SENATE—*Monday, April 5, 1971*

The Senate met at 10 a.m. and was called to order by Hon. LLOYD M. BENTSEN, a Senator from the State of Texas.

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

Eternal Spirit, amid the pageantry of palms and the panoply of buds and blossoms, we pause to renew our loyalty to Thee, the giver of life and the King of the Universe. Give us grace, wisdom, and strength to serve the people of this Nation, and to help bring to fulfillment the reign of the Prince of Peace.

Prepare our hearts, O God, for the way of the cross and its deeper meaning—that it is by suffering love we are redeemed. Make us to know that it is by dying we live, by giving life we find it again. Lift our vision to the glory of the resurrection and the life that abides all change. Help us so to live and so to serve as to be worthy of eternal life.

In the name of Him who is the resurrection and the life. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. ELLENDER).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 5, 1971.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. LLOYD M. BENTSEN, a Senator from the State of Texas, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

Mr. BENTSEN thereupon took the chair as Acting President pro tempore.

MESSAGE FROM THE PRESIDENT

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

REPORT ON THE OPERATIONS IN 1970 OF THE INTERNATIONAL COFFEE AGREEMENT OF 1968—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. BENTSEN) laid before the Senate the following message from the President of the United States, which was referred to the Committee on Finance:

To the Congress of the United States:

I transmit herewith my report on the operations in 1970 of the International Coffee Agreement of 1968.

Events during 1970 once again demonstrated the capacity of the Agreement to protect the interests of both its consumer and producer members. The International Coffee Council acted decisively in August to curb a precipitous increase in world coffee prices caused by damage to the Brazilian coffee crop in mid-1969. At the same time the judicious measures adopted by the Council enabled producing countries to maintain their foreign exchange earnings from coffee exports at a level consistent with the objectives of the Agreement.

I am also pleased to inform the Congress that we have reached an agreement with Brazil relating to our trade with that country in soluble coffee, which settles the U.S. complaint against Brazil under Article 44 of the International Coffee Agreement. This agreement improves the competitive conditions of access to Brazilian green coffee by U.S. soluble coffee processors in a manner which safeguards the interests of consumers.

In terms of the bilateral accord, which will be valid as long as the United States continues to implement the International Coffee Agreement, Brazil will make available for sale to American soluble coffee manufacturers an appropriate quantity of green coffee free of Brazilian contribution quota. American firms will qualify to purchase this coffee, which will be of suitable quality, in proportion to their historical production of soluble coffee. The enclosed letter from the Secretary of State provides a more detailed account of the settlement and the negotiations which led up to it.

In the light of the Agreement's benefit to American consumers in 1970, its undoubted value to the developing coffee producing countries, and the resolution of our problem with Brazil, I urge timely Congressional action to extend the necessary implementing legislation until September 30, 1973, when the 1968 International Coffee Agreement terminates. Prompt passage will reaffirm to the Agreement's 41 exporting members the strength of our commitment to their economic development. Expeditious approval will, moreover, remove any uncertainty on the part of our own industry as well as foreign countries concerning the future of international coffee cooperation.

RICHARD NIXON.

THE WHITE HOUSE, *April 1, 1971.*

MESSAGE FROM THE PRESIDENT—APPROVAL OF A JOINT RESOLUTION

A message in writing from the President of the United States was communicated to the Senate by Mr. Leonard, one of his secretaries, announcing that on March 31, 1971, the President had approved and signed the following joint resolution:

S.J. Res. 55. A joint resolution to provide a temporary extension of certain provisions of law relating to interest rates and cost-of-living stabilization.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, April 1, 1971, be dispensed with.

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

WAIVER OF RULE VIII

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the call of the calendar under rule VIII be waived.

The ACTING 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 be authorized to meet during the session of the Senate today.

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar.

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

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

U.S. AIR FORCE

The assistant legislative clerk read the nomination of Maj. Gen. Homer I. Lewis, U.S. Air Force Reserve, to be Chief of the Air Force Reserve.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

U.S. ARMY

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Army.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

Mr. SCHWEIKER. Mr. President, at the recent hearings before the Committee on Armed Services, I was privileged to vote along with my colleagues on the committee to recommend the confirmation of the nomination, in the Office of Chief of Reserves in the Department of the Army, of one of my good friends and an outstanding citizen of my State, Brig. Gen. J. Milnor Roberts, Jr.

General Roberts, in a real sense, represents the tradition of the citizen-soldier in the United States; he is a successful man in his profession in civilian life, and he has, at the same time, given extraordinary service to his country in

uniform, as a Reserve officer in both war and peace. We in Pennsylvania are proud of his record and we anticipate with confidence his ability and dedication to the challenge which he faces in leading the Nation's Army Reserve, in what may be its most critical hour.

General Roberts, completing his 4 years of ROTC training in 1940 at Lehigh University in Pennsylvania, was called to active duty as a very young officer in World War II. He was assigned to the perhaps most hazardous duty in the Army, that with the glider infantry, commanding a glider infantry company in preparation for the Normandy Beach landing, in which he participated on the first day, subsequently serving with bravery and distinction in the great crusade, which ended in the liberation of the Western European peoples.

Mr. President, I was particularly impressed at yesterday's hearing with the responses of General Roberts to questions presented him by our distinguished chairman and other members of the committee with regard to his own attitude to the military services, and particularly the Reserves, which he will lead. We know that this Nation traditionally has depended upon its citizens to come to the defense of the country in times of crisis, and that if our Nation is to survive in this turbulent world we must continue to rely upon this motivation for service from throughout the national community.

General Roberts fully understands and is dedicated to this principle; he knows that his responsibility of leadership is not a casual one, and that the fate of this Nation may rest upon the citizen-soldier leaders of this Nation, of which he is a representative.

I believe it is important for the Senators to understand the type of man we are placing this great responsibility upon. An article prepared for publication in the Officer magazine, the official publication of the Reserve Officers Association, sheds some light upon his personality and qualifications, and I ask that it be included in my remarks at this point.

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

NEW ARMY RESERVE CHIEF, SURVIVOR OF "THE LONGEST DAY" HAS OUTSTANDING RECORD IN COMMAND AND LEADERSHIP ROLE

Maj. Gen. J. Milnor Roberts, Jr., the new Chief of Army Reserve on the Army Staff, went from command of Co. E., of the 88th Glider Infantry Regiment, to the post of Battlefield Aide, to the V Corps Commander on the Omaha Beach on D-Day, 6 June 1944, only to find himself so often exposed to enemy fire in so many different situations that he landed the next morning on the casualty list.

"I encountered an old college friend the next morning who greeted me with, 'My God, I thought you were dead.'

"Funny thing," recalled Gen. Roberts with a not too funny laugh, "It took me a little time to convince him that I was alive and generally speaking all right, and I was concerned as to how far reports of my name being on the KIA list had proceeded. I especially wanted my family back home to know that the report was, indeed, greatly exaggerated."

Roberts was a captain at the time, just four years after receiving his commission from ROTC at Lehigh University, Bethlehem, Pa., and just approaching his 25th birthday. But from the time of that historic Normandy Beachhead landing until the end of the war, he was involved in the roughest action of World War II, as Allied forces plowed across France and Germany, before uniting with the Russian allies and accepting the German surrender, a traumatic 11 months later. Meanwhile, he had become a key member of the V Corps Staff, first as Assistant G–5, Executive Officer of the G–5 Section, and then Assistant G–2, before being released from active duty in December 1945, carrying home with him various military decorations, including the Bronze Star Medal, the Croix de Guerre with Silver Star (French), and Military Cross of 1939 (Czechoslovakian).

Before shipping overseas to an English training base, he served as instructor at the Infantry School at Ft. Benning, and in various instructor and training assignments in the infantry and glider infantry. By coincidence, his glider infantry experience parallels that of then Lt. Col. Strom Thurmond, a much decorated officer of the D-Day landing, who today is the second senior Republican member of the Senate Armed Services Committee, Past National President of ROA, and recent recipient of the ROA Minute Man of the Year award. They first met when they shared a battered jeep on a wild dash up a country road during an advance inland from the Beachhead. Thurmond was then operations officer of the G–5 Section of First Army and Roberts was Executive Officer, G–5 Section, V Corps. They have been personal friends since.

About "The Longest Day", the history making novel by Cornelius Ryan, which was the basis for a fabulous motion picture, the premiere showing of which was sponsored in many places by ROA, Roberts had been a rich source of material because of his activity for his Commander, General Leonard Gerow, in rushing from one point on Omaha Beach to another. One story he recalls, which has never been told, was the delightful one about the messages to the troops from the President of the United States and the invasion forces' surgeon.

President Roosevelt's message was couched in the loftiest inspirational prose, exhorting the men to respond to their sacred challenge to liberate in the name of God and justice the enslaved beloved friends of all Americans. The Surgeon General, in a more practical sense, emphasized the issuance of duplicate essential articles to all soldiers going out to fight and reminding them that the romantic aspects of their liberation efforts should be guarded with care. Gen. Roberts used one of his—in which to wrap his wrist watch, and he recalled later that his watch was the only thing about him dry after he got ashore. "This is the watch I have on my wrist today," he says with some pride.

After World War II, Gen. Roberts continued in the active reserve, serving as S–2, S–3 and Executive Officer, 314th Infantry Regiment; Commanding Officer, 1st Battle Group, 314th Infantry Regiment; Commander, Combat Command Section, 79th Command Headquarters (Divisional); as a Mobilization Designee to the Office, Chief of Information, Department of the Army, and Commander of the 99th ARCOM.

Gen. Roberts was selected and confirmed for two star rank, but gave up his opportunity to become a major general when he accepted an appointment on 1 October 1970, as Deputy Chief of Army Reserve, being the first Army Reserve General Officer to fill this position. As Chief, he regained his two-star rank.

A native of Pittsburgh, Gen. Roberts, in civilian life, was President of Sykes Advertising, Inc., and has been active in various civic, professional and patriotic activities.

He became Commander of the 99th ARCOM in December 1968, and was promoted to Brig. Gen. in May 1968.

In addition to the infantry school and glider operations course, he has completed the command and general staff college associate and combat refresher courses, the National War College Defense Strategy Seminar and the National Security Seminar of the Industrial College of the Armed Forces. He has also attended the Army War College Senior Reserve Component Officers Course.

Gen. Roberts' wife, "Ginger", petite and auburn-haired, has been completing a four year effort to obtain a Master's Degree in Social Work from the University of Pittsburgh, since he has been in the Pentagon. The Roberts, parents of a college-age son, a high school senior, Class of 1971, and two other teenagers, had just completed and warmed up a home they had designed by a leading contemporary architect to meet requirements of this day: an adult section of the house, connected by a second story bridge to a section of the house occupied by their children, underneath of which is a garden patio. The site is on a mountainside overlooking the Allegheny River, and the most scenic part of suburban Pittsburgh.

U.S. NAVY

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Navy.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE AIR FORCE

The assistant legislative clerk proceeded to read sundry nominations in the Air Force, which had been placed on the Secretary's desk.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

LEGISLATIVE SESSION

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

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

THE NATION'S CONSCIENCE

Mr. MANSFIELD. Mr. President, in the New York Times of March 28, 1971, and the Christian Science Monitor of April 2, 1971, there were published commentaries by Mr. Richard L. Strout and Mr. Neil Sheehan. While I do not endorse all the assumptions, questions, and conclusions raised in either the essay or the column, I do think that Mr. Strout and Mr. Sheehan raise a matter which will be given

increasing consideration in the days ahead. Because this will be a question for discussion and consideration, I ask unanimous consent to have the two articles printed in the RECORD at this point.

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

[From the New York Times, Mar. 28, 1971]

SHOULD WE HAVE WAR CRIME TRIALS?

(By Neil Sheehan)

(NOTE.—Neil Sheehan, who spent three years in Vietnam, is a correspondent in The Times Washington Bureau.)

"The tragic story of Vietnam is not, in truth, a tale of malevolent men bent upon conquest for personal gain or imperial glory. It is the story of an entire generation of leaders (and an entire generation of followers) so conditioned by the tensions of the cold war years that they were unable to perceive in 1965 (and later) that the Communist adversary was no longer a monolith . . . Lyndon Johnson, though disturbingly volatile, was not in his worst moments an evil man in the Hitlerian sense . . . Set against these facts the easy designation of individuals as deliberate or imputed 'war criminals' is shockingly glib, even if one allows for the inexperience of the young."—Townsend Hoopes, the former Under Secretary of the Air Force, January, 1970.

Is the accusation glib? Or is it too unpleasant to think about? Do you have to be Hitlerian to be a war criminal? Or can you qualify as a well-intentioned President of the United States? Even when I saw those signs during the March on the Pentagon in 1967, "Hey, Hey L.B.J. How Many kids did you kill today?" they didn't make me think that Lyndon Johnson, the President of the United States, might be a war criminal. A misguided man perhaps, an egomaniac at worst, but not a war criminal. That would have been just too much. Kids do get killed in war. Besides, I'd never read the laws governing the conduct of war, although I had watched the war for three years in Vietnam and had written about it for five. Apparently, a lot of the men in Saigon and Washington who were directing the war didn't read those laws either, or if they did, they interpreted them rather loosely.

Now a lot of other people are examining our behavior in Vietnam in the light of these laws. Mark Sacharoff, an assistant professor of English at Temple University, has gathered their work together into this bibliography. By this simple act he has significantly widened our consciousness. If you credit as factual only a fraction of the information assembled here about what happened in Vietnam, and if you apply the laws of war to American conduct there, then the leaders of the United States for the past six years at least, including the incumbent President, Richard Milhous Nixon, may well be guilty of war crimes.

There is the stuff of five Dreyfus affairs in that thought. This is what makes the growing literature on alleged war crimes in Vietnam so important. This bibliography represents the beginning of what promises to be a long and painful inquest into what we are doing in Southeast Asia. The more perspective we gain on our behavior, the uglier our conduct appears. At first it had seemed unfortunate and sad; we were caught in the quicksand of Indochina. Then our conduct appeared stupid and brutal, the quagmire was of our own making, the Vietnamese were the victims and we were the executioners. Now we're finding out that we may have taken life, not merely as cruel and stubborn warriors, but as criminals. We are conditioned as a nation to believe that only our enemies commit war crimes. Certainly the enemy in Indochina has perpetrated crimes. The enemy's war crimes, however, will not wash us clean if we too are war criminals.

What are the laws of war? One learns that there is a whole body of such laws, ranging from specific military regulations like the Army's Field Manual 27–10, "The Law of Land Warfare," to the provisions of the Hague and Geneva Conventions, which are United States law by virtue of Senate ratification, to the broad principles laid down by the Nuremberg and Tokyo war crimes tribunals. These laws say that all is not fair in war, that there are limits to what belligerent man may do to mankind. As the Hague Convention of 1907 put it, "The right of belligerents to adopt means of injuring the enemy is not unlimited." In other words, some acts in war are illegal and they aren't all as obviously illegal as the massacre of several hundred Vietnamese villagers at Mylai.

Let's take a look at our conduct in Vietnam through the viewing glass of these laws. The Army Field Manual says that it is illegal to attack hospitals. We routinely bombed and shelled them. The destruction of Vietcong and North Vietnamese Army Hospitals in the South Vietnamese countryside was announced at the daily press briefings, the Five o'Clock Follies, by American military spokesmen in Saigon.

So somebody may have committed a war crime in attacking those hospitals. The Manual also says that a military commander acquires responsibility for war crimes if he knows they are being committed, "or should have knowledge, through reports received by him or through other means," and he fails to take action to stop them. President Johnson kept two wire-service teletypes in his office and he read the newspapers like a bear. There are thus grounds for believing that he may have known his Air Force and artillery were blowing up enemy hospitals. He was the Commander in Chief. Did his knowledge make him a war criminal? The Army Manual says that "every violation of the law of war is a war crime."

Let's proceed to one of the basic tactics the United States used to prosecute the war in South Vietnam—unrestricted air and artillery bombardments of peasant hamlets. Since 1965, a minimum of 150,000 Vietnamese civilians, an average of 68 men, women and children every day for the past six years, have been killed in the south by American military action or by weapons supplied to the Saigon forces by the United States. Another 350,000 Vietnamese civilians have been wounded or permanently maimed. This is a very conservative estimate. It is based on official figures assembled by Senator Edward M. Kennedy's Senate Subcommittee on Refugees and on a study for the Subcommittee by those eminent Government auditors, the General Accounting Office. The real toll may be much higher. This conservative attitude makes the documentation put together by the Senator and his staff aides, Jerry Tinker and Dale S. de Haan, among the most impressive in the bibliography. Many, perhaps the majority, of those half-million civilian casualties were caused by the air and artillery bombardments of peasant hamlets authorized by the American military and civilian leaders in Saigon and Washington.

The United States Government tried and hanged in 1946 a Japanese general, Tomoyuki Yamashita, because he was held responsible for the deaths of more than 25,000 noncombatants killed by his troops in the Philippines.

Can a moral and legal distinction be drawn between those killings in World War II, for which General Yamashita paid with his life, and the civilian deaths ordered or condoned by American leaders during the Vietnam war? Again, if you accept only a portion of the evidence presented in this bibliography, and compare that evidence to the laws of war, the probable answer is, No. And President Nixon has spread this unrestricted bombing through Laos and Cambodia, killing and wounding unknown tens of thousands of civilians in those countries.

Looking back, one realizes that the war-crimes issue was always present. Our vision was so narrowly focused on the unfolding details of the war that we lacked the perspective to see it, or when the problem was held up to us, we paid no heed. This lesson becomes clear in reading the proceedings of the Russell Tribunal now published in "Against the Crime of Silence." The proceedings were widely dismissed in 1967 as a combination of kookery and leftist propaganda. They should not have been. Although the proceedings were one-sided, the perspective was there.

One saw the substance all the time in Vietnam in the bombing and shelling of the peasant hamlets. In November, 1965, I found five fishing hamlets on the coast of Quangngai Province in central Vietnam, not far from Mylai, which had been ravaged over the previous two months by the five-inch guns of United States Navy destroyers and by American and South Vietnamese fighter-bombers. The local Vietnamese officials told me that at least 184 civilians had been killed. After a day of interviewing the survivors among the ruins, I concluded that a reasonable estimate might run as high as 600 dead. American Army officers working in the province told me that the most serious resistance the Vietcong guerrillas in the hamlets had offered was sniper fire. The hamlets and all their inhabitants had been attacked just because the Vietcong were present. I discovered that another 10 hamlets in the province had also been gutted and about 25 others severely damaged, all for like reasons.

Making the peasants pay so dearly for the presence of guerrillas in their hamlets, regardless of whether they sympathized with the Vietcong seemed unnecessarily brutal and politically counter-productive to me, since this Hun-like treatment would alienate them from the Saigon authorities and the American forces. No common-sense military purpose seemed to be served. When I wrote my story describing the agony of the fisher folk, however, it did not occur to me that I had discovered a possible war crime. The thought also does not seem to have occurred to my editors or to most readers of The Times. None of the similar stories that I and other reporters wrote later on provoked any outrage, except among that minority with the field of vision to see what was happening. As Lieutenant Calley told the prosecutor at Fort Benning, "It wasn't any big deal, sir."

Reading through the news dispatches from 1965, 1966 and 1967 that Seymour Melman of Columbia and Richard Falk of Princeton assembled to document accusations of war crimes made by The Clergy and Laymen Concerned About Vietnam, "In the Name of America," is to view those scenes again in this new and disturbing perspective. Frank Harvey, in "Air War—Vietnam," recounts with the power of anecdotal narrative the casual destruction of peasant hamlets in the Mekong Delta by the United States Air Force. Usually the excuse was that a squad or so of guerrillas might be present in the hamlet or the mere location of the hamlet in guerrilla-dominated territory. Harvey is a convincing witness because he concludes with a defense of the war.

You might argue that this destruction, and concomitant loss of civilian life, were not deliberate, that they were among those haphazard horrors of war. The record says otherwise.

As early as the fall of 1965, the American Embassy in Saigon distributed to correspondents a Rand Corporation study on the air and artillery bombardments. The study concluded that the peasants blamed the Viet-

cong when their hamlets were blasted and their relatives killed; in effect, that shrapnel, white phosphorous and napalm were good political medicine. The study was dismissed by reporters as macabre proof that the Government could always find a think-tank to tell it what it wanted to think.

In the summer of 1966, however, a lengthy secret study of the pacification program was done for the Embassy and military headquarters in Saigon by some of the most experienced Americans in the country. One of the study's recommendations was that this practice of unrestricted bombing and shelling should be carefully re-examined. According to the study there was evidence that the practice was driving hundreds of thousands of refugees into urban slums and squalid camps, causing unnecessary death and suffering, and angering the peasantry. The proposal for a re-examination was vetoed at the highest levels of American authority in Saigon.

By deciding not to reconsider, the American leadership in Saigon was deciding to ordain the practice, to establish a de facto policy. During those earlier years at least, the policy was not acknowledged in writing, as far as I know, but neither can there be any doubt that this was the way things were to be done and that those American military and civilian leaders directing the war knew the grim cost of their decision not to look. Why did they establish the policy? Because devastation had become a fundamental element in their strategy to win the war.

I remember asking one of the most senior American generals in the late summer of 1966 if he was not worried by all the civilian casualties that the bombing and shelling were causing. "Yes, it is a problem," he said, "but it does deprive the enemy of the population, doesn't it?" A survey of refugees commissioned later that year by the Pentagon indicated that 54 per cent of those in Dinhtuong Province in the Mekong Delta were fleeing their hamlets in fear of the bombing and shelling. So this was the game. The firepower that only American technology can muster, the General Motors of death we invented in World War II, was to defeat the Vietnamese Communists by outright military attrition, the body count, and by obliterating their strategic base, the rural population.

If you destroyed the rural society, you destroyed the resources the enemy needed to fight. You deprived him of recruits in the South, of the food and the intelligence the peasantry provide; you reversed Mao Tse-tung's axiom by drying up the sea (the peasantry) in which the guerrillas swam.

All of those directives issued by the American military headquarters in Saigon about taking care to avoid civilian casualties, about protecting the livestock and the homes of the peasantry, were the sort of pharisaic prattle you hear from many American institutions. Whenever you say the institution is not behaving as it says it should, the institution can always point to a directive and say you must be mistaken. (General Electric had directives forbidding price fixing when some of its vice presidents were convicted of price fixing.) No one was fooling himself when he marked off those "free-fire zones,' and ordered those "pre-planned airstrikes'" and that "harassing and interdiction fire" by the artillery. People and their homes were dehumanized into grid coordinates on a targeting map. Those other formalities, like obtaining clearance from the Vietnamese province chief before you bombed a hamlet, were stratagems to avoid responsibility, because he almost never refused permission. (Such legal fictions, by the way, are expressly forbidden by the laws of war.)

Out in the countryside the captains and majors did not disguise the design. One day in a heavily-populated province in the Mekong Delta, a young Army captain swept his hand across the map over a couple of dozen hamlets in guerrilla-dominated territory near the provincial capital and remarked that the peasants were evacuating them and moving in near town. Why? I asked. "Because it's not healthy out there. We're shelling the hell out of them," he said.

By 1967, this policy of unrestricted air and artillery bombardments had been orchestrated with search and destroy operations by ground troops, B–52 strikes, and crop destruction with chemical herbicides into a strategy that was progressively laying waste much of the countryside. (The question of whether herbicides were dumped on the landscape to an extent that may constitute a separate war crime is treated at length in several of the books Mr. Sacharoff lists.) That year Jonathan Schell went to Quangnai to document the creeping destruction of the rural society in a two-part article that first appeared in The New Yorker magazine. It was later published with a title of understated irony, "The Military Half." Schell estimated that by this time about 70 per cent of the 450 hamlets in the province had been destroyed.

Did the military and civilian leaders directing the war from Washington know what was happening in Vietnam? How could they have avoided knowing? The newspapers, magazine articles like Schell's and the reports of the Kennedy Subcommittee indicated the extent of what was being done in their name. The statistics alone are enough to tell the tale; five million refugees, nearly a third of South Vietnam's population of 16 million people, and that conservative estimate of the civilian casualties from what is called "friendly" military action, of at least 150,000 dead and 350,000 wounded or maimed.

These peasant hamlets, one must bear in mind, were not being plowed under because American or South Vietnamese ground troops were attempting to seize them from the enemy in pitched battles. The hamlets were being bombarded in the absence of ground combat.

One might argue that though regrettable, though even immoral, the indiscriminate air and artillery bombardments of civilians in Vietnam were not a war crime. The Allies engaged in terror bombing of Japanese and German cities in World War II. Look at the incendiary raids on Dresden and Tokyo and the nuclear holocausts of Hiroshima and Nagasaki. None of the defendants at the Nuremberg and Tokyo trials were convicted of war crimes involving the bombing of civilian populations, because the prosecutors had done the same thing. By custom, therefore, one might argue, terror bombing is an accepted practice of war. Similarly, in the Korean War, the United States Air Force bombed Korean towns and cities.

But is Vietnam the same kind of war? There is good reason to think that it is not. In World War II opposing industrialized societies were fighting a war of survival. In this context of total war, the cities inevitably became targets to be destroyed. They contained the industries and fueled their opponent's war machine and the workers who manned the factories. The worker was as much a combatant as the uniformed soldier. Korea was also, more or less, a conventional conflict between uniformed armies, although bombing practices there would bear examination in the perspective of history.

In Vietnam, however, the most advanced technological nation in the world intervented in a civil war in a primitive, agricultural country. The Vietnamese Communists possess negligible industry, no air force of any size, and no intercontinental missiles that pose a threat to the survival of the United States. The intervention was, rather, undertaken for reasons of domestic politics and foreign policy, to avoid the repercussions at home of losing a war to Communists and to maintain a position of power and influence for the United States in Southeast Asia.

Moreover, as the literature in Sacharoff's bibliography amply documents, the use of the air weapon underwent a subtle and important change in South Vietnam from the previous two wars. Air power, and artillery as a corollary weapon, were directed by an occupying power, the United States, at the civilian population in the rural areas of the country under occupation. The targets of the bombs and shells were the noncombatants themselves, because it was believed that their existence was important to the enemy. Air power became a distinct weapon of terror to empty the countryside. Samuel P. Huntington, of Harvard, has even coined a marvelously American euphemism for the technique—"forced-draft urbanization and modernization." Some of us prefer a quotation from Tacitus that the late Bernard Fall was fond of citing: "Where they make a desert they call it peace."

One key to understanding this use of airpower in South Vietnam is to compare the unrestricted bombing in the south with the elaborate restrictions that surrounded the air campaign against North Vietnam.

Although the North Vietnamese may not believe it, in the North a conscious effort was made to bomb only military, and what limited industrial targets were available, and to weigh probable civilian casualties against the military advantages to be gained from a particular airstrike. The ultimate objective of the air campaign against the North was, to be sure, political rather than military. It sought to intimidate the North Vietnamese into withdrawing their forces from the South and taking the Vietcong guerrillas along with them. And undoubtedly the restrictions were also designed to escape the unfavorable publicity that would result from severe civilian casualties in the North.

The mere fact that an attempt was made to avoid them throws into sharp understanding the very different motives that lay behind the bombing in the south and the inherent acceptance of great civilian suffering. When Harrison Salisbury, an assistant managing editor of The New York Times, visited North Vietnam in December, 1966, to write his memorable series of articles on the destruction wrought by American air raids there (civilian homes, schools, hospitals and churches had been wrecked because the air campaign had never been the surgical operation Pentagon propaganda portrayed it as being), the most severe example of civilian deaths the North Vietnamese claimed was 89 in the town of Nandinh southeast of Hanoi, from six months of bombings, less than half the official South Vietnamese estimate of the number of civilians killed in the five hamlets I found on the coast of Quangngai Province in 1965.

Did the employment of the air weapon and the artillery in South Vietnam thus exceed the limits sanctioned by the laws of war?

The Untied States Army . . . Field Manual says: "The law of war . . . requires that belligerents refrain from employing any kind or degree of violence which is not actually necessary for military purposes and that they conduct hostilities with regard for the principles of humanity and chivalry." The Manual goes on to explain what is meant by "actually necessary for military purposes," i.e. military necessity. "The prohibitory effect of the law of war is not minimized by 'military necessity' which has been defined as that principle which justifies those measures not forbidden by international law which are indispensable for securing the complete submission of the enemy as soon as possible. Military necessity has been rejected as a defense for acts forbidden by the customary or conventional laws of war inasmuch as the

latter have been developed and framed with consideration for the concept of military necessity." In short, if you can demonstrate certain measures are required to defeat the enemy, and those measures are not specifically forbidden by the laws of war, you employ them.

Assuming that the use of air power in South Vietnam was not specifically forbidden by the laws of war, was this means necessary to defeat the enemy? He could have been deprived of the rural population by another, more humane method. This would have involved putting sufficient American ground troops in South Vietnam to occupy most of the countryside and thereby gain control over the rural hamlets. National mobilization and the dispatch of upwards of 600,000 troops to South Vietnam was proposed by the Joint Chiefs of Staff and rejected by President Johnson and his advisers, because this strategy would have meant higher draft calls, wage and price controls, and other measures that would have been unpopular with the American public. So there are grounds for believing that the use of the air weapon in the South was not a military necessity but a political convenience, a substitute for sufficient infantrymen to hold the countryside.

I am not saying that garrisoning South Vietnam with ground troops would have made the war a sensible enterprise. I am suggesting that the war's impact upon the Vietnamese might have been more merciful. The Marines, because of their pre-World-War-II experience with pacification in Central America and the Caribbean, did make an attempt to hold a good many of the hamlets in central Vietnamese provinces where they operated. Life for a Vietnamese farmer within these zones was safer than for his brethren in other regions.

In any case, to address the basic question of legal sanctions, it appears that the employment of air and artillery to terrorize the peasantry and raze the countryside was an act specifically forbidden by the laws of war. The Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War states:

"The High Contracting Parties specifically agree that each of them is prohibited from taking any measure or such a character as to cause the physical suffering or extermination of protected persons [civilians] in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

"No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

"Pillage is prohibited.

"Reprisals against protected persons and their property are prohibited."

The paragraphs seem to be a reasonably fair description of what was inflicted upon much of the South Vietnamese peasantry by the United States.

The Army Field Manual is more specific. "The measure of permissible devastation is found in the strict necessities of war," it says. "Devastation as an end in itself *or as a separate measure of war* [italics added] is not sanctioned by the law of war."

The adoption of devastation as a basic element of strategy also seems to have led American leaders into what may be related war crimes against South Vietnamese civilians. The Geneva Convention of 1949 states that a belligerent power has a duty, in so far as it is able, to care for the victims of war.

"The wounded and the sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect. As far as military considerations allow, each party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment."

The consignment of Vietnamese civilian war wounded to provincial hospitals that were little better than charnel houses has been a national scandal for the United States. The reports of the Kennedy Subcommittee describe the scenes of two wounded to a bed, no sheets or mattresses, no showers, filthy toilets, open sewers and swarms of flies spreading infection. In contrast, the United States military hospitals are models of medical science. Given the wide publicity the deplorable conditions in these Vietnamese civilian hospitals have received over the years, would it be possible for the responsible leaders of the United States to contend that the neglect was not deliberate?

A similar war crime may have been committed against civilians forcibly evacuated from their homes. These persons would appear to fall under the category of internees in the Geneva Convention of 1949. The Convention lays out in great detail the obligation of a belligerent power to provide such persons with adequate food, housing and medical care. Here is an excerpt from a report to the Kennedy Subcommittee by a team from the General Accounting Office which inspected so-called refugee camps in South Vietnam last summer. The excerpt describes a camp in Quangnam Province on the central coast:

"At this location, there were about 2,070 people. We were informed that only 883 were recognized as refugees and that they would receive temporary benefits. We were advised that these people were all Vietcong families and that they were relocated by force in February or March 1970. These people are under heavy guard by the Vietnamese military.

"During our inspection, we observed there were no latrines, no usable wells, no classrooms, and no medical facilities. The shelters were crudely constructed from a variety of waste material, such as empty ammunition boxes and cardboard. We observed that the number of shelters would not adequately house these people . . . The [American] refugee adviser stated that there were no plans to improve the living conditions at this site."

The fact that these persons are being held by the South Vietnamese authorities apparently does not absolve the United States of responsibility under the laws of war. Legally they remain our refugees. As the Army Field Manual explains:

"The restrictions placed upon the authority of a belligerent government cannot be avoided by a system of using a puppet government, central or local, to carry out acts which would be unlawful if performed directly by the occupant. Acts induced or compelled by the occupant are nonetheless its acts." The Saigon regime is not a puppet government, but it is a client regime whose existence is dependent upon the United States. A good argument could be made that because of this client relationship, the United States induces these acts. Telford Taylor, of Columbia, the former chief American prosecutor of Nuremberg, quantifies the neglect of the civilian war wounded and refugees. In "Nuremberg and Vietnam: An American Tragedy," he notes that the United States spent, at the most, a quarter-billion dollars to ease the civilian plight over the three years from 1965 through 1967. You will think this is a lot of money, until he tells you the amount was less than four per cent of the cost of air operations over the same period.

What about a relationship between the use of airpower and artillery in South Vietnam and the garden variety war crimes that many of the books in this bibliography allege—the individual acts of torture and murder of prisoners and civilians by American soldiers, the burning of peasant huts in "Zippo raids," the looting and the rape? Did the conduct of the war as approved at the highest levels create an atmosphere in which the lives of the Vietnamese were so cheapened that they became sub-humans in the eyes of the soldier? If so, did this atmosphere help to incite these individual war crimes, given the traditional racism of Americans towards Asians—the dinks, the gooks, the slopeheads—and the psychological stress upon the soldier of fighting in a country where much of the population is hostile, where women and children do set mines and boobytraps and shoot at you?

The two accounts of the My-lai massacre mentioned in this bibliography, Richard Hammer's "One Morning in the War" and Seymour Hersh's "My Lai 4," as well as the testimony that has emerged at the court martial of Lieutenant Calley, of practices like driving civilians ahead of the troops to detonate mines with their bodies suggest that the general conduct of the war did contribute to these individual atrocities.

The word Lieutenant Calley used to describe the act of slaughtering the 102 men, women and children for whose deaths he is being held responsible evokes this atmosphere in uncanny fashion. He told the prosecutor that he was ordered "to waste the Vietnamese . . . waste, waste them, Sir." Were this just Lieutenant Calley speaking the word would not carry much meaning, but the word is from the argot of the American soldier in Viet-nam. Human beings are "wasted" there, they were "blown away." Soldiers have a unique ability to find words to describe the reality of their wars.

Given such an atmosphere, the massacre at Mylai would be a departure from the norm only in that it consisted of the direct murder by rifle and machine gun fire of several hundred Vietnamese civilians at one time. The soldiers in Lieutenant Calley's platoon, whose moral sense led them to disregard his orders and not participate in the killings, do not appear to have been shocked by the lesser, individual atrocities that occurred prior to Mylai. Looked at coldly, Lieutenant Calley and the soldiers who did join him in the massacre were doing with their rifles what was done every day for reasons of strategy with bombs and artillery shells. There are Calleys in every army. What makes them dangerous is a set of circumstances in which their homicidal abberations can run amok. The laws of war say that it is the responsibility of the highest leadership to do all in its power to prevent such circumstances from occurring.

Both the Army Field Manual and the Nuremberg Principles address this central issue in delineating when a claim of superior orders can constitute a defense against a charge of war crimes. "The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, *provided a moral choice was in fact possible for him*" [italics added], the Nuremberg Principles say. The Army Field Manual is a bit more elaborate. "In considering the question whether a superior order constitutes a valid defense, the court shall take into consideration the fact that obedience to lawful military orders is the duty of every member of the Armed Forces; that the latter cannot be expected, in condition of war discipline, to weigh scrupulously the legal merits of the orders received; that certain rules of warfare may be controversial; or that an act otherwise amounting to a war crime may be done in obedience to orders conceived as a measure of reprisal," the Manual says.

Curiously, Lieutenant Calley's lawyers have claimed that he has a robot-like personality

incapable of resisting any orders from his superior, Capt. Ernest Medina, but they have not sought to defend Calley on the grounds that, given the general atmosphere in which the war was being conducted, and his interpretation of his orders that morning in Mylai, he may not have been capable of a moral choice. They may have hesitated to do so because they would have had to put the entire command structure from President Johnson on down in the witness chair. Telford Taylor notes in his book that a court martial at Fort Benning is too limited a forum for such a far-reaching inquiry.

Nevertheless, the question of higher responsibility hangs over Mylai. It hangs over the individual atrocities described in these books, it hangs over the use of airpower and artillery to lay waste the Vietnamese villages, if that, too, constitutes a war crime and the greatest one of all.

Many would contend, as Townsend Hoopes did in an exchange of articles with two reporters for the Village Voice who accused him and his colleagues of being war criminals, that raising the issues of war crimes in Vietnam is absurd and unwarranted in the context of a democracy like the United States. Worse, many would argue, it is vindictive, capable of perversion into a new McCarthyism. Hoopes was a Deputy Assistant Secretary of Defense and Under Secretary of the Air Force in the Johnson Administration. He wrote an admired account of the inside events behind the March 31, 1968, decision to restrict the bombing of North Vietnam and open peace negotiations. His view is important because it appears to be widely held.

Hoopes argued that since the President is elected, since the war was prosecuted from well-meaning if mistaken motives, since Congress voted the funds and there was broad public support at the outset, no official should acquire criminal liability. Judgment, he said, should be confined to voting the Government out of office. Attacking this position in his introduction to the Russell Tribunal proceedings, Noam Chomsky of M.I.T. states that Hoopes is claiming an immunity for American leaders which this country denied to the leaders of Japan and Germany. Marcus Raskin, co-director of the Institute for Policy Studies in Washington, the think-tank of the New Left, asserts that Congress cannot be held responsible as a body, because many Congressmen voted funds merely to ensure that American soldiers had the means to defend themselves. Telford Taylor, a mugwump Democrat, remarks that though good intentions may be mitigating circumstances, they do not negate the fact of a crime, if one occurred.

Taken to its logical end, the Hoopes argument also means that all Americans were responsible for the actual conduct of the war. If so, then the adult majorities of Japan and Germany should have been punished for war crimes. They applauded the beginning of World War II. And if everyone is responsible, of course no one is responsible. The Nuremberg and Tokyo tribunals rejected Hoopes's argument by making a distinction between those in the audience and those who held power, as do the laws of war. The Army Manual denies a collective copout: "The fact that a person who committed an act which constitutes a war crime acted as the head of a State or as a responsible government official does not relieve him from responsibility for his act."

(Hyperbole in describing what war crimes may have taken place in Vietnam seems just as unhelpful as the Hoopes argument. Chomsky in "At War With Asia," accuses the United States of intending genocide in Vietnam. So do Richard Falk, the international legal scholar, and Gabriel Kolko, the revisionist historian, both of whom have otherwise diamond-cutting minds, in "War Crimes and the American Conscience," the published proceedings of a Washington symposium on war crimes last year. Genocide does not appear to be an accurate characterization of American conduct in Vietnam. The story is more complicated and the facts do not support the charge. The population of the country has grown despite the war, from an estimated 15-million in 1962 to about 17-million now.)

But how is this country to determine whether war crimes were really committed in Vietnam and who is responsible for them?

Not even the wildest of anticommunist politicians has predicted the conquest of the United States by the Vietcong guerrillas and the North Vietnamese army. So it seems equally outlandish to imagine that a tribunal with the power of those at Tokyo and Nuremberg will ever sit in judgment on the leaders of this country.

The Army, the principal service involved in the Vietnam war, has shown that it will not enforce military law and judge itself. The dismissal of charges against Maj. Gen. Samuel W. Koster, the division commander of the troops at Mylai, demonstrated that the current leadership of the Army considers Lieutanant Calley and Captain Medina to be its only real war criminals. Barring unforeseen disclosures, no one more important than a few captains, a major and a colonel or two are likely to join Calley and Medina in the dock. For the Army has a good case against General Koster, who was in his helicopter over the Mylai area that morning. What the Army lacked was the will to prosecute.

Perhaps it is expecting too much of human nature to think that the Army would sit in judgment on its own conduct in Vietnam. A command structure so traumatized, so emotionally defensive because of its failure in Vietnam, is not, except under great outside duress, about to begin charging members of the inner circle with war crimes.

Indeed, the military services are in the greatest danger of becoming the scapegoats of a public witchhunt that could come from the left over the war crimes issue if responsible men do not prevail. Mark Lane's collection of purported eye-witness accounts of atrocities in Vietnam, "Conversations with Americans," is an example of the kind of scurrilous attack that is already being made. The military have few defenders in the current climate. Much of the intellectual communities and many of the students are almost childishly indiscriminate in their assaults. A number of the former senior civilian officials of the country, who have changed their minds about the war they helped us prosecute, are now all too eager to blame everything on the generals.

Professional soldiers, whose frame of reference is almost by nature circumscribed, are being criticized for not having displayed the kind of broad wisdom and judgment self-proclaimed statesmen did not exhibit. If the generals did commit war crimes in Vietnam, they did so with the knowledge and consent of the civilians. If seeking to pacify with the fire and the sword of the 20th century, airplanes and howitzers, constitute a war crime, then the civilians helped to induce this crime by denying the generals sufficient troops to garrison the countryside.

President Johnson and his closest advisers, Robert S. McNamara, Walt W. Rostow, and Dean Rusk, directed the unfolding of the conflict just as President Nixon and his senior advisers now do. The military almost always played a subordinate role. Mr. McNamara, for example, supervised the planning and execution of the war for the President as the chief of a European General Staff would have done. In 1965 he often said: "We're going to trade firepower for men." He had no criminal intent, of course. What he meant was that he planned to expend ten bombs to kill five North Vietnamese soldiers, instead of trading the lives of five American infantrymen for the same job. But when the bombs were targeted on civilians, Mr. McNamara did not cry halt. This is not to say that the generals would be absolved of responsibility, only that the highest, and therefore the greatest, responsibility does not rest with them.

For precisely this reason, one cannot expect the Nixon Administration, of its own accord, to institute any meaningful inquiry into war crimes. Mr. Nixon is using the same airpower tactics in Laos and Cambodia that his predecessor employed in South Vietnam. His strategy of Vietnamization is even more dependent upon the unrestricted use of airpower than was Mr. Johnson's. Mr. Nixon has also sensed even more keenly the political convenience of this weapon. He has calculated correctly that the public will not worry much about the dead, or about their age or sex, so long as the bodies are far enough away that the photographers and the television crews can't get to them too often and so long as they are, most important of all, not American.

The Kennedy Subcommittee estimates that civilian casualties in Laos, which has a population of only three million, are now exceeding 30,000 a year, including more than 10,000 dead. Many of these casualties are attributable to American bombs. Classified military documents specifically talk about bombing villages in Communist-held areas "to deprive the enemy of the population resource." No one knows what the civilian casualty toll is in Cambodia, where the same kind of air attacks are taking place. The Kennedy Subcommittee guesses there are now about a million and a half refugees in Cambodia out of a population of 6.5 million and that civilian casualties are running in the tens of thousands a year.

When I asked a responsible official at the State Department about the refugees he said he didn't have an estimate. Why? I asked. "The Cambodians haven't really asked us for any assistance with refugees and until they do it's not our concern. Our staff in the Embassy is pretty small and they have a lot of other fish to fry." What about the civilian casualties? "The Cambodians haven't been compiling them," he said. "We're dependent on their statistics and they don't keep careful statistics on anything." Really, that's what he said. The new American aid program for Cambodia contains no funds specifically marked for civilian medical relief.

Yet the cleansing of the nation's conscience and the future conduct of the most powerful country in the world towards the weaker peoples of the globe, demand a national inquiry into the war crimes question. What is needed is not prison sentences and executions, but social judgments soberly arrived at, so that if these acts are war crimes, future American leaders with not dare to repeat them.

The sole hope for such a national inquiry would appear to rest with the Congress or a commission of responsible men, with military and judicial experience, appointed by Congress and empowered to subpoena witnesses and examine documents. They might try to answer one fundamental question that I have not attempted to deal with here because the arguments are still so tangled—whether the United States intervention in Vietnam was itself a violation of the Nuremberg Principles forbidding wars of aggression. There does not seem to be the stomach for such an inquiry in Congress now, but attitudes may change as the full import of the issue becomes known.

If Congress fails to undertake an inquiry that carries the authority of the nation, then

hypocrisy will be added to our sins. The Nuremberg judgments upon such diabolical Nazi crimes as the extermination of the Jews will still stand as a monument to international justice. Even under the most critical scrutiny, nothing the United States has perpetrated approaches the satanic evil of Hitler and his followers. The Nazis were in a class by themselves.

But the other, lesser judgments at Nuremberg, and the verdicts at the Tokyo Tribunal, will become what many said they were at the time—the pronouncements of victors over vanquished. We ought to remember that at the Tokyo Tribunal, the United States went so far as to establish the legal precedent that any member of a Cabinet who learns of war crimes, and subsequently remains in that Government acquires responsibility for those crimes. Under our own criteria, therefore, Orville Freeman, the Secretary of Agriculture under President Johnson, could acquire responsibility for war crimes in Vietnam.

Recently, when I discussed with a Japanese friend the condemnation of General Yamashita for the death of more than 25,000 noncombatants in the Philippines, he remarked: "We Japanese have a saying. The victor is always right."

History shows that men who decide for war, as the Japanese militarists did, cannot demand mercy for themselves. The resort to force is the ultimate act. It is playing God. Those who try force cannot afford to fail. I do not mean to suggest that men should be free to attempt anything in war to ensure victory. Quite the opposite. The laws of war seek to mitigate the evil of war, to save what lives can be saved in the midst of great killing. War nonetheless remains an evil that imposes a unique burden upon those responsible. This will sound cynical to many, but if the Johnson Administration had won the war in Vietnam, few would be searching for war crimes among the physical and human ruins of Indochina. Evidence of murder and brutality on a grand scale would have been hushed in the shouts of success. The resort to force has failed, however, and that failure has helped to make the issue of war crimes in Vietnam a very real and a very fair one to be dealt with. Our failure presents an opportunity for humanity that should not be lost.

[From the Christian Science Monitor, Apr. 2, 1971]

THE NATION'S CONSCIENCE

(By Richard L. Strout)

WASHINGTON.—Americans are going to have to live with what they have done in Indo-China for a long time. According to opinion polls most Americans now think it was a mistake to get into Vietnam. President Nixon is now pulling GIs out and the movement seems irreversible.

The United States went in with idealistic notions to "save" Vietnam. Few small nations will want to be saved under such circumstances. American opinion appears to be hardening against the war. Time magazine begins this week's issue with a somber quotation from the syndicated columnist Arthur Hoppe: "The radio this morning said the allied invasion of Laos had bogged down. Without thinking, I nodded and said 'good.' And having said it, I realized the bitter truth: now I root against my own country. That is how far we have come in this hated and endless war." Time's comment: ". . . the overriding desire now is for a clear-cut finish."

But can it be "clear-cut"? Mr. Nixon proposes to pull out combat troops leaving perhaps 50,000 by the end of 1972. Presumably U.S. artillery and air power will continue. An article by Orville Schell Jr., in Look magazine, April 6, on "Silent Vietnam" carried a dramatic aerial photograph of a river meandering through a green mangrove forest 50 miles east of Saigon, with a contrasting photograph below—a similar scene wilted and yellowed from herbicides. This area it says, "like half the mangrove stand in Vietnam, has been destroyed by 'agent orange' (a herbicide) from U.S. planes."

An American officer in the war said of a native village "to save it we had to destroy it." In testimony here, Sen. Gaylord Nelson (D) of Wisconsin, March 18, before the Senate Foreign Relations Committee advocated that the U.S. join other nations under the Geneva protocol in banning chemical herbicides. (It seems strange to some that the U.S. is a hold-out in this field.) He noted the preliminary report of a special commission sent to Vietnam by the American Association of the Advancement of Science last December. It found:

Over the past nine years approximately one-seventh of South Vietnam has been sprayed with chemical herbicides for purposes of defoliation and crop destruction. This is an area the size of Massachusetts.

Southwest of Saigon mangrove swamps cover 3,000 square kilometers where about half have been sprayed. Aerial checks show essentially all vegetation killed with little regrowth after three years, and with normal bird and animal life departed.

A fifth of South Vietnan's marketable hardwood forest has been sprayed. "Over large areas most of the trees appeared dead, and bamboo has spread over the ground."

Crop land sufficient to feed 600,000 persons for a year has been destroyed. (South Vietnam exported 48,000 metric tons of rice in 1964; imported 675,000 tons four years later.)

Peasants had no recourse, it is reported, but to flock into cities and refugee camps to escape bombardment and spraying. Refugees number 2 to 4 million in Vietnam, 1.5 million in Laos, 1 million in Cambodia.

In a long, provocative essay-review in the New York Times Sunday Book Review, March 28, former war correspondent Neil Sheehan considers a bibliography of 33 books dealing with alleged U.S. "war crimes" in Indo-China. In low-keyed language Mr. Sheehan searches the precedents of the U.S. Army's Field Manual, "The Law of Land Warfare," and The Hague and Geneva Conventions, and the Nuremberg and Tokyo War Crimes Tribunals. It appears that some acts of war are illegal (if there is anybody to enforce them!). In 1946 the U.S. Government tried and hanged a Japanese general held responsible for the deaths of 25,000 noncombatants alleged to have been killed by his troops in the Philipppines.

But how about air and artillery bombardments of peasant hamlets in Vietnam? As Newsweek notes, in discussing the Sheehan review, the author is hardly a fanatic; only last December he sharply exposed what the magazine calls "numerous factual discrepancies" in a muckracking book on My Lai, and warned against emotional distortions.

Now Mr. Sheehan asks what the moral and legal distinction is between the Axis atrocities of World War II "and the civilian deaths ordered or condoned by American leaders" in Indo-China? It will take more than this year or the next, he sadly concludes, for "the cleansing of the nation's conscience."

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the Senator from Pennsylvania request recognition at this time?

Mr. SCOTT. No, Mr. President, I yield back the time customarily allotted to me at this time.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Illinois (Mr. STEVENSON) is recognized for a period not to exceed 15 minutes.

SENATE CONCURRENT RESOLUTION 17—SUBMISSION OF A CONCURRENT RESOLUTION RELATING TO THE 1971 SOUTH VIETNAMESE ELECTIONS

Mr. STEVENSON. Mr. President, I introduce, for myself and Senators MANSFIELD, INOUYE, MUSKIE, MCGOVERN, HUGHES, CRANSTON, GRAVEL, HUMPHREY, and KENNEDY, a concurrent resolution and ask that it be received and appropriately referred.

The ACTING PRESIDENT pro tempore. Without objection, the resolution will be received and appropriately referred.

Mr. STEVENSON. Mr. President, for a decade, we have justified our military involvement in South Vietnam as an effort to support the freedom and the rights of self-determination of the people of South Vietnam.

That has been our purpose, professed time and again. In his only visit to South Vietnam as President, Mr. Nixon spoke of the vitally important object of seeing that the people of South Vietnam have the right to choose their own future.

In the name of freedom and self-determination we have fought and bled for the regimes of Diem, General Ky, and now Mr. Thieu.

We have fought in South Vietnam; we have fought in Cambodia and in Laos. We have sacrificed the lives of 43,000 young Americans. And the purpose for which these men died remains unfulfilled. Indeed, it may be forgotten.

The invasion of Laos has demonstrated again the futility of attempting to resolve a deeprooted Indochinese political conflict with B–52's, helicopter gun ships, and South Vietnamese combat troops.

It does not help us to anguish over the mistakes of the past, to blame one another, or to reopen the wounds this tragic war has inflicted upon our society. The Nation is already tormented by anger and guilt. It does behoove us to learn from our mistakes and to renew our commitment to self-determination for the people of South Vietnam.

Instead of supporting the people of South Vietnam in their search for peace and freedom, we seem to be supporting a regime which is committed to prolonging the war. For as long as that remains our policy, the drain upon our lives, our Treasury, and our national conscience will continue. To gain freedom for Americans held prisoner in the North, the war must be ended, not prolonged.

The people of South Vietnam, in common with all Americans, want desperately to end this war which has ravaged their hamlets and decimated their populace. Some 300,000 South Vietnamese civilians have been killed; thousands have been maimed; 3.5 millions have been driven from their homes; an area the size of Massachusetts has been de-

foliated. And now to the war's bloody toll in South Vietnam must be added hundreds of thousands of men, women, and innocent children in Laos and Cambodia. All humanity cries out for an end to the senseless killing and maiming of human beings and the wanton destruction of their homeland. But it now appears to be our object, not to end the war, but to continue it as a proxy war between Asians.

I hear little from our own Government about the morality of what we are doing in Indochina, even less about the welfare of the people of Indochina and virtually nothing about the long-term possibilities for popular, progressive, and neutral governments in Indochina.

We are concerned instead, it seems, with destroying supplies, interdicting supply routes, chasing imaginary enemy headquarters, and publishing the grim body counts. And all the while the policies of Indochina becomes more polarized, and the dangers of a confrontation with the People's Republic of China grows as the Chinese commitment to North Vietnam, the Vietcong, and Pathet Lao grows.

The continued quest for a military solution risks our continued military involvement. It also risks the freedom and independence of the people of Indochina for short-term military gains. A precipitate withdrawal of all U.S. troops could run the same risk. I support the withdrawal of all American forces by a fixed date. I believe that such a policy could start serious negotiations and bring about our disengagement. But I recognize—all Americans must recognize—the risk inherent in terminating our military involvement in Indochina without a negotiated settlement covering amnesty, withdrawal of all troops, and the return of our prisoners.

It is not too late to follow a course which may not only hasten our departure from Indochina, but also leave behind something durable and decent for all our expenditure of blood and treasure.

The people of South Vietnam will elect a new House of Representatives in August and a President and Vice President in October. Our military involvement almost inevitably works to the political advantage of the men in power. It thus threatens to involve us in the electoral politics of the people of South Vietnam, even if only by an appearance of support for the present regime. The close cooperation with the Government of South Vietnam required by our military commitment inevitably creates an appearance of support for Thieu and Ky.

There is, moreover, reason to be concerned that U.S. support for the Thieu-Ky regime is as real as it is apparent. The New York Times of February 2 reported:

> National surveys of Vietnamese public opinion, which are prepared and analyzed by the United States mission (in Saigon), are being used to assist President Nguyen Van Thieu in his re-election campaign this year.

The surveys referred to are conducted by CORDS, a U.S. civilian agency responsible for the pacification effort in South Vietnam. The survey is conducted monthly in all 44 provinces, and its results are turned over to the Thieu-Ky Government. The questionnaire made available to the New York Times contained three questions relating specifically to the forthcoming elections: which men are most likely to run; what kind of man should be elected; and what are the decisive issues. To give Mr. Thieu the answers to these questions is to promote his self-perpetuation rather than the self-determination of the people of South Vietnam.

The United States cannot be true to its commitment to self-determination in the world and also support the election of one candidate or another, however covertly, in South Vietnam. To do so would be wrong. It would repeat mistakes of the past. It may be that other governments view free elections in the third world as inconsistent with their interests. But I would submit that it is better politics, and morally right, for the United States to aline itself with—not against—the rights of self-determination we ourselves first articulated as a nation.

Because I believe that U.S. neutrality in the electoral process of the people of South Vietnam is both morally right and politically right, I am today introducing a concurrent resolution which reaffirms the political neutrality of the United States. It calls upon the President to implement a policy of strict neutrality in the forthcoming Vietnamese elections. It would also create a congressional commission with a staff in South Vietnam to oversee the activities of the United States, its citizens, and its Government, during the campaign, in a continuing effort to assure the people of South Vietnam that we as a nation are truly committed to their rights as a free, self-governing people.

This commission would have 10 members, five each from the Senate and the House. I had thought at first to include five additional Presidential appointees. But I concluded that the impartiality of the commission would then be questioned by the South Vietnamese.

There is too much evidence that the President is perceived in South Vietnam as supporting the reelection of Thieu and Ky. His Ambassador in South Vietnam, Mr. Bunker, was quoted in the South Vietnamese press last fall as saying that the United States supports the reelection of President Thieu in 1971. The American Embassy in Saigon denied the statement attributed to Mr. Bunker, but the fact remains that that is how our position is widely perceived among the people of South Vietnam.

Only last week my distinguished colleague, the Senator from Idaho (Mr. CHURCH), cited the testimony of an official of the U.S. Information Agency that USIA has used its vast and varied resources in South Vietnam—

> To assist the Vietnamese Government in developing a means of communicating *with the electorate* and to provide technical and professional advice.

The evidence of U.S. support, real or apparent, for the reelection of President Thieu requires a counterweight if the United States is to avoid involvement in the electoral politics of South Vietnam. The resolution which I am introducing today is intended to offer such a counterweight. It is a reaffirmation of neutrality and our commitment to the rights of the people of South Vietnam to choose their own government. I believe that the people of South Vietnam might well respect an expression of political neutrality by the elected representatives of the American people in their Congress.

Given the sensitivity of the South Vietnamese people to any interference in their domestic affairs by foreign governments, I am hopeful that the commission would be welcomed not only by the people, but also by the government of South Vietnam, and would be helped in its effort to assure the noninvolvement of the United States in the electoral politics of that nation.

This resolution goes a step further toward guaranteeing the people of South Vietnam the right to choose their own government. It declares that we shall as a nation support only a freely elected government and, therefore, that all U.S. support will henceforth be withheld from any government which gains, or retains, power in South Vietnam by means of a coup or other corrupt or coercive means.

I would not expect the Government of South Vietnam to permit the candidacy or the election of men representing factions or nations with which it is at war. But it is most unlikely that the people of South Vietnam would freely choose a President associated with the repressive, indeed often times brutal, conduct of Hanoi or the Vietcong. There are, however, men and groups in South Vietnam not associated with Hanoi or the Vietcong who are committed to peace and reconciliation, to the fulfillment of the national aspirations of the people of South Vietnam, and to a negotiated settlement of the war.

I do not know if they will choose to run. I do hope so. I do not know if they could succeed against a well-entrenched and powerful government, however unpopular it may be. I do know that the people of South Vietnam should be given a chance to elect such men.

The intent of this resolution is not to defeat Thieu and Ky, but to neutralize the political advantage which our military involvement affords them, and to insure that this advantage is not augmented by the activities, overt or covert, of representatives of the U.S. Government during the forthcoming election campaign in South Vietnam.

By affirming our neutrality in the campaign, this resolution may well encourage the candidacy of men who will commit themselves to a negotiated settlement of the war. And by lessening the advantage which even the appearance of U.S. support gives to the existing regime, this resolution may encourage Thieu and Ky to heed the desire of the people of South Vietnam for peace and reconciliation.

In short, I believe this resolution could help create the climate in which a negoti-

ated settlement would be possible, and in which all American forces could be withdrawn more quickly than might otherwise be possible.

Moreover, this resolution, if adopted by the representatives of the American people in their Congress, would reaffirm for the people of South Vietnam and of the world our commitment to the rights of peoples everywhere to choose their own governments.

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

The ACTING PRESIDENT pro tempore. Without objection, the resolution will be printed in the RECORD.

The concurrent resolution, which reads as follows, was referred to the Committee on Foreign Relations:

S. CON. RES. 17

Resolved by the Senate (the House of Representatives concurring),

Whereas a declared purpose of United States military involvement in South Vietnam is to protect the freedom and rights of self-determination of the people of that nation;

Whereas the support of the United States for a regime which acquires or retains power through coercive or corrupt means would run counter to the fundamental principles of American democracy and popular sovereignty;

Whereas the 1971 South Vietnamese elections will determine the composition of the South Vietnamese House of Representatives and the identity of the President and the Vice President of South Vietnam and thereby affect directly and substantially the conduct of the war, the rate of American withdrawal, and the prospects for a negotiated settlement;

Whereas the goal of self-determination for the people of South Vietnam requires that the United States not only avoid actual support for any candidates or parties but also the appearance of any such support; and

Whereas the necessarily close relationship between the United States and the government of South Vietnam could create a false appearance of support for the re-election of President Thieu or Vice President Ky: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

SEC. 1. The Congress reaffirms the neutrality of the United States in the 1971 South Vietnamese elections and urges the President of the United States to assure that the United States maintains strict neutrality and impartiality with respect to such elections and that no United States support in any form will be provided to any candidate, faction, party or group in those elections.

SEC. 2. It is the sense of the Congress that no United States troops or other military assistance shall be furnished to any South Vietnamese regime which hereafter acquires, or retains, power through a coup d'etat or any corrupt or coercive means.

SEC. 3. (a) There is established a body to be known as the South Vietnamese Election Commission (hereafter referred to as the Commission). The Commission shall have as its purpose the observation and study of U.S. involvement in the 1971 elections in South Vietnam.

(b)(1) The Commission shall consist of the following 10 members:

(A) Five members of the Senate appointed by the President pro tempore of the Senate, three of whom shall be members of the majority party and two of whom shall be members of the minority party; and

(B) Five members of the House of Representatives appointed by the Speaker of that House, three of whom shall be members of the majority party and two of whom shall be members of the minority party.

(2) The Commission shall select a chairman and vice chairman from among its members. Vacancies in the membership of the Commission shall not affect the power of the remaining members to execute the duties of the Commission, and shall be filled in the same manner as in the case of the original selection.

(c) Personnel, including persons speaking the language of South Vietnam, shall be employed by the Commission as soon as practicable after this concurrent resolution is agreed to. Such personnel as may be designated by the Commission shall immediately thereafter be sent to South Vietnam to observe the election campaign and the activities of U.S. agencies, officials and citizens and shall remain in that country for such period of time as the Commission considers appropriate.

(d)(1) The Commission shall make its first interim report to the Congress not later than July 15, 1971. The Commission shall thereafter submit regular interim reports to the Congress and shall submit a final report not later than November 30, 1971. Each report shall include such findings, conclusions, and recommendations with respect to the duty imposed upon the Commission and with respect to such other matters as the Commission considers appropriate.

(2) The Commission shall cease to exist 30 days after submission of its final report.

(e) For purposes of this concurrent resolution, the Commission is authorized, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to hold hearings, (3) to sit and act at any time or place, (4) to employ personnel, (5) to subpoena witnesses and documents, (6) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel, information, and facilities of any such department or agency, (7) to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946, (8) to interview employees of the Federal government and other individuals, and (9) to take depositions and other testimony.

(f) Expenses of the Commission under this concurrent resolution, which shall not exceed $450,000, shall be paid from the contingent funds of the Senate upon vouchers approved by the chairman of the Commission.

SEC. 4. Nothing in this concurrent resolution shall be construed as creating any commitment of military assistance to any South Vietnamese government, howsoever that government comes to power.

SOUTH VIETNAM

Mr. SCOTT. Mr. President, I listened with interest to the remarks of the Senator from Illinois (Mr. STEVENSON) in connection with the introduction of the resolution. I think the nature of it could be better understood if we turned it about.

Suppose the Legislature of South Vietnam were to enact a resolution providing for a congressional commission of South Vietnamese to report on or to supervise or to seek to maintain the fairness of the operation of American elections. South Vietnam is a sovereign state and, as the distinguished Senator from Illinois noted, while we hear little about the morality of our involvement there, I submit it is a little late for us to be concerned about the morality of our original involvement. The morality involved is a continuing matter.

While we support the people of South Vietnam, and I agree as to that, I wonder how this can be done by a repudiation of the Government of South Vietnam.

The resolution calls for a commission of Senators and Representatives to provide congressional oversight. Yet all Senators and Representatives on such a commission would have long since expressed themselves one way or another on the war in Southeast Asia; and having known positions they would operate more to influence the election than not to influence the election. Such a resolution in itself could only be interpreted as a covert move to undermine the government, or maintain it, according to the composition of those congressional overseers who had been placed by action of the U.S. Congress over and above the people of South Vietnam.

I am sure the resolution is well intended and motivated but I am equally sure it would do more harm than good.

Mr. MANSFIELD. Mr. President, first, allow me to commend the Senator from Illinois for the initiative he has undertaken in this most difficult and dangerous area. I would like to ask his permission that I be included as the cosponsor of the resolution.

Mr. STEVENSON. I would be grateful to the Senator if he would be willing to cosponsor the resolution.

Mr. MANSFIELD. Mr. President, I ask that I be added as cosponsor of the resolution.

The ACTING PRESIDENT pro tempore (Mr. BENTSEN). Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I have read the remarks of the distinguished Senator from Illinois and the resolution. As we all know, Vietnam and Indochina are a corrosive cancer on the American body-politic, and something must be done and something will be done to bring this mistaken and tragic war to a close.

This resolution is an attempt on the part of my distinguished colleague to face up to a situation which he points out will take place in August when members of the Vietnamese House and Senate will stand for election, and in October when the President and Vice President will stand for election. It is my belief that elections in South Vietnam should be free and open and that all South Vietnamese should have a chance to participate. That was not the case in the last election.

The statement was made that South Vietnam is a sovereign state. I think that is open to question because on the basis of the situation that has developed since we have become more and more involved there, I think the relationship could be more like that of client than sovereign.

Furthermore, I express the hope on the basis of the election next November that then the South Vietnamese will take over completely the defense of their country and the future of their country and do so on a basis which they consider best and not on a basis of what we might like done.

I have said many times so far as Indochina is concerned that it is not vital to the security of this Nation and never has been. I felt that way before we became involved. I have not changed my opinion since.

The Senator points out that we have fought in South Vietnam, Cambodia, and Laos; that we have sacrificed the lives of 43,000 young Americans, and the purpose for which these young men dies remains obscure; indeed, it may be forgotten. For what purpose, may I ask—for what purpose?

As far as the figures are concerned, on the basis of a summary issued by the Department of Defense through March 13, 1971, it is true that 44,676 were killed in combat, but it is also true that 9,335 were killed in noncombat activities. Furthermore, the wounded, as of March 13, amounted to 296,034. So as of March 13 total casualties which this Nation has suffered in that far away place, which is of no vital interest to us, amounted to 350,046. It has increased considerably since then.

I would point out that the South Vietnamese at the present time have an army of regulars which numbers 1.1 to 1.2 million, and that in addition they have regional and popular forces numbering 520,000. I would point out, also, that in Cambodia there are 20,000 South Vietnamese regulars, and in Laos there was until recently something on the order of 18,000 to 20,000 South Vietnamese regulars—the cream of the crop, so to speak.

We have been through a Cambodian invasion, sometimes referred to as an incursion. We have given air, artillery, and logistic support to a Laos invasion, sometimes called an incursion, and the result is that now we have brought about a concentration of North Vietnamese troops along the DMZ and the Laotian South Vietnamese border. At the present time there is fighting going on in South Vietnam itself, and the Laos incursion or invasion has been, in some degree, responsible for this concentration and stepup in the war.

Furthermore, because of the invasion of Laos there has been a return of an unspecified number of Chinese labor troops into North Vietnam to keep the railroads repaired and running for the purpose of sending supplies to Hanoi.

According to the press this morning, or the radio, it is estimated that in northern Laos, instead of 10,000, 12,000, or 13,000 Chinese labor troops and antiaircraft troops, as well as combat troops, there are now about 18,000 to 20,000 along the road down from Meng La in Yunnan to Muong Sai and along the road extending east toward Dien Bien Phu, and all that is needed there is a bridge to complete that road.

There is also the road going down westward to the town of Pak Beng, which will bring it pretty close to the Thai border.

All of these developments are, I think, significant. The time for talking is past as far as Vietnam is concerned, and the time for action is here on the part of both the Congress and the administration, and I think the American people. Both Houses of Congress have made their views well known in that respect.

The Senator indicates in his remarks, and I quote him:

> It does not help us to anguish over the mistakes of the past, to blame one another, or to reopen the wounds this tragic war has inflicted upon our society. The Nation is already tormented by anger and guilt. It does behoove us to learn from our mistakes and to renew our commitment to self-determination for the people of South Vietnam.

We have preached self-determination at least since the time of Woodrow Wilson. It was one of the 14 points laid down at the end of the First World War. And I think it is about time to put into effect that principle, not just to talk about it, but to do something about it.

May I point out that the Senator is correct when he says it does not do any good to look back to the past; it does not do any good to blame one another; or to reopen old wounds, because all of us have our share of responsibility to bear. This is not just a war waged by a Republican administration; this is a war which was started by a Democratic administration, and we cannot gainsay it no matter how much we try to gloss over that fact.

So I will not point the finger at anyone, because, I repeat, there is enough blame, there is enough guilt, for all of us to share.

Then there is that part of his speech about morality, and again I quote the distinguished Senator:

> But I would submit that it is better politics, and morally right, for the United States to aline itself with—not against—the rights of self-determination we ourselves first articulated as a nation.

True. It only emphasizes what has been said previously, and I am glad to join the distinguished Senator in what he had to say in his outstanding initial speech in the Senate.

Then he points out that there is a question that even now we are intervening in the elections, and while our Ambassador to South Vietnam, Mr. Bunker, or someone on his staff, has denied it, nevertheless I think the evidence is there to indicate that the people who are attached to the USIA and other agenices have been carrying on campaign activities out in the Provinces:

> To assist the Vietnamese government in developing means of communication with the electorate and to provide technical and professional advice.

That, I think, is something which is most serious. I think this Nation has involved itself in the affairs of too many other nations. I think it is about time that we begin to look at the affairs of this Nation as they apply to this Nation's security—period. We have not been too good at that. We have been loath to face up to the realities of the present. We have looked back upon policies which were good 10 and 20 years ago and some still insist they are good today. I think it is about time that, regardless of the names hurled at us, we live up to our responsibilities and face up to the realities of the present.

They say that would make one a neo-isolationist. That is getting to be a popular term for those who are opposed to the war and who, like me, are opposed to any more Vietnams anywhere in the world, because when I say one Vietnam is one Vietnam too many, I mean it. We overstretched ourselves. We overexpended. We overspent. Vietnam has cost in excess of $115 billion. For what? For what?

We have all these problems here at home with people in need. Whom are we going to think of? Our own people or some other people? It is not that I do not have sympathy with other people throughout the world, because I believe that, whether we like it or not, we are all internationalists and we cannot avoid being so labeled. This globe is too small. It is shrinking more and more every day. The means of transport and communication are becoming more rapid day by day. We live with our neighbors, one with another, whether we like it or not, and we will help our neighbors to the extent of our ability and one would hope that they will help us in return.

But I would emphasize that the population of this Nation is not unlimited, and I would point out that the resources of this Nation are not unlimited, either.

We are not the world's policeman. We are not and should not be the Nation which will go in and fill some vague voids which are created when other nations pull out their military power. We will face up to our international responsibilities. We will honor our word. We will honor our pledge. But I think it is about time that we get out of this particular area of excessive military involvement, that we face up to the realities of the moment, that we do not become involved any more in this kind of adventure, with its guilt, with its graft, with its corruption, with its drugs and disease, with its loss in manpower, with its expenditure of treasure.

It is high time that this corrosive cancer be cut from the American body politic and that we return to the present and unity. That is not the fact at this time.

I again commend the distinguished Senator from Illinois.

Mr. STEVENSON. I thank the Senator.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin is recognized for a period of not to exceed 20 minutes.

(The remarks of Mr. PROXMIRE when he introduced Senate Joint Resolution 83 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from New York (Mr. JAVITS) is recognized for not to exceed 15 minutes.

SOME PERSPECTIVES ON THE CALLEY CASE

Mr. JAVITS. Mr. President, I want to make some observations on the Calley

case, in view of the fact that interest in this case has burgeoned very considerably.

In the first place, so that the law may be clear, I ask unanimous consent to have printed in the RECORD a memorandum which I have had prepared for me, detailing the legal steps in the case from where it stands now, under the Articles of War and the Uniform Code of Military Justice, up to and including the review by the Commander in Chief, which he has announced he will make personally.

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

MEMORANDUM

The following are the Post Conviction Court Martial Procedures in the case of Lieutenant William L. Calley.

1. He was convicted under the provisions of Title 10, U.S. Code, section 918 which is article 118 of the Articles of War contained in the Uniform Code of Military Justice. Automatic appellate procedures provided for in the Code now come into play.

2. The basic initial review is accomplished by the Judge Advocate and the Commanding General of Ft. Benning, Georgia. They can approve or disapprove the findings of the Court Martial. The Judge Advocate reviews the case and makes a report with recommendations to the Commanding General. If he approves the findings, the case goes to the United States Court of Military Review which acts as the intermediate appellate court. If it is again affirmed, the case automatically goes to the United States Court of Military Appeals for final disposition.

3. The jury in the military case is approved by the convening authority who is the Commanding General.

4. The President has the authority to review the verdict and sentence in the case at any time. Acting as the Commander-in-Chief it is assumed that the President would not intervene until all steps in the appeal process has been concluded since the final verdict has not yet been entered against Calley. The President may reduce any sentence or restrictions imposed upon Calley or pardon him completely.

Mr. JAVITS. Mr. President, since last week's decision by the Calley court-martial jury—fellow officers, themselves veterans of Vietnam and men of conscience—there has been a national outpouring of feeling against the verdict. Public opinion polls offer conflicting versions of the national sentiment on the Calley case, but they do indicate a great division in our land and a great deal of sentiment against the verdict. I believe much of the outcry is predicated upon the view that Lieutenant Calley is nothing more than a scapegoat for a bad national policy in Vietnam. Nonetheless, because the matter will have a very profound effect on our country, it deserves the attention of all of us, and I wish to make my statement today.

Certainly, no one can take any comfort from the fact that any American soldier has come to this fate. Vietnam is a vicious war which brutalizes men; this war has even called into question our national purpose in the world.

While I share the feeling of sadness which pervades many, let us not forget, in this great outpouring of sympathy for Lieutenant Calley, what is the essence of this case. Let us remember the national revulsion which swept the country—and the world—when the My Lai story broke.

At this stage, as the case moves into the levels of review to which Lieutenant Calley is entitled under military law, including review by the highest command official—in this case, as announced, the President himself—the real question is whether there has been a miscarriage of justice here—and I think there has not. The Army has made a difficult—indeed an unprecedented decision—in charging one of its own officers with the murder of unarmed civilians during wartime. Victors do this to the vanquished, but to enforce such discipline upon ourselves is unusual. In doing so, the United States has said to the world that in spite of this brutalizing war, we remain essentially a humane people. Our soldiers do not murder children; we do not observe the "gook rule"—treating orientals as somehow subhuman.

In the last several days, a great deal has been said about the responsibility of the soldier to give obedience to the orders of his superiors. Although Lieutenant Calley asserted that he was following the orders of Captain Medina, the jury of his peers concluded in fact that first, no such order was given, or second, even if it was given, Lieutenant Calley acted illegally in blindly following an illegal order.

Beyond the purely legal aspect of this question, we seem to have forgotten a central keystone of our heritage as a compassionate and civilized people, as heirs to the Judeo-Christian ethical tradition: that the highest duty of individual man is to exercise his own free choice, responding to his own conscience—as indeed several did at My Lai—rather than to allow himself to be subsumed in a group ethic of barren sterility, in a system which sees no ethical or moral question. Lieutenant Calley's action ran afoul of that duty, and the jury's verdict found his acts utterly repugnant to that tradition.

We are also told that we are all guilty—that our society must accept a collective guilt for what happened at My Lai. While this may figure in a different context from the one we have been discussing, even such a belief requires that we must nevertheless allocate individual responsibility for the specific acts of barbarism at My Lai. That means not only judging the actions of Lieutenant Calley but also those of Captain Medina, Colonel Henderson, General Coster, and any others who had specific responsibility for the conduct of our men on that terrible day.

To say merely that society or the system is guilty and to say no more is to abdicate individual responsibility and to assert that Lieutenant Calley and others never had a choice at My Lai. That simply is not true.

In agonizing over the Calley case, our Nation has essentially been looking inward—considering the impact of the case upon the draft, upon the Army as an institution, and upon the attitudes of our people as Americans toward the Vietnam war. But what about its impact upon the Vietnamese people—North as well as South—and the people of Asia and Africa and Latin America, and upon the world community as a whole?

Is there a double standard at Nuremberg and My Lai?

Who can justify the killing of infants with their mothers, the ill, the aged, and the infirm, at My Lai?

Who would undertake to defend, on any grounds, the annihilation of all human life within a radius of action or a so-called free fire zone?

We have said to the world that we are a civilized people, and that even in war we will not abandon respect for human life and belief in the worth of every man, whatever his race or color. Whether or not Lieutenant Calley's sentence is reduced is really immaterial—although I hope and expect that in mercy and compassion it will be. But if the Nation really is encouraged to believe that he did nothing wrong—indeed that he is a hero—then we have changed as a people, during the course of this tragic war, even more disastrously than I had imagined.

In all of the discussion about the impact of this case upon Army morale, let us consider what would have been the impact of acquittal on Army morale. Would we not be saying to the members of Lieutenant Calley's own platoon who refused to fire at women and children, "You needn't have a conscience. Whatever you do is justified"?

Would we not be saying to the soldier who worked for a year to bring this case to public attention, "You should have kept quiet"?

Would we not be saying to our young soldiers in Vietnam, "The American people regard you primarily as killers, not as human beings with a conscience, so don't think twice about herding unarmed civilians into a ditch and shooting them down. It is really what we expect of you"?

What would the acquittal of Lieutenant Calley have done to the morale of the men who want our professional army to be of the highest quality and the best standards, who believe that there is a place in our military for the sensitive and intelligent man?

The ultimate answer to My Lai must be found in our national tradition. The use of military power without conscience can develop a dynamic and an ethic of its own and can destroy humanity all together. It is invested with a sense of direction only by moral principles. It is the function of morality to define the extent to which military power may be used justifiably.

As a moral problem, the incidents at My Lai command that we as a people preserve and reaffirm the principles of justice which must govern our actions in the community of man. The use of force in the world community is never a problem only for generals or presidents or senators or diplomats; the responsibility is with all the people.

I am profoundly disappointed that this duty in social morality is being overlooked by many in our country today.

Medals, marches, and honors for Lieutenant Calley, rather than sadness over what a young American was brought to,

in a brutal and misguided Vietanm war, are not patriotism, but anti-patriotism.

It is in times of crisis that our most profound beliefs and commitments are tested. The crucible of Vietnam is such a crisis for the United States. We are being tested as a people. By the degree to which we decline to admit our mistakes and reaffirm our commitment to the universal principles of justice, we shall have failed to grasp the meaning of our own tradition, and shall have been truant to its promise.

(The remarks of Mr. JAVITS when he introduced S. 1486 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. CHILES). Under the previous order the distinguished Senator from Iowa (Mr. MILLER) is now recognized for 15 minutes.

(The remarks of Mr. MILLER when he introduced S.J. Res. 82 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of routine morning business for a period not to exceed 30 minutes, with statements therein limited to 3 minutes.

ORDER FOR THE RECOGNITION OF SENATORS PACKWOOD AND DOLE WEDNESDAY, APRIL 14, 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Wednesday, April 14, immediately following the recognition of the minority and majority leaders under the standing order, the distinguished Senator from Oregon (Mr. PACKWOOD) be recognized for not to exceed 15 minutes and that he be followed by the distinguished Senator from Kansas (Mr. DOLE) for not to exceed 15 minutes.

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

EXECUTIVE COMMUNICATIONS, ETC.

The ACTING PRESIDENT pro tempore (Mr. BENTSEN) laid before the Senate the following letters, which were referred as indicated:

PROPOSED LEGISLATION TO REMOVE CERTAIN LIMITATIONS ON THE ESTABLISHMENT OF ACREAGE ALLOTMENTS

A letter from the Under Secretary of Agriculture, submitting a draft of proposed legislation to amend section 378(a) of the Agricultural Adjustment Act of 1938, as amended, to remove certain limitations on the establishment of acreage allotments for other farms owned by persons whose farms have been acquired by any Federal, State, or other agency having the right of eminent domain (with accompanying papers); to the Committee on Agriculture and Forestry.

REPORT ON APPORTIONMENT OF APPROPRIATION FOR THE DEPARTMENT OF THE INTERIOR FOR RESOURCES MANAGEMENT, BUREAU OF INDIAN AFFAIRS

A letter from the Deputy Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation for the Department of the Interior for "Resources Management," Bureau of Indian Affairs, for the fiscal year 1971, had been apportioned on a basis indicating a need for a supplemental estimate of appropriation; to the Committee on Appropriations.

REPORT COVERING MILITARY CONTRACTS AWARDED WITHOUT FORMAL ADVERTISING

A letter from the Acting Secretary of the Army, transmitting, pursuant to law, the semi-annual report of Department of the Army contracts for military construction awarded without formal advertising for the period July 1 through December 31, 1970 (with an accompanying report); to the Committee on Armed Services.

REPORT ON THE NATIONAL INDUSTRIAL RESERVE

A letter from the Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, the 23rd annual report to the Congress on the National Industrial Reserve (with an accompanying report); to the Committee on Armed Services.

PROPOSED LEGISLATION TO AUTHORIZE CERTAIN CONSTRUCTION AT MILITARY INSTALLATIONS

A letter from the Secretary of Defense, submitting a draft of proposed legislation to authorize certain construction at military installations and for other purposes (with accompanying papers); to the Committee on Armed Services.

PROPOSED LEGISLATION TO AUTHORIZE ADDITIONAL APPROPRIATIONS FOR RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FOR THE NAVY

A letter from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to authorize additional appropriations during the fiscal year 1971 for research, development, test, and evaluation for the Navy (with accompanying papers); to the Committee on Armed Services.

REPORT ON THE AIR FORCE MILITARY CONSTRUCTION CONTRACTS AWARDED WITHOUT FORMAL ADVERTISING

A letter from the Secretary of the Air Force, transmitting, pursuant to law, a report on the Air Force military construction contracts awarded by the Department of the Air Force without formal advertisement for the period July 1, 1970 through December 31, 1970 (with an accompanying report); to the Committee on Armed Services.

REPORT OF DEPARTMENT OF DEFENSE PROCUREMENT FROM SMALL AND OTHER BUSINESS FIRMS

A letter from the Acting Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, a report of Department of Defense Procurement from Small and Other Business Firms for July through December 1970 (with an accompanying report); to the Committee on Banking, Housing and Urban Affairs.

REPORT ON EXPORT-IMPORT BANK LOANS

A letter from the Office of the Secretary, Export-Import Bank of the United States, reporting on the amount of Export-Import Bank loans, insurance and guarantees, issued in January and February 1971, in connection with United States exports to Yugoslavia; to the Committee on Banking, Housing and Urban Affairs.

REPORT OF THE GSA'S FIRST DUAL-FUEL VEHICLE EXPERIMENT

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, a report on the General Services Administration's first dual-fuel vehicle experiment which is part of the President's overall anti-pollution program (with an accompanying report); to the Committee on Commerce.

REPORT RELATING TO LABORATORY ANIMAL WELFARE

A letter from the Director of Science and Education, Department of Agriculture, reporting, pursuant to law, on changes in laboratory animal welfare legislation (with accompanying papers); to the Committee on Commerce.

PROPOSED LEGISLATION TO CONTINUE THE DUTY-FREE STATUS OF CERTAIN GIFTS BY MEMBERS OF THE ARMED FORCES SERVING IN COMBAT ZONES

A letter from the Acting Secretary of the Navy, submitting a draft of proposed legislation to continue for two additional years the duty-free status of certain gifts by members of the armed forces serving in combat zones (with accompanying papers); to the Committee on Finance.

REPORTS OF THE 1971 ADVISORY COUNCIL ON SOCIAL SECURITY

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, reports of the 1971 Advisory Council on Social Security (with an accompanying report); to the Committee on Finance.

REPORT ON PURCHASES AND SALES OF GOLD AND OTHER RESERVE ASSETS AND THE STATE OF THE U.S. GOLD STOCK

A letter from the Secretary of the Treasury, transmitting, pursuant to law, a report on purchases and sales of gold and other reserve assets and the state of the U.S. gold stock, July 1 through December 31, 1970 (with an accompanying report); to the Committee on Foreign Relations.

REPORT ON HEMISFAIR 1968, FEDERAL PARTICIPATION

A letter from the Secretary of Commerce, transmitting, pursuant, to law, a final report on the Federal participation in HemisFair '68, San Antonio, Texas (with an accompanying report); to the Committee on Foreign Relations.

REPORT OF THE SOCIAL PROGRESS TRUST FUND

A letter from the Executive Vice President, Inter-American Development Bank, transmitting, pursuant to law, the Tenth Annual Report of the Social Progress Trust Fund (with an accompanying report); to the Committee on Foreign Relations.

REPORT OF THE DEPARTMENT OF STATE ON ITS ACTIVITIES UNDER THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

A letter from the Secretary of State, transmitting, pursuant to law, the eighteenth report of the Department of State on its activities under the Federal Property and Administrative Services Act of 1949 for the calendar year 1970 (with an accompanying report); to the Committee on Government Operations.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on serious problems in accounting for military leave, Department of the Army (with an accompanying report); to the Committee on Government Operations.

REPORT OF SMALL RECLAMATION PROJECT LOAN APPLICATION—GRAHAM CURTIS PROJECT

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, an application by the Graham Canal Company and the Curtis Canal Company for loans and a grant under the Small Reclamation Projects Act (with an accompanying report and papers); to the Committee on Interior and Insular Affairs.

PROPOSED CONCESSION CONTRACT WITH MCCULLOCH PROPERTIES, INC.

A letter from the Secretary of the Interior, submitting a proposed amendment to a concession contract under which McCulloch Properties, Inc., will be authorized to continue to operate Lake Mead Marina and provide related facilities and services for the public within Lake Mead National Recreation Area, Nevada (with accompanying papers); to the Committee on Interior and Insular Affairs.

PROPOSED CONCESSION CONTRACT WITH GOVERNMENT SERVICES, INC.

A letter from the Secretary of the Interior, submitting a proposed amendment to the concession contract under which Government Services, Inc., will be authorized to provide and operate certain concession facilities and services within the areas administered by the National Capital Parks, for a term of one year from January 1, 1971, through December 31, 1971 (with accompanying papers); to the Committee on Interior and Insular Affairs.

PROPOSED LEGISLATION TO EXTEND THE DESALTING PROGRAM BEING CONDUCTED BY THE SECRETARY OF THE INTERIOR

A letter from the Assistant Secretary of the Interior, submitting a draft of proposed legislation to extend the desalting program being conducted by the Secretary of the Interior (with accompanying papers); to the Committee on Interior and Insular Affairs.

REPORT OF CHARLES R. ROBERTSON LIGNITE RESEARCH LABORATORY OF THE BUREAU OF MINES

A letter from the Secretary of the Interior, reporting, pursuant to law, on the activities of, expenditures by, and donations to the Charles R. Robertson Lignite Research Laboratory of the Bureau of Mines at Grand Forks, North Dakota, for the calendar year 1970; to the Committee on Interior and Insular Affairs.

PROPOSED LEGISLATION TO TRANSFER CHARLOTTE AND LEE COUNTIES FROM THE MIDDLE TO THE SOUTHERN DISTRICT OF FLORIDA, AND TO TRANSFER HIGHLANDS COUNTY FROM THE SOUTHERN TO THE MIDDLE DISTRICT OF FLORIDA

A letter from the Director, Administrative Office of the United States Courts, submitting a draft of proposed legislation to amend Title 28, United States Code, to transfer Charlotte and Lee Counties from the Middle to the Southern District of Florida and Highlands County from the Southern to the Middle District of Florida (with accompanying papers); to the Committee on the Judiciary.

PROPOSED LEGISLATION REMOVING THE STATUTORY CEILING ON SALARIES PAYABLE TO U.S. MAGISTRATES

A letter from the Director, Administrative Office of the United States Courts, submitting a draft of proposed legislation to remove the statutory ceiling on salaries payable to United States magistrates (with accompanying papers); to the Committee on the Judiciary.

ORDERS SUSPENDING DEPORTATION

A letter from the Commissioner of the Immigration and Naturalization Service transmitting, pursuant to law, copies of orders suspending deportation, and list of persons involved (with accompanying papers); to the Committee on the Judiciary.

PROPOSED LEGISLATION TO AUTHORIZE APPROPRIATIONS FOR THE COMMISSION ON CIVIL RIGHTS

A letter from the Chairman, United States Commission on Civil Rights, submitting a draft of proposed legislation to authorize appropriations for the Commission on Civil Rights (with accompanying papers); to the Committee on the Judiciary.

REPORT OF THE GIRL SCOUTS OF AMERICA

A letter from the President and National Executive Director, Girl Scouts of the United States of America, transmitting, pursuant to laws, the 21st annual report of the Girl Scouts of the United States of America (with an accompanying report); to the Committee on Labor and Public Welfare.

REPORT OF THE NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

A letter from the Chairman, National Advisory Council on the Education of Disadvantaged Children, transmitting, pursuant to law, the 1971 annual report for the President and the Congress, title I, ESEA, The Weakest Link: The Children of the Poor (with an accompanying report); to the Committee on Labor and Public Welfare.

PROPOSED LEGISLATION TO PROVIDE THAT THE FEDERAL GOVERNMENT SHALL ASSUME THE RISKS OF ITS FIDELITY LOSSES

A letter from the Secretary of the Treasury, submitting a draft of proposed legislation to provide that the Federal Government shall assume the risks of its fidelity losses (with accompanying papers); to the Committee on Post Office and Civil Service.

PROSPECTUS WHICH REVISES THE AUTHORIZED FEDERAL LAW ENFORCEMENT TRAINING CENTER AT BELTSVILLE, MD.

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which revises the authorized Federal Law Enforcement Training Center at Beltsville, Md. (with accompanying papers); to the Committee on Public Works.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. BENTSEN):

A resolution adopted by the House of Representatives of the Legislature of the State of Hawaii; to the Committee on Agriculture and Forestry:

"HOUSE RESOLUTION 264

"Whereas, under the Food Stamp Act of 1964, as amended, the Congress of the United States initiated a federal-state program of food assistance to help to achieve a fuller and more effective use of food abundances and to provide for improved levels of nutrition among economically needy households; and

"Whereas, low-income families using the food stamp coupons are eating much more and better foods, with more than eighty per cent of this increased consumption in livestock products, fruits, and vegetables; and

"Whereas, as presently administered, the list of foods which may be purchased with food stamps includes domestically produced foods but excludes foreign and ethnic foods; and

"Whereas, the State of Hawaii's unique situation as a conglomerate of many and varied racial backgrounds, each assimilated into the American way of life but retaining distinct ethnic tastes in culture, necessitates a consideration for certain exemptions as to the food list in the Food Stamp Program; and

"Whereas, the purpose of the program is not to change the diet of the people but rather to improve the quality of their food and to expand the variety of foods which may be eaten thereby achieving a balanced diet; and

"Whereas, many of these ethnic foods which have been excluded do contain the necessary and vital nutrients which contribute to a balanced diet; now, therefore,

"Be it resolved by the House of Representatives of the Sixth Legislature of the State of Hawaii, Regular Session of 1971, that the Congress of the United States be requested to exempt the State of Hawaii from restrictions concerning the types of food products which may be purchased under the Food Stamp Program; and

"Be it further resolved that certified copies of this Resolution be transmitted to the President of the Senate and the Speaker of the House of Representatives of the United States Congress, the Secretary of the Department of Health, Education and Welfare, the Secretary of the Department of Agriculture, the Secretary of the Department of Commerce, and the members of Hawaii's Congressional Delegation."

A memorial of the Senate of the Legislature of the State of Idaho; to the Committee on Agriculture and Forestry:

"SENATE JOINT MEMORIAL NO. 110

"(Joint memorial to the Honorable Senate and House of Representatives of the United States in Congress assembled, and the Honorable Congressional delegation of the State of Idaho)

"We, your Memorialists, the Senate and House of Representatives of the state of Idaho assembled in the First Regular Session of the Forty-First Idaho Legislature, do respectfully represent that:

"Whereas, the family farm is one of the mainstays of the Idaho economy, and

"Whereas, the family farm has come to depend on operating loans advanced by the Farmers Home Administration, and

"Whereas, the Farmers Home Administration has exhausted its available supply of loan funds for family farms, and

"Whereas, there is still a pressing need for operating loans for family farms in Idaho, and these family farms cannot secure credit from any other source, and

"Whereas, this vital loan service could be made available by an act of Congress.

"Now, therefore, be it resolved by the First Regular Session of the Forty-first Idaho Legislature, the Senate and House of Representatives concurring, that we most respectfully urge the Congress of the United States to make additional funds for operating loans for family farms available to the Farmers Home Administration as soon as possible.

"Be it further resolved that we respectfully urge our congressional delegation to continue their fine efforts toward obtaining this additional appropriation for the Farmers Home Administration.

"Be it further resolved that the Secretary of the Senate be, and he is hereby authorized and directed to forward certified copies of this Memorial to the leadership of the Senate and House of Representatives of Congress, and to the Senators and Representatives representing this state in the Congress of the United States."

A joint memorial resolution of the Legislature of the State of Idaho; to the Committee on Agriculture and Forestry;

"HOUSE JOINT MEMORIAL NO. 2

"(A Joint Memorial, the Honorable President of the United States, the Honorable Senate and House of Representatives of the United States in Congress Assembled, the Honorable Congressional Delegation of the State of Idaho, and the Honorable Secretary of the United States Department of Agriculture)

"We, your Memorialists, the Senate and House of Representatives of the state of Idaho assembled in the First Regular Session of the Forty-first Idaho Legislature, do hereby respectfully represent that:

"Whereas, a majority of the world's popu-

lation does not receive adequate foodstuffs to maintain a balanced diet, and many people are actually starving; and

"Whereas, the American farmer has been encouraged to increase production to help meet the demand of the world's population while still sustaining the health of the citizens at home; and

"Whereas, while the farmer has increased production, he has also paid higher prices for the products and services he has utilized including higher wages to labor, higher rates for transportation, and higher prices for equipment; and

"Whereas, the farmer is now receiving proportionately less for the products of his labor than he has received at any time in the last two decades, and many farm families are being forced to abandon their livelihood in agriculture; and

"Whereas, this plight of the farmer has not improved and has actually deteriorated despite the higher prices the consumer is paying for farm products.

"Now, therefore, be it resolved by the First Regular Session of the Forty-first Legislature of the state of Idaho, now in session, the House of Representatives and Senate concurring, that we most respectfully urge the President of the United States, the Congress, and the Secretary of Agriculture to recognize the problems facing agriculture and undertake to provide solutions for the great disparity between the prices paid to the farmer and the prices paid by the consumer for agricultural products.

"Be it further resolved that the Clerk of the House of Representatives be, and she is hereby authorized and directed to forward copies of this Memorial to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, to the Senators and Representatives representing this state in the Congress of the United States, and to the Honorable Secretary of the United States Department of Agriculture."

A joint memorial of the Legislature of the State of Idaho; to the Committee on Banking, Housing and Urban Affairs:

"HOUSE JOINT MEMORIAL NO. 3

"(A Joint memorial to the honorable Senate and House of Representatives of the United States in Congress assembled, and the Honorable congressional delegation representing the State of Idaho in the Congress of the United States.)"

"We, your Memorialists, the Senate and House of Representatives of the state of Idaho assembled in the First Regular Session of the Forty-first Idaho Legislature, do hereby respectfully represent that:

"Whereas, the year 1976 shall mark the bicentennial anniversary of the founding of this great nation; and

"Whereas, it is appropriate that such a great event be commemorated by an object as solid and beautiful as the freedom and resolve upon which our government is based; and

"Whereas, throughout the history of these great United States of America silver has played a predominant role in the nation's coinage.

"Now, therefore, be it resolved by the First Regular Session of the Forty-first Idaho Legislature, now in session, the Senate and the House of Representatives concurring, that the Congress of the United States provide for the minting of a bicentennial coin of one ounce of nine hundred proof silver and to provide further that the Congress of the United States call for a world-wide design contest to insure a design for the coin equal to the event it marks.

"Be it further resolved that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward copies of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and to the Senators and Representatives representing this state in the Congress of the United States.

A joint memorial of the Legislature of the State of Idaho; to the Committee on Commerce:

"SENATE JOINT MEMORIAL NO. 106

"(A joint memorial

To the Honorable President of the United States, the Secretary of Transportation, President of the Senate and Speaker of the House of Representatives of the Congress of the United States and the Senators and Representatives representing the State of Idaho in the Congress of the United States.)"

"We, your Memorialists, the Senate and House of Representatives of the state of Idaho assembled in the First Regular Session of the Forty-first Idaho Legislature, do hereby respectfully represent that:

"Whereas, the people of the state of Idaho are separated and sometimes isolated by the mountainous terrain and severe climatic conditions and depend upon the passenger rail system as a vital link for communication and transportation within the borders of the state and among the neighboring states; and

"Whereas, loss of passenger rail service within Idaho, and between Idaho and her neighbors would have a harsh impact upon the Idaho employee and upon the economic health of Idaho in general; and

"Whereas, the state of Idaho, which includes various sites of growing tourist and recreational attraction, depends upon convenient transportation system for the continued expansion of these recreational resources; and

"Whereas, the final plan for the basic national rail passenger system, which has been presented, fails to provide a single point of service to the state of Idaho and her citizens, and therefore does not recognize the needs of people located within the area stretching from the Wyoming border on the east to the Oregon and Washington borders on the west, and from Utah and Nevada on the south to Montana and Canada on the north.

"Now, therefore, be it resolved by the First Regular Session of the Forty-first Idaho Legislature, the Senate and the House of Representatives concurring, that we most respectfully urge the Congress of the United States to take the action necessary to insure that the people of the state of Idaho may participate in and benefit from the basic national rail passenger system and shall not suffer disadvantage therefrom by including the southern Idaho east-west and north-south routes under the system.

"Be it further resolved that the Secretary of the Senate be, and he is hereby authorized and directed to forward copies of this Memorial to the President of the United States, the Secretary of Transportation, the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States, and the Senators and Representatives representing this state in the Congress of the United States.

"I hereby certify that this is a true and correct copy of Senate Joint Memorial No. 106 that was passed by the Forty-first Legislative session of the State of Idaho."

A joint memorial of the Legislature of the State of Idaho; to the Committee on Finance:

"HOUSE JOINT MEMORIAL NO. 7

"A joint memorial to the Honorable Richard M. Nixon, President of the United States, the Honorable Senate and House Representatives of the United States in Congress assembled; the Senators and Representatives of Congress representing the State of Idaho in Congress, Secretary of the Interior, Secretary of Commerce, administrator of environmental protection agency, and the chairman of the Idaho air pollution control commission."

"We, your Memorialists, the Legislature of the state of Idaho, assembled in its First Regular Session of the Forty-first Idaho Legislature, do respectfully represent: that

"Whereas, the state of Idaho is using its best effort in the matter of natural ecological protection by means of environmental controls; and

"Whereas, the state of Idaho has established ambient air standards regarding sulfur dioxide levels and requiring that emissions must be reduced to meet these levels; and

"Whereas, the state of Idaho is receiving cooperation from industry in its efforts to meet such standards of control through technological research and, where such technological knowledge is attained, by the application of its use through the construction of byproduct facilities to meet those quality standards; and

"Whereas, the mining and smelting industry in Idaho has responded to its obligation to meet control standards, and to that end expended great sums of money in the construction of plants for the recovery of sulfur dioxide and its conversion to sulfuric acid for fertilizer use; and

"Whereas, the mining and smelting industry is unable to market its sulfuric acid production on a competitive basis because of the unrestricted, duty-free import of byproduct elemental sulfur from our Northern neighbor, Canada, which is reaching the markets and can be converted into sulfuric acid for use at a cost substantially below that of our domestic byproduct producers; and

"Whereas, without markets for their sulfuric acid these byproduct plants become inoperable, which results in a failure of the attainment of our atmospheric improvement; and

"Whereas, we deem it an obligation of government, where within its power, to make economically tolerable the fulfillment by industry of the standards which are fixed for the improvement of our environment; and

"Whereas, in the present market situation of byproduct sulfuric acid, it is within the means of government to provide the requisite protection to our own domestic industry necessary to assist it in meeting the federal and state goals for atmospheric improvement;

"Now, therefore, be it resolved by the House of Representatives of the state of Idaho, and the Senate concurring, that we direct this problem to the attention of the President and Congress of the United States and request that action be taken in a solution of this environmental control byproduct marketing problem, and to this end it is suggested that the following remedies may be considered:

"1. Subsidization of the byproduct sulfuric acid producer as necessary to meet competition in his nearest domestic market.

"2. Imposition of tariffs on elemental sulfur imports adequate to place byproduct sulfuric acid in a competitive position.

"3. Imposition of quotas on foreign sulfur by law or by agreement with the importing nations.

"Be it further resolved that the Secretary of the Senate be, and he is hereby authorized and directed to forward certified copies of

this Memorial to the Honorable Richard M. Nixon, President of the United States, the President of the Senate and the Speaker of the House of Representatives of Congress, Senators and Representatives representing the state of Idaho in Congress, Secretary of the Interior, Secretary of Commerce, Administrator of Environmental Protection Agency, and the Chairman of the Idaho Air Pollution Control Commission.

A joint memorial of the Legislature of the State of Idaho; to the Committee on Finance:

"SENATE JOINT MEMORIAL NO. 101

"(A joint memorial to the Honorable Senate and House of Representatives of the United States in Congress assembled.)"

"We, your Memorialists, the Senate and House of Representatives of the state of Idaho assembled in the First Regular Session of the Forty-first Idaho Legislature, do respectfully request that:

"Whereas, the revenue sources of local units of government in Idaho is primarily limited to taxation of real property, and

"Whereas, local units of government must meet the increasing needs of the citizenry at ever increasing costs, imposing a heavy burden upon real property, and

"Whereas, the people of the United States, through the government of the United States, are the non-resident land owners of approximately two-thirds of the land in the state of Idaho, and

"Whereas, these lands are being held in public ownership so that the people of this nation, both now and in the future, may enjoy the various benefits of ownership, and

"Whereas, this public ownership withdraws a large portion of the local tax base by withdrawing land and resources from private ownership.

"Now, therefore, be it resolved by the First Regular Session of the Forty-first Idaho Legislature, the Senate and House of Representatives concurring, that we most respectfully urge the Congress of the United States to adopt legislation to provide for payment in lieu of taxes to the state of Idaho and its local units of government, and to other states and local taxing units similarly affected.

"Be it further resolved that we respectfully urge our congressional delegation to continue efforts toward obtaining adoption of this legislation.

"Be it further resolved that the Secretary of the Senate, be, and he is hereby authorized and directed to forward certified copies of the Memorial to the leadership of the Senate and the House of Representatives of Congress, and to the Senators and Representatives representing this state in the Congress of the United States."

A joint resolution of the Legislative Assembly of the State of Montana; to the Committee on Finance:

"SENATE JOINT RESOLUTION 47

"(A joint resolution of the Senate and House of Representatives of the forty-second Legislative Assembly of the State of Montana approving in principle the proposed Federal Family Assistance Act.)"

"Now, therefore, be it resolved by the Senate and House of Representatives of the State of Montana:

"That this legislative assembly approves in principle the proposed Family Assistance Act providing a basic national income supplement for all needy families with children, the aged and unemployable, and the inclusion of working incentives, child care services for working mothers, job training, and like provisions aimed at creating self-sufficient independent families.

"Be it further resolved, that a copy of this joint resolution be sent by the secretary of the state of Montana to the president of the United States; to the vice-president of the United States in his capacity as president of the United States senate; to the speaker of the house of representatives in congress; and to each of the members of the congressional delegation of Montana."

A concurrent resolution of the Legislature of the State of New Jersey; to the Committee on Finance:

"SENATE CONCURRENT RESOLUTION NO. 42

"(A concurrent resolution memorializing the Congress of the United States to enact appropriate legislation to provide that all sales taxes paid by individual taxpayers shall be treated for Federal income tax purposes as credits against Federal income tax due, rather than as deductions against income for such purposes.)"

"WHEREAS, It is generally recognized that taxation in this country has reached a crisis level, and that tax relief should be granted whenever feasible; and

"WHEREAS, Federal income tax law presently provides that all sums paid by individual taxpayers for sales taxes are to be treated as deductions to reduce the income subject to the Federal income tax; and

"Whereas, Amending the aforementioned tax law to provide that all sums paid for sales taxes shall be treated for Federal income tax purposes as credits against Federal income tax due rather than as deductions against income for such purposes would be an appropriate form of tax relief that would not unduly effect the economy; now, therefore,

"Be it resolved by the Senate of the State of New Jersey (the General Assembly concurring):

1. That the Congress of the United States be, and it is hereby, respectfully memorialized to consider the enactment of legislation to provide that all sums for sales taxes paid by individual taxpayers shall be treated for Federal income tax purposes as credits against Federal income tax due, rather than as deductions against incomes for such purposes as is presently provided.

2. The Secretary of the Senate shall cause duly authenticated copies of this resolution to be sent to the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States, and the members of the Congress of the United States elected from New Jersey."

A resolution of the Senate of the State of Wisconsin; to the Committee on Finance:

"SENATE RESOLUTION 9

"Informing congress of Wisconsin's need for its share of held-back federal highway trust funds.

"Whereas, an exceptionally harsh winter has left the surfaces of Wisconsin's highways in need of extensive repairs; and

"Whereas, the construction of new and improved highways is vital to this state's growing transportation needs; and

"Whereas, Wisconsin's climate, because of rapidly changing seasons, provides only a limited number of months suitable for highway construction, making it necessary that highway work commence as soon as the weather allows; and

"Whereas, despite these pressing present needs the United States department of transportation is holding back highway trust funds; and

"Whereas, this state's share of these funds will reach an estimated $55,000,000 by July 1 of this year; now, therefore, be it

"Resolved by the senate, That congress be immediately informed of this state's needs and urged to take action necessary to release this state's share of held-back highway trust funds at the earliest possible date; and, be it further

"Resolved, That duly attested copies of this resolution be transmitted to the secretary of the federal department of transportation, the secretary of the senate of the United States, the chief clerk of the house of representatives and the members of Wisconsin's congressional delegation."

A resolution of the Senate of the State of Washington; to the Committee on Foreign Relations:

"SENATE RESOLUTION 41

"Whereas, Greece, the land of the earliest recorded democratic republic, has valiantly withstood the threat of Communists even though she geographically stands within the shadow of the Iron Curtain; and

"Whereas, Greece remains an important ally of the United States and other free nations in the defense of the Eastern Mediterranean from the foes of freedom; and

"Whereas, The patriotic people of Greece challenged the forces of oppression and began a long struggle for restoration of their nation and the freedom of their people; and

"Whereas, Their cause was just and Greek people were dedicated to freedom; strong support developed so that after many difficult years the Ottoman Sultan was forced to acknowledge the independence of Greece; and

"Whereas, The people of Greece have clearly demonstrated that where there is a will to be free, ways and means to secure and defend freedom will be found; and

"Whereas, Through the centuries the Greek people have continually earned the admiration of the world for their courage, self-reliance and love of freedom; and

"Whereas, We, the members of the Senate gratefully acknowledge the many citizens of Greek ancestry within this State and their contributions to our cultural heritage, as well as appreciate this opportunity to pay respect to the Honorable Spiro T. Agnew, Vice President of the United States, who so willingly gave of his time to address this Legislature; and

"Whereas, The One Hundred Fiftieth Anniversary of Greek Independence was yesterday, March 25, 1971;

"Now, therefore, be it resolved, That the members of the Senate on behalf of the people of the state of Washington, now join in paying tribute to their neighbors of Greek ancestry and to the people of Greece upon the occasion of the One Hundred Fiftieth Anniversary of Greek Independence;

"Be it further resolved, That the Secretary of the Senate be and he is hereby ordered to send a copy of this resolution to the Honorable Spiro T. Agnew, Vice President of the United States and to the Rev. A. Homer Demopulos of Saint Demetrios Greek Orthodox Church, Seattle, Washington."

A resolution of the Legislature of the Commonwealth of Massachusetts; to the Committee on Foreign Relations:

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO PROTEST TO HANOI THE MISTREATMENT OF AMERICAN PRISONERS OF WAR

"Whereas, There are over 1600 U.S. servicemen listed as prisoners of war or missing in action and many missing in action may be in prison camps, and more than 200 U.S. servicemen have been held more than three and one half years, longer than any U.S. serviceman was held prisoner in World War II; and

"Whereas, Hanoi has shown itself very sensitive to the state of opinion in the U.S., it would be very useful to let Hanoi see something of the unity and the impatience of the American people over the long standing proven mistreatment of U.S. men in North Vietnamese prison camps; now, therefore, be it

"Resolved, That the General Court of Massachusetts hereby respectfully urges the Congress of the United States to protest to Hanoi the mistreatment of U.S. prisoners of war held in North Vietnam; and be it further

"Resolved, That a copy of these resolutions be transmitted forthwith by the Secretary of

the Commonwealth to the President of the United States, to the presiding officer of each branch of Congress and to the members thereof from the Commonwealth."

Two joint memorials of the Legislature of the State of Idaho; to the Committee on Interior and Insular Affairs:

"HOUSE JOINT MEMORIAL No. 1

"(A Joint Memorial to the President of the United States, the Honorable Senate and House of Representatives of the United States in Congress assembled, the House Committee on Interior and Insular Affairs, the Senate Committee on Interior and Insular Affairs, and to the Senators and Representatives representing this State in the Congress of the United States)

"We, your Memorialists, the Senate and House of Representatives of the state of Idaho assembled in the First Regular Session of the Forty-first Idaho Legislature, do respectfully represent that:

"Whereas, the Congress of the United States has before it various proposals for legislation which would affect the future management of the present Sawtooth Primitive Area and adjacent lands; and

"Whereas, this is a region of incomparable scenic beauty and a rich historical past; and

"Whereas, this area is under increasing pressures of public and private use; and

"Whereas, uncontrolled development in the Sawtooth Valley, the Stanley Basin, and the environs of the Sawtooths threaten destruction of the natural beauty of the area; and

"Whereas, it is urgently required, in the public interest, that a definite permanent plan for the management of the Sawtooths be adopted as soon as possible; and

"Whereas, this matter has been the subject of considerable study by the United States Congress including public hearings in the area of the Sawtooths; and

"Whereas, the weight of past study and public sentiment favors the creation of a Sawtooth National Recreation Area; and

"Whereas, such action would permit continued management of the Sawtooths by the United States Forest Service, allowing the broadest multiple use of the area—for example, permitting grazing and timber management where possible; and

"Whereas, a national recreation area would permit continued management of fish and game by the Idaho Fish and Game Department.

"Now, therefore, be it resolved, by the First Regular Session of the Forty-first Idaho Legislature, now in session, the Senate and House of Representatives concurring, that we most respectfully urge the Congress of the United States of America to proceed at the earliest possible date to enact the necessary legislation to authorize the establishment of the Sawtooth National Recreation Area and Wilderness.

"Be it further resolved that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward copies of this Memorial to the President and the Vice President of the United States, the Speaker of the House of Representatives of Congress, to the House Committee on Interior and Insular Affairs, to the Senate Committee on Interior and Insular Affairs, and to the Senators and Representatives representing this state in the Congress of the United States."

"SENATE JOINT MEMORIAL No. 104

"(A joint memorial to the President of the Senate, the Speaker of the House of Representatives of the United States Congress and to the Senators and Representatives representing this State in the Congress of the United States.)

"We, your Memorialists, the Senate and House of Representatives of the state of Idaho assembled in the First Regular Session of the Forty-first Idaho Legislature, do hereby respectfully represent that:

"Whereas, many of the ore deposits now found in the Sawtooth, White Cloud, and Boulder ranges are of the type which require open pit development; and

"Whereas, the laws of this state and the national government related to these more modern methods of development are in need of revision to bring them up to date to deal with such matters as restoration, stream pollution, and other ecological considerations; and

"Whereas, it is desirable to postpone further development until revisions as may now be required and deemed necessary have been adopted.

"Now, therefore, be it resolved by the First Regular Session of the Forty-first Idaho Legislature, now in session, the Senate and House of Representatives concurring, that we most respectfully urge the Congress of the United States of America to proceed at the earliest possible date to enact the necessary legislation to withdraw, subject to valid and existing claims, such lands as are described in H.R. 18899 introduced in the 91st Congress, 2nd Session, which include the rugged and scenic areas of the Sawtooth, White Cloud and Boulder ranges adjacent to the Sawtooth Valley and Stanley Basin, from all forms of locations and entry under, and operation of the mining laws of the United States for a period of five years.

"Be it further resolved that the Secretary of the Senate be, and he is hereby authorized and directed to forward copies of this Memorial to the President of the Senate, the Speaker of the House of Representatives of the United States Congress, and to the Senators and Representatives representing this state in the Congress of the United States."

A joint memorial of the Legislature of the State of Idaho; to the Committee on the Judiciary:

"SENATE JOINT MEMORIAL No. 109

"A joint memorial to the Honorable Senate and House of Representatives of the United States in Congress assembled

"We, your Memorialists, the Senate and House of Representatives of the state of Idaho assembled in the First Regular Session of the Forty-first Idaho Legislature, do hereby respectfully represent that:

"Be it resolved by the First Regular Session of the Forty-first Idaho Legislature, now in session, that we most respectfully urge the Congress of the United States to disregard and consider withdrawn the requests of this body contained in Senate Joint Memorial No. 4, 1963, regarding a proposal to call a convention for the purpose of proposing an amendment to the Constitution of the United States, and contained in Senate Joint Memorial No. 1, 1965, regarding a proposal to call a convention for the purpose of proposing an amendment to the Constitution of the United States.

"Be it further resolved that Senate Joint Memorial No. 4, 1963, and Senate Joint Memorial No. 1, 1965, be, and the same are hereby withdrawn.

"Be it further resolved that the Secretary of the Senate be, and he hereby is, authorized and directed to forward copies of this Memorial to the President of the Senate of the United States, the Speaker of the House of Representatives of the United States and to the Senators and Representatives representing this state in the Congress of the United States."

A concurrent resolution of the General Assembly of the State of Delaware; to the Committee on the Judiciary:

"SENATE CONCURRENT RESOLUTION No. 13

"(Relative to the proposed amendment to the Constitution of the United States extending the right to vote to citizens eighteen years of age or older.)

"Whereas, at the first session of the 82nd Congress of the United States, begun and held at the City of Washington on the 21st of January, 1971, it was resolved by the Senate and the House of Representatives of the United States in Congress assembled (two-thirds of each House concurring therein), that the following Article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SEC. 1. The right of citizens of the United States who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

"SEC. 2. The Congress shall have power to enforce this Article by appropriate legislation"; and

"Whereas, the citizens of Delaware, through their elected representatives in General Assembly of the State of Delaware, are desirous of reaffirming their pride and faith in young adults; and

"Whereas, the citizens of Delaware are desirous of continuing the tradition of leadership so nobly initiated on December 7, 1787.

A resolution of the Legislature of the Commonwealth of Massachusetts; to the Committee on Labor and Public Welfare:

"Resolutions memorializing the President and the Congress of the United States to rescind the moratorium on the application of the Davis-Bacon Act in the Federal Construction Field."

"Whereas, The President of the United States has recently by presidential proclamation ordered a moratorium on the application of the Davis-Bacon Act in the federal construction field; and

"Whereas, The Davis-Bacon Act provides for the payment of the prevailing rate of wages in the particular area wherein federal construction projects are being undertaken; and

"Whereas, The suspension of said Act will, in the opinion of counless labor and government officials, be detrimental to the economy in general as well as to all in the public construction industry; now, therefore, be it

"Resolved, That the Massachusetts Senate unequivocally urges the President and the Congress of the United States to rescind the current moratorium or suspension on the application of the Davis-Bacon Act because of its adverse effect upon both labor and management in the public construction field; and be it further

"Resolved, That a copy of these resolutions be transmitted forthwith by the Clerk of the Senate to the President of the United States, to the presiding officer of each branch of Congress and to each member therof from the Commonwealth.

"Senate, adopted, March 22, 1971."

A joint memorial of the Oregon Legislative Assembly; to the Committee on Post Office and Civil Service:

"HOUSE JOINT MEMORIAL 4

"To the Honorable Senate and House of Representatives of the United States of America, in Congress assembled:

"We, your memorialists, the Fifty-sixth Legislative Assembly of the State of Oregon, in legislative session assembled, most respectfully represent as follows:

"Whereas it is apparent that the process of counting population and the apportionment procedure for seats in the House of Representatives of the United States are in

profound need of reexamination which must be undertaken before the 1980 census perpetuates the present inequity; and

"Whereas one of the primary purposes of the federal decennial census is to assure the proper allocation of congressional seats; and

"Whereas the census figures on which the 1970 congressional reapportionment will be based allow the inclusion of mobile populations, such as students and military personnel, in the state in which they were found when the census was taken notwithstanding the fact that the state may deny to them the right to participate in its election processes; and

"Whereas rules of the Census Bureau for assigning residency, although authorized by law, are not consistent with the objective of equal representation for equal numbers; and

"Whereas even the validity of the method by which congressional seats are apportioned after the census is taken may be questioned under recent 'one-man, one-vote' decisions of the United States Supreme Court; and

"Whereas it is unclear which states have acquired seats at the expense of the two states, Oregon and Connecticut, most obviously deprived of additional seats under the pending reapportionment; and

"Whereas there is precedent for the Congress of the United States to afford exceptional relief to Oregon and Connecticut; now, therefore.

"Be it Resolved by the Legislative Assembly of the State of Oregon:

"(1) The Congress of the United States is memorialized to increase temporarily the size of the membership of the House of Representatives of the United States by two, assigning those seats one each to Oregon and Connecticut.

"(2) The Congress of the United States is further memorialized to seek and enact a more consistent and equitable method of computing population and apportioning seats prior to the 1980 federal decennial census.

"(3) A copy of this memorial shall be transmitted to the President of the Senate and the Speaker of the House of Representatives of the United States and to each member of the Oregon Congressional Delegation."

A resolution adopted by the American Veterans of World War II, Department of Pennsylvania, regarding the treatment of American prisoners of war; to the Committee on Foreign Relations.

A petition from the Citizen-Sons of Culebra outlining their philosophy; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following report of a committee was submitted:

By Mr. BYRD of West Virginia (for Mr. JACKSON) from the Committee on Interior and Insular Affairs, with amendments:

S. Res. 45. A resolution to authorize a study of national fuels and energy policy (Rept. No. 92–53). Ordered referred to the Committee on Rules and Administration.

By Mr. CANNON, from the Committee on Rules and Administration, without amendment:

S. Res. 76. A resolution authorizing supplemental expenditures by the Committee on Agriculture and Forestry for an inquiry and investigation pertaining to rural development (Rept. No. 92–54).

S. Res. 77. A resolution authorizing the printing for the use of the Committee on Interior and Insular Affairs of additional copies of its committee print entitled "Congress and the Nation's Environment" (Rept. No. 92–55).

S. Res. 83. A resolution authorizing the printing of the report entitled "National Program for the Conquest of Cancer" (Rept. No. 92–56).

S. Con. Res. 15. A concurrent resolution pertaining to the printing of additional copies of part I of the hearings before the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary (Rept. No. 92–57).

S. Res. 78. A resolution authorizing the printing for the use of the Committee on Interior and Insular Affairs of additional copies of its committee print entitled "A Review of Energy Issues and the 91st Congress" (Rept. No. 92–58).

S. Res. 80. A resolution authorizing the printing of additional copies of the committee print entitled "Legislative History of the Federal Construction Safety Act" (Rept. No. 92–59).

S. Con. Res. 18. An original concurrent resolution authorizing the printing of additional copies of Senate Report 91–1548, entitled "Economics of Aging: Toward a Full Share in Abundance" (Report No. 92–60).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable report of a protocol was submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations, with understandings and declarations:

Executive H, 91st Congress, second session, Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America, signed at Mexico City on April 1, 1968 (Ex. Rept. No. 92–5).

The following favorable reports of nominations were submitted:

By Mr. WILLIAMS, from the Committee on Labor and Public Welfare:

George C. Guenther, of Pennsylvania, to be an Assistant Secretary of Labor;

Horace E. Menasco, of Washington, to be Administrator of the Wage and Hour Division, Department of Labor;

Alan F. Burch, of Maryland;

James F. Van Namee, of Pennsylvania; and

Robert D. Moran, of Massachusetts, to be members of the Occupational Safety and Health Review Commission.

BILLS AND JOINT RESOLUTIONS INTRODUCED

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

By Mr. BENTSEN:

S. 1481. A bill for the relief of Jose Amaral de Souza. Referred to the Committee on the Judiciary.

By Mr. SPONG:

S. 1482. A bill to amend the Act entitled "An Act to establish a boundary line between the District of Columbia and the Commonwealth of Virginia, and for other purposes", approved October 31, 1945 (59 Stat. 552). Referred to the Committee on the Judiciary.

By Mr. TALMADGE:

S. 1483. A bill 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. Referred to the Committee on Agriculture and Forestry.

By Mr. HARRIS:

S. 1484. A bill to promote the integration of education in the Nation's public elementary and secondary schools. Referred to the Committee on Labor and Public Welfare.

By Mr. RIBICOFF (for himself, Mr. BURDICK, Mr. CANNON, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HOLLINGS, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MONDALE, Mr. MONTOYA, Mr. PELL, Mr. RANDOLPH, Mr. TALMADGE, Mr. WILLIAMS, and Mr. SCHWEIKER):

S. 1485. A bill to establish a Department of Education. Referred to the Committee on Government Operations and then, if reported by the Committee on Government Operations, to the Committee on Labor and Public Welfare.

By Mr. JAVITS (for himself, Mr. HRUSKA, Mr. COOPER, Mr. DOLE, Mr. PELL, Mr. MCGEE, and Mr. TOWER):

S. 1486. A bill to establish an Antitrust Review and Revision Commission. Referred to the Committee on the Judiciary.

By Mr. SPARKMAN (for himself, Mr. MONDALE, Mr. TOWER, and Mr. PACKWOOD):

S. 1487. A bill to provide for continuation of authority for regulation of exports. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. MUSKIE (for himself, Mr. ANDERSON, Mr. HART, Mr. HUMPHREY, Mr. METCALF, Mr. STEVENSON, and Mr. MONDALE):

S. 1488. A bill to require an immigrant alien to maintain a permanent resident as a condition for entering and remaining in the United States, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. PACKWOOD:

S. 1489. A bill for the relief of Park Jung Ok. Referred to the Committee on the Judiciary.

By Mr. McINTYRE (for himself, Mr. MCGOVERN, Mr. METCALF, and Mr. STEVENS):

S. 1490. A bill to amend the Internal Revenue Code of 1954 and the Social Security Act to provide a comprehensive program of health care for the 1970's by strengthening the organization and delivery of health care nationwide and by making comprehensive health care insurance available to all Americans, and for other purposes. Referred to the Committee on Finance.

By Mr. BEALL:

S. 1491. A bill concerning medical records, information, and data to promote and facilitate medical studies, research, education, and the performance of the obligations of medical utilization committees in the District of Columbia. Referred to the Committee on the Judiciary.

By Mr. HATFIELD:

S. 1492. A bill for the relief of Jung Ok Park. Referred to the Committee on the Judiciary.

By Mr. BEALL:

S. 1493. A bill for the relief of Gaspar Bodmer Camacho. Referred to the Committee on the Judiciary.

By Mr. MATHIAS:

S. 1494. A bill for the relief of Pete Kayafas. Referred to the Committee on the Judiciary.

By Mr. STEVENS:

S. 1495. A bill to amend the Internal Revenue Code of 1954 to permit a deduction from gross income based upon the cost of living in certain States; and

S. 1496. A bill to amend the Internal Revenue Code of 1954 to exempt from tax a portion of the income of individuals not employed by the Federal Government who live in a State in which Federal employees receive an allowance based on living costs

and conditions of environment. Referred to the Committee on Finance.

S. 1497. A bill to authorize certain additions to the Sitka National Monument in the State of Alaska, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. NELSON (for himself and Mr. McGOVERN):

S. 1498. A bill to provide for the control of surface and underground coal mining operations which adversely affect the quality of our environment, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. EASTLAND:

S. 1499. A bill to amend title 18, United States Code, with respect to certain offenses against the security of the United States;

S. 1500. A bill to amend the Immigration and Nationality Act, and for other purposes;

S. 1501. A bill to amend titles 18 and 28, United States Code, with respect to proceedings before committees of the Congress, and for other purposes;

S. 1502. A bill to amend the Internal Security Act of 1950, and for other purposes;

S. 1503. A bill to amend the Foreign Agents Registration Act of 1938; and

S. 1504. A bill to provide for the internal security of the United States Government, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. PROUTY:

S. 1505. A bill to amend the Social Security Act so as to add thereto a new title XX under which blind or disabled individuals will be assured a minimum annual income of $1,800. Referred to the Committee on Finance.

By Mr. WILLIAMS:

S.1506. A bill to amend section 37 of the Internal Revenue Code of 1954 to update the retirement income credit. Referred to the Committee on Finance.

By Mr. PEARSON (for himself, Mr. ALLOTT, Mr. BENNETT, Mr. BURDICK, Mr. GRAVEL, Mr. HART, Mr. HATFIELD, Mr. HOLLINGS, Mr. HUGHES, Mr. HUMPHREY, Mr. McGOVERN, Mr. McINTYRE, Mr. MANSFIELD, Mr. METCALF, Mr. MONDALE, Mr. MONTOYA, Mr. NELSON, Mr. PROUTY, Mr. RANDOLPH, Mr. STEVENS, Mr. STEVENSON, and Mr. THURMOND):

S. 1507. A bill to provide for the establishment of a National Rural Development Center, and for other purposes. Referred to the Committee on Agriculture and Forestry.

By Mr. MONDALE:

S. 1508. A bill to amend the Wild and Scenic Rivers Act by designating a certain river in the State of Minnesota as a potential addition to the national wild and scenic rivers system. Referred to the Committee on Interior and Insular Affairs.

By Mr. BURDICK (for himself, Mr. SCOTT, and Mr. TUNNEY):

S. 1509. A bill to encourage and help implement improvements in the judicial machinery of our State and local courts by creating an Institute for Judicial Studies and Assistance, the purpose of which shall be to make grants to State and local courts and nonprofit organizations to carry out the objectives of the act and to serve as a reservoir of up-to-date information on court management and organization. Referred to the Committee on the Judiciary.

By Mr. TOWER:

S. 1510. A bill to amend title 10, United States Code, to remove the restriction on the use of certain private institutions under the dependents' medical care program. Referred to the Committee on Armed Services.

By Mr. HART:

S. 1511. A bill to relieve the Archdiocese of Detroit from liability for interest attributable to certain late payments of taxes. Referred to the Committee on Finance.

By Mr. MONDALE (for himself, Mr. JAVITS, Mr. NELSON, and Mr. SCHWEIKER):

S. 1512. A bill to amend the Economic Opportunity Act of 1964 to provide for a comprehensive child development program in the Department of Health, Education, and Welfare. Referred to the Committee on Labor and Public Welfare.

By Mr. SCHWEIKER:

S. 1513. A bill for the relief of Franco Silvestri. Referred to the Committee on the Judiciary.

By Mr. MILLER:

S.J. Res. 82. A joint resolution expressing a proposal by the Congress of the United States for securing the safe return of American and allied Prisoners of War and the accelerated withdrawal of all American military personnel from South Vietnam. Referred to the Committee on Foreign Relations.

By Mr. PROXMIRE:

S.J. Res. 83. A joint resolution to provide for a study and investigation of the effectiveness of the interdiction bombing by the United States in Southeast Asia. Referred to the Committee on Armed Services.

By Mr. CRANSTON (for himself, Mr. NELSON, and Mr. TUNNEY):

S.J. Res. 84. A joint resolution to establish the Tule Elk National Wildlife Refuge. Referred to the Committee on Interior and Insular Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TALMADGE:

S.1483. A bill 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. Referred to the Committee on Agriculture and Forestry.

THE FARM CREDIT ACT OF 1971

Mr. TALMADGE. Mr. President, I introduce today legislation to rewrite our farm credit laws to enable the farm credit system to meet the credit needs of modern American agriculture. Hopefully the introduction and consideration of this legislation will lead to a searching examination of the credit needs not only of American agriculture, but rural areas in general.

The bill that I am introducing today has been under consideration by the administration for some time but has not yet received final clearance. However, farmers and farm leaders from my State as well as elsewhere have come to me urging that I introduce this important legislation now. They point with pride to the fact that it concerns their own credit system and not a Federal agency. They feel that it will be of great value to rural America by modernizing existing farm credit law under which the Federal Land Banks, Production Credit Association, Federal Intermediate Credit Banks, and Banks for Cooperatives are chartered.

I have not yet had time to study the bill fully. But I am impressed by the claims made by those who have given it close study. This bill has been in the development process for well over a year. A Commission on Agricultural Credit, composed of 27 national farm leaders and leaders in the Farm Credit System, was appointed in May 1969, to study present and future credit needs of agriculture. After a 10-month study the Commission laid down a detailed set of recommendations for modification of the Farm Credit System to assure that it will continue to be responsive to the rapidly growing and changing credit needs of rural people.

Subsequently, these recommendations were examined, discussed, and developed into proposals for legislative changes through group action of the various Farm Credit Boards at all levels and from all areas of the counrty.

In general the legislative proposal would completely rewrite the farm credit laws, expanding activities of the land banks, intermediate credit banks, and production credit associations to include rural housing loans, loans to persons providing custom farm services, and the providing of financial related services, such as estate planning. The bill would also provide additional flexibility in the making of loans, commitments, participations, and stock issuance and other financing. In short, it would enable the Farm Credit System to respond effectively to the ever increasing credit needs of farmers and to serve a wider segment of rural America.

And credit needs of farmers have been increasing. In order to remain in business they have had to make many changes in their operations. They are forced into increasing the size of their farms. Today, farms in this country average 389 acres, up 31 percent in just the last 10 years.

Farm real estate values in the last decade increased by 60 percent and now total about $209 billion. On a per acre basis land values have increased by 66 percent and now average $193.

Farmers have been forced to invest more in machinery and equipment. Total value of motor vehicles, machinery and equipment on farms has increased by 54 percent and in 1970 amounted to $34.3 billion.

The value of livestock and poultry on farms has increased by 55 percent since 1960 and now totals $23.5 billion.

In order to achieve their goal of a more productive and more economic unit, farmers have been forced to make greater and greater use of credit. In 1970 farmers owed a total of over $55 billion in both mortgage and short-term debt. This is an increase of 134 percent over 1960 debt.

And what of the future? Most people closely associated with agriculture believe that farmers' needs for credit in the future will be immense. Farmers are concerned because they find themselves continually using more credit. Lenders are concerned for they want to be able to be able to assure borrowers of adequate financing. The farmer-owned Farm Credit System is doubly concerned for it is a system of borrowers and lenders.

Agricultural economists of the Federal Reserve System recently predicted

that farmers would require a minimum of $3 to $4 billion additional credit each year in the remainder of the seventies. They estimate that farm debt could increase to as high as $137 billion by 1980. This projection represents only the average annual increase in farmers' use of credit each year during the past 10 years.

Other economists forecast with assurance that a family farm unit by 1980 will require a minimum of $250,000 to $500,000 of capital, depending on the particular farm type.

Of course, many factors contribute to this spiraling requirement for capital in agriculture. New farming techniques. Bigger, more efficient but more expensive farming equipment. Greater reliance on purchased farm inputs. Inflation. Whatever the reasons, the availability of a dependable supply of credit on terms suited to farmers' needs is essential to the continued growth and development of American agriculture.

And this is exactly what the new proposal of the Farm Credit Administration is designed to achieve. Today this independent agency has over $15 billion in loans outstanding to farmers and their cooperatives. It brings more than $1 billion of new money into agriculture each year; none of it from Government coffers. And American farmers have more than $1 billion invested in this, their own credit institution.

In the past, the farm credit system has worked together with the Farmers Home Administration, life insurance companies, commercial banks, and other lending institutions and persons in providing farmers with the money needed to operate effectively and efficiently. They intend to continue to perform in this manner, but feel that in order to accomplish the purpose for which they were organized it is necessary to eliminate existing obsolete provisions of law, simplify procedures, and make such other changes which would enable them to respond effectively to farm credit needs.

I believe that the introduction of this bill will provide an excellent vehicle for examining the credit needs not only of American agriculture, but of all of rural America. Such an examination is long overdue. The problems of the rural or smalltown family who wants to buy a decent house, the problems of a smalltown mayor who wants to install an adequate water and sewer system, and the problems of a smalltown chamber of commerce that wants to attract new industry are equally as pressing as the problems of our hard pressed American farmer.

The President's Task Force on Rural Development recommended in its report of March 1970 the establishment of a Rural Development Credit Bank. The task force recommended that this bank be structured in law as a wholly new title in an amendment to the Farm Credit Act. The task force recommended that this bank be established—

Within the farm credit system, but completely apart from farm loans to provide private capital for such uses as rural housing, water and sewer systems, water resource projects, rural industries, recreational facilities, and rural utilities including rural electric and telephone systems.

Loans should be made to private individuals, cooperative, corporations, municipalities or other appropriate public authorities established under State law.

The capital needs for this investment are too great in total, and too large in individual amounts, to be met in full by existing local banking and financial institutions.

During 1970 I offered an amendment to the Agricultural Act of 1970 to require reports from the administration in a number of areas which would enable the Congress to legislate more effectively for rural communities development. This amendment was enacted into law as title IX of the Agricultural Act of 1970. In addition to four other reports, the executive branch is required to report to the Congress on the possible utilization of the Farm Credit Administration and the agencies in the Department of Agriculture to fulfill rural financial assistance requirements not filled by other agencies. The President is required to submit this report, together with such legislative recommendations as he deems appropriate, on or before July 1, 1971.

Presently, the staff of the Senate Committee on Agriculture and Forestry is examining proposals to establish a Rural Community Development Bank. The committee will be most interested in receiving the President's recommendations on this subject.

Already we have numerous Government programs aimed at meeting such rural credit needs as the need for rural housing and the need for rural water and sewer systems. Unfortunately, all of these programs are badly underfunded. All are subject to the whims of officials in the Office of Management and Budget.

Although rural America contains only one-third of the Nation's population, it contains fully two-thirds of the Nation's occupied substandard housing.

The Department of Housing and Urban Development is primarily concerned with cities and suburbs. It has very little interest in small town America. The Farms Home Administration has a good program for housing loans in rural areas. However, this program is pitifully small when compared with the need for rural housing financing.

Moreover, the Farmers Home Administration's program is aimed at low-income families. There are often no sources of credit available to rural families with an income of over $8,000 who want to purchase a nice home. Recently I received a letter from a friend of mine who is a banker in a small Georgia town. My friend has summed up the situation concisely.

At present, I have five loan applications for long term real estate loans on people from this county with Atlanta mortgage brokers. The loans qualify in every respect, but the normal mortgage purchasers, i.e., large insurance companies, will not purchase conventional mortgages in rural communities. For this reason, these families will be unable to build houses in the $30,000.00 to $50,000.00 bracket although they already have between 20% and 30% cash equity in the homes.

If rural America is to retain its population, it must have adequate housing for its middle-income residents, as well as its low-income families. One of the key features of the bill that I introduce today is the provision giving the Federal land banks authority to make long-term mortgage loans for housing in rural areas. This provision would enable the Federal land bank to make housing loans to those individuals who do not qualify as low-income borrowers under the Farmers Home Administration program.

The credit needs of small towns are enormous. Before any small town can experience substantial economic growth, it must have an adequate water and sewer system. According to a Farmers Home Administration survey conducted in 1969, over $11 billion would be required to provide adequate water and sewer systems for our rural areas. The Farmers Home Administration survey covered all communities with populations of 5,500 or less.

How are we meeting this $11 billion need at the present time? Congress appropriated $100 million for water and sewer grants to rural areas for fiscal 1971. The administration is refusing to spend one-half of this small amount. The administration's water and sewer insured loan program has been increased from $130 million for fiscal 1971 to $189 million for fiscal 1972. But this $59 million increase is infinitesimal when compared with the need of $11 billion.

The bill I am introducing will not provide financing for water and sewer systems and other public service for rural areas. However, the proposals for rural community development banks would meet this need.

The Senate Committee on Agriculture and Forestry will welcome any new suggestions for meeting the credit needs of the American farmer and of rural America. I believe that the bill I am introducing today will go a long way toward closing the credit gap in rural America and I will welcome any comments on this legislation and any additional proposals for meeting our farm credit needs.

Mr. President, I ask unanimous consent to have the text of this legislation, together with a summary of principal provisions and a list of key proposals, printed at the conclusion of my remarks.

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

S. 1483

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

POLICY AND OBJECTIVES

SEC. 1.1. (a) It is declared to be the policy of the Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit rural areas, that the farmer-owned cooperatve Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

(b) It is the objective of this Act to con-

tinue to encourage farmer- and rancher-borrowers participation in the management, control, and ownership of a permanent system of credit for agriculture and to modernize and improve the authorizations and means for furnishing such credit and credit for housing in rural areas made available through the institutions constituting the Farm Credit System as herein provided.

SEC. 1.2. The Farm Credit System. The Farm Credit System shall include the Federal land banks, the Federal land bank associations, the Federal intermediate credit banks, the production credit associations, the banks for cooperatives, and such other institutions as may be made a part of the System, all of which shall be chartered by and subject to the supervision of the Farm Credit Administration.

TITLE I—FEDERAL LAND BANKS AND ASSOCIATIONS

PART A—FEDERAL LAND BANKS

SEC. 1.3. Establishment; title; branches. The Federal land banks established pursuant to section 4 of the Federal Farm Loan Act, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration, not inconsistent with the provisions of this title, as may be necessary or expedient to implement this Act. Unless an existing Federal land bank is merged with one or more other such banks under section 4.10 of this Act, there shall be a Federal land bank in each farm credit district. It may include in its title the name of the city in which it is located or other geographical designation. When authorized by the Farm Credit Administration, it may establish such branches or other offices as may be appropriate for the effective operation of its business.

SEC. 1.4. Corporate existence; general corporate powers. Each Federal land bank shall be a body corporate and, subject to supervision by the Farm Credit Administration, shall have power to—

(1) Adopt and use a corporate seal.

(2) Have succession until dissolved under the provisions of this Act or other Act of Congress.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all the usual incidents of ownership of real and personal property necessary or convenient to its business.

(6) Make loans and commitments for credit, accept advance payments, and provide services and other assistance as authorized in this Act, and charge fees therefor.

(7) Operate under the direction of its board of directors.

(8) Elect by its board of directors a president, any vice president, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this Act, define their duties, and require surety bonds or make other provision against losses occasioned by employees.

(9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, and agents are elected or provided for; its property acquired, held, and transferred; its loans and appraisals made; its general business conducted; and the privileges granted it by law exerised and enjoyed.

(10) Borrow money and issue notes, bonds, debentures, or other obligations individually, or in concert with one or more other banks of the System, of such character, terms, conditions, and rates of interest as may be determined.

(11) Accept deposits of securities or of current funds from its Federal land bank associations and pay interest on such funds.

(12) Participate with one or more other Federal land banks in loans under this title on such terms as may be agreed upon among such banks.

(13) Approve the salary scale of the officers and employees of the Federal land bank associations and the appointment and compensation of the chief executive officer thereof and supervise the exercise by such associations of the functions vested in or delegated to them.

(14) Deposit its securities and its current funds with any member bank of the Federal Reserve System and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(15) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of any such agency, and make such other investments as may be authorized by the Farm Credit Administration.

(16) Conduct studies and make and adopt standards for lending.

(17) Delegate to Federal land bank associations such functions vested in or delegated to the bank as it may determine.

(18) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.

(19) Perform any function delegated to it by the Farm Credit Administration.

(20) Require Federal land bank associations to endorse notes and other obligations of its members to the bank.

(21) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

SEC. 1.5. Land bank stock; value; shares; voting; dividend. (a) The capital stock of each Federal land bank shall be divided into shares of par value of $5 each, and may be of such classes as its board of directors may determine with the approval of the Farm Credit Administration.

(b) Voting stock of each bank shall be held only by the Federal land bank associations and direct borrowers through agents, which stock shall not be transferred, pledged, or hypothecated except as authorized pursuant to this Act.

(c) The board of each bank shall from time to time increase its capital stock to permit the issuance of additional shares to the Federal land bank associations so that members of such associations purchasing stock or participation certificates therein may be eligible for loans from the bank.

(d) Nonvoting stock may be issued to the Governor of the Farm Credit Administration, and may also be issued to Federal land bank associations in amounts which will permit the bank to extend financial assistance to eligible persons other than farmers or ranchers. Participation certificates with a face value of $5 each may be issued in lieu of nonvoting stock when the bylaws of the bank so provide.

(e) Dividends shall not be payable on any stock held by the Governor of the Farm Credit Administration. Noncumulative dividends may be payable on other stock and participation certificates of the bank. The rate of dividends may be different between different classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the bank by such classes and issues, but otherwise dividends shall be without preference.

SEC. 1.6. Real estate mortgage loans. The Federal land banks are authorized to make long-term real estate mortgage loans in rural areas, as defined by the Farm Credit Administration, and continuing commitments to make such loans under specified circumstances, or extend other financial assistance of a similar nature to eligible borrowers, for a term of not less than five nor more than forty years.

SEC. 1.7. Interest rates and other charges. Loans made by a Federal land bank shall bear interest at a rate or rates, and on such terms and conditions as may be determined by the board of directors of the bank from time to time, with the approval of the Farm Credit Administration. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable costs on a sound business basis taking into account the cost of money to the bank, necessary reserves and expenses of the banks and Federal land bank asociations, and providing services to stockholders and members. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

SEC. 1.8. Eligibility. The services authorized in this title may be made available to persons who are or become stockholders or members in the Federal land bank associations including (1) farmers and ranchers, (2) persons furnishing to farmers and ranchers farm related services necessary to their agricultural production, including basic processing and marketing, and (3) owners of rural homes.

SEC. 1.9. *Security.* Loans by the Federal land banks shall be secured primarily by interest in rural real estate, the value of which shall be determined by appraisal under appraisal standards prescribed or approved by the Farm Credit Administration, to adequately secure the loan. However, additional security may be required to supplement real estate security, and credit factors other than the ratio between the amount of the loan and the security value shall be given due consideration.

SEC. 1.10. *Purposes.* Loans made by the Federal land banks to farmers and ranchers may be for any agricultural purpose and other credit needs of the applicant. Loans may also be made to rural residents for rural housing financing under regulations of the Farm Credit Administration. Loans to persons furnishing farm related services to farmers and ranchers may be made for the necessary capital structures and equipment and initial working capital for such services. The banks may own and lease, or lease with option to purchase, to persons eligible for assistance under this Title, facilities needed in the operations of such persons.

SEC. 1.11. *Services related to borrowers' operations.* The Federal land banks may provide technical assistance to borrowers, members, and applicants and may make available to them such financial related services appropriate to their operations as determined to be feasible, under regulations of the Farm Credit Administration.

SEC. 1.12. *Loans through associations or agents.* (a) The Federal land banks shall, except as otherwise herein provided, make loans through a Federal land bank association serving the territory in which the real estate offered by the applicant is located. If there is no active association chartered for the territory where the real estate is located, or if the association has been declared insolvent, the bank may make the loan through

another such association, directly, or through such bank or trust company or savings or other financial institution as it may designate. When the loan is not made through a Federal land bank association, the applicant shall purchase stock in the bank in an amount not less than $5 nor more than $10 for each $100 of the loan and the loan shall be made on such terms and conditions as the bank shall prescribe.

PART B—FEDERAL LAND BANK ASSOCIATIONS

SEC. 1.13. *Organizations; articles; charters; powers of the Governor.* Each Federal land bank association chartered under section 7 of the Federal Farm Loan Act, as amended, shall continue as a federally chartered instrumentality of the United States. A Federal land bank association may be organized by any group of ten or more persons desiring to borrow money from a Federal land bank, including persons to whom the Federal land bank has made a loan directly or through an agent and has taken as security real estate located in the territory proposed to be served by the association. The articles of association shall describe the territory within which the association proposes to carry on its operations. Proposed articles shall be forwarded to the Federal land bank for the district, accompanied by an agreement to subscribe on behalf of the association for stock of the land bank equal to not less than $5 nor more than $10 per $100 of the amount of the aggregate loans desired or held by the association members. Such stock may be paid for by surrendering for cancellation stock in the bank held by a borrower and the issuance of an equivalent amount of stock to such borrower in the association. The articles shall be accompanied by a statement signed by each of the members of the proposed association establishing his eligibility for, and that he has or desires a Federal land bank loan; that the real estate with respect to which he desires a loan is not being served by another Federal land bank association; and that he is or will become a stockholder in the proposed association. A copy of the articles of association shall be forwarded to the Governor of the Farm Credit Administration with the recommendations of the bank concerning the need for the proposed association in order to adequately serve the credit needs of eligible persons in the proposed territory and a statement as to whether or not the territory includes any territory described in the charter of another Federal land bank association. The Governor for good cause shown may deny the charter applied for. Upon the approval of the proposed articles by the Governor and the issuance of such charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States. The Governor shall have power, in the terms of the charter, under rules and regulations prescribed by him or by approving bylaws of the association, to provide for the organization, management, and conduct of the business of the association, the initial amount of stock of such association, the territory within which its operations may be carried on and to direct at any time changes in the charter of such association as he finds necessary in accomplishing the purposes of this Act.

SEC. 1.14. *Board of directors.* Each Federal land bank association shall elect from its voting shareholders a board of directors of such number, for such terms, in such manner, and with such qualifications as may be required by its bylaws.

SEC. 1.15. *General corporate powers.* Each Federal land bank association, subject to supervision of the Federal land bank for the district and of the Farm Credit Administration, shall have the power to—

(1) Adopt and use a corporate seal.

(2) Have succession until dissolved under the provisions of this Act or other Act of Congress.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real estate and personal property necessary or convenient to its business.

(6) Operate under the direction of its board of directors in accordance with this Act.

(7) Elect by its board of directors a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees as provided in this Act; define their duties; and require surety bonds or make other provisions against losses occasioned by employees. No director shall, within one year after the date when he ceases to be a member of the board, be elected or designated a salaried employee of the association on the board of which he served.

(8) Prescribe by its board of directors its bylaws, not inconsistent with law, providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers and employees elected or provided for; its property acquired, held, and transferred; its general business conducted; and privileges granted it by law exercised and enjoyed.

(9) Accept applications for Federal land bank loans and receive from such bank and disburse to the borrowers the proceeds of such loans.

(10) Subscribe to stock of the Federal land bank of the district.

(11) Elect by its board of directors a loan committee with power to elect applicants for membership in the association and recommend loans to the Federal land bank, or with the approval of the Federal land bank, delegate the election of applicants for membership and the approval of loans within specified limits to other committees or to authorized employees of the association.

(12) Upon agreement with the bank, take such additional actions with respect to applications and loans and perform such functions as are vested by law in or delegated to the Federal land banks as may be agreed to or delegated to the association.

(13) Endorse and become liable to the bank on loans it makes to association members.

(14) Receive such compensation and deduct such sums from loan proceeds with respect to each loan as may be agreed between the association and the bank and may make such other charges for services as may be approved by the bank.

(15) Provide technical assistance to members, borrowers, applicants, and other eligible persons and make available to them such financial related services appropriate to their operations as it determines, with Federal land bank approval, are feasible, under regulations of the Farm Credit Administration.

(16) Borrow money from the bank and, with the approval of such bank, borrow from and issue its notes or other obligations to any commercial bank or other financial institutions.

(17) Buy and sell obligations of or insured by the United States or any agency thereof or of any banks of the Farm Credit System.

(18) Invest its funds in such obligations as may be authorized in regulations of the Farm Credit Administration and approved by the bank and deposit its securities and current funds with any member bank of the Federal Reserve System, with the Federal land bank, or with any bank insured by the Federal Deposit Insurance Corporation, and pay fees therefor and receive interest thereon as may be agreed.

(19) Perform such other function delegated it by the Federal land bank of the district.

(20) Exercise by its board of directors or authorized officers or agents all such incidental powers as may be necessary or expedient in the conduct of its business.

SEC. 1.16. *Association stock; value of shares; voting.* (a) The shares of stock in each Federal land bank association shall have a par value of $5 each. No person but borrowers from the bank shall become members and stockholders of the association. If an application for membership is approved and if the applied-for loan is granted, the member of the association shall subscribe to stock in the association in an amount not less than 5 per centum nor more than 10 per centum of the face amount of the loan as determined by the bank. Stock shall be paid for in cash by the time the loan is closed. Stock shall be retired and paid at fair book value not to exceed par, as determined by the association, upon the full repayment of the loan and if the loan is in default may be canceled for application on the loan, or under other circumstances, for other disposition, when approved by the bank. The aggregate capital stock of each association shall be increased from time to time as necessary to permit the securing of requested loans from the bank for the association's members.

(b) The stock issued by an association may be voting stock or nonvoting stock of such classes as the association determines with the approval of the bank under regulations prescribed by the Farm Credit Administration. Each holder of voting stock shall be entitled to only one vote, and no more, in the election of directors and in deciding questions at meetings of stockholders. Participation certificates may be issued in lieu of nonvoting stock when the bylaws of the association so provide.

PART C—PROVISIONS APPLICABLE TO FEDERAL LAND BANKS AND FEDERAL LAND BANK ASSOCIATIONS

SEC. 1.17. *Land bank reserves; dividends.* (a) Each Federal land bank shall, at the end of each fiscal year, carry to reserve account a sum of not less than 50 per centum of its net earnings for the year until said reserve account shall be equal at the end of such year, after restoring any impairment thereof, to the outstanding capital stock and participation certificates of the bank. Thereafter, a sum equal to 10 per centum of the year's net earnings shall be added to the reserve account until the account shall be equal to 150 per centum of the outstanding capital stock and participation certificates of the bank. Any amounts added to the reserve account in excess of 150 per centum of the outstanding capital stock and participation certificates may be withdrawn from such reserves with the approval of the Farm Credit Administration.

(b) Any bank may declare a dividend or dividends out of the whole or any part of net earnings which remain after (1) the maintenance of the reserve as required in subsection (a) hereof, (2) the payment of the franchise tax as required by section 4.0 for any year in which any stock in the bank is held by the Governor of the Farm Credit Administration, and (3) with approval of the Farm Credit Administration.

SEC. 1.18. *Association reserves; dividends.* (a) Each Federal land bank association shall, out of its net earnings at the end of each fiscal year, carry to reserve account a sum not less than 10 per centum of such earnings until the reserve account shall equal 25 per centum of the outstanding capital stock and participation certificates of such association after restoring any impairment thereof. Therefore, 5 per centum of the net earnings for the year shall be

added to such reserve account until it shall equal 50 per centum of the outstanding capital stock and participation certificates of the association. Any accounts in the reserve account in excess of 50 per centum of the outstanding capital stock and participation certificates may be withdrawn with the approval of the Federal land bank.

(b) Any association may declare a dividend or dividends out of the whole or any part of net earnings which remain after (1) maintenance of the reserve required in subsection (a) hereof and (2) bank approval.

(c) Whenever any association is liquidated, a sum equal to its reserve account as required in this Act shall be paid and become the property of the bank in which such association is a shareholder.

SEC. 1.19. *Agreements for sharing gains or losses.* Each Federal land bank may enter into agreements with Federal land bank associations in its district for sharing the gain or losses on loans or on security held therefor or acquired in liquidation thereof, and associations are authorized to enter into any such agreements and also, subject to bank approval, agreements with other associations in the district for sharing the risk of loss on loans endorsed by each such association.

SEC. 1.20. *Liens on stock.* Each Federal land bank and each Federal land bank association shall have a first lien on the stock and participation certificates it issues, except on stock held by the Governor of the Farm Credit Administration, for the payment of any liability of the stockholder to the association or to the bank, or to both of them.

SEC. 1.21. Taxation. Every Federal land bank and every Federal land bank association and the capital, reserves, and surplus thereof, and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by a Federal land bank or a Federal land bank association to the same extent, according to its value, as other similar property held by other persons is taxed. The mortgages held by the Federal land banks and the notes, bonds, debentures, and other obligations issued by the banks or associations shall be deemed and held to be instrumentalities of the Government of the United States and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 (31 U.S.C. 742 (a)).

TITLE II—FEDERAL INTERMEDIATE CREDIT BANKS AND PRODUCTION CREDITS AND PRODUCTION CREDIT ASSOCIATIONS

PART A—FEDERAL INTERMEDIATE CREDIT BANK

SEC. 2.0. Establishment; branches. The Federal intermediate credit banks established pursuant to section 201(a) of the Federal Farm Loan Act, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration not inconsistent with the provisions of this Title as may be necessary or expedient to implement this Act. Unless an existing Federal intermediate credit bank is merged with one or more other such banks under section 4.10 of this Act, there shall be a Federal intermediate credit bank in each farm credit district. It may include in its title the name of the city in which it is located or other geographical designation. When authorized by the Farm Credit Administration, it may establish such branches or other offices as may be appropriate for the effective operation of its business.

SEC. 2.1. Corporation existence; general corporate powers. Each Federal intermediate credit bank shall be a body corporate and, subject to supervision of the Farm Credit Administration, shall have power to—

(1) Adopt and use a corporate seal.

(2) Have succession until dissolved under the provisions of this Act or other Act of Congress.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all of the incidents of ownership of real and personal property necessary or convenient to its business.

(6) Make and discount loans and commitments for credit, and provide services and other assistance as authorized in this Act, and charge fees therefor.

(7) Operate under the direction of its board of directors.

(8) Elect by its board of directors a president, any vice president, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this Act, define their duties and require surety bonds or make other provision against losses occasioned by employees.

(9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, and agents elected or provided for; its property acquired, held, and transferred; its loans and discounts made; its general business conducted; and the privileges granted by law exercised and enjoyed.

(10) Borrow money and issue notes, bonds, debentures, or other obligations individually, or in concert with one or more other banks of the System, of such character, and such terms, conditions, and rates of interest as may be determined.

(11) Purchase nonvoting stock in or paid-in surplus to, and accept deposits of securities or of current funds from production credit associations holding its shares and pay interest upon such funds.

(12) Deposit its securities and its current funds with any member bank of the Federal Reserve System, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(13) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of any such agency and make such other investments as may be authorized by the Farm Credit Administration.

(14) Delegate to the production credit associations such functions vested in or delegated to the intermediate credit bank as it may determine.

(15) Approve the salary scale of the officers and employees of the associations and the appointment and compensation of the chief executive officer thereof and supervise the exercise by the production credit associations of the functions vested in or delegated to them.

(16) Amend and modify loan contracts, documents, payment schedules, and release, subordinate, or substitute security for any of them.

(17) Conduct studies and make and adopt standards for lending.

(18) Enter into loss sharing agreements with other Federal intermediate credit banks and production credit associations.

(19) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

(20) Participate with one or more other Federal intermediate credit banks or production credit associations in the district, in loans under this title on such terms as may be agreed upon among such banks and associations.

(21) Perform any function delegated to it by the Farm Credit Administration.

SEC. 2.2. Federal intermediate credit bank stock; value; dividends; additional stock; retirement. (a) The capital stock of each Federal intermediate credit bank shall be divided into shares of par value of $5 each and may be of such classes as its board of directors may determine with the approval of the Farm Credit Administration.

(b) Voting stock of each bank shall be held only by the production credit associations which stock shall not be transferred, pledged, or hypothecated except as provided in this title or as authorized under regulations of the Farm Credit Administration.

(c) The board of each bank shall from time to time increase its capital stock to permit the issuance of additional shares to production credit associations in such amounts as shall be determined by the board.

(d) Nonvoting stock may be issued to the Governor of the Farm Credit Administration. Nonvoting stock may also be issued to production credit associations in such amounts as will permit the association to extend financial assistance to eligible persons other than farmers, ranchers, and producers or harvesters of aquatic products. Participation certificates, with a face value of $5, may be issued in lieu of such nonvoting stock when the bylaws of the bank so provide.

(e) Participation certificates also may be issued by a bank to financing institutions other than production credit associations which are eligible to borrow from or discount eligible paper with the bank.

(f) Dividends shall not be payable on any stock held by the Governor of the Farm Credit Administration other than the tax imposed by section 4.0(c), but noncumulative dividends may be payable on other capital and participation certificates in an amount not to exceed a per centum permitted under regulations of the Farm Credit Administration, in any year as determined by the board of directors. Such dividends may be in the form of stock and participation certificates or, when the Governor of the Farm Credit Administration holds no stock in the bank, in cash. The rate of dividends may be different between different classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the bank by such classes and issues, but otherwise dividends shall be without preference.

(g) Each Federal intermediate credit bank, with the approval of the Farm Credit Administration, may determine the amount of the initial or additional stock in the bank to be subscribed for by the production credit associations in the farm credit district served by the bank in order to provide capital to meet the credit needs of the bank. The amount so determined shall be allotted among the associations in the district upon such basis that, as nearly as may be practicable, the sum of the stock already owned and the additional amount to be subscribed for by such association will be in the same proportion to the total amount of stock already owned and to be subscribed for by all of the associations in the district that the average indebtedness (loans and discounts) of each association to the bank during the immediately preceding three fiscal years is of the average of such indebtedness of all associations to the bank during such three-year period. Each association shall subscribe for stock in the bank in the amount so al-

lotted to it. Such subscriptions shall be subject to call and payment therefor shall be made at such times and in such amounts as may be determined by the bank.

Whenever the relative amounts of stock in a bank owned by the associations differ substantially from the proportion indicated in the preceding paragraph, and additional subscriptions to stock through which such proportion could be reestablished are not contemplated, the bank, with the approval of the Farm Credit Administration, may direct either separately or in combination such transfers, retirements, and reissuance of outstanding stock among the associations as will reestablish the aforesaid proportion as nearly as may be practicable. Outstanding stock which is retired for this purpose, except as otherwise approved by the Farm Credit Administration, shall be the oldest stock held by the association and the bank shall pay the association therefor at the fair book value thereof not exceeding par.

The banks may issue further amounts of participation certificates with the same rights, privileges, and conditions, for purchase by institutions other than production credit associations which are entitled to receive participation certificates from the bank as patronage refunds. Participation certificates held by other financing institutions may be transferred to other such institutions upon request of, or with the approval of the bank.

After all stock held by the Governor of the Farm Credit Administration has been retired, the bank may retire other stock at par and participation certificates at face amount under regulations of the Farm Credit Administration. Such other stock and participation certificates shall be retired without preference and in such manner that, unless otherwise approved by Farm Credit Administration, the oldest outstanding stock or certificates at any given time will be retired first. In case of liquidation or dissolution of any production credit association or other financing institution, the stock or participation certificates of the bank owned by such association or institution may be retired by the bank at the fair book value thereof, not exceeding par or face amount, as the case may be.

(h) Except with regard to stock held by the Governor, each Federal intermediate credit bank shall have a first lien on all stock and participation certificates it issues and on all allocated reserves and other equities for any indebtedness of such capital investments to the bank.

(i) In any case where the debt of a production credit association or other financing institution is in default, the bank may retire all or part of the capital investments in the bank held by such debtor at the fair book value thereof, not exceeding par or face amount as the case may be, in total or partial liquidation of the debt.

SEC. 2.3. *Loans; discounts; participations; leasing.* (a) The Federal intermediate credit banks are authorized to make loans and extend other similar financial assistance to and discount for, or purchase from, any production credit association with its endorsement or guaranty, any note, draft, or other obligation presented by such association, and to participate with such association and one or more intermediate credit banks in the making of loans to eligible borrowers, all the foregoing to be secured by such collateral, if any, as may be required in regulations of the Farm Credit Administration. The banks may own and lease or lease with option to purchase to persons eligible for assistance under this title, equipment needed in the operations of such persons.

(b) The Federal intermediate credit banks are authorized to discount for, or purchase from, any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, and any association of agricultural producers engaged in the making of loans to farmers and ranchers, with its endorsement or guaranty, any note, draft, or other obligation the proceeds of which have been advanced or used in the first instance for any agricultural purpose, including the breeding, raising, fattening, or marketing of livestock; and to make loans and advances to any such financing institution secured by such collateral as may be approved by the Farm Credit Administration: *Provided*, That no such loan or advance shall be made upon the security of collateral other than notes or other such obligations of farmers and ranchers eligible for discount or purchase under the provisions of this section, unless such loan or advance is made to enable the financing institution to make or carry loans for any agricultural purpose.

(c) No paper shall be purchased from or discounted for any national bank, State bank, trust company or savings institution under subsection (b) if the amount of such paper added to the aggregate liabilities of such national bank, State bank, trust company or savings institution, whether direct or contingent (other than bona fide deposit liabilities), exceeds the lower of the amount of such liabilities permitted under the laws of the jurisdiction creating the same, or twice the paid-in and unimpaired capital and surplus of such national bank, State bank, trust company, or savings institution. No paper shall under this section be purchased from or discounted for any other corporation engaged in making loans for agricultural purposes including the raising, breeding, fattening, or marketing of livestock, if the amount of such paper added to the aggregate liabilities of such corporation exceeds the lower of the amount of such liabilities permitted under the laws of the jurisdiction creating the same, or 10 times the paid-in and unimpaired capital and surplus of such corporation. It shall be unlawful for any national bank which is indebted to any Federal intermediate credit bank, upon paper discounted or purchased under subsection (b), to incur any additional indebtedness, if by virtue of such additional indebtedness its aggregate liabilities direct or contingent, will exceed the limitations herein contained.

SEC. 2.4. Terms. Loans, advances, or discounts made under section 2.3 shall be repayable in not more than seven years from the time they are made or discounted by the Federal intermediate credit bank, and shall bear such rate or rates of interest or discount as the board of directors of the bank shall from time to time determine with the approval of Farm Credit Administration, but the rates charged financing institutions other than production credit associations shall be the same as those charged production credit associations. In setting the rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable costs on a sound business basis taking into account the cost of money to the bank, necessary reserves and expenses of the banks and production credit associations, and providing services to borrowers from the banks and associations. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank. No obligation tendered for discount by a financing institution, without the approval of the Farm Credit Administration, shall be eligible for discount upon which the original borrower has been charged a rate of interest exceeding by more than 1½ percent per annum the discount rate of the bank.

SEC. 2.5. Services related to borrowers' operations. The Federal intermediate credit banks may provide technical assistance to borrowers, members, and applicants from the banks and production credit associations, including persons obligated on paper discounted by the bank, and may make available to them such financial related services appropriate to their operations as determined to be feasible under regulations of the Farm Credit Administration.

SEC. 2.6. Net earnings—Determination; annual application; surplus account; absorption of net loss. (a) If, at the end of a fiscal year a Federal intermediate credit bank shall have stock outstanding held by the Governor of the Farm Credit Administration, such bank shall determine the amount of its net earnings after paying or providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves) and shall apply such net earnings as follows: (1) to the restoration of the impairment, if any, of capital stock and participation certificates, as determined by its board of directors; (2) to the restoration of the amount of the impairment, if any, of the surplus account established by this subsection, as determined by its board of directors; (3) 25 per centum of any remaining net earnings shall be used to create and maintain an allocated reserve account; (4) a franchise tax shall be paid to the United States, as provided in section 4.0 of this Act; (5) reasonable unallocated contingency reserve account may be established and maintained; (6) dividends on stock held by production credit associations and on participation certificates may be declared as provided in section 2.2(f) of this title; and (7) any remaining net earnings shall be distributed as patronage refunds as provided in subsection (b) of this section.

Amounts applied to reserve account as provided in (3) above, either heretofore or hereafter, shall be allocated on the same patronage basis and have the same tax treatment as is provided in subsection (b) of this section for patronage refunds. Such allocations of reserve account shall be subject to a first lien as additional collateral for any indebtedness of the holders thereof to the bank and in any case where such indebtedness is in default may, but shall not be required to, be retired and canceled for application on such indebtedness, and, in case of liquidation or dissolution of a holder thereof, such reserve account allocations may be retired, all as is provided for stock and participation certificates in section 2.2(g) of this title. At the end of any fiscal year that the allocated reserve account of any bank exceeds 25 per centum of its outstanding stock and participation certificates, such excess may be distributed, oldest allocations first, in voting stock to production credit associations and participation certificates issued as of the date of the allocations and, with the approval of the Farm Credit Administration, also in cash.

If and when the relative amounts of stock in a Federal intermediate credit bank owned by the production credit associations are adjusted to reestablish the proportion of such stock owned by each association, as provided in the first or second paragraphs of section 2.2(g) of this Title, amounts in the reserve account that are allocated to production credit associations may be adjusted in the same manner, so far as practicable, to reestablish the holdings of the production credit associations in the allocated legal reserve accounts into substantially the same proportion as are their holdings of stock.

No part of the surplus account established by a Federal intermediate credit bank on January 1, 1957, consisting of its earned surplus account, its reserve for contingencies, and the surplus of the production credit corporation transferred to the bank, shall be distributed as patronage refunds or as dividends. In the event of a net loss in any fiscal

year after providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves), such loss shall be absorbed by: first, charges to the unallocated reserve account; second, impairment of the allocated reserve account; third, impairment of the surplus other than that transferred from the production credit corporation of the district; fourth, impairment of surplus transferred from the production credit corporation of the district; fifth, impairment of voting stock and participation certificates; and sixth, impairment of nonvoting stock.

(b) If at the end of a fiscal year a Federal intermediate credit bank shall have outstanding capital stock held by the Governor of the Farm Credit Administration, patronage refunds declared for that year shall be paid in voting stock to production credit associations and in participation certificates to other financing institutions borrowing from or discounting with the bank during the fiscal year for which such refunds are declared. The recipients of such patronage refunds shall not be subject to Federal income taxes thereon. All patronage refunds shall be paid in the proportion that the amount of interest earned by the bank on its loans to and discounts for each production credit association or other financing institution bears to the total interest earned by the bank on all such loans and discounts outstanding during the fiscal year. Each participation certificate issued in payment of patronage refunds shall be in multiples of $5 and shall state on its face the rights, privileges, and conditions applicable thereto. Patronage refunds shall not be paid to any other Federal intermediate credit bank, or to any Federal land bank or bank for cooperatives.

(c) If, at the end of a fiscal year a Federal intermediate credit bank shall have no outstanding capital stock held by the Governor of the Farm Credit Administration, the net earnings of such bank shall, under regulations prescribed by the Farm Credit Administration, continue to be distributed on a cooperative basis with an obligation to distribute patronage dividends and with provision for sound, adequate capitalization to meet changing financing needs of production credit associations, other financial institutions eligible to discount paper with the bank, and other eligible borrowers, and prudent corporate fiscal management, to the end that the current year's patrons carry their fair share of the capitalization, ultimate expenses, and reserves. Such regulations may provide for the application of less than 25 per centum of net earnings after payment of operating expenses to the restoration or maintenance of the allocated reserve account, additions of unallocated contingency reserve account of not to exceed such per centum of net earnings as may be approved by the Farm Credit Administration, and provide for allocations to patrons not qualified under the Internal Revenue Code, and the payment of patronage in stock, participation certificates, or in cash, as the board may determine. If during the fiscal year but not at the end thereof a bank shall have had outstanding capital stock held by the Governor of the Farm Credit Administration, provision will be made for the payment of the franchise tax required in section 4.0.

SEC. 2.7. Distribution of assets on liquidation. In the case of liquidation or dissolution of any Federal intermediate credit bank, after payment or retirement, as the case may be, first, of all liabilities; second, of all stock held by the Governor of the Farm Credit Administration at par; third, of all stock owned by production credit associations at par and all participation certificates at face amount; any remaining assets of the bank shall be distributed as provided in this subsection. Any of the surplus established pursuant to section 2.6 (excluding that transferred from the production credit corporation of the district) which the Farm Credit Administration determines was contributed by financing institutions other than the production credit associations discounting with or borrowing from the bank on January 1, 1957, shall be paid to such institutions, or their successors in interest as determined by Farm Credit Administration, and the remaining portion of such surplus (including that transferred from the production credit corporation of the district) shall be paid to the holders of voting and nonvoting stock pro rata. The contribution of each such financing institution under the preceding sentence shall be computed on the basis of the ratio of its patronage to the total patronage of the bank from the date of organization of the bank to January 1, 1957. The allocated reserve established pursuant to section 2.6 shall be paid to the production credit associations and other financing institutions to which such reserve is allocated on the books of the bank. Any assets of the bank then remaining shall be distributed to the production credit associations and the holders of participation certificates pro rata.

SEC. 2.8. Taxation. Every Federal intermediate credit bank and the capital, reserves, and surplus thereof and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation except taxes on real estate held by a Federal intermediate credit bank to the same extent, according to its value, as other similar property held by other persons is taxed. The obligations held by the Federal intermediate credit banks and the notes, bonds, debentures, and other obligations issued by the banks shall be deemed to be instrumentalities of the Government of the United States, and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 (31 U.S.C. 742 (a)).

PART B—PRODUCTION CREDIT ASSOCIATIONS

SEC. 2.10. Reorganization and charters. Each production credit association chartered under section 20 of the Farm Credit Act of 1933, as amended, shall continue as a federally chartered instrumentality of the United States. Production credit associations may be organized by ten or more farmers or ranchers or producers or harvesters of aquatic products desiring to borrow money under the provisions of this title. The porposed articles of association shall be forwarded to the Federal intermediate credit bank for the district accompanied by an agreement to subscribe on behalf of the association for stock in the bank in such amounts as may be required by the bank. The articles shall specify in general terms the objects for which the association is formed, the powers to be exercised by it in carrying out the functions authorized by this part, and the territory it proposes to serve. The articles shall be signed by persons desiring to form such an association and shall be accompanied by a statement signed by each such person establishing eligibility to borrow from the association in which he will become a stockholder. A copy of the articles of association shall be forwarded to the Governor of the Farm Credit Administration with the recommendations of the bank concerning the need for such an association in order to adequately serve the credit needs of eligible persons in the proposed territory and whether that territory includes any area described in the charter of another production credit association. The Governor for good cause shown may deny the charter. Upon approval of the proposed articles by the Governor and the issuance of a charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States. The Governor shall have the power under rules and regulations prescribed by him or by prescribing in the terms of the charter or by approval of bylaws of the association, to provide for the organization, management, and conduct of the business of the association, the initial amount of stock of the association, the territory within which its operations may be carried on, and to direct at any time such changes in the charter as he finds necessary for the accomplishment of the purposes of this Act.

SEC. 2.11. Board of directors. Each production credit association shall elect from its voting members a board of directors of such number for such terms, with such qualifications, and in such manner as may be required by its bylaws.

SEC. 2.12. General corporate powers. Each production credit association, subject to supervision by the Federal intermediate credit bank for the district and the Farm Credit Administration, shall have power to—

(1) Have succession until terminated in accordance with this Act or any other Act of Congress.

(2) Adopt and use a corporate seal.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to its business.

(6) Operate under the direction of its board of directors in accordance with this Act.

(7) Subscribe to stock of the bank.

(8) Purchase stock of the bank held by other production credit associations and stock of other production credit associations.

(9) Contribute to the capital of the bank or other production credit associations.

(10) Invest its funds as may be approved by the Federal intermediate credit bank under regulations of the Farm Credit Administration and deposit its current funds and securities with the Federal intermediate credit bank, a member bank of the Federal Reserve System or any bank insured under the Federal Deposit Insurance Corporation, and may pay fees therefor and receive interest thereon as may be agreed.

(11) Buy and sell obligations of or insured by the United States or of any agency thereof or of any banks of the Farm Credit System.

(12) Borrow money from the Federal intermediate credit bank, and with the approval of such bank, borrow from and issue its notes or other obligations to any commercial bank or other financial institutions.

(13) Make and participate in loans, accept advance payments, and provide services and other assistance as authorized in this title and charge fees therefor.

(14) Endorse and become liable on loans discounted or pledged to the Federal intermediate credit bank.

(15) Enter into loss sharing agreements with the Federal intermediate credit bank and other production credit associations.

(16) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock will be issued, transferred, and retired, its officers and employees elected or provided for, its property acquired, held, and transferred, its general business conducted, and the privileges granted it by law exercised and enjoyed.

(17) Elect by its board of directors a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees as provided in this Act, define their duties, and require surety bonds or make other provisions against losses occasioned by employees. No director shall, within one year after

the date when he ceases to be a member of the board, be elected or designated a salaried employee of the association on the board of which he served.

(18) Elect by its board of directors a loan committee with power to approve applications for membership in the association and loans or participations or, with the approval of the bank, delegate the approval of applications for membership and loans or participations within specified limits to other committees or to authorized officers and employees of the association.

(19) Perform any functions delegated to it by the bank or the Farm Credit Administration.

(20) Exercise by its board of directors or authorized officers or employees, all such incidental powers as may be necessary or expedient to carry on the business of the association.

SEC. 2.13. Capital stock; classes of stock; transfer; exchange; and dividends. (a) A production credit association may issue voting stock, nonvoting stock, preferred stock, participation certificates, and provide for an equity reserve. Holders of stock, participation certificates, and equity reserve shall have such rights, not inconsistent with the provisions of this section, as are set forth in the bylaws of the association. Stock shall be divided into shares of $5 par value each, and participation certificates shall have a face value of $5 each.

(b) Voting stock may be purchased only by farmers and ranchers, or producers or harvesters of aquatic products, who are eligible to borrow from the association. Each holder of voting stock shall be entitled to no more than one vote except as otherwise provided in subsection (d) hereof. No voting stock or any interest therein or right to receive dividends thereon shall be transferred by act of the parties or by operation of law, except to another person eligible to hold voting stock, and then only as provided in the bylaws.

(c) Nonvoting stock may be issued to the Governor of the Farm Credit Administration and to other investors.

(d) Preferred stock, which shall be nonvoting, may be issued to the Governor and to other investors when authorized by a majority vote of the outstanding shares of voting stock, by a majority vote of the outstanding shares of the nonvoting stock, and by a majority vote of the outstanding shares of preferred stock, except that all stock held by the Governor shall be excluded from voting hereunder. For the purpose of this subsection only, the holders of such stock shall be entitled to one vote, in person or by written proxy, for each share of stock held. The authorization to issue preferred stock shall state the privileges, restrictions, limitations, dividend rights (either cumulative or noncumulative) redemption rights, preferences, and other qualifications affecting said stock, and the total amount of the authorized issue to which it belongs.

(e) Participation certificates may be issued to persons eligible to borrow from the association to whom voting stock is not to be issued.

(f) Each borrower from the association shall be required to own at the time the loan is made voting stock or participation certificates as provided in the bylaws of the association, in an amount equal in fair book value (not exceeding par or face amount, as the case may be), as determined by the association, to $5 per one hundred dollars or fraction thereof of the amount of the loan. Such stock and participation certificates shall not be canceled or retired upon payment of the loan or otherwise except as may be provided in the bylaws. Notwithstanding any other provision of this section, for a loan in which an association participates with a commercial bank or other financial institution other than a Federal intermediate credit bank or another production credit association, the requirement that the borrower own stock or participation certificates shall apply only to the portion of the loan which is retained by the association.

(g) Voting stock shall, within two years after the holder ceases to be a borrower, be converted into nonvoting stock at the fair book value thereof, not exceeding par. Consistent with the provisions of this Part, and as provided in the bylaws of the association, each class of stock and participation certificates shall be convertible into any other class of stock except preferred stock, and into participation certificates.

(h) As a further means of providing capital, an association may, as provided in its bylaws, and with the approval of the bank, require borrowers to purchase stock or participation certificates in addition to that required in subsection (f) hereof, or invest in the equity reserve, in an aggregate amount not exceeding $5 per $100 or fraction thereof of the amount of the loan. Any portion of the amounts invested under this subsection which is no longer required for the purposes of the association may be returned to the owners thereof by revolving or retirement in accordance with its bylaws.

(i) Dividends shall be paid on preferred stock in accordance with the authorization of the stockholders to issue such stock. Dividends on stock other than preferred stock, and on participation certificates may be paid by an association as provided in its bylaws at such rate or rates as are approved by the Federal intermediate credit bank in accordance with regulations of the Farm Credit Administration, and may be paid, upon such approval, even though the amount in the surplus accounts is less than the minimum aggregate amount prescribed by the bank as provided in section 2.14.

(j) Except with regard to stock held by the Governor, each production credit association shall have a first lien on stock and participation certificates it issues, allocated surplus, and on investments in equity reserve, for any indebtedness of the holder of such capital investments and, in the case of equity reserve, for charges for association losses in excess of reserves and surplus.

(k) In any case where the debt of a borrower is in default, the association may retire all or part of the capital investments in the association held by such debtor at the fair book value thereof, not exceeding par or fact amount, as the case may be, in total or partial liquidation of the debt.

SEC. 2.14. Application of earnings; restoration of capital impairment; and surplus account. (a) Each production credit association at the end of each fiscal year shall apply the amount of its earnings for such year in excess of its operating expenses (including provision for valuation reserves against loan assets in an amount equal to one-half of one per centum of the loans outstanding at the end of the fiscal year to the extent that earnings in such year in excess of other operating expenses permit, until such reserves equal or exceed three and one-half per centum of the loans outstanding at the end of the fiscal year, beyond which three and one-half per centum further additions to such reserves are not required but may be made) first to the restoration of the impairment, if any, of capital; and second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Federal intermediate credit bank.

(b) When the bylaws of an association so provide, available net earnings at the end of any fiscal year may be distributed on a patronage basis in stock, participation certificates, or in cash, except that when the Governor holds any stock in an association the cash distribution shall be such percentage of the patronage refund as shall be determined under regulations of the Farm Credit Administration. Any part of the earnings of the fiscal year in excess of the operating expenses for such year held in the surplus account may be allocated to patrons on a patronage basis.

SEC. 2.15. Short- and intermediate-term loans; participation; other financial assistance; terms; conditions, interest, security. (a) Each production credit association, under rules and regulations prescribed by the board of directors of the Federal intermediate credit bank of the district and approved by the Farm Credit Administration, may make, guarantee, or participate with other lenders in short- and intermediate-term loans and other similar financial assistance to (1) farmers and ranchers and the producers or harvesters of aquatic products, for agricultural purposes and other requirements of such borrowers, (2) rural residents for housing financing in rural areas, under regulations of Farm Credit Administration, and (3) persons furnishing to farmers and ranchers farm related services necessary to their agricultural production, including basic processing and marketing. Each association may own and lease, or lease with option to purchase, to stockholders of the association equipment needed in the operations of the stockholder.

(b) Loans authorized in subsection (a) hereof shall bear such rate or rates of interest as are determined under regulations prescribed by the board of the bank with the approval of the Farm Credit Administration, and shall be made upon such terms, conditions, and upon such security, if any, as shall be authorized in such regulations. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the association, necessary reserves and expenses of the association, and services provided to borrowers and members. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan in accordance with the rate or rates currently being charged by the association. Such regulations may require prior approval of the bank or of Farm Credit Administration on certain classes of loans; and may authorize a continuing commitment to a borrower of a line of credit.

SEC. 2.16. Other services. Each production credit association may provide technical assistance to borrowers, applicants, and members and may make available to them such financial related services appropriate to their operations as is determined feasible, under regulations prescribed by the Farm Credit Administration.

SEC. 2.17. Taxation. Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, Territorial, or local taxing authority. Such associations, their property, their franchises, capital, reserves, surplus, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that interest on the obligations of such associations shall be subject only to Federal income taxation in the hands of the holder thereof pursuant to the Public Debt Act of 1941 (31 U.S.C. 742(a)) and except that any real and tangible personal property of such associations shall be subject to Federal, State, Territorial, and local taxation to the same

extent as similar property is taxed. The exemption provided in the preceding sentence shall apply only for any year or part thereof in which stock in the production credit associations is held by the Governor of the Farm Credit Administration.

TITLE III—BANKS FOR COOPERATIVES

SEC. 3.0. Establishment; titles; branches. The banks for cooperatives established pursuant to sections 2 and 30 of the Farm Credit Act of 1933, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration, not inconsistent with the provisions of this Title, as may be necessary or expedient to implement this Act. Unless an existing bank for cooperatives is merged with one or more other such banks under section 4.10 of this Act, there shall be a bank for cooperatives in each farm credit district and a Central Bank for Cooperatives. A bank for cooperatives may include in its title the name of the city in which it is located or other geographical designation. The Central Bank for Cooperatives may be located in such place as its board of directors may determine with the approval of the Farm Credit Administration. When authorized by the Farm Credit Administration each bank for cooperatives may establish such branches or other offices as may be appropriate for the effective operation of its business.

SEC. 3.1. Corporate existence; general corporate powers. Each bank for cooperatives shall be a body corporate and, subject to supervision by Farm Credit Administration, shall have power to—

(1) Adopt and use a corporate seal.

(2) Have succession until dissolved under the provisions of this Act or other Act of Congress.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to its business.

(6) Make loans and commitments for credit, provide services and other assistance as authorized in this Act, and charge fees therefor.

(7) Operate under the direction of its board of directors.

(8) Elect by its board of directors a president, and a vice president, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this Act, define their duties and require surety bonds or make other provisions against losses occasioned by employees.

(9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, or agents elected or provided for; its property acquired, held, and transferred; its loans made; its general business conducted; and the privileges granted it by law exercised and enjoyed.

(10) Borrow money and issue notes, bonds, debentures, or other obligations individually or in concert with one or more other banks of the System, of such character, and such terms, conditions, and rates of interest as may be determined.

(11) Participate in loans under this Title with one or more other banks for cooperatives and with commercial banks and other financial institutions upon such terms as may be agreed among them.

(12) Deposit its securities and its current funds with any member bank of the Federal Reserve System, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(13) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of any such agency and make such other investments as may be authorized by the Farm Credit Administration.

(14) Conduct studies and adopt standards for lending.

(15) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.

(16) Perform any function delegated to it by the Farm Credit Administration.

(17) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

SEC. 3.2. *Board of directors.* (a) In the case of a district bank for cooperatives, the board of directors shall be the farm credit district board and in the case of the Central Bank for Cooperatives shall be a separate board of not more than 13 members, one from each farm credit district and one at large. One district director of the Central Bank Board shall be elected by each district farm credit board and the member at large shall be appointed by the Governor with the advice and consent of the Federal Farm Credit Board.

(b) For the purposes of this section the provisions of sections 5.1 (b) and (c), 5.4, 5.5, and 5.6 shall apply to and shall be the authority of the Central Bank for Cooperatives the same as though it were a district bank.

SEC. 3.3 Bank for cooperatives stock; values; classes of stock; voting; exchange. (a) The capital stock of each bank for cooperatives shall be in such amount as its board determines, with the approval of Farm Credit Administration, is required for the purpose of providing adequate capital to permit the bank to meet the credit needs of borrowers from the bank and such amounts may be increased or decreased from time to time in accordance with such needs.

(b) The capital stock of each bank shall be divided into shares of par value of $100 each and may be of such classes as the board may determine with the approval of the Farm Credit Administration. Such stock may be issued in fractional shares.

(c) Voting stock may be issued or transferred to and held only by cooperative associations eligible to borrow from the banks and other banks for cooperatives and shall not be otherwise transferred, pledged, or hypothecated except as consented to by the issuing bank under regulations of the Farm Credit Administration.

(d) Each holder of one or more shares of voting stock which is eligible to borrow from a bank for cooperatives shall be entitled only to one vote and only in the affairs of the bank in the district in which its principal office is located unless otherwise authorized by the Farm Credit Administration, except that if such holder has not been a borrower from the bank in which it holds such stock within a period of two years next preceding the date fixed by the Farm Credit Administration prior to the commencement of voting, it shall not be entitled to vote.

(e) Nonvoting investment stock may be issued in such series and in such amounts as may be determined by the board and approved by the Farm Credit Administration and may be exchanged for voting stock or sold or transferred to any person subject to the approval of the issuing bank.

SEC. 3.4. Dividends. Dividends may be payable only on nonvoting investment stock, other than stock held by the Governor of the Farm Credit Administration, if declared by the board of directors of the bank in accordance with regulations of the Farm Credit Administration.

SEC. 3.5. Retirement of stock. Any nonvoting stock held by the Governor of the Farm Credit Administration shall be retired to the extent required by section 4.0(b) before any other outstanding voting or nonvoting stock shall be retired except as may be otherwise authorized by Farm Credit Administration. When those requirements have been satisfied, nonvoting investment stock may be called for retirement at par. With the approval of the issuing bank, the holder may elect not to have the called stock retired in response to a call, reserving the right to have such stock included in the next call for retirement. When the requirements of section 4.0(b) have been met, voting stock may also be retired at fair book value not exceeding par, on call or on such revolving basis as the board may determine with approval of the Farm Credit Administration with due regard for its total capital needs: *Provided, however,* That all equities in the district banks issued or allocated with respect to the year of the enactment of this Act and prior years shall be retired on a revolving basis according to the year of issue with the oldest outstanding equities being first retired. Equities issued for subsequent years shall not be called or retired until equities described in the preceding sentence of this proviso have been retired.

SEC. 3.6. Guaranty fund subscriptions in lieu of stock. If any cooperative association is not authorized under the laws of the State in which it is organized to take and hold stock in a bank for cooperatives, the bank shall, in lieu of any requirement for stock purchase, require the association to pay into or have on deposit in a guaranty fund, or the bank may retain out of the amount of the loan and credit to the guaranty fund account of the borrower, a sum equal to the amount of stock which the association would otherwise be required to own. Each reference to stock of the banks for cooperatives in this Act shall include such guaranty fund equivalents. The holder of the guaranty fund equivalent and the bank shall each be entitled to the same rights and obligations with respect thereto as the rights and obligations associated with the class or classes of stock involved.

SEC. 3.7. Lending powers. The banks for cooperatives are authorized to make loans and commitments to eligible cooperative associations and to extend to them other technical and financial assistance, including but not limited to discounting notes and other obligations, guaranties, collateral custody, or participation with other banks for cooperatives and commercial banks or other financial institutions in loans to eligible cooperatives, under such terms and conditions as may be prescribed by the Farm Credit Administration, including provisions for avoiding duplication between the Central Bank and district banks for cooperatives. Each bank may own and lease, or lease with option to purchase, to stockholders of the bank equipment needed in the operations of the stockholder.

SEC. 3.8. Eligibility. Any association of farmers, producers or harvesters of aquatic products, or any federation of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing farm or aquatic products; or for purchasing, testing, grading, processing, distributing, or furnishing farm or aquatic supplies or furnishing farm business services or services to eligible cooperatives and conforms to either of the two following requirements:

(a) No member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(b) does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration;

and in any case

(c) does not deal in farm products or aquatic products, or products processed therefrom, farm or aquatic supplies, or farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members, excluding from the total of member and nonmember business transactions with the United States or any agency or instrumentality thereof or services or supplies furnished as a public utility; and

(d) a percentage of the voting control of the association not less than 66⅔ per centum, or such higher percentage as established by the district board is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;

shall be eligible to borrow from a bank for cooperatives.

SEC. 3.9. Ownership of stock by borrowers. (a) Each borrower at the time a loan is made by a bank for cooperatives shall own at least one share of voting stock and shall be required by the bank with the approval of the Farm Credit Administration to own additional voting stock or nonvoting investment stock at that time, or from time to time, as the lending bank may determine, but the requirement for the ownership of stock at the time the loan is closed shall not exceed an amount equal to 10 per centum of the face amount of the loan. Such additional ownership requirements may be based on the face amount of the loan, the outstanding loan balance at the beginning of any fiscal year or on a percentage of the interest payable by the borrower during any year or during any quarter thereof, or upon such other basis as the bank, with the approval of the Farm Credit Administration, determines will provide adequate capital for the operation of the bank and equitable ownership thereof among borrowers. In the case of a direct loan by the Central Bank, the borrower shall be required to own the necessary stock in the district bank for the district in which its principal office is located and the district bank shall be required to own a corresponding amount of stock in the Central Bank.

(b) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan made by a bank for cooperatives which it sells to or makes in participation with financial institutions other than any of the banks for cooperatives. In such cases the distribution of earnings of the bank for cooperatives shall be on the basis of the interest in the loan retained by such bank.

SEC. 3.10. Interest rates; security; lien; cancellation; and application on indebtedness. (a) Loans made by a bank for cooperatives shall bear interest at a rate or rates determined by the board of directors of the bank from time to time, with the approval of the Farm Credit Administration. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the bank, necessary reserves and expenses of the bank; and services provided. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

(b) Loans shall be made upon such terms, conditions, and security, if any, as may be determined by the bank in accordance with regulations of the Farm Credit Administration.

(c) Each bank for cooperatives shall have a first lien on all stock or other equities in the bank as additional collateral for the payment of any indebtedness of the owner thereof to the bank. In the case of a direct loan to an eligible cooperative by the Central Bank, the Central Bank shall have a first lien on the stock and equities of the borrower in the district bank and the district bank shall have a lien thereon junior only to the lien of the Central Bank.

(d) In any case where the debt of a borrower is in default, or in any case of liquidation or dissolution of a present or former borrower from a bank for cooperatives, the bank may, but shall not be required to retire and cancel all or a part of the stock, allocated surplus or contingency reserves, or any other equity in the bank owned by or allocated to such borrower, at the fair book value thereof not exceeding par, and, to the extent required in such cases, corresponding shares and other obligations and other equity interests held by a district bank in the Central Bank or another district bank on account of such indebtedness, shall be retired or equitably adjusted.

SEC. 3.11. *Earnings and reserves; application of savings.* (a) Each bank for cooperatives, at the end of each fiscal year when said bank shall have stock outstanding held by the Governor of the Farm Credit Administration, shall determine the amount of its net savings after paying or providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves) and shall apply such savings as follows: (1) To the restoration of the amount of the impairment, if any, of capital stock, as determined by its board of directors; (2) 25 per centum of any remaining net savings shall be used to create and maintain a surplus account; (3) it shall next pay to the United States a franchise tax as provided in section 4.0 of this Act; (4) reasonable contingency reserves may be established; (5) dividends on investment stock may be declared as provided in this Title; and (6) any remaining net savings shall be distributed as patronage refunds as provided in subsections (c) or (d) of this section: *Provided,* That any patronage refunds received by a district bank from any other bank for cooperatives shall be excluded from net savings of the district bank for the purpose of computing such franchise tax. Amounts applied as provided in (2) and (4) above after January 1, 1956, shall be allocated on a patronage basis approved by the Farm Credit Administration. At the end of any fiscal year any portion of the reserve established under (4) above which is no longer deemed necessary shall be transferred to the surplus account and, if the surplus account of any such bank for cooperatives exceeds 25 per centum of the sum of all its outstanding capital stock, the bank may distribute in the same manner as a patronage refund any part or all of such excess which has been allocated: *Provided,* That any surplus and contingency reserve shown on the books of the banks as of January 1, 1956, shall not be distributed as patronage refunds. In making such distributions except as otherwise provided in section 3.6 and distributions by the Central Bank, the oldest outstanding allocations shall be distributed first. Wherever used in this title, the words "surplus account" as applied to any bank for cooperatives shall mean any surpluses and contingency reserves shown on the books of the bank as of January 1, 1956, and any amounts applied as provided in (2) above after said date. Said surplus account shall be divided to show the amounts thereof subject to allocation as provided in this subsection and may be further subdivided as prescribed by the Farm Credit Administration.

(b) Whenever at the end of any fiscal year a bank for cooperatives shall have no outstanding capital stock held by the Governor of the Farm Credit Administration, the net savings shall, under regulations prescribed by the Farm Credit Administration, continue to be distributed on a cooperative basis with an obligation to distribute patronage dividends, and with provision for sound, adequate capitalization to meet the changing financing needs of eligible cooperative borrowers and prudent corporate fiscal management, to the end that current year's patrons carry their fair share of the capitalization, ultimate expenses, and reserves related to the year's operations. Such regulations may provide for application of less than 25 per centum of net savings to the restoration or maintenance of an allocated surplus account, reasonable additions to unallocated surplus, or to unallocated reserves of not to exceed such per centum of net savings after payment of operating expenses as may be approved by Farm Credit Administration, and provide for allocations to patrons not qualified under the Internal Revenue Code, or payment of such per centum of patronage refunds in cash, as the board may determine. If during the fiscal year but not at the end thereof a bank shall have had outstanding capital stock held by the United States, provision will be made for payment of franchise taxes required in section 4.0.

(c) The net savings of each district bank for cooperatives, after the earnings for the fiscal year have been applied in accordance with subsection (a) or (b) of this section whichever is applicable, shall be paid in stock or in cash, or both, as determined by the board, as patronage refunds to borrowers of the fiscal year for which such patronage refunds are distributed. Except as provided in subsection (d) below, all patronage refunds shall be paid in proportion that the amount of interest and service fees on the loans to each borrower during the year bears to the interest and service fees on the loans of all borrowers during the year or on such other proportionate patronage basis as the Farm Credit Administration may approve.

(d) The net savings of the Central Bank for Cooperatives after the earnings for the fiscal year have been applied in accordance with subsections (a) or (b) whichever is applicable, shall be paid in stock or cash, or both, as determined by the board, as patronage refunds to the district banks on the basis of interests held by the Central Bank in loans made by the district banks and upon any direct loans made by the Central Bank to cooperative associations, or on such other proportionate patronage basis as the Farm Credit Administration may approve. In cases of direct loans, such refund shall be paid to the district bank or banks which issued their stock to the borrower incident to such loans, and the district bank or banks shall issue a like amount of patronage refunds to the borrower.

(e) In the event of a net loss in any fiscal year after providing for all operating expenses (including reasonable valuation reserves and losses in excess of any applicable reserves), such loss may be carried forward or carried back, if appropriate, or otherwise shall be absorbed by: First, charges to unallocated reserve or surplus accounts established after the date of enactment of this Act; second, charges to allocated contingency reserve account; third, charges to allocated surplus account; fourth, charges to other contingency reserve and surplus accounts; fifth, the impairment of voting stock; and sixth, the impairment of all other stock; *Provided, however,* That any tax deficiency assessment for any year may be paid

from unallocated surplus or any other account.

(f) For any year that a bank for cooperatives is subject to Federal income tax, it may pay in cash such portion of its patronage refunds as will permit its taxable income to be determined without taking into account savings applied as allocated surplus, allocated contingency reserves, and patronage refunds under subsections (a) or (b) of this section.

SEC. 3.12. Distribution of assets and liquidation or dissolution. In the case of liquidation or dissolution of any bank for cooperatives, after payment or retirement, first, of all liabilities; second, of all capital stock issued before January 1, 1956, at par, any stock held by the Governor of the Farm Credit Administration at par, and all nonvoting stock at par; and third, all voting stock at par; any surplus and reserves existing on January 1, 1956, shall be paid to the holders of stock issued before that date, stock held by the Governor of the Farm Credit Administration, and voting stock pro rata, and any remaining surplus and reserves shall be distributed to those entities to which they are allocated on the books of the bank. If it should become necessary to use any surplus or reserves to pay any liabilities or to retire any capital stock, unallocated reserves or surplus, allocated reserves and surplus shall be exhausted in accordance with rules prescribed by Farm Credit Administration.

SEC. 3.13. Taxation. Each bank for cooperatives and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such banks shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, Territorial, or local taxing authority. Such banks, their property, their franchises, capital, reserves, surplus, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that interest on the obligations of such banks shall be subject only to Federal income taxation in the hands of the holder thereof pursuant to the Public Debt Act of 1941 (31 U.S.C. 742(a)) and except that any real and tangible personal property of such banks shall be subject to Federal, State, Territorial, and local taxation to the same extent as similar property is taxed. The exemption provided in the preceding sentence shall apply only for any year or part thereof in which stock in the bank for cooperatives is held by the Governor of the Farm Credit Administration.

TITLE IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM

PART A—FUNDING

SEC. 4.0. *Stock purchased by Governor; retirement; franchise tax; revolving fund.* (a) The Federal land banks, the Federal intermediate credit banks, the banks for cooperatives, and subject to section 2.13 (d), the production credit associations may issue stock which may be purchased by the Governor of the Farm Credit Administration on behalf of the United States as a temporary investment in the stock of the institution to help one or several of the banks or associations to meet emergency credit needs of borrowers. The ownership of such stock shall be deemed to not change the status of ownership of the banks or associations, but during the time such stock is outstanding, the pertinent provisions of the Government Corporation Control Act shall be applicable.

(b) The Governor shall require the retirement of such stock at such time as in his opinion the bank or association has resources available therefor and the need for such temporary investment is reduced or no longer exists. If the Governor determines that a production credit association does not have resources available to retire stock held by him, but in his judgment, the Federal intermediate credit bank of the district has resources available to do so, the Governor may require such bank to invest in an equivalent amount of nonvoting stock of said association and the association then shall retire the stock held by the Governor.

(c) For any year or part thereof in which the Governor holds any stock in an institution of the System, such institution after complying with Secs. 1.17, 2.6, 2.14, 3.12, respectively, and before declaring any dividends or patronage distribution, shall pay to the United States as a franchise tax a sum equal to the lower of 25 per centum of its net earnings for the year or a rate of return on such temporary investment calculated at a rate determined by the Secretary of the Treasury equal to the average annual rate of interest on all public issues of debt obligations of the United States issued during the fiscal year ending next before such tax is due, multiplied by the percentage that the number of days such stock is outstanding is of 365 days. Such payments shall be deposited in the miscellaneous receipts in the Treasury.

SEC. 4.1. Revolving funds and Government deposits. (a) The revolving fund established by Public Law 87–343, 75 Stat. 758, as amended, shall be available at the request of the Governor of the Farm Credit Administration for his temporary investment in the stock of any Federal intermediate credit banks or production credit associations as provided in section 4.0 and for any other purpose authorized by said Act. Funds received from the partial or the full retirement of such investments shall be deposited in this revolving fund.

(b) The revolving fund established by Public Law 87–494, 76 Stat. 109, as amended, shall be available at the request of the Governor of the Farm Credit Administration for his temporary investment in the stock of any bank for cooperatives as provided in section 4.0 of this Act. Funds received from the partial or full retirement of such investments shall be deposited in this revolving fund.

(c) The Secretary of the Treasury is authorized, in his discretion, upon the request of the Farm Credit Administration, to make deposits for the temporary use of any Federal land bank, out of any money in the Treasury not otherwise appropriated. Such Federal land bank shall issue to the Secretary of the Treasury a certificate of indebtedness for any such deposit, bearing a rate of interest not to exceed the current rate charged for other Government deposits, to be secured by bonds or other collateral, to the satisfaction of the Secretary of the Treasury. Any such certificate shall be redeemed and paid by such land bank at the discretion of the Secretary of the Treasury. The aggregate of all sums so deposited by the Secretary of the Treasury shall not exceed the sum of $6,000,000 at any one time.

SEC. 4.2. *Power to borrow; issue notes, bonds, debentures, and other obligations.* Each of the banks of the System, in order to obtain funds for its authorized purposes, shall have power, subject to supervision of the Farm Credit Administration, to—

(a) Borrow money from or loan to any other institution of the System, borrow from any commercial bank or other lending institution, issue its notes or other evidence of debt on its own individual responsibility and full faith and credit, and invest its excess funds in such sums, at such times, and on such terms and conditions as it may determine.

(b) Issue its own notes, bonds, debentures, or other similar obligations, full collateralized as provided in section 4.3 (b) by the notes, mortgages, and security instruments it holds in the performance of its functions under this Act in such sums, maturities, rates of interest, and terms and conditions of each Issue as it may determine with approval of the Governor.

(c) Join with any or all banks organized and operating under the same title of this Act in borrowing or in issuance of consolidated notes, bonds, debentures, or other obligations as may be agreed with approval of the Governor.

(d) Join with other banks of the System in issuance of Systemwide notes, bonds, debentures, and other obligations in the manner, form, amounts, and on such terms and conditions as may be agreed upon with approval of the Governer. Such Systemwide issue by the participating banks and such participations by each bank shall not exceed the limits to which each such bank is subject in the issuance of its individual or consolidated obligations and each such issue shall be subject to approval of the Governor.

SEC. 4.3. Aggregate of obligations; collateral. (a) No issue of long-term notes, bonds, debentures, or other obligations by a bank or banks shall be approved in an amount which, together with the amount of other bonds, debentures, long-term notes, or other similar obligations issued and outstanding, exceeds 20 times the capital and surplus of all the banks which will be primarily liable on the proposed issue, or such lesser amount as the Farm Credit Administration shall establish by regulation.

(b) Each bank shall have on hand at the time of issuance of any long-term notes, bonds, debentures, or other similar obligations and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under the authority of this Act, obligations of the United States or any agency thereof direct or fully guaranteed, other readily marketable securities approved by the Farm Credit Administration, or cash, in an aggregate value equal to the total amount of long-term notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

SEC. 4.4. Liability of banks; United States not liable. (a) Each bank of the System shall be fully liable on notes, bonds, debentures, or other obligations issued by it individually, and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by other banks operating under the same title of this Act. Each bank shall also be primarily liable for the portion of any issue of consolidated or Systemwide obligations made on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration in order to make payments of interest or principal which any bank primarily liable therefor shall be unable to make. Such calls shall be made first upon the other banks operating under the same title of this Act as the defaulting bank, and second upon banks operating under other titles of this Act, in proportion to the capital, surplus, bonds, debentures, or other obligations which each may have outstanding at the time of such assessment.

(b) Each bank participating in an issue shall by appropriate resolution undertake such responsibility as provided in subsection (a), and in the case of consolidated or Systemwide obligations shall authorize the Governor to execute such long-term notes, bonds, debentures, or other obligations on its behalf. When a consolidated or Systemwide issue is approved, the notes, bonds, debentures, or other obligations shall be executed by the Governor and the banks shall be liable thereon as provided herein.

(c) The United States shall not be liable or assume any liability directly or indirectly thereon.

SEC. 4.5. Finance committee. There shall be established a finance committee for the banks organized and operated under titles I, II, and III, respectively, of this Act, composed of the presidents of each bank. Each such committee may have such officers and such subcommittees for such terms and such representation as may be agreed upon between the banks. When appropriate to the performance of their function, the subcommittees, or representatives thereof, of the various banks shall constitute such subcommittees in connection with Systemwide issues of obligations. The finance committees and subcommittees acting for the banks of the System shall, subject to approval of the Governor, determine the amount, maturities, rates of interest, and participation by the several banks in each issue of joint, consolidated, or Systemwide obligations.

SEC. 4.6. Bonds as investments. The bonds, debentures, and other similar obligations issued under the authority of this Act shall be lawful investments for all fiduciary and trust funds and may be accepted as security for all public deposits.

SEC. 4.7. Purchase and sale by Federal Reserve System. Any member of the Federal Reserve System may buy and sell bonds, debentures, or other similar obligations issued under the authority of this Act and any Federal Reserve Bank may buy and sell such obligations to the same extent and subject to the same limitations placed upon the purchase and sale by said banks of State, county, district, and municipal bonds under 12 U.S.C. 355.

SEC. 4.8. Purchase and sale of obligations. Each bank of the System may purchase its own obligations and the obligations of other banks of the System and may provide for the sale of obligations issued by it, consolidated obligations, or Systemwide obligations through a fiscal agent or agents, by negotiation, offer, bid, syndicate sale, and to deliver such obligations by book entry, wire transfer, or such other means as may be appropriate.

SEC. 4.9. Fiscal agency. A fiscal agency shall be established by the banks for such of their functions relating to the issuance, marketing, and handling of their obligations, and interbank or intersystem flow of funds as may from time to time be required.

PART B—DISSOLUTION AND MERGER

SEC. 4.10. Merger of similar banks. Banks organized or operating under titles I, II, or III, respectively, may, upon approval of a majority of their stockholders and the Farm Credit Administration, merge with banks in other districts operating under the same title of this Act.

SEC. 4.11. Board of directors for merged bank. In the event of merger of two or more banks to serve borrowers in more than one farm credit district, a separate board of directors shall be created for the resulting merged bank. The board thus created shall be composed of two directors elected by the district boards, at least one of which shall have been elected by the eligible stockholders of or subscribers to the guaranty fund of the merging banks, and one director appointed by the Governor with the advice and consent of the Federal Farm Credit Board. Notwithstanding the foregoing, the bylaws of the merged bank may, with the approval of the Farm Credit Administration, provide for a different number of directors selected in a different manner. The board so constituted shall have such separate and distinct powers, functions, and duties as are normally exercised by a district board related to the operations and policies of the banks which were merged.

SEC. 4.12. Dissolution; voluntary liquidation; mergers; receiverships; and conservators. (a) No institution of the System shall go into voluntary liquidation without the consent of the Farm Credit Administration and with such consent may liquidate only in accordance with regulations prescribed by the Farm Credit Administration. Associations may voluntarily merge with other like associations upon the vote of a majority of each of their stockholders present and voting or voting by written proxy at duly authorized meetings, and with the approval of the supervising bank and the Farm Credit Administration. The Governor of the Farm Credit Administration may require such merger whenever he determines, with the concurrence of the district board, than an association has failed to meet its outstanding obligations, failed to provide adequate credit services at reasonable cost, or failed to conduct its operations in accordance with this Act.

(b) Upon default of any obligation by any institution of the System, such institution may be declared insolvent and placed in the hands of a conservator or a receiver appointed by the Governor and the proceedings thereon shall be in accordance with regulations of the Farm Credit Administration regarding such insolvencies.

TITLE V—DISTRICT AND FARM CREDIT ADMINISTRATION ORGANIZATION

PART A—DISTRICT ORGANIZATIONS

SEC. 5.0. Creation of districts. There shall be not more than twelve farm credit districts in the United States, which may be designated by number, one of which districts shall include the Commonwealth of Puerto Rico. The boundaries of the twelve farm credit districts existing on the date of enactment of this Act may be readjusted from time to time in the discretion of the Federal Farm Credit Board, and two or more districts may be merged as provided in section 5.18(1).

SEC. 5.1. District boards of directors; membership; eligibility; terms. (a) There shall be in each farm credit district a farm credit board of directors composed of seven members. Each farm credit district board may include in its title the name of the city in which the banks of the System for the district are located or other geographical designation.

(b) To be eligible for membership on a farm credit district board a person must be a citizen of the United States for at least ten years, and a resident of the district for at least two years.

A person shall not be eligible who—

(1) Is or has, within one year next preceding the date of election or appointment, been a salaried officer or employee of the Farm Credit Administration or of any institution of the System;

(2) Has been convicted of a felony or adjudged liable in damages for fraud; or

(3) If there is at the time of his election another resident of the same State who was elected to the district board by the same electorate, except where a district embraces only one State.

No director of a district board shall be eligible to continue to serve in that capacity and his office shall become vacant if, after his election or appointment as a member of a district board, he continues or becomes a salaried officer or employee of the Farm Credit Administration, of any institution of the System, or a member of the Federal Farm Credit Board, or if he becomes legally incompetent or is finally convicted of a felony or held liable in damages for fraud. In any event, no director shall, within one year after the date when he ceases to be a member of the board, be elected or designated to serve as a salaried employee of any bank or joint employee of the district for which he served as director.

(c) The terms of district directors shall be for three years, except that the terms of appointed directors may be for a shorter or longer term to permit the staggering of such appointments over a three-year period but in no event shall such appointed director be eligible to serve for more than two full terms.

SEC. 5.2. Same; nomination; election; appointment. (a) Two of the district directors shall be elected by the Federal land bank associations, two by the production credit associations, and two by the borrowers from or subscribers to the guaranty fund of the bank for cooperatives. The seventh member shall be appointed and may be removed by the Governor with the advice and consent of the Federal Farm Credit Board.

(b) At least two months before an election of an elected director the Farm Credit Administration shall cause notice in writing to be sent to those entitled to nominate candidates for such elected director. In the case of an election of a director by Federal land bank associations and borrowers through agencies, such notice shall be sent to all Federal land bank associations and borrowers through agencies in the district; in the case of an election by production credit associations, such notice shall be sent to all production credit associations in the district; and in the case of an election by cooperatives which are voting stockholders or subscribers to the guaranty fund of the bank for cooperatives of the district, such notice shall be sent to all cooperatives which are eligible, voting stockholders or subscribers to the guaranty fund at the time of sending the notice. The notice in the case of associations shall state the number of votes the board of each association is entitled to cast for nomination and election based on the voting stockholders of the association as determined by the Farm Credit Administration as near as practicable to the date of the notice. After receipt of such notice those entitled to nominate a director shall forward nominations to the Farm Credit Administration. The Farm Credit Administration shall from the nominations received within 60 days after it sends such notice, prepare a list of candidates for such elected director, consisting of the 3 nominees receiving the highest number of votes, except that for elections to fill vacancies the Farm Credit Administration may specify a shorter period than 60 days but not less than 30 days.

(c) At least one month before the election of an elected director, the Farm Credit Administration shall mail to each person or organization entitled to elect the elected director a list of the 3 candidates receiving the highest number of votes from those nominated in accordance with subsection (b). In the case of an election of a director by the Federal land bank associations and each direct borrower and borrowers through agents, the directors of each land bank association shall cast the vote of such association for one of the candidates on the list. Each association shall be entitled to cast the number of votes specified in the notice prior to the nomination pool as determined by the Farm Credit Administration to be the number of voting stockholders of each association, and each direct borrower and borrowers through agents shall be entitled to cast one vote. Each production credit association shall be entitled to cast the number of votes specified in the notice of nomination poll as determined by the Farm Credit Administration to be equal to the number of voting stockholders of such association. Each cooperative which is the holder of voting stock in or a subscriber to the guaranty fund of the bank for cooperatives shall be entitled to cast one vote except as provided in subsection 3.4(d). The votes shall be forwarded to the Farm Credit Administration and no vote shall be counted unless received by it within 60 days after the sending of such list of candidates, except that for elections to fill vacancies the Farm Credit Administration may specify a shorter period than 60 days but not less than 30 days. In the case of a tie another runoff election between those tying shall be held.

SEC. 5.3. District directors constitute boards of directors for Federal land banks, Federal intermediate credit banks, and district banks for cooperatives. The members of each farm credit district board of directors shall be and shall have all the functions, powers, and duties of directors for the Federal land banks, the Federal intermediate credit banks, and the district banks for cooperatives in their respective districts.

SEC. 5.4. District board officers. Each farm credit district board shall elect from its members a chairman and a vice chairman and shall appoint a secretary from within or without its membership as it may see fit. The chairman, vice chairman, and secretary shall hold office for a term of one year and until their successors are selected and take office.

SEC. 5.5 Compensation of district board. Members of each farm credit district board shall receive compensation, including reasonable allowances for necessary expenses, in attending meetings of the board as district board and as directors of the district banks including travel time. The compensation shall not be in excess of the level set by the Farm Credit Administration. In addition to attending said meetings, a director may not receive compensation and allowances for any services rendered in his capacity as director or otherwise for more than 30 days or parts of days in any one calendar year without the approval of the Farm Credit Administration.

SEC. 5.6. Powers of the district farm credit board. (a) Each farm credit district board shall have power to—

(1) Act as the board of directors for the district and of the several banks of the System in the district.

(2) Provide rules and regulations, governing the banks and associations in the district, not inconsistent with law.

(3) Elect or provide for joint officers and employees for the banks in its district which are institutions of the System or, upon agreement with banks in other districts, joint officers and employees of institutions in more than one district. The salary or other compensation of all such joint officers and employees and the allocation thereof between the banks shall be fixed by the district farm credit board. Officers and employees elected or provided for by the district farm credit board, whether separate officers and employees of the institutions or joint officers and employees, shall be officers and employees of the district institutions served by them. Employment, compensation, leave, retirement, except as provided in subsection (b) of this section, hours of duty, and all other conditions of employment of such joint officers and employees and of the separate officers and employees of the institutions in the district provided for by the board of directors shall be without regard to the provisions of Title 5 of the United States Code relating to such matters, but all such determinations shall be consistent with the law under which the banks are organized and operate. Appointments, promotions, and separations so made shall be based on merit and efficiency and no political test or qualification shall be permitted or given consideration. The limitations against political activity and conflict of interest of such officers and employees shall be in accordance with rules and regulations prescribed by the Farm Credit Administration.

(4) Authorize the acquisition and disposal of such property, real or personal, as may be necessary or convenient for the transaction of the business of the banks of the System located in its district, upon such terms and conditions as it shall fix, and to prorate among such banks the cost of purchases, rentals, construction, repairs, alterations, maintenance, and operation, in such amounts and in such manner as it shall determine. Any lease, or any contract for the purchase or sale of property, or any deed or conveyance of property, or any contract for the construction, repair, or alteration of buildings, authorized by a district farm credit board under this subsection shall be executed by the officers of the bank or banks concerned pursuant to the direction of such board. No provision of law relative to the acquisition or disposal of property, real or personal, by or for the United States, or relative to the making of contracts or leases by or for the United States, including the provisions set out in Titles 40 and 41, and including provisions applicable to corporations wholly owned by the United States, shall be deemed or held applicable to any lease, purchase, sale, deed, conveyance, or contract authorized or made by a district farm credit board or the banks of the System under this subsection.

(5) Authorize, with the approval of the Farm Credit Administration, agreements for the provision of joint services between institutions of the System in the district and between districts for those bank and association functions and for those services to borrowers which can most effectively be performed by joint undertakings of the district or districts, consistent with the provisions of this Act.

(6) Formulate broad policy considerations concerning the funding operations of the banks in the district and, in concert with the other district boards, furnish unified long-range policy guidance for the funding of the System.

(b) The provisions of subsection (a) of this section are qualified as follows:

(1) Each officer and employee of the banks of the System who, on December 31, 1959, was within the purview of the Civil Service Retirement Act, as amended, shall continue so during his continuance as an officer or employee of any of such banks or of the Farm Credit Administration without break in continuity of service. Any other officer or employee of such banks and any other person entering upon employment with any such banks after December 31, 1959, shall not be covered under the civil service retirement system by reason of such employment, except that (1) a person who, on December 31, 1959, was within the purview of the Civil Service Retirement Act, as amended, and thereafter becomes an officer or employee of any such banks without break in continuity of service shall continue under the civil service retirement system during his continuance as an officer or employee of any of such banks without break in continuity of service and (2) a person who has been within the purview of said Act as an officer or employee of such banks and, after a break in such employment, again becomes an officer or employee of any of such banks may elect to continue under the civil service retirement system during his continuance as such officer or employee by so notifying the Civil Service Commission in writing within thirty days after such reemployment.

(2) Each of the banks of the System shall contribute to the civil service retirement and disability fund, for each fiscal year after June 30, 1960, a sum as provided by section 4(a) of the Civil Service Retirement Act as amended, except that such sum shall be determined by applying to the total basic salaries (as defined in that Act) paid to the employees of said banks who are covered by that Act, the per centum rate determined annually by the United States Civil Service Commission to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in such section 4(a). Each bank shall also pay into the Treasury as miscellaneous receipts such portion of the cost of administration of the fund as is determined by the United States Civil Service Commission to be attributable to its employees.

PART B—FARM CREDIT ADMINISTRATION ORGANIZATION

SEC. 5.7. The Farm Credit Administration. The Farm Credit Administration shall be an independent agency in the executive branch of the Government. It shall be composed of the Federal Farm Credit Board, the Governor of the Farm Credit Administration, and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration by this Act.

SEC. 5.8. The Federal Farm Credit Board; nomination and appointment of members; organization and compensation. (a) There is established in the Farm Credit Administration a Federal Farm Credit Board. The Board shall consist of not more than 13 members, one of whom shall be designated by the Secretary of Agriculture. The remainder of the Board shall be appointed by the President, with the advice and consent of the Senate, one from each farm credit district, to be known as the appointed members.

(b) In making appointments to the Board, the President shall have due regard to a fair representation of the public interest, the welfare of all farmers, and the various types of cooperative credit interests in the Farm Credit System, with special consideration to persons who are experienced in cooperative agricultural credit, taking into consideration the lists of nominees proposed by the Farm Credit System as hereinafter provided.

(c) Each appointed member of the Board shall have been a citizen of the United States and shall have been a resident of the district from which he was appointed for not less than ten years next preceding his appointment, and the removal of residence from the district shall operate to terminate his membership on the Board. No person shall be eligible for nomination or appointment if within one year next preceding the commencement of his term he has been a salaried officer or employee of the Farm Credit Administration or a salaried officer or employee of any institution of the Farm Credit System. Any person who is a member of a district farm credit board when appointed as a member of the Federal Farm Credit Board shall design as a member of the district board before assuming his duties as a member of the Board. No person who becomes an appointed member of the Board shall be eligible to continue to serve in such capacity if such person is or becomes a member of a district farm credit board, or an officer or employee of the Farm Credit Administration, or director, officer, or employee of any institution of the Farm Credit System. No director shall, within one year after the date when he ceases to be a member of the Board, be elected or designated to serve as a salaried officer or employee of any bank, joint officer or employee, or officer or employee of the Farm Credit Administration.

(d) The Secretary of Agriculture shall designate one member of the Board to serve at the pleasure of the Secretary. He shall be known as the Secretary's Representative on the Board. He shall be a citizen of the United States and shall have been a resident of the United States for not less than ten years preceding his designation on the Board. No person shall be designated by the Secretary if such person is a member of a farm credit district board, an officer or employee of the Farm Credit Administration, or an officer or employee of any institution operating under the supervision of the Farm Credit Administration. The Secretary's Representative shall not be eligible to serve as Chairman, Vice Chairman, or Secretary of the Board but shall otherwise possess all the rights and privileges of membership on the Board.

(e) The term of office of the appointed members of the Board shall be six years and such members shall serve until their successors are duly appointed and qualified. No ap-

pointed member of the Board shall be eligible to serve more than one full term of six years and, in addition, if he is appointed to fill the unexpired portion of one term expiring before his appointment to a full term, he may be eligible thereafter for appointment to fill a full term of six years.

All vacancies for the offices of appointed members shall be filled for the unexpired portion of the term upon like nominations and like appointments: *Provided, however,* That the district board of directors may select a representative to meet with the Board, without the right of vote, prior to the filling of a vacancy occasioned by death, resignation, disability, or declination in the office of member from that district, under rules and regulations prescribed by the Board.

(f) A list of nominees for appointment as an appointed member of the Board shall be presented to the President for consideration in the filling of any office of Board member. The list shall be composed of one selected by each voting group in the district in which the member's term is about to expire or in which a vacancy occurs, determined in accordance with the procedure prescribed in section 5.2 of this title for the nomination and election of members of a district farm credit board, except that the list of candidates for appointment shall be the two nominees of each voting group receiving the highest number of votes.

(g) The members of the Board shall meet and subscribe the oath of office and annually organize by the election of a Chairman and Vice Chairman. The Board shall appoint a Secretary from within or without the membership. Such officers of the Board shall serve for one year and until their successors are selected and take office. The Board may function notwithstanding vacancies exist, provided a quorum is present. A quorum shall consist of a majority of all the members of the Board, for the transaction of business. The Board shall hold at least four regularly scheduled meetings a year and such additional meetings at such times and places as it may fix and determine. Such meetings may be held on the call of the Chairman or any three Board members.

(h) Each of the Board members shall receive the sum of $100 a day for each day or part thereof in the performance of his official duties at regular and special meetings of the Board and regular and special meetings of district boards. In addition to attending said meetings, members may receive compensation for services rendered as member for not more than 30 days or parts of days in any calendar year, and shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of their official duties without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States. The Secretary's Representative if he is a full-time officer or employee of the United States shall receive no additional compensation for his official duties on the Board, but may receive travel and subsistence and other expenses.

(i) The Board shall adopt such rules as it may see fit for the transaction of its business, and shall keep permanent records and minutes of its acts and proceedings.

SEC. 5.9. Powers of the Board. The Federal Farm Credit Board shall establish the general policy for the guidance of the Farm Credit Administration and the Farm Credit System in carrying out this Act; may require such reports as it deems necessary from the institutions of the Farm Credit System; provide for the examination of the condition of and general supervision over the performance of the powers, functions, and duties vested in each such institution, and for the performance of all the powers and duties vested in the Farm Credit Administration or in the Governor which, in the judgment of the Board, relate to matters of broad and general supervisory, advisory, or policy nature. The Board shall function as a unit without delegating any of its functions to individual members, but may appoint committees and subcommittees for studies and reports for consideration by the Board. It shall not operate in an administrative capacity.

SEC. 5.10. Governor; appointment; responsibilities. The Governor of the Farm Credit Administration shall be appointed by and serve at the pleasure of the Federal Farm Credit Board. He shall be responsible, subject to the general supervision and direction of the Board as to matters of a broad and general supervisory, advisory, or policy nature, for the execution of all of the administrative functions and duties of the Farm Credit Administration. During any period in which the Governor holds any stock in any of the institutions subject to supervision of the Farm Credit Administration, the appointment of the Governor shall be subject to approval by the President and during any such period the President shall have the power to remove the Governor.

SEC. 5.11. Compensation; salary and expense allowance. The compensation of the Governor of the Farm Credit Administration shall be at the rate fixed in the Executive Pay Schedule. The Board shall fix the allowance for his necessary travel and subsistence expenses or per diem in lieu thereof.

SEC. 5.12. Compliance with Board orders. It shall be the duty of the Governor of the Farm Credit Administration to comply with all orders and directions which he receives from the Federal Farm Credit Board and, as to third persons, all acts of the Governor shall be conclusively presumed to be in compliance with the orders and directions of the Board.

SEC. 5.13. Farm Credit organization. The Governor of the Farm Credit Administration is authorized, in carrying out the powers and duties now or hereafter vested in him by this Act and acts supplementary thereto, to establish and to fix the powers and duties of such divisions and instrumentalities as he may deem necessary to the efficient functioning of the Farm Credit Administration and the successful execution of the powers and duties so vested in the Governor and the Farm Credit Administration. The Governor shall appoint such other personnel as may be necessary to carry out the functions of the Farm Credit Administration: *Provided,* That the salary of positions of Deputy Governors shall not exceed the maximum scheduled rate of the general schedule of the Classification Act of 1949, as amended. The powers of the Governor may be exercised and performed by him through such other officers and employees of the Farm Credit Administration as he shall designate.

SEC. 5.14. Seal. The Farm Credit Administration shall have a seal, as adopted by the Governor, which shall be judicially noted.

SEC. 5.15. Administrative expenses. The Farm Credit Administration may, within the limits of funds available therefor, make necessary expenditures for personnel services and rent at the seat of Government and elsewhere; contract stenographic reporting services; purchase and exchange lawbooks, books of reference, periodicals, newspapers, expenses of attendance at meetings and conferences; purchase, operation, and maintenance at the seat of Government and elsewhere of motor-propelled passenger-carrying vehicles and other vehicles; printing and binding; and for such other facilities and services, including temporary employment by contract or otherwise, as it may from time to time find necessary for the proper administration of this Act.

SEC. 5.16. Allocation of expenses for administrative services by the Farm Credit Administration; disposition of money. (a) The Farm Credit Administration shall prior to the first day of each fiscal year estimate the cost of administrative expenses for the ensuing fiscal year in administering this Act, including official functions, and shall apportion the amount so determined among the institutions of the System on such equitable basis as the Administration shall determine, and shall assess against and collect in advance the amount so apportioned from the institutions among which the apportionment is made.

(b) The amounts collected pursuant to subsection (a) of this section shall be covered into the Treasury, and credited to a special fund, which fund is authorized to be appropriated to said Administration for expenditure during each fiscal year for salaries and expenses of said Administration as set forth in an appropriation act or acts. As soon as practicable after the end of each such fiscal year, the Administration shall determine, on a fair and reasonable basis, the cost of operation of the Farm Credit Administration and the part thereof which fairly and equitably should be allocated to each bank and association as its share of the cost during the fiscal year of such Administration. If the amount so allocated is greater than the amount collected from the bank or other institutions, the difference shall be collected from such bank or other institutions, and, if less, shall be refunded from the special fund to the bank or other institutions entitled thereto or credited in the special fund to such bank or other institutions for use for the same purposes in future fiscal years.

SEC. 5.17. Quarters and facilities for the Farm Credit Administration. As an alternate to the rental of quarters under section 5.15, and without regard to any other provision of law, the banks of the System, with the concurrence of two-thirds of the district boards, are hereby authorized—

(1) To acquire real property in the District of Columbia or elsewhere for quarters of the Farm Credit Administration.

(2) To construct, develop, furnish, and equip such building thereon and such facilities appurtenant thereto as in their judgment may be appropriate to provide, to the extent the Federal Farm Credit Board may deem advisable, suitable, and adequate quarters and facilities for the Farm Credit Administration.

(3) To enlarge, remodel, or reconstruct the same.

(4) To make or enter into contracts for any of the foregoing.

The Board may require of the respective banks of the System, and they shall make to the Farm Credit Administration, such advances of funds for the purposes set out in this section as in the sole judgment of the Board may from time to time be advisable for the purposes of this section. Such advances shall be in addition to and kept in a separate fund from the assessments authorized in section 5.16 and shall be apportioned by the Board among the banks in proportion to the total assets of the respective banks, and determined in such manner and at such times as the Board may prescribe. The powers of the banks of the System and purposes for which obligations may be issued by such banks are hereby enlarged to include the purpose of obtaining funds to permit the making of advances required by this section. The plans and decisions for such building and facilities and for the enlargement, remodeling, or reconstruction thereof shall be such as is approved in the sole discretion of the Board.

SEC. 5.18. Enumerated powers. The Farm Credit Administration shall have the following powers, functions, and responsibilities in connection with the institutions of the Farm Credit System and the administration of this Act:

(1) Modify the boundaries of farm credit districts, with due regard for the farm credit needs of the country, as approved by the Federal Farm Credit Board.

(2) Issue and amend or modify Federal charters of institutions of the System and approve change in names of banks operating under this Act; approve the merger of districts when agreed to by the boards of the districts involved and by a majority of the voting stockholders and contributors to the guaranty funds of each bank for each of such districts; approve mergers of banks operating under the same Title of this Act, merger of Federal land bank associations, merger of production credit associations and the consolidation or division of the territories which they serve; and approve consolidations of boards of directors, or management agreements. Such mergers shall be encouraged where such action will improve service to borrowers and the financial stability, effect economies of operation, or permit desirable joint management, or consolidation of territories and office quarters.

(3) Make annual reports to the Congress on the condition of the System and its institutions and, from time to time, recommend legislative changes.

(4) Approve the salary scale for employees of the institutions of the System, and approve the appointment and compensation of the chief executive officer of such institutions, except of associations.

(5) Coordinate the activities of the banks in making studies of lending standards, including appraisal and credit standards; approve national and district standards, procedures, and appraisal forms; prescribe price and cost levels to be used in such standards, appraisals, and lending; supplement the work of the district under the foregoing where necessary to accomplish the purposes of this Act.

(6) Prescribe loan security requirements and the types, classes, or numbers of loans which may be made only with prior approval.

(7) Conduct loan and collateral security review.

(8) Approve the issuance of obligations of the institutions of the System and execute on behalf of the banks consolidated and Systemwide obligations for the purpose of funding the authorized operations of the institutions of the System, and prescribe collateral therefor.

(9) Approve interest rates paid by institutions of the System on their bonds, debentures, and similar obligations, the terms and conditions thereof, and interest or other charges made by such institutions to borrowers.

(10) Make investments in a stock of the institutions of the System as provided in section 4.0 out of the revolving fund, and require the retirement of such stock.

(11) Regulate the borrowing, repayment, and transfer of funds and equities between institutions of the System.

(12) Coordinate and assist in providing services necessary for the convenient, efficient, and effective management of the institutions of the System.

(13) Undertake research into the rural credit needs of the country and ways and means of meeting them and of the funding of the operations of the System in relation to changing farming and economic conditions.

(14) Prepare and disseminate information to the general public on use, organization and functions of the System and to investors on merits of its securities.

(15) Require surety bonds or other provisions for the assets of the institutions of the System against losses occasioned by employees.

(16) Prescribe rules and regulations necessary or appropriate for carrying out the provisions of this Act.

(17) Exercise such incidental powers as may be necessary or appropriate to fulfill its duties and carry out the purposes of this Act.

SEC. 5.19. Delegation of duties and powers to institutions of the System. The Farm Credit Administration is authorized and directed, by order or rules and regulations, to delegate to a Federal land bank such of the duties, powers, and authority of the Farm Credit Administration with respect to and over a Federal land bank or Federal land bank associations, their officers and employees, in the farm credit district wherein such Federal land bank is located, as may be determined to be in the interest of effective administration; and, in like manner, to delegate to a Federal intermediate credit bank such of the duties, powers, and authority of the Farm Credit Administration with respect to and over a Federal intermediate credit bank or production credit associations, their officers and employees, in the farm credit district wherein such Federal intermediate credit bank is located, as may be determined to be in the interest of effective administration; to authorize the redelegation thereof; and, in either case the duties, powers, and authority so delegated or redelegated shall be performed and exercised under such conditions and requirements and upon such terms as the Farm Credit Administration may specify. Any Federal land bank or Federal intermediate credit bank to which any such duties, powers, or authority may be delegated or any association to which any power may be redelegated, is authorized and empowered to accept, perform, and exercise such duties, powers, and authority as may be so delegated to it.

SEC. 5.20. Examinations and reports. Except as provided herein, each institution of the System, and each of their agents, at such times as the Governor of the Farm Credit Administration may determine, shall be examined and audited by farm credit examiners, but each bank and each production credit association shall be examined and audited not less frequently than once each year. If the Governor determines it to be necessary or appropriate, the required examinations and audits may be made by independent certified public accountants, certified by a regulatory authority of a State, and in accordance with generally accepted auditing standards. Upon request of the Governor or any bank of the System, farm credit examiners shall also make examinations and written reports of the condition of any organization, other than national banks, to which, or with which, any institution of the System contemplates making a loan or discounting paper of such organization. For the purposes of this Act, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act, the Federal Reserve Act, the Federal Deposit Insurance Act, and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.

SEC. 5.21. Conditions of other banks and lending institutions. The Comptroller of the Currency is authorized and directed, upon request of the Farm Credit Administration to furnish for confidential use of an institution of the System such reports, records, and other information as he may have available relating to the financial condition of national banks through, for, or with which such institution of the System has made or contemplates making discounts or loans and to make such further examination, as may be agreed, of organizations through, for, or with which such institution of the Farm Credit System has made or contemplates making discounts or loans.

SEC. 5.22. Consent to the availability of reports and to examinations. Any organization other than State banks, trust companies, and savings associations shall, as a condition precedent to securing discount privileges with a bank of the Farm Credit System, file with such bank its written consent to examination by farm credit examiners as may be directed by the Farm Credit Administration; and State banks, trust companies, and savings associations may be required in like manner to file a written consent that reports of their examination by constituted State authorities may be furnished by such authorities upon the request of the Farm Credit Administration.

SEC. 5.23. Reports on conditions of institutions receiving loans or deposits. The executive departments, boards, commissions, and independent establishments of the Government of the United States, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal reserve banks are severally authorized under such conditions as they may prescribe, upon request of the Farm Credit Administration, to make available to it or to any institution of the System in confidence all reports, records, or other information relating to the condition of any organization to which such institution of the System has made or contemplates making loan or for which it has or contemplates discounting paper, or which it is using or contemplates using as a custodian of securities or other credit instruments, or a depository. The Federal reserve banks in their capacity as depositories, agents, and custodians for bonds, debentures, and other obligations issued by the banks of the System or book entries thereof are also authorized and directed, upon request of the Farm Credit Administration, to make available for audit by farm credit examiners all appropriate books, accounts, financial records, files, and other papers.

PART C—OTHER LAWS

SEC. 5.24. Jurisdiction. Each institution of the System shall for the purposes of jurisdiction be deemed to be a citizen of the State, commonwealth, or District of Columbia in which its principal office is located. No district court of the United States shall have jurisdiction of any action or suit by or against any production credit association upon the ground that it was incorporated under this Act or prior Federal law, or that the United States owns any stock thereof, nor shall any district court of the United States have jurisdiction, by removal or otherwise, of any suit by or against such association except in cases by or against the United States or by or against any officer of the United States and except in cases by or against any receiver or conservator of any such association appointed in accordance with the provisions of this Act.

SEC. 5.25. State legislation. Whenever it is determined by the Farm Credit Administration, or by judicial decision, that a State law is applicable to the obligations and securities authorized to be held by the institutions of the System under this Act, which law would provide insufficient protection or inadequate safeguards against loss in the event of default, the Farm Credit Administration may declare such obligations or securities to be ineligible as collateral for the issuance of new notes, bonds, debentures, and other obligations under this Act.

SEC. 5.26. Repeal. (a) The Federal Farm Loan Act, as amended; section 2 of the Act of March 10, 1924 (Public No. 35, 68th Congress, 43 Stat. 17), as amended; section 6 of the Act of January 23, 1932 (Public No. 3, 72d Congress, 47 Stat. 14), as amended; the Farm Credit Act of 1933, as amended; sections 29 and 40 of the Emergency Farm Mortgage Act of 1933; Act of June 18, 1934 (Public No. 381, 73d Congress, 48 Stat. 983); Act of June 4, 1936 (Public No. 644, 74th Congress, 49 Stat. 1461), as amended; sections 5, 6, 20, 25(b), and 39 of the Farm Credit Act of 1937, as

amended; sections 601 and 602 of the Act of September 21, 1944 (Public Law 425, 78th Congress, 58 Stat. 740, 741), as amended; sections 1, 2, 3, 4, 5, 6, 7, 8, 16, and 17(b) of the Farm Credit Act of 1953, as amended; sections 2, 101, and 201(b) of the Farm Credit Act of 1956 are hereby repealed. All references in other legislation, State or Federal, rules and regulations of any agency, stock, contracts, deeds, security instruments, bonds, debentures, notes, mortgages and other documents of the institutions of the System, to the Acts repealed hereby shall be deemed to refer to comparable provisions of this Act.

(b) All regulations of the Farm Credit Administration or the institutions of the System and all charters, bylaws, resolutions, stock classifications, and policy directives issued or approved by the Farm Credit Administration, and all elections held and appointments made under the Acts repealed by subsection (a) of this section shall be continuing and remain valid until superseded, modified, or replaced under the authority of this Act. All stock, notes, bonds, debentures, and other obligations issued under the repealed acts shall be valid and enforceable upon the terms and conditions under which they were issued, including the pledge of collateral against which they were issued, and all loans made and security or collateral therefor held by, and all contracts entered into by, institutions of the System shall remain enforceables according to their terms unless and until modified in accordance with the provisions of this Act; it being the purpose of this subsection to avoid disruption in the effective operation of the System by reason of said repeals.

SEC. 5.27. Amendments to other laws. (a) The Executive schedule of basic pay, 80 Stat. 458, 5 U.S.C. 5311–5317, as amended is further amended by striking from Positions at level IV the "Governor of the Farm Credit Administration" (5 U.S.C. 5315 (51)) and inserting in Positions at level III the additional position "(55) Governor of the Farm Credit Administration' (5 U.S.C. 5314 (55)).

(b) Amend the section title and substance of 12 U.S.C. 393 to read as follows:

"§ 393. Federal reserve banks as depositaries for and fiscal agents of Federal land banks, intermediate credit banks, banks for cooperatives, and other institutions of the Farm Credit System.

"The Federal reserve banks are authorized to act as depositaries for and fiscal agents of any Federal land bank, Federal intermediate credit bank, bank for cooperatives, or other institutions of the Farm Credit System."

SEC. 5.28. Separability. If any provision of this Act, or the application thereof to any persons or in any circumstances, is held invalid, the remainder of this Act and the application of such provision to other persons or in other circumstances shall not be affected thereby.

SEC. 5.29. Reserve right to amend or repeal. The right to alter, amend, or repeal any provision or all of this Act is expressly reserved.

SUMMARY OF PRINCIPAL PROVISIONS OF PROPOSED FARM CREDIT ACT OF 1971

The Federal Farm Credit Board in May of 1969 commissioned a panel of 27 national farm leaders representing all of the major farm organizations, the academic community, the financial community, and the farm press, with representatives of the Farm Credit institutions and their borrower owners, to study the present and future credit needs of agriculture. The study included an in-depth examination of existing authorities and services. It resulted in recommendations for additional means of meeting the anticipated rural credit needs. This was against a background of economic forecasts that farmers during the next decade will need twice as much capital credit as they are now using.

The report of that Commission recommended an overall objective for the Farm Credit System, 11 separate goals, and some 44 specific recommendations for implementing those objectives and goals. Its recommendation for further study of the funding of the System in the future was immediately implemented by the appointment of an advisory committee on finance composed of fiscal experts outside of the System. The Finance Committee recommended significant modernization in the System's funding operations.

In addition, the Report of the President's Task Force on Rural Development, particularly Chapter VII on financing rural development, particularly its suggestions for possible participation by the Farm Credit System, was examined in depth. The provisions of section 901 (f) of the Agricultural Act of 1970 were also considered. From all of these reports and recommendations and from the experience of over 50 years of the successful operation of the cooperative System, the owners and management of the Farm Credit banks and associations and their advisers recommended to the Federal Farm Credit Board substantial revisions of existing law.

Most of the Federal land bank law dates back to the original 1916 Act. The precautionary limitations incorporated therein, necessary and appropriate as they were in those early years, are now inhibiting the extension of the amount and types of credit demanded by the owners of the System and other farmers and rural residents. Intervening enactments, including those relating to the production credit associations, the Federal intermediate credit banks, and the banks for cooperatives, were cast in much broader terms which has resulted in an extremely complex set of laws to be administered. There are unwarranted differences in eligibility and credit standards employed by the several branches of the System. Much of the present law is entirely obsolete. Modernization of other provisions is essential. No satisfactory way was found to implement the accepted recommendations by simple amendments.

Hence, the draft bill will replace existing law. Nevertheless, the bill does not change the existing structure of the System and the Farm Credit Administration as an independent executive agency charged with providing general policy guidelines for and supervision of the lending institutions. It does, however, authorize more credit decisions to be made locally and more supervision of the associations will be the responsibility of the banks.

The tremendous needs for agricultural credit and of credit for rural development led to the recommendation that other branches of the System might subsequently be needed. However, this bill addresses itself to rural development only by authorizing the Federal land banks to make long-term loans for housing in rural areas and the production credit associations and Federal intermediate credit banks to assist in making short-term housing loans. The industrial development so important to rural areas seems to require approaches to funding which are not compatible with the philosophy of borrower ownership and control on a cooperative basis. In many instances such development will require some public investment or tax exemption on municipal securities. The development of water and sewer and other environmental improvement likewise are public or quasi-public undertakings, the funding of which can hardly be brought within the concept of a self-sustaining, cooperative borrower-owned and managed institutions funding these improvements in the wholesale money market. This is not to say that the System cannot be useful in community development and in the implementation of other programs funded through existing or newly suggested institutions for financing such development.

TITLE I—FEDERAL LAND BANK AND ASSOCIATIONS

New authority is granted the land banks for long-term mortgage loans for housing in rural areas, to be defined by regulations. It is intended to fill a gap for nonfarm housing credit between the areas primarily served by savings and loan associations and other mortgage lends and the subsidized credit for public housing and Farmers Home Administration low income borrowers.

Financial related services such as assistance in estate planning, transfer of farms between generations, and other services essential to profitable financial management of farms would be available to borrowers through the banks and associations.

Loans to persons furnishing custom-type services to farmers is a modern necessity in view of the changes in farm labor, cost of equipment, and other operating expenses. Leasing of facilities necessary for their agricultural production would also be permitted.

By removal of the 65 percent loan-value ratio and the narrow statutory limits for normal value appraisals, the banks, under Farm Credit Administration regulations, will have more authority and responsibility in credit decisions. They will be in a position to give sound consideration to security other than a first lien on farm land and to other credit factors, the principal one of which is repayment ability of the borrower. Other security not needed for short-term credit could be taken, supplementing the land security where the long-value ratio might be between the present 65 percent limit and the value of the real estate mortgage. A first lien would no longer be required. The Commission recommended a look-through theory on loans to corporate farming entities. By omitting the present statutory definition of corporate eligibility for land bank loans, it is believed that through regulations comparability can be achieved by the land bank and production credit associations in corporate eligibility rules.

Permissive authority to issue nonvoting stock, probably to nonfarm borrowers; additional capitalization, by requiring borrowers to purchase stock of not less than 5 percent nor more than 10 percent of the amount of the loan; payment of different dividend rates on different classes of stock; and other corporate powers, permitting more flexible operations of the banks and associations would be provided.

The legal reserve requirements for land banks and associations would remain unchanged as well as the present tax exemption.

It is not contemplated that these changes would result in substantial shifts in the pattern of land bank loans but would permit the extension of credit services required to meet the varied situations in our modern farm economy.

TITLE II—INTERMEDIATE CREDIT BANKS

Aside from enumerating corporate powers to achieve compatibility with the land bank powers, the functions of the intermediate credit banks would remain primarily as discount banks for paper representing loans by production credit associations and for other financial institutions making agricultural short- and intermediate-term loans. These banks would be authorized to participate with production credit associations in the larger loans, furnish custom services and financial related services of the character described in Title I. The credit banks would be authorized to discount short- and intermediate-term loans by production credit associations for repair, maintenance, and improvement of nonfarm rural homes. Credit for the lower priced homes or mobile could be ac-

complished in the intermediate-term credit range.

Other changes relating to the intermediate credit banks include authorization to issue different classes of stock, investment by the banks in the capital of the production credit associations, extension of the maturities of banks' debentures and other obligations beyond the existing 5-year maturity limit, to establish a reasonable reserve of unallocated surplus, to undertake loss sharing agreements, and other supervision of the production credit associations.

PRODUCTION CREDIT ASSOCIATIONS

Additional authority for the production credit associations to make short- and intermediate-term loans for rural housing, loans for persons furnishing custom-type services to farmers, and permit the associations to furnish financial related services would be granted.

Authority would be granted to the production credit associations to participate with commercial banks in loans to farmers. This would permit country banks to continue their line of credit with their customers and have the production credit association carry the overline.

Such associations would be given the opportunity to increase their capital by requiring borrowers to invest not less than $5, as presently required, nor more than $10 in the capital of the association. They could, also, under the new provisions, purchase capital stock and equity reserves in other production credit associations.

TITLE III—BANKS FOR COOPERATIVES

The authority of the banks for cooperatives is clarified to make continuing commitments for lines of credit, furnish technical and other services to borrowers, and participate with commercial banks and other lenders as well as other banks for cooperatives.

Capital structural changes include authorization to issue nonvoting investment stock, without the present 4 percent dividend limitation, permit the requirement of advance purchase of stock to the extent of not more than 10 percent of the loan, as well as the existing stock override purchases related to the quarterly interest payments of borrowers, and to permit more freedom in the retirement of allocated surplus.

The ratio of authorized debentures to net worth would be raised from the present 8 to 1 limit to the ceiling now available to other branches of the System 20 to 1.

The definition of cooperation eligible to borrow from the banks for cooperatives would be stated separately from that in the Agricultural Marketing Act and would permit district banks to make loans to cooperatives in which at least 66⅔ percent of the voting control is held by farmers. Under present law, as administratively interpreted, 90 percent of the voting media must be so held.

More flexibility would be given, when there is no Government stock investment in the banks for cooperatives, in the distribution of net savings to permit a larger portion of the patronage refunds to be in cash; to the establishment of reasonable unallocated reserves; and to provide the mechanics for payment of unexpected obligations not related strictly to the year's operations.

TITLE IV—FUNDING OPERATIONS OF THE BANKS

Existing authorizations for purchase of stock by the Governor of the Farm Credit Administration are preserved and, in the case of the land bank, the authority of the Secretary of the Treasury to deposit not more than $6 million in the lands banks for their use under certificates of indebtedness. The payment of franchise tax by the intermediate credit banks and the banks for cooperatives when the Governor holds such stock is likewise preserved. These stock purchases, and payments in retirement thereof, by the banks for cooperatives, the intermediate credit banks, and the production credit associations are to be funded from the two existing revolving funds.

Other provisions common to all the institutions of the System will continue their authority to issue, on their own responsibility and credit, obligations for short-term borrowing from commercial institutions, collateralized bonds, and debentures and similar obligations, and their authority to join in the issuance of consolidated collateralized bonds and debentures and other obligations. In this connection, permission is given to utilize all modern funding devices as appropriate in modern financial circles, rather than the somewhat restrictive existing authority. For example, the land banks are now authorized to issue "farm-loan bonds" fully collateralized by first liens. The success of the System and the reputation it has built in the financial community no longer require that rigid limitation.

One of the strong recommendations of the Finance Committee was to reduce the entries into the wholesale money market by means of Systemwide single security issues. Authority is sought to use such instruments if its feasibility can be established.

Other provisions common to the several institutions would permit mergers of like institutions where necessary or appropriate for accomplishing their objectives in a most economical manner.

TITLE V—DISTRICTS AND FARM CREDIT ORGANIZATION

The present democratic process for owners of the System to elect directors and provisions for district boards of directors to serve as common boards for the three banks in each district are retained. The use of the idea of joint employees and joint services is augmented by authorizing the same technique across district lines.

The organization and function of the Federal Farm Credit Board and its policy-making role is preserved. The powers of the Farm Credit Administration are assembled in one place rather than spread throughout the context of the law relating to each institution. These powers have been carefully outlined to permit the maximum direction and operation of the banks of the System by their owners and their representatives. The overall authority for correlation of the activities of the banks and associations and the examination and supervision of the operations of the institutions have nevertheless been retained in the Farm Credit Administration.

FARM CREDIT ACT OF 1971—KEY PROPOSALS

FEDERAL LAND BANKS—(TITLE I)

1. Removes 65% loan limitations.
2. Authorizes rural residence loans.
3. Permits security other than first mortgage on real estate.
4. Permits financing of farm related services.
5. Permits financially related services.
6. Eliminates $100,000 FCA approval.
7. Delegates loan closing authority to associations.
8. Permits variable interest rates.
9. Permits open-end mortgages.
10. Permits requirement for stock investment of up to $10 per $100 of loans.
11. Broadens association loss-sharing agreements.
12. Permits issuance of non-voting stock and participation certificates.

Permits FLBs to own and lease facilities needed by eligible borrowers.

14. Removes quick asset statutory requirements and places in regulations.
15. Removes specific provisions and limitations on fees and charges.
16. Eliminates mandatory personal liability in loans to corporations and makes it a credit decision.
17. Permits FLBs to participate in loans with other FLBs.

FEDERAL INTERMEDIATE CREDIT BANKS—(TITLE II)

1. Permits FICBs to purchase stock in or contribute to the surplus of production credit associations.
2. Permits FICBs to participate in loans and loss-sharing plans with other FICBs and production credit associations.
3. Authorizes production credit associations to issue non-voting stock and participation certificates.
4. Authorizes transfer of participation certificates held by other financing institutions.
5. Permits creation and maintenance of reasonable unallocated contingency reserve accounts.
6. Permits loans to producers or harvesters of aquatic products.
7. Permits financing of farm-related services.
8. Permits financially-related services.
9. Authorizes rural residence loans of a short- and intermediate-term nature.
10. Permits FICB's to own and lease equipment needed by eligible borrowers.
11. Removes the 5-year maturity limitation on FICB debentures.

PRODUCTION CREDIT ASSOCIATIONS—(TITLE II)

1. Permits the purchase of stock in and contribution to the capital of other PCA's and FICB's.
2. Permits participation in loans and loss-sharing plans with FICB's.
3. Permits loans to producers or harvesters of aquatic products.
4. Permits rural residence loans of a short- and intermediate-term nature.
5. Permits financing of farm-related services.
6. Permits financially-related services for farmers and ranchers.
7. Permits PCA's to issue participation certificates.
8. Permits participation with commercial banks in loans to farmers and ranchers.
9. Permits associations to own or lease, or lease with option to purchase to stockholders of the association equipment needed in the operations of the stockholder.
10. Permits PCAs to require stock and other equity investment of up to $10 per $100 of loans.

BANKS FOR COOPERATIVES—(TITLE III)

1. Provides flexibility under FCA regulations, when there is no Government stock investment in a bank, in the distribution of annual net savings to permit a large portion of patronage refunds to be in cash and the establishment of reasonable unallocated reserves to provide a source for the payment of any unexpected obligations not related strictly to a current year's operations.
2. Permits increase in the maximum ratio of authorized debentures or similar obligations to the net worth of the BCs from the present 8 to 1 statutory limit to 20 to 1, the ceiling now available to other branches of the System, or such prudent lesser ratio as may be established by FCA regulation.
3. Increases flexibility in the composition and management of the capital structures of a BC.
4. Provides additional authority to borrow money by issuance of individual or consolidated BC notes, bonds, debentures or other obligations, as may be approved by FCA.
5. The eligibility of cooperatives borrowing from the BCs would be separately stated and maintained by granting permissive authority for a district board to reduce the bank's required level of farmer voting control in a cooperative borrower to not less than 66⅔%.
6. Clarifies and expands the present power of a BC to make loans to eligible cooperatives to permit extension of technical and other financial assistance including guarantees, collateral custody, leasing of equipment to stockholders, and participation with other

financial institutions in loans to eligible cooperatives.

7. Permits loans to fishery and other aquatic product cooperatives.

8. Authority for determination of location of Central Bank for Cooperatives would be vested in its board of directors with approval of FCA.

PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM—(TITLE IV)

1. Permits, in addition to presently authorized consolidated bank group securities, the issuance of Systemwide (37 banks) notes, bonds, debentures and other obligations.

2. Extends provisions applicable to purchase and sale by the Federal Reserve Banks of Farm Loan Bonds of the land banks to other obligations issued by any of the banks of the System.

3. Broadens the authority of the banks' Fiscal Agent to permit handling cash flow and interbank and intersystem transfer of funds.

4. Provides for the voluntary merger of a bank with one or more like banks in other districts operating under the same title of the act.

5. Authorizes Governor of Farm Credit Administration to require mergers of like associations for default of obligations, failure to provide adequate credit services for which they are chartered, or failure to conduct operations in accordance with applicable law.

DISTRICT AND FARM CREDIT ADMINISTRATION ORGANIZATION—(TITLE V)

1. Provides for the voluntary merger of one or more of the 12 Farm Credit Districts.

2. Throughout existing law there are over 200 references to powers of the Farm Credit Administration. In lieu thereof, each title of the bill provides for general supervision; assembled in this section are the few specific powers reserved to Farm Credit Administration which appear to be essential to effective supervision and operation of the System. The purpose of this change is to secure effective administration of the act as close to the borrower beneficiary as can be accomplished. To this end, district boards are given more specific authority for rules and regulations governing district banks and associations, and authority to redelegate these powers when appropriate to the associations.

3. Authorizes the payment of rent for Farm Credit Administration office quarters and eliminates the present requirement that these quarters be housed in the Department of Agriculture. Authorizes the banks of the System as an alternative to paying assessments for rent to acquire or construct and own a building to house the Farm Credit Administration.

By Mr. HARRIS:

S. 1484. A bill to promote the integration in the Nation's public elementary and secondary schools. Referred to the Committee on Labor and Public Welfare.

INTEGRATED EDUCATION ACT OF 1971

Mr. HARRIS. Mr. President, we all are well aware of the 1968 conclusion of the National Advisory Commission on Civil Disorders that, "our nation is moving toward two societies, one black, one white—separate and unequal." That language from the Commission's report recalled the landmark ruling of the Supreme Court in the Brown decision of 1954 in which it was held that separate but equal schools are inherently unequal.

In the 14 years after 1954, our Nation had progressed from a ruling that segregated education was inherently unequal and, therefore, unconstitutional to a point in time when a commission appointed by the President of the United States could conclude that we are rapidly becoming two societies—separate and unequal.

It is now almost 3 years later, and we have a new standard against which to measure our progress—or lack of it—toward an end to segregation in one important aspect of American life. Just a few weeks ago, the Department of Health, Education, and Welfare reported that 38 percent of the black elementary and secondary students in the Deep South are attending schools with a majority of white students. This represents progress to be sure; the figure stood at only one-tenth of 1 percent in 1954 and only 1 percent 10 years later when Congress enacted the Civil Rights Act. Since the passage of the act with titles IV and VI, each of which has been effective to some extent in converting unconstitutional dual school systems to unitary, desegregated systems, the progress toward integrated education in the South has been slow but nonetheless real.

Unfortunately, the same cannot be said for areas outside the South. As a matter of fact, Mr. President, there are strong indications that while segregated education is becoming less common in the South, it is increasing in many areas outside the South. The statistics released by HEW showed that 28 percent of the black students in the North and West are in majority white schools—10 percent less than in the Deep South.

In the South, school systems prior to the Brown decision of 1954 were segregated on the basis of race under State laws. That type of segregation has become known as de jure segregation—separation of students brought about by legal authority. The Supreme Court declared it was unconstitutional—a denial of equal education opportunity. Subsequent court decisions have dealt with the pace with which desegregation must be accomplished, culminating with the 1969 Supreme Court decision in Alexander against Holmes County, Mississippi, requiring an immediate completion of the long process of converting from dual to unitary systems.

States outside the South either had eliminated segregated education prior to the Brown decision or had never officially sanctioned racially segregated assignment of students. School segregation or racial isolation in such areas has traditionally been defined as de facto—not caused by legal authority. Regardless of the cause, however, the deleterious effect of segregation on the child is the same, and this is what we should be concerned about. Moreover, I agree with those who maintain that in many instances, investigation of what we call de facto segregation will reveal that official actions—de facto factors—are involved, factors such as zoning restrictions, decisions as to where schools should be located, location of public or low-cost, Government-subsidized housing or other factors. But I am not trying today to rekindle a debate we have had on numerous occasions in this Chamber.

Mr. President, I think most of us would agree—now that the courts and the Department of Health, Education, and Welfare have proclaimed the end of the dual school system as it has been known for years in the South—that the Congress should now move ahead with a national program promoting the integration of all school systems throughout the Nation, regardless of whether the racial separation has resulted from de jure or de facto factors. If racial isolation is harmful to children, if children learn better in racially and economically integrated classrooms—as I firmly believe they do—then I think the Federal Government has a responsibility to enact a comprehensive program to bring about such integration, and, in so doing, to maximize the opportunity for American children to secure a quality education. There is another reason why the Congress and the Nation should move vigorously in this direction, and I refer here back to the report of the Commission on Civil Disorders.

It was my privilege to serve on that Commission, chaired by the distinguished and very able former Governor of Illinois, Otto Kerner, along with the disguished junior Senator from Massachusetts (Mr. BROOKE) and our able colleague from the House, the gentleman from Ohio (Mr. MCCULLOCH), the gentleman from California (Mr. CORMAN) and other distinguished American citizens. The deliberations of the Kerner Commission brought home to me most emphatically the fact that the schools of our Nation—along with the homes, the churches, the neighborhoods and all other elements in our society—must be involved in the national effort to bring our people together. We in the Congress should encourage this effort legislatively.

Mr. President, our colleagues, the senior Senator from Minnesota (Mr. MONDALE), the junior Senator from Massachusetts (Mr. BROOKE), the senior Senator from New Jersey (Mr. CASE) and the senior Senator from Connecticut (Mr. RIBICOFF) have taken the lead in introducing a bill which would authorize a national program to encourage integration of schools. I am a cosponsor of that bill (S. 683) together with other of our colleagues. The administration also is supporting a desegregation assistance bill (S. 195), introduced by the senior Senator from New York (Mr. JAVITS) and the junior Senator from Michigan (Mr. GRIFFIN), but I do not believe this measure can be considered a national integration bill in the same sense as S. 683.

S. 683 is clearly preferable, and I strongly endorse it as an important and needed initiative toward a more comprehensive school integration program. We must learn to walk before we can run, and I hope Congress will enact at least the equivalent of S. 683.

But more will be needed, and that is why I am today introducing the proposed Integrated Education Act of 1971. My bill is similar to one introduced on January 22 of this year by Congressman CORMAN of California, my colleague on the Kerner Commission. Mr. CORMAN'S bill is numbered H.R. 1954, a number with symbolic significance, recalling as it does the year the Supreme Court of the United States declared that segre-

gation of students on the basis of race was unconstitutional—that it generated in black children such "a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Mr. President, my bill recognizes that in many school districts—particularly those in larger urban and suburban areas—meaningful integration will require substantial construction of new facilities, not to serve the same neighborhoods, which in many cases are segregated, but to accommodate students from larger, more diversified areas. The bill would assist construction of educational parks, magnet schools, and other facilities; reorganization of grade structures and redrawing of attendance zones to change the racial and economic makeup of school enrollments. It would, in short, provide the kind of financial inducement school officials need to bring about lasting and meaningful integration of their schools. I believe the Congress should make available the kind of substantial assistance envisioned in my bill. As a nation, we can ill afford to delay in moving comprehensively on the problem of racial isolation. My bill can be the vehicle for that movement.

Mr. President, I ask that a fact sheet summarizing the major provisions of the Integrated Education Act of 1971 be printed at this point in the RECORD and that the text of the bill be included following the fact sheet.

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

SUMMARY OF INTEGRATED EDUCATION ACT OF 1971

1. Authorizes $14 billion over a five-year period for the following purposes:

A. At least 75% of the funds to school districts individually or jointly for implementing plans for the establishment of integrated school systems within three years or within five years for districts with more than 100,000 pupils and for the costs of programs designed to meet the special challenges of education in *integrated school systems*. An integrated school system is one in which in every school the variation between the percentage of minority group pupils in it and the whole system is 20 percent or less and the variation between the proportion of minority group members of the faculty in it and the whole system is insubstantial. Activities which may be funded include construction and alteration of facilities, consolidation of school systems, creation of new attendance zones, development and implementation of methods of grouping pupils in classes that will integrate pupils within schools, and necessary transportation of students.

B. Up to 25% of the funds for pilot projects to school districts individually or jointly for the 1) establishment of integrated schools, provided that funds not be available for construction, and 2) the costs of programs designed to meet the special challenges of education in integrated school systems.

C. Up to 10% of the funds to school districts individually or jointly for the development of plans for the establishment of integrated school systems.

2. Other provisions

A. Safeguards prohibiting aid to school districts aiding private teachers, or assignment procedures, including testing, within schools resulting in the isolation of minority group children.

B. Public information and community participation provisions requiring that all documents relative to the application must be made public and developed with the participation of a community advisory committee composed equally of minority and non-minority persons, at least 50 percent of whom must be parents of children directly affected by projects to be carried out under the program.

S. 1484

A bill to promote the integration of education in the Nation's public elementary and secondary schools

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

DECLARATION OF NATIONAL POLICY

SEC. 2. In recognition of the educational harm inflicted upon all children by segregation according to race or national origin in public education, regardless of its cause, and in recognition of the educational benefits conferred upon all children by integrated education, the Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies, or groups of local educational agencies, for integration of public elementary and secondary school systems, and for improving the quality of education in integrated public elementary and secondary school systems.

GRANTS FOR INTEGRATION OF SCHOOL SYSTEMS

SEC. 3. (a) The Commissioner shall make grants to local educational agencies, either individually or jointly, to pay, in whole or in part—

(1) the cost of implementation of plans which the Commissioner determines will accomplish expeditiously, and not later than September, 1974, the establishment of integrated school systems, or with respect to school systems with enrollments of more than 100,000 pupils, plans which the Commissioner determines will accomplish expeditiously and not later than September, 1976, the establishment of integrated school systems, where the Commissioner determines that all elementary schools will be integrated schools not later than September, 1974; or

(2) the cost of programs which the Commissioner finds designed to meet the special challenges of education in integrated school systems or in school systems implementing a plan which meets the requirement of paragraph (1).

(b) Grants under this section may be used for—

(1) construction of elementary and secondary school facilities within a local educational agency or local education agencies; and

(2) consolidation of existing school systems;

(3) alteration, remodeling, improving or enlarging of existing school facilities;

(4) creation of new school attendance zones; and

(5) development and implementation of methods of grouping pupils in classes that will integrate minority group pupils with nonminority group pupils within schools.

Grants under this section and under section 5 may include sums to cover the cost of necessary transportation of students.

GRANTS FOR PLANNING

SEC. 4. The Commissioner is authorized to grant funds to local educational agencies, either individually or jointly, for development of plans for submission to the Commissioner under section 3. Grants under this section in any fiscal year may not exceed 10 percentum of the total amount appropriated in that fiscal year for expenditrue under this Act.

GRANTS FOR PILOT PROJECTS

SEC. 5. The Commissioner is authorized to make grants to local educational agencies, either individually or jointly, for—

(1) the cost of establishment of integrated schools;

(2) the cost of programs which the Commissioner finds designed to meet the special challenges of education in integrated schools. Grants under this section shall be available only for pilot projects in connection with the development of a plan submitted under section 3(a). Grants under this section in any fiscal year may not exceed 25 percentum of the total amount appropriated in that fiscal year for expenditure under this Act. No funds under this section shall be available for construction of new schools.

APPLICATION

SEC. 6. (a) A local educational agency or agencies may receive a grant under this Act only upon application therefor approved by the Commissioner, upon his determination, consistent with such basic criteria as he may establish, that payments will be used for the purposes established under this Act, that implementation of the plan or project for which a grant is sought will accomplish lasting integration of minority-group with nonminority-group pupils within the school system or project schools and that the application has been prepared, and will be administered, with the participation and advice of a committee established pursuant to subsection (b).

(b) The application of local educational agencies or groups of local agencies desiring to apply for assistance under this Act must set forth the annual steps toward accomplishing integration that it, or they, expect to take during the three or five year periods, whichever is applicable. Each local educational agency or groups of local educational agencies shall report to the Commissioner at the end of each school year the progress made. The Commissioner shall determine whether a local educational agency or group of local educational agencies is or are eligible to continue to receive funds under this Act on the basis of annual progress made.

(c) (1) Each local educational agency desiring to apply for assistance under this Act shall select not less than five but not more than fifteen organizations which in the aggregate are broadly representative of the minority and nonminority communities to be served. Those organizations which have been established pursuant to, or with respect to, other Federal programs, such as Community Action Agencies, City Demonstration Agencies, Title I Advisory Committees, Head Start Parents Advisory Committees, and 4–C Committees and civil rights organizations, should ordinarily be among those selected. Each such organization selected by the local educational agency may appoint one member to an advisory committee.

(2) In addition to member appointed to the advisory committee by organization selected by the local educational agency pursuant to paragraph (1) of this subsection. the local educational agency shall appoint to the advisory committee such additional persons from the community as may be needed in order to establish an advisory committee composed of equal numbers of minority and nonminority persons, at least 50 percent of whom shall be parents whose children will be directly affected by the project to be carried out under the program.

(3) The local educational agency shall consult with the advisory committee established pursuant to this subsection with respect to policy matters arising in the development, administration and operation by such agency

of each project assisted under the program. The advisory committee shall be given a reasonable opportunity to observe and comment upon all project-related activities of the local educational agency.

(d) Applications and all written material pertaining thereto shall be made readily available to the public by the applicant and by the Commissioner.

(e) An application for assistance under this Act shall contain assurances satisfactory to the Commissioner, accompanied by such supportive information as he may require that—

(1) Federal funds made available under the program for any fiscal year will be so used to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be available to the applicant from non-Federal sources for purposes which meet the requirements of the programs, and in no case to supplant such funds;

(2) Federal funds made available under the program will not be used to supplant funds which (A) were available to the applicant from non-Federal sources prior to the implementation by the applicant from order or plan for the desegregation of its schools or of a plan or project under this Act, and (e) have been withdrawn or reduced as a result or desegregation or of implementation of a plan or project under this Act. For the purposes of this paragraph, a reduction shall not be deemed to have taken place where non-Federal funds available to a local educational agency pursuant to State statute are reduced by operation of such statute, solely on account of a decline in such agency's enrollment or its transportation needs;

(3) A reasonable effort is being made to utilize other Federal funds available for meeting the needs of children;

(4) The applicant (A) has not, since the beginning of the 1970–71 school year, engaged in the gift, lease, or sale of property or services, directly or indirectly, to any nonpublic school or school system which, at the time of such transaction, practices discrimination on the basis or race, color or national origin, where such gift, lease, or sale was for the purpose of, or had the effect of, encouraging, facilitating, supporting, or otherwise assisting the operation of such school or school system as an alternative available to nonminority group students seeking to avoid desegregated or integrated public schools; and (B) will not engage in the gift, lease, or sale of property or services to any such school or school system for any purpose;

(5) Staff members of the local educational agency who work directly with children, and professional staff of such agency who are employed on the administrative level, will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without discrimination based upon race, color, or national origin.

(6) No practices or procedures, including testing, will be employed by the local educational agency in the assignment of children to classes, or otherwise in carrying out curricular or extra-curricular activities, within the schools of such agency in such a manner as (A) to result in the isolation of minority and nonminority group children in such classes or with respect to such activities; or (B) to discriminate against children on the basis of their being members of a minority group;

(7) The applicant will furnish to the Commissioner such additional information as he may deem necessary for the administration of the program.

APPROPRIATIONS AUTHORIZED

SEC. 7. There are authorized to be appropriated to carry out the provisions of this Act $1,000,000,000 for the fiscal year ending June 30, 1972, $2,000,000,000 for the fiscal year ending June 30, 1972, $3,000,000,000 for the fiscal year ending June 3, 1974, and $4,000,000,000 for each fiscal year thereafter through the fiscal year ending June 30, 1976.

DEFINITIONS

SEC. 8. (a) For the purposes of this Act, the term—

(1) "Integrated school" means a public elementary or secondary school which meets applicable State law standards concerning integration of minority-group children and faculty and with respect to which

(a) the variation between—

(i) the percentage of minority-group pupils enrolled in such schools, and

(ii) the percentage of minority-group pupils enrolled in the grade levels served by such school, in all schools administered by the local educational agency, or where more than one educational agency is joining in the submission of an application under this Act, in all schools administered by the cooperating local agencies, is 20 percentum or less; and

(b) (i) the variation between—

(I) the proportions of minority-group members of the teaching and of the supervisory staffs of such schools, and

(II) the proportion of minority-group persons within the geographical boundaries of the local educational agency administering such school, or where more than one local educational agency is joining in the submission of an application under this Act, within the geographical boundaries or the cooperating local educational agencies is insubstantial, or

(ii) the Commissioner determines that the local educational agency, or where more than one local educational agency is joining in the submission of an application under this Act, the local educational agencies, concerned are implementing a plan to increase the proportion of minority-group teachers, supervisors, and administrators in all schools administered by the local educational agency or agencies, and the variation between

(I) the proportions of minority-group members of the teaching and of the supervisory staffs of such school and

(II) the proportions of minority-group teachers and minority-group supervisors in all schools administered by the local educational agency administering such school, or where more than one local agency is joining in an application under this Act, by the cooperating local educational agencies, is insubstantial;

(2) "School system" means public elementary and secondary schools under the administration of a local educational agency, or where more than one local educational agency is joning in the submission of an application under this Act, under the administration of the cooperating local educational agencies;

(3) "Integrated school system" means an intergrated school system in which all of the schools are integrated schools;

(4) "Minority-group" includes persons who are Negro, Spanish-surnamed, Oriental, and American Indian;

(5) "Local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent or other school district located within a State. Such term includes any State agency which directly operates and maintains facilities for providing free public education.

(6) "Elementary school" means a day or residential school which provides elementary education, as determined under State law; and

(7) "Secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(b) Except as otherwise provided in this section, the definition contained in section 303 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) are applicable to this Act.

By Mr. RIBICOFF (for himself, Mr. BURDICK, Mr. CANNON, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HOLLINGS, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. McGEE, Mr. McGOVERN, Mr. McINTYRE, Mr. MONDALE, Mr. MONTOYA, Mr. PELL, Mr. RANDOLPH, Mr. TALMADGE, Mr. WILLIAMS, and Mr. SCHWEIKER):

S. 1485. A bill to establish a Department of Education. Referred to the Committee on Government Operations and then, if reported by the Committee on Government Operations, to the Committee on Labor and Public Welfare.

Mr. RIBICOFF. Mr. President, for myself and Senators BURDICK, CANNON, HARRIS, HART, HARTKE, HOLLINGS, HUGHES, HUMPHREY, JACKSON, McGEE, McGOVERN, McINTYRE, MONDALE, MONTOYA, PELL, TALMADGE, WILLIAMS, SCHWEIKER, I introduce for appropriate reference a bill to establish a Department of Education.

Congress will shortly be considering major proposals to reorganize the executive branch of the Federal Government. The President has transmitted a message containing the rationale and the outlines of the realignment he has recommended for our consideration.

These are important, far-reaching, and long-term recommendations. They deserve our careful examination and the most considerate attention, since reorganization proposals on this scale do not come before us very often. It is especially important, therefore, that we examine as complete an array of alternative proposals as can be soundly devised. It is in that spirit and with that intention that I introduce today a bill to create a Department of Education headed by a Secretary of Cabinet rank.

I introduced similar proposals in 1965 and again in 1967. The intervening years have only increased the importance of coordinating the Federal role in education. Today 29 Federal agencies spend over $12 billion on education, often with no coordination and little cooperation. Millions of Americans are educated through Federal programs as diverse as those of the Office of Child Development, the Defense Department, the Job Corps, and the Bureau of Indian Affairs. Nearly 6 percent of the Federal budget supports education. The $12 billion we now spend is a 500-percent increase over our activities in 1962 when I was Secretary of Health, Education, and Welfare. In addition, there are now more than 20 imperfectly coordinated Federal advisory councils and commissions for education.

The bill I am introducing today consolidates and coordinates responsibility for education at the Federal level and affords an opportunity for the first time to rationalize, analyze, present, and carry out Federal policy for education in this Nation. Whether we accomplish these goals through enactment of this bill or the President's reorganization proposals is less important than recognizing the need for prompt action.

Education plays a critical role in the lives of all Americans. More than 60 million Americans are now full-time students; 3.3 million more are professional staff. These figures do not include the millions of children who watch "Sesame Street," or the millions who receive formal education each year from industry, the Peace Corps, the military, Federal manpower programs, and adult and continuing education. When we include all of these people, 125 million Americans are part of this country's education system.

Expenditures for formal education will exceed $65 billion this fiscal year and will be handled by 50 States, five territories, the Federal Government, 18,000 operating school districts, and more than 2,500 institutions of higher education.

But arguments of scale are only one part of the reason for better coordination and execution of the Federal role in education. We must also recognize the present importance of education and educational policy to American society, and the increase in that significance in the decades ahead. This is not just a question of increasing enrollments or expenditures.

Our society and the technology which supports it continue to increase in complexity and require individuals possessed of more sophisticated educational background and preparation. In addition, one of the dominant features of contemporary life is change. It is all about us, its pace increasing, its impact on our lives more insistent.

High technology, population growth, greater human density, unprecedented advances in communications and data processing, the systematic pursuit of knowledge, and the managerial revolution have stamped the present and the future with the characteristic of continual change.

Things are moving so fast we are beginning to suffer from what author Alvin Toffler calls future shock. He contends that the rapid pace of change is not merely creating a changed society, but developing an entirely new society.

The study of the future as a way of gaining a firmer grasp on the present has begun to attract the attention of an increasing number of scholars and analysts. The presence of change places great stress on education. In earlier times, for example, we could afford to think of education as preparation for life. Our society, our technology, our way of life evolved at a comparatively slow pace so that each of us could prepare for a career upon which we could then enter and remain.

Now we experience three, four or five career changes in the course of our lives. Old techniques and skills become obsolescent; new ones need to be acquired. Education is still preparation, to be sure, but it now must be preparation for change. And education has become equally important as a continuing or recurrent activity, following us along in our professional and personal lives to the point of retirement and beyond.

This new relationship of education to our lives requires that we reconsider the education system's capacity to renew and redefine itself, to reflect, anticipate, and help guide the changes which we will all experience.

A serious study and consideration of the Federal role in education is a logical place to begin. I hope that the bill I introduce today together with the President's reorganization proposals for a Human Resources Agency will help focus this question.

My bill is not complicated. First, it establishes a separate Department of Education to serve as a focal point within the Federal Government for defining educational policy and administering Federal education programs. The function and purpose of the proposed department would be to advise the President of the United States about the progress and the future of education and the appropriate policies and programs needed to foster the orderly growth and development of educational resources and facilities in the Nation. The department would conduct necessary studies, collect data, and provide information and other assistance to those engaged in the development of educational policy. It would assist other agencies and institutions in the development of comprehensive planning relating to education.

The new Department would be specifically charged with responsibility for facilitating the continuing renewal of education in America. To assist in this function, a National Institute of Education would be established to carry out the full range of research and development required to improve education in the Nation.

My bill also establishes two principal advisory bodies. The first, the Federal Interagency Committee on Education chaired by the Secretary of Education, would consist of appropriate representatives of designated departments and agencies in the Federal Government. This Committee would assure the effective coordination and consistent administration of Federal programs affecting education which remain distributed across the Government.

The second advisory body, the National Advisory Commission on Education, is designed to provide the Secretary with a high-level policy advisory board. The need for such a body has been well documented by Senator CLAIBORNE PELL of Rhode Island and was included as a result of his efforts in Public Law 91-230 in the form of a National Council on Quality in Education. The National Advisory Commission proposed in my bill would be appointed by the President, confirmed by the Senate, and staffed independently. The Commission would assess the general progress of education, particularly in the light of Federal policy, offer advice concerning present and future direction of such policies and programs, and work with the Secretary to devise a rational and effective advisory structure for the Department.

Within the new Department, the bill would create the positions of Secretary, Under Secretary, six Assistant Secretaries, and a chief counsel.

The core of the new Department would consist of the Office of Education, Head Start, Follow Through, the Job Corps, and the institutional training programs of the Manpower Development and Training Act. The bill would transfer to the Department the instructional materials development, computer innovation, and teacher retraining responsibilities of the National Science Foundation, the educational television facilities programs now within the purview of the Secretary of Health, Education, and Welfare, and the college housing program administered by the Department of Housing and Urban Development.

Responsibility for the Bureau of Indian Affairs schools and the dependents' schools now operated by the Department of Defense would be transferred to the new Department, and the Secretary would be an ex officio member of the Board of Directors of the Corporation for Public Broadcasting. The school lunch program and responsibility for administering the graduate school now run by the Department of Agriculture would now be within this new Department. Additional transfers may be made upon the recommendation of the President and the submission of a reorganization plan to the Congress.

Finally, the Secretary would be required to report annually to the Congress on the progress of education with special weight to the kinds of data necessary for Congress to legislate effectively. Particular attention is given to the presentation of data concerning the results of education, whether as a consequence of Federal programs or not. The Secretary is also required under the terms of the bill to identify each year policy issues which in his judgment are of particular importance and to present to the Congress a detailed analysis of the full dimensions of those issues—what their causes are, why they are important, what possible solutions exist and what the positive and negative consequences of those alternative solutions might be.

The primary objective of this legislation is to locate responsibility for analyzing and defining educational policy within the Federal Government. But several other principles are also essential.

First, those responsible for policy need to be familiar with the operational problems of the area within which they work. The tradition of Federal responsibility for education is long—it dates back to the Northwest Ordinance—but the tradition of local control of education dates back even further and has been firmly established within our constitutional framework.

Two school systems, however, have long been operated by the Federal authorities. The schools operated by the Bureau of Indian Affairs and the Department of Defense would be better served by becoming the responsibility of the new Department of Education. This change in organizational location would improve the administration of these schools and provide the Department with meaningful experience about the problems associated with at least elementary and secondary education.

In making this recommendation I am indebted to the pioneering work done by the late Senator Robert F. Kennedy and

Senator EDWARD M. KENNEDY of Massachusetts, in disclosing the serious deficiencies in Indian education. Unfortunately, President Nixon's reorganization plan proposes to leave the Bureau of Indian Affairs untouched within the new Department of Natural Resources. Questions such as this are precisely the ones that should be aired in the course of hearings on executive reorganization.

A second principle in this bill is the need to plan for the future. Educational policy must be oriented to the future. The time between the identification of educational policy needs, the incorporation of solutions into operational programs, and the achievement of desired results is often many years. Graduate programs, for example, require 4 to 8 years to begin to produce desired types of manpower. It will be 12 to 20 years before Headstart has its hoped-for effect in the society. In light of lead-times like this, long-range future perspectives are essential.

Third, my legislation recognizes the broad range of educating agencies and institutions in our society. Educational policy deliberations are normally directed to schools, colleges, and universities. But we have developed a more refined understanding in recent years of the numerous agencies and influences beyond the schools which have an impact on education.

Major surveys like the Coleman report have suggested how strong nonschool influences are in predicting academic achievement. The success of "Sesame Street" is coming just as we are begining to understand the tremendous impact mass media are having on the education of our young. We know that doctors, lawyers, policemen, and our courts perform educational functions in our society as Charles Silberman has provocatively discussed in his recent book "Crisis in the Classroom." We know that industry, the military, the Peace Corps, and VISTA all perform educational functions, formal and informal, intended and unintended. The President's proposal for a family assistance program has widespread implications for education which go far beyond its day care provisions.

As the new Department addresses educational policy issues, therefore, it should consider such issues from the dual perspectives of the basic educational systems—preschool, elementary and secondary schooling, and higher education—and the nonschool educational systems such as those just identified. To stimulate this kind of concern, my bill defines education very broadly and appoints the Secretary an ex officio member of the Board of Directors of the Corporation for Public Broadcasting.

Finally, an idea that occupies a central position in this bill is the concept that the Federal role in education should be to stimulate, facilitate, and help bring about renewal in the educational systems of the Nation. This idea is closely related, of course, to the impact of the future and rapid change in our society upon educational goals and the institutional structures the Nation possesses for education.

The Federal Government should lead the way in uncovering the knowledge, developing new techniques, and making them available to our schools and colleges. Our curriculums must be up-to-date and the methods used should be based on the most current knowledge about learning and teaching. Schools and universities should be structured to generate their own renewal.

The administration should be commended for emphasizing reform and renewal as the policy underlying its 1972 budget proposals. The proposals already before the Congress to establish a National Institute of Education and a National Foundation for Higher Education will also help stimulate innovation that is long overdue throughout education.

The time has come to end the uncertain status of education in the Federal Government. Education must be represented at the highest levels of policy discussion. Its weak voice must be strengthened through the consolidation of programs which rightly belong together. These needed steps would be accomplished through the provisions of the bill I introduced today.

I ask unanimous consent that the bill be referred to the Committee on Government Operations and if and when this bill is reported by that committee, that it be referred to the Committee on Labor and Public Welfare for its consideration.

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

Mr. RIBICOFF. Mr. President, I also ask unanimous consent that the text of the bill and a section-by-section analysis be printed at this point in the RECORD.

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

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

S. 1485

A bill to establish a Department of Education

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

FINDINGS AND PURPOSE

SEC. 2. The Congress finds that—

(1) education is the largest single category of domestic public expenditure in the Nation;

(2) the role and importance of education increases as our society becomes more complex and more affluent;

(3) public policy toward education is vital to the present and long-range interests of the United States;

(4) education must be broadly conceived in terms of all those forces, institutions, and agencies which function as educating influences in the United States;

(5) the United States is the only major nation which does not have a Cabinet-level department of education; and

(6) it is essential therefore to establish a Department of Education to administer and coordinate Federal education legislation, weigh and consider major educational policy issues confronting the Nation, and facilitate a continuing renewal of the educating institutions of the United States.

DEPARTMENT OF EDUCATION ESTABLISHED

SEC. 3. There is hereby established as an executive department of the Government, the Department of Education.

OFFICERS

SEC. 4. (a) The Department shall be administered by a Secretary of Education who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) There shall be in the Department an Under Secretary of Education who shall be appointed by the President by and with the advice and consent of the Senate. The Under Secretary shall perform such duties and exercise such powers as the Secretary shall prescribe during the absence or disability of the Secretary, or in the event of a vacancy in the office of the Secretary, the Under Secretary shall act as Secretary.

(c) There shall be in the Department six Assistant Secretaries of Education and a General Counsel. Each of the Assistant Secretaries shall be appointed by the President, by and with the advice and consent of the Senate. Each Assistant Secretary shall perform such duties and exercise such powers as the Secretary shall prescribe. During the absence or disability, or in the event of vacancies in the offices, of the Secretary and Under Secretary, the Assistant Secretaries and the General Counsel shall act as Secretary in the order prescribed by the Secretary.

FUNCTIONS OF THE DEPARTMENT

SEC. 5. (a) It is the principal function of the Department to promote the cause and advancement of education throughout the United States.

(b) In addition to any other function of the Secretary under the provisions of this Act, the Secretary is authorized to—

(1) advise the President with respect to the progress of education;

(2) develop and recommend to the President appropriate policies and programs to foster the orderly growth and development of the Nation's educational facilities and resources especially in the light of long-range requirements;

(3) exercise leadership at the direction of the President in coordinating Federal activities affecting education;

(4) conduct continuing comprehensive surveys, collect, analyze, and disseminate relevant information concerning education in the United States;

(5) provide information and such other assistance as may be authorized by the Congress to aid in the maintenance of efficient school, college, and university systems;

(6) encourage comprehensive long-range planning by State and local governments, especially with respect to coordinating Federal, State, and community educational activities at the local level; and

(7) conduct studies, make recommendations, and administer discretionary programs to facilitate the continuing renewal of the American educational system.

TRANSFER OF AGENCIES

SEC. 6. (a) All officers, employees, assets, liabilities, contracts, property, and records as are determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with any function of the following agencies, offices or parts of agencies or offices, are hereby transferred to the Department:

(1) the Office of Education of the Department of Health, Education and Welfare;

(2) the Office of Child Development of the Department of Health, Education and Welfare;

(3) the Office of the Assistant Secretary of

Health, Education and Welfare for Education;

(4) any advisory committee in the Department of Health, Education and Welfare giving advice to and making recommendations concerning education.

(c) In any case where all of the functions of any agency or office are transferred pursuant to this title, except any committee transferred under paragraph (4) of subsection (a) of this section, such agency or office shall lapse.

TRANSFER OF FUNCTIONS

SEC. 7. (a) There are hereby transferred to the Secretary all functions of the Secretary of Health, Education and Welfare—

(1) with respect to and being administered by him through the Office of Education;

(2) with respect to and being administered by him through the office of Child Development;

(3) with respect to all laws dealing with the relationship between Gallaudet College, Howard University, Freedmen's Hospital, and American Printing House for the Blind, and the Department of Health, Education and Welfare;

(4) under section 394 of the Communications Act of 1934, relating to Federal grants for the construction of television broadcasting facilities to be used for educational purposes;

(5) under part B of title II and title III of the Manpower Development and Training Act of 1962 which the Director of the Office of Management and Budget determines relate to institutional manpower training; and

(6) under the Drug Abuse Educational Act of 1970.

(b) There are hereby transferred to the Secretary all functions of the Director of the Office of Economic Opportunity—

(1) under sections 222(a) (1) and (2) of the Economic Opportunity Act of 1964 relating to the project Headstart and Follow Through programs; and

(2) under part A of title I of the Economic Opportunity Act of 1964 relating to the Job Corps.

(c) There are hereby transferred to the Secretary all functions of the Secretary of Defense with respect to the operation of schools for dependents of members of the Armed Forces.

(d) There are hereby transferred to the Secretary all functions of the Secretary of the Interior with respect to the operation of schools for Indian children being administered by him through the Bureau of Indian Affairs.

(e) There are hereby transferred to the Secretary all functions of the Secretary of Agriculture—

(1) under the National School Lunch Act;

(2) with respect to the operation of the Graduate School, U.S. Department of Agriculture.

(f) There are hereby transferred to the Secretary all functions of the Secretary of Housing and Urban Development under title IV of the Housing Act of 1950 relating to college housing.

(g) There are hereby transferred to the Secretary all functions of the Secretary of Labor under title III of the Manpower Development and Training Act of 1962 which the Director of the Office of Management and Budget determines relate to institutional manpower training.

(h) There are hereby transferred to the Secretary all functions of the National Science Foundation which the Director of the Office of Management and Budget determines relate to instructional personnel development programs, instructional program development and programs in computer innovations designed for use in education.

REDESIGNATION OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SEC. 8. (a) The Department of Health, Education, and Welfare is hereby redesignated the Department of Health and Welfare, and the Secretary of Health, Education, and Welfare is hereby redesignated the Secretary of Health and Welfare.

(b) All laws, orders, regulations, and other matters relating to the Department of Health, Education, and Welfare or to the Secretary of Health, Education, and Welfare shall, insofar as they are not inconsistent with the provisions of this Act, be deemed to relate to the Department of Health and Welfare or to the Secretary of Health and Welfare.

NATIONAL INSTITUTE OF EDUCATION

SEC. 9. (a) There is established within the Department of Education a National Institute of Education. The Institute shall be administered by a Director appointed by the Secretary under the provisions of title 5, United States Code, governing appointments in the competitive civil service. There shall be a Deputy Director, appointed by the Secretary under the provisions of title 5, United States Code, governing appointments in the competitive civil service, who shall act for the Director and exercise such functions as the Director may prescribe. There is hereby established a National Advisory Council on Educational Research and Development.

(b) The Institute shall, in accordance with the provisions of this section, seek to improve education in the United States by—

(A) conducting research and related activities designed to identify and resolve problems in education in the United States and to achieve the objectives of education in the United States;

(B) advancing the practice of education, as an art, science, and profession;

(C) strengthening the scientific and technological foundations of education; and

(D) building an effective educational research and development system.

Activities authorized under this section shall be carried out with express attention to the unique characteristics of behavioral and social science research and development together with an awareness that the principal responsibilities for education is State and local throughout the United States.

(c)(1) The Council shall consist of fifteen members appointed by the President, by and with the advice of the Senate, the Director, and such other ex officio members who are officers of the United States as the President may designate. Eight members of the Council (excluding ex officio members) shall constitute a quorum. The Chairman of the Council shall be designated by the President.

(2) The term of office of the appointed members of the Council shall be three years, except that (A) any member appointed to fill a vacancy shall serve only such portion of a term as shall not have been expired at the time of such appointment, and (B) in the case of initial members, five shall serve terms of two years and five shall serve terms of one year. Any person who has been a member of the Council for six consecutive years shall thereafter be ineligible for appointment to the Council during the two-year period following the expiration of such sixth year.

(d) Subject to general regulations of the Secretary promulgated for the management of the Institute, the Council shall——

(1) advise the Director and the Secretary on the policies, priorities, and management procedures of the Institute;

(2) review, and advise the Secretary on the status of educational research in the United States;

(3) meet at the call of the Chairman, except that it shall meet (A) at least six times during each fiscal year, or (B) whenever one-third of the members request a meeting in writing, in which event one-third of the members (excluding ex officio members) shall constitute a quorum; and

(4) submit an annual report to the President on the activities of the Institute, and on educational research in general, which shall include such recommendations and comments as the Council may deem appropriate, and shall be submitted to the Congress as part of the Secretary's annual report.

(e) Each major division of the Institute shall be headed by an Assistant Director of the institute. Such Assistant Director shall be compensated at the rate prescribed for grade GS–18 in section 5332 of title 5, United States Code, and shall perform such functions as the Director may prescribe.

(f) In order to carry out its objectives, the Institute is authorized to—

(1) conduct educational research,

(2) collect and disseminate the findings of educational research,

(3) train individuals in educational research and related activities,

(4) assist and foster research, collection, and dissemination or information, and training through grants, or technical assistance to, or jointly financed cooperative arrangements with, public or private organizations, institutions, agencies, or individuals,

(5) promote the coordination of such research and research support within the Federal Government,

(6) construct or provide (by grant or otherwise) for such facilities and equipment as he determines may be required.

(g) The Director is authorized, in accordance with regulations promulgated by the Secretary, to appoint and compensate, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule rates, such technical and professional personnel as may be necessary to accomplish the functions of the Institute.

(h) No grant or contract shall be made by the Institute without first securing the advice and counsel of a panel of non-government experts qualified to review the topic and type of research or related activity proposed to be undertaken through such grant or contract.

(i) There are hereby authorized to be appropriated, without fiscal year limitation, $400,000,000, in the aggregate, for the period beginning July 1, 1972, and ending June 30, 1974, to carry out the functions of the Institute. Sums so appropriated shall, notwithstanding any other provision of law unless enacted in express limitation of this subsection, remain available for the purposes of this subsection until expended.

FEDERAL INTERAGENCY COMMITTEE ON EDUCATION

SEC. 10. (a) There is hereby established a "Federal Interagency Committee on Education".

(b) The Committee shall study and make such recommendations as may be necessary to assure effective coordination of Federal programs affecting education, including—

(1) development of Federal programs in accordance with the educational goals and policies of the Nation;

(2) consistent administration of policies and practices among Federal agencies in the conduct of similar programs;

(3) full and effectve communication among Federal agencies to avoid unnecessary duplication of activities;

(4) adequate procedures for the availability of information on educational matters requested by the Secretary; and

(5) full and effective cooperation with the Secretary on such studies and analyses as are necessary to carry out the purposes of this Act.

(c) The Committee shall be composed of the Secretary, who shall be the Chairman, and one appropriate representative of each of the following: The Department of State, the Department of Defense, the Department of Agriculture, the Department of Labor, the Department of Health and Welfare, the National Science Foundation, the Atomic Energy Commission, the National Aeronautics and Space Administration, and the National Endowments for the Arts and the Humanities. Other members may be added by Executive Order of the President as he determines may be necessary.

(d) The Chairman may invite Federal agencies in addition to those which are represented on the Committee under the provisions of subsection (c) of this section to designate representatives to participate in meetings of the Committee on matters of substantial interest to such agencies which are to be considered by the Committee.

(e) The Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Executive Director of the Domestic Council, and the Director of the Office of Science and Technology may each designate a member of his staff to attend meetings of the Committee as observers.

(f) Each Federal agency which is represented on the Committee under the provisions of subsection (c) of this section, shall furnish necessary assistance to the Committee in accordance with section 214 of the Act of May 3, 1945 (31 U.S.C. 691).

NATIONAL ADVISORY COMMISSION ON EDUCATION

SEC. 11. There is hereby established a National Advisory Commission on Education composed of fifteen members appointed by the President, by and with the advice and consent of the Senate from among individuals—

(1) who are familiar with the educational needs and goals of the United States,

(2) who have competence in assessing the progress of educational agencies, institutions, and organizations in meeting those needs and achieving those goals,

(3) who are familiar with the administration of State and local educational agencies and of institutions of higher education, and

(4) who are representative of the mass media, industry and the general public.

Members shall be appointed for terms of three years, except that (1) in the case of initial members, one-third of the members shall be appointed for terms of one-year each and one-third of the members shall be appointed for terms of two years each, and (2) appointments to fill the unexpired portion of any terms shall be for such portion only.

(b) The National Commission shall—

(1) review the administration of, general regulations for, and operation of Federal education programs;

(2) advise the Secretary and other Federal officials with respect to the educational needs and goals of the Nation and assess the progress of the renewal of appropriate agencies, institutions, organizations of the Nation in order to meet those needs and achieve those goals;

(3) conduct objective evaluations of specific education programs and projects in order to ascertain the effectiveness of such programs and projects in achieving the purpose for which they are intended;

(4) make recommendations (including recommendations for changes in legislation) for the improvement of the administration and operation of Federal education programs;

(5) consult with Federal, State, and local and other educating agencies, institutions, and organizations with respect to assessing education in the United States and the improvement of the quality of education, including—

(A) areas of unmet needs in education and national goals and the means by which those areas of need may be met and those national goals may be achieved.

(B) determination of priorities among unmet needs and national goals; and

(C) Special means of improving the quality and effectiveness of teaching, curricula, and educational media and of raising standards of scholarship and levels of achievement;

(6) conduct national conferences on the assessment, improvement, and renewal of education, in which national and regional education associations and organizations, State and local education officers and administrators, and other education-related organizations, institutions, and persons (including parents of children participating in Federal education programs) may exchange and disseminate information on the improvement of education; and

(7) conduct, and report on, comparative studies and evaluations of education systems in foreign countries.

(8) advise and assist in the coordination of all the advisory bodies to Federal education programs.

(c) The National Commission shall make an annual report, and such other reports as it deems appropriate, concerning its findings, recommendations, and activities to the President for submission to the Congress once each year.

(d) In carrying out its responsibilities under this section, the National Commission shall take, together with the Secretary, whatever action is necessary to carry out section 438 of the General Educational Provisions Act, to devise a manageable and effective advisory structure for the Department. The National Commission shall advise the Secretary on the number of advisory bodies that are necessary and the manner in which such bodies relate to one another. The National Commission shall consult with the National Advisory Council on the Education of Disadvantaged Children, the National Advisory Council on Supplementary Centers and Services, the National Advisory Council on Education Professions Development, the National Advisory Council on Educational Research and Development and such other advisory councils and committees as may be appropriate to carry out its functions under this subsection. All Federal agencies are directed to cooperate with the National Commission in carrying out its functions under this subsection.

(e) The National Commission is authorized to engage such technical assistance as may be required to carry out its functions and the Secretary shall, in addition, make available to the National Commission such secretarial, clerical, and other assistance and such pertinent data prepared by the Department as the National Commission may require to carry out its functions.

(f) Members of the National Commission who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the National Commission or while otherwise engaged in the business of the National Commission, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service for grade GS–18 under section 5332 of title 5, United States Code, including travel time, and while so serving on the business of the National Commission away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(g) The President shall appoint the National Commission not later than thirty days after the date of enactment of this Act.

POWERS AND DUTIES OF THE SECRETARY

SEC. 12. (a) The Secretary shall be responsible for the exercise of all functions of the Department, and shall have authority to direct and supervise all personnel and activities thereof.

(b) (1) The Secretary is authorized to appoint and fix the compensation of such officers and employees, and prescribe their functions, as may be necessary to carry out the purposes and functions of this Act.

(2) The Secretary may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

(c) The Secretary may promulgate such rules and regulations as may be necessary to carry out the functions vested in him or in the Department, and he may delegate authority for the performance of any such function to any officer or employee under his direction and supervision.

(d) The Secretary shall cause a seal of office to be made for the Department, of such design as the President shall approve, and judicial notice shall be taken thereof.

(e) The Secretary shall as soon as practicable after the end of the fiscal year make a report to the President for submission to the Congress on the activities of the Department during the preceding fiscal year. Such report shall also contain objective data on: enrollments; expenditures; numbers of teachers and other categories of professional and related personnel; numbers of professionals who lack full qualifications; needs for classrooms and other construction; special needs of critical concern such as the disadvantaged, rural and urban education, and progress made toward the continuing renewal of education; the results and outcomes of education and schooling; budget projections for five years based on actual or anticipated appropriations for the fiscal year in which the annual report is issued; the advisory structure of the Department including the names and composition of advisory committees and councils and the relationships the committees and councils bear to one another; and similar data. The report shall also include each year a complete discussion of one or more basic educational policy issues which in the Secretary's judgment have great salience.

TRANSFERRED PERSONNEL

SEC. 13. Each officer or employee of the United States or any department or agency thereof who is transferred at any time to the Department of Education shall be deemed, effective as of the date of such transfer, to be an officer or employee of the Department. No reappointment of any such officer or employee shall be required because of his transfer to that department. Except as otherwise specifically provided by this section, no such officer or employee shall be reduced in rank, grade, seniority, or rate of compensation because of any such transfer.

TECHNICAL AMENDMENTS

SEC. 14. (a) Section 19(d)(1) of title 3, United States Code, is hereby amended by inserting before the period at the end thereof a comma and the following: "Secretary of Education".

(b) Section 101 of title 5, United States Code, is amended by inserting at the end thereof the following:

"The Department of Education".

(c) Subchapter II of chapter 53 of title 5, United States Code (relating to executive schedule pay rates), is amended as follows:

(1) Section 5312 is amended by adding at the end thereof the following:

"(13) Secretary of Education,".

(2) Section 5314 is amended by adding at the end thereof the following:

"(57) Under Secretary of Education."

(3) Section 5315 is amended by adding at the end thereof the following:

"(95) General Counsel, Department of Education."

"(96) Assistant Secretaries of Education (6)."

"(97) Director, National Institute of Education, Department of Education."

(4) Section 5316 is amended by adding at the end thereof the following new paragraph:

"(130) Deputy Director, National Institute of Education, Department of Education."

(d) (1) Effective 90 days from the date of enactment of this Act, section 516 and 517 of the Revised Statutes of the United States (20 U.S.C. 1, 2) are repealed.

(2) Effective 90 days from the date of enactment of this Act, the Cooperative Research Act is amended by striking out sections 2 and 3 thereof.

SAVINGS PROVISIONS

SEC. 15. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this Act, by (A) any agency or office, or part thereof, any functions of which are transferred by this Act, or (B) any court of competent jurisdiction, and

(2) which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary, by any court of competent jurisdiction, or by operation of law.

(b) The provisions of this Act shall not affect any proceedings pending at the time this section takes effect before any agency or office, or part thereof, functions of which are transferred by this Act; but such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Department. Such proceedings, to the extent they do not relate to functions so transferred, shall be continued before the agency or office, or part thereof, before which they were pending at the time of such transfer. In either case orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Secretary, by a court of competent jurisdiction, or by operation of law.

(c) (1) Except as provided in paragraph (2)—

(A) the provisions of this Act shall not affect suits commenced prior to the date this question takes effect, and

(B) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted.

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any agency or office, or part thereof, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any agency or office, or part thereof, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act. Causes of actions, suits, or other proceedings may be asserted by or against the United States or such official of the Department as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this subsection.

(2) If before the date on which this Act takes effect, any agency or office, or officer thereof in his official capacity, is a party to a suit, and under this Act—

(A) such agency or office, or any part thereof, is transferred to the Secretary, or

(B) any function of such agency, office, or part thereof, or officer is transferred to the Secretary,

then such suit shall be continued by the Secretary (except in the case of a suit not involving functions transferred to the Secretary, in which case the suit shall be continued by the agency, office, or part thereof, or officer which was a party to the suit prior to the effective date of this Act).

(d) With respect to any function transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any agency, office, or part thereof, or officer so transferred or functions of which are so transferred shall be deemed to mean the department or officer in which such function is vested pursuant to this Act.

(e) Orders and actions of the Secretary in the exercise of functions transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the agency or office, or part thereof, exercising such functions, immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Secretary.

(f) In the exercise of the functions transferred under this Act, the Secretary shall have the same authority as that vested in the agency or office, or part thereof, exercising such functions immediately preceding their transfer, and his actions in exercising such functions shall have the same force and effect as when exercised by such agency or office, or part thereof.

AMENDMENT TO THE COMMUNICATIONS ACT OF 1934

SEC. 16. Section 396(c)(1) of the Communications Act of 1934 is amended by inserting after the first sentence thereof the following sentence: "The Secretary of Education shall be an ex officio member of the Board.".

CODIFICATION

SEC. 17. The Secretary is directed to submit to the Congress within two years from the effective date of this Act, a proposed codification of all laws which contain functions transferred to the Secretary by this Act.

FEDERAL CONTROL PROHIBITED

SEC. 18. Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any local or State educational agency, institution, or school system.

DEFINITIONS

SEC. 19. As used in this Act, the term—

(1) "Committee" means the Interagency Committee on Education;

(2) "Council" means the National Council on Educational Research and Development of the National Institute of Education;

(3) "Director" means the Director of the National Institute of Education;

(4) "Department" means the Department of Education;

(5) "education" means that process by which individuals and groups develop or acquire skills, competencies, attitudes, values, and new understandings. Formally or informally, education may be undertaken in, offered by, or received from preschool elementary, secondary, and post-secondary institutions as well as other kinds of institutions, agencies, organizations, and individuals, including but not limited to the home and family, the mass media, industry, and the military;

(6) "educational research" includes research, planning, surveys, evaluations, invesigations, experiments (including experimental schools), development, demonstration and dissemination in the field of education;

(7) "function" includes powers and duties;

(8) "National Commission" means the National Advisory Commission on Education;

(9) "Secretary" means the Secretary of the Department of Education;

(10) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts, or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies; and includes any other public institution or agency having administrative control and direction of a public elementary or secondary school; and

(11) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law for this purpose.

EFFECTIVE DATE; INITIAL APPOINTMENT OF OFFICERS

SEC. 20. (a) This Act, other than this section, shall take effect ninety days after the enactment of this Act, or on such prior date after enactment of this Act as the President shall prescribe and publish in the Federal Register.

(b) Notwithstanding subsection (a), any of the officers provided for in subsections (a), (b), and (c) of section 4 may be appointed in the manner provided for in this Act, at any time after the date of enactment of this Act. Such officers shall be compensated from the date they first take office, at the rates provided for in this Act. Such compensation and related expenses of their offices shall be paid from funds available for the functions to be transferred to the Department pursuant to this Act.

DEPARTMENT OF EDUCATION BILL—SECTION-BY-SECTION ANALYSIS

Section 2. States the Congressional finding that education is of great importance in our complex and affluent society, that public policy respecting education is therefore of vital interest to the present and long-range interests of America, that educational policy must include all the educating influences in our society, and that the United States is the only major Nation which does not have a Cabinet level department of education.

Section 3. Establishes a Department of Education.

Section 4. Creates the office of Secretary, Under Secretary, six Assistant Secretaries, and a General Counsel.

Section 5. States that the Department is to promote the cause and advancement of education throughout the United States, to advise the President respecting the programs of education, to develop policies and programs to foster the orderly growth and development of educational resources and facilities, to coordinate Federal activities affecting education, to conduct surveys, collect and analyze data, and disseminate information, to provide information and assistance

to aid in the maintenance of school, college, and university systems, to encourage long-range planning by State and local government, and to facilitate the continuing renewal of the American educational system.

Sections 6 & 7 (generally). Transfer the Office of Education, the Office of Child Development, the Office of the Assistant Secretary of Health, Education and Welfare for Education, and any advisory committees in HEW concerning education to the Department of Education. Also included in the transfer are the functions of the Secretary of HEW respecting educational television broadcasting facilities and the Manpower Development and Training Act of 1962 relating to institutional manpower training.

Also transferred to the new Department are Head Start, Follow Through, Job Corps, Department of Defense dependents' schools, school operated by the Bureau of Indian Affairs, the Graduate School operated by the Department of Agriculture, and the National School Lunch Act. College housing is transferred to the Department as are the functions of the Secretary of Labor under Title III of the Manpower Development and Training Act which relate to institutional manpower training and the functions of the National Science Foundation relating to curriculum development, computer innovations in education, and teacher retraining.

Section 8. Redesignates the Department of Health, Education and Welfare as the Department of Health and Welfare.

Section 9(a). Establishes a National Institute of Education within the Department of Education headed by a Director and Deputy Director. Establishes a National Advisory Council on Educational Research and Development.

Sections 9(b) & 9(f). Authorize the Institute to seek to improve education by conducting research and related activities to identify and resolve problems in education and to achieve the objectives of education, to advance the practice of education, to strengthen the scientific and technological foundations of education, and to build an effective research and development system. The Institute is also authorized to collect and disseminate findings, train researchers, grant and contract for research, promote the coordination of research, and provide for facilities and equipment.

Section 9(c). Establishes a three-year term for the fifteen-member Advisory Council.

Section 9(d). Requires the Advisory Council to advise the Secretary and the Director on the policies, priorities and management of the Institute and the status of educational research in the United States, and to present an annual report to the President on these matters.

Section 9(e). Authorizes the appointment of directors of the major divisions of the Institute at a grade of GS–18.

Section 9(g). Authorizes exceptions to the Civil Service regulations for the purpose of employing scientists and technicians.

Section 9(h). Requires panel review of Institute grants and contracts.

Section 9(i). Authorizes $400,000,000 in the aggregate through the period ending June 30, 1974.

Section 10. Establishes a Federal Interagency Committee on Education to study and make recommendations to assure effective coordination of Federal education programs. Appoints the Secretary chairman and provides for appropriate representatives from the Departments of State, Defense, Agriculture, Labor, and Health and Welfare, and the National Science Foundation, Atomic Energy Commission, the National Aeronautics and Space Administration, and the National Endowments for the Arts and the Humanities.

Section 11 (generally). Establishes a National Advisory Commission on Education to review the operation of Federal education programs, advise the Secretary on educational needs, goals, and renewal, conduct objective evaluations of education programs and projects, make recommendations for the improvement of Federal programs, consult with Federal, State and local agencies respecting the improvement of the quality of education, and conduct conferences on the assessment, improvement, and renewal of education.

Section 11 (d). Authorizes the Commission to assist the Secretary in establishing a rational and well-integrated advisory structure for the Department.

Section 12. Defines powers and duties of the Secretary. Requires an annual report containing objective data on education including the results and outcomes of education, five-year budget projections, progress toward the renewal of education in the Nation, and a report on the advisory structure of the Department. The report is also to include each year a complete analysis of major educational policy issues.

Section 13. Makes provisions for all transferred personnel insuring no loss of rank, grade, seniority, or rate of compensation because of transfer.

Section 14. Contains technical amendments to the United States Code.

Section 15. Contains savings provisions to assure that all actions pending before preexisting agencies or programs remain in force and standing despite the transfer of those agencies or programs to the new Department.

Section 16. Amend the Communications Act of 1934 by making the Secretary of Education an *ex officio* member of the Board of the Corporation for Public Broadcasting.

Section 17. Requires the Secretary to submit within two years of enactment a proposed codification of all laws which contain functions transferred to the Secretary by this Act.

Section 18. Prohibits Federal control of education with respect to any State or local educational agency.

Section 19 (generally). Defines terms used throughout the Act.

Section 19(5). Defines education to include not only concern for preschool, elementary, secondary, and post-secondary education but also concern for the educational functions of other agencies and institutions such as the home and family, the military, industry, and the mass media.

Section 20. Establishes the effective date of the Act as 90 days after enactment.

Mr. MONDALE. Mr. President, I commend the senior Senator from Connecticut (Mr. RIBICOFF) for introducing a bill to create a Cabinet level Department of Education.

Education has never received the priority it deserves, and I am delighted to support proposals such as these which are designed to make more visible and tangible our commitment to the education of American children. While I have reservations about some parts of the proposed legislation—such as the provision which would place Headstart and child development programs in this newly created Department—I strongly support the concept and thrust of this proposal and I am pleased to be a cosponsor of it.

Senator RIBICOFF, who previously served as Secretary of Health, Education, and Welfare, and brings that knowledge and expertise to this problem, is doing the cause of education a great service by introducing the bill, and I commend him for it.

Mr. HUMPHREY. Mr. President, I am pleased to join the distinguished Senator from Connecticut (Mr. RIBICOFF) in the introduction of the Department of Education Act. The senior Senator from Connecticut is to be highly commended for his continued legislative effort, initiated out of his firsthand experience as Secretary of Health, Education, and Welfare, to establish a focal point for education within the Federal Government and to give a decisive emphasis to America's educational priorities.

Education is a matter of paramount concern to the American people. It is the largest single category of domestic public expenditure in the Nation. It is recognized as an essential human resource investment of the highest economic and social importance. Surely, in the midst of rhetoric about Federal departmental reorganization to improve the delivery of services, the reform of our educational bureaucracy demands priority attention by Congress. There must be a high level authority and responsibility within the Federal Government for the development of a new education policy for America.

In the RECORD of March 30, 1971, I presented the outline of this education policy. I believe that the Department of Education Act offers the essential administrative framework for drafting that policy by which we can at last assure excellence, imagination, and full opportunity in American education. We must put the full educational resources of the Federal Government at the disposal of the American people, over one-fourth of whom are of school age—5 to 17—with 8.5 million more enrolled in postsecondary education courses. That can only be done through the creation of a department under a Cabinet-level Secretary of Education, providing a spokesman for education at the summit of Government and bringing together our scattered Federal educational activities. In addition to the reorganization and transfer of educational functions of Federal agencies, this act provides for the establishment of a Federal Interagency Committee on Education to assure the effective coordination of all Federal programs affecting education.

The establishment of a Department will also enable us to inaugurate a decisive forward advance in American education. Included in this substantially revised and comprehensive legislation, for example, is a provision for the establishment, within the Department, of a National Institute of Education to undertake and foster research on important problems and new directions in education. Moreover, there would be a National Advisory Commission on Education, appointed by the President, by and with the advice and consent of the Senate, to bring competent public participation to bear in the review of the administration of Federal education programs and in providing valuable counsel on the educational needs and goals of the Nation. The legislation also calls for annual reports to the President and Congress to assure effective oversight of progress in the meeting of these critical needs and toward the achievement of all-important goals for the enrichment of the lives of our children and youth.

Let it be clear that this bill does not

call for any so-called Federal control of education, but rather for an end to duplication and confusion in Federal programs of assistance to our States and communities that are today hard pressed to find the funds and resources to assure quality standards and unrestricted opportunities in education for all our people.

Mr. President, there must be no further delay in addressing the critical education needs of America. I believe there is an overwhelming national consensus that the time has come to establish a Department of Education to guarantee that these needs will be met now with the full resources of the Federal Government.

By Mr. JAVITS (for himself, Mr. HRUSKA, Mr. COOPER, Mr. DOLE, Mr. PELL, Mr. MCGEE, and Mr. TOWER):

S. 1486. A bill to establish an Antitrust Review and Revision Commission. Referred to the Committee on the Judiciary.

Mr. JAVITS. Mr. President, on behalf of myself, Mr. HRUSKA, Mr. COOPER, Mr. DOLE, Mr. MCGEE, Mr. PELL, and Mr. TOWER, I introduce a bill to establish an Antitrust Review and Revision Commission. I ask that the bill be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. JAVITS. Mr. President, this bill would establish an 18-member bipartisan Commission composed of eight Members of Congress, four members of the executive branch, and six experts from the private sector, to be chosen in such a manner as to be broadly representative of the various interests, needs, and concerns which the antitrust laws may affect. The Commission would be charged with the duties of examining our antitrust laws and making recommendations for revising them. The Commission would specifically be asked to investigate the effect of the antitrust laws upon:

Price levels, product quality and service;

Employment, productivity, output, investment and profit;

Concentration of economic power and financial control;

Foreign trade and international competition; and

Economic growth.

The bill provides a period of 2 years for this study, in order that fundamental and basic relationships between the antitrust laws and our increasingly complex economy can be thoroughly analyzed and so that proposals for revision of the laws may be given careful and thoughtful review.

There are several reasons why I believe a review and revision of the antitrust statutes has become an economic necessity for our country. Three major reasons are as follows: First, the market structure of our economy and even the nature of the economy itself have changed radically since the adoption of the Sherman Act in 1890; statutes designed to meet the needs of a 19th century economy cannot be expected to provide direction for economic policies of the 1970's; second, the vague language of the existing antitrust statutes and the lack of clarity as to the purposes of those statutes have left the courts, the bar, and the business community with little guidance for deciding cases, predicting results, or making business decisions; the result has been confusion, conflict and uncertainty in the law; third, the general language of the law has required that the major antitrust policies be shaped and expressed by the judiciary, which has no significant expertise in the economy. This has led to irrational applications of and developments in the law, some of which may be said to be anticompetitive and genuinely in conflict with the declared purposes of our antitrust statutes. I will briefly discuss each of these three points in turn.

Two major historical developments affecting the nature and market structure may have rendered obsolete many 19th century conceptions of antitrust and, at the same time, have generated a need for different antitrust rules and weapons.

The first of these historical changes is the evolution of an essentially laissez-faire economy into a mixed economy, characterized by pervasive government involvement as participant and regulator.

The second is the growth of a nation of many small businesses and few "trusts" into one whose economy is dominated by corporate giants which, it has been suggested, operate more economically as far as the consumer is concerned under stable conditions conducive to planning than can small businesses in a perfectly competitive economy.

Our antitrust laws, as interpreted by the courts, have not kept pace with these changes. Perhaps the courts are not to be blamed for this, for the judicial function is to interpret statutes consistently with their purpose. However, Congress has the responsibility for seeing that laws and their purpose are kept up to date; antitrust policy in changing times should be made by Congress and not the courts.

It is my hope that the Commission to be established by my bill would give full consideration to the implications of these historical trends for antitrust policy and suggest to Congress appropriate corrective action.

Our antitrust laws are rife with conflict and uncertainty. Vague statutory terms about restraints of trade and attempts to monopolize have been given substance and content by the courts with practically no guidance from Congress. Indeed, it could be argued that Congress has given worse than no guidance by imposing conflicting and contrary mandates on the courts, for it is difficult to reconcile the philosophy of earlier statutes with the price-equivalency of the Robinson-Patman Act, which dampens competition—though it may be necessary for public policy reasons. Confusion has been increased by the overlapping jurisdictions of the Justice Department and the Federal Trade Commission, which should serve separate prosecutorial and regulatory functions, and by the uncertain relationship between private antitrust actions and suits brought by the Government.

The problem facing lawyers and businessmen was well summarized by Robert H. Jackson when he was Assistant Attorney General for Antitrust:

> In view of the extreme uncertainty which prevails as a result of these vague and conflicting adjudications, it is impossible for a lawyer to determine what business conduct will be pronounced lawful or unlawful by the courts. The situation is embarrassing to businessmen wishing to obey the law and to government officials attempting to enforce it.

If anything, the situation has become far worse since that statement was made in 1938. The Antitrust Review and Revision Commission could perform a great service by laying a basis for a consistent and predictable antitrust law.

In large part because of the lack of economic expertise in the courts and even in the Justice Department, where prosecutorial zeal or political considerations seem sometimes to outweigh economic realities, both the enforcement and interpretation of antitrust statutes have at times been economically irrational or anticompetitive. For example, corporations are prohibited from making practical arrangements with wholly owned subsidiaries; mergers of small town banks are forbidden by the Supreme Court while horizontal mergers between corporate giants sometimes go unchallenged; rules relating to geographical or product market definitions are stretched beyond reason in order to foreclose conglomerate mergers with respect to which Congress has expressed no policy; the Robinson-Patman Act is interpreted in a manner designed further to limit rather than promote competition. The Commission I envision would investigate into such matters and could contribute greatly to the formation of new, economically rational antitrust policies by the Congress.

Congess now has the benefit of two recent Presidential Task Force reports on the antitrust laws, commissioned by Presidents Johnson and Nixon. These reports made several interesting observations and suggestions. Proposals for legislative action ranged in scope from the breakup of very large firms in highly concentrated industries to a limitation on the duration of antitrust decreases. I believe two general features of the reports tended to render them ineffective. First, in large part the focus of the reports was on the technical improvement of existing laws rather than the clarification and reordering of fundamental concepts. It may be of course that intensive investigation would support the basic principles of our existing laws, but I believe that it is most important that such an investigation be made. A Commission would have the mandate and the time to do so. Second, the task forces were not made up of officials in a position to effectuate their policy conclusions; the reports were simply forwarded by experts to officials who had not participated in making the studies and recommendations.

The Commission to be established by my bill would insure the involvement of Congressmen and executive officials who would be in a position to help implement

their proposals. These are some of the reasons why I believe it is necessary to establish a high-level Commission to study all aspects of our antitrust policy and make appropriate recommendations to Congress for revising the law. Only on the basis of the recommendations of such a Commission is Congress likely to be moved to action. Such a Commission could be a very effective instrument of reform.

I am not suggesting that we scrap our antitrust laws or that competition is an anachronism. Nor am I so naive as to think that the Commission will resolve all the disparate views about the role of antitrust policy into one broad consensus. However, the time has come when I feel the Commission could make recommendations which would attract broad support in Congress and have a major effect in improving and facilitating our whole enterprise system.

The Commission could profitably give its attention to marketing techniques. With the growth of the economy a number of novel marketing techniques have evolved, and with them have come, inevitably, antitrust problems. These problems include resale price maintenance, fair trade laws, limitations on competition between distributors and a whole panoply of problems connected with franchising.

The Commission could perform a valuable service by clarifying the relationship between the Justice Department and the FTC in the enforcement scheme. At present, there is a good deal of overlap in their functions, particularly under the Clayton Act. Similarly the relationship between private antitrust actions and government actions could be clarified.

Another extremely valuable contribution the Commission could make would be to determine if the Robinson-Patman Act, forbidding price discrimination, continues to serve a useful purpose and, if so, to rewrite the act so that the courts which must interpret it, and the businessmen who must obey its commands, can make some sense out of it. For years now the courts have been extending pointed invitations to Congress to do something about this problem, and it is time the invitation was accepted.

Another area in which the Commission clearly could make a most valuable contribution is in the application of our domestic antitrust laws to foreign trade and investment. For many years, experts have been pointing out how the rigid application of the antitrust laws has put our exporters at a serious disadvantage abroad. That is not a matter to be taken lightly in these days of concern with our balance of payments and our trade balance.

No less pressing is the need to encourage the investment of private capital of the United States and other developed countries in the developing countries. Again it is widely felt that our antitrust laws are an inhibiting factor, particularly to the establishment of consortia of United States and other private companies from industrialized countries grouping to invest in less developed countries. In both instances, there is a deep conflict between our antitrust philosophy and other major national policies when there should be coordination and thoughtful accommodation between them.

Many experts have concluded that uncertainty about the enforcement of U.S. antitrust laws extraterritorially is the greatest single inhibitor to increased foreign trade and investment. The report of the ABA Committee on Trade Regulation in 1963, for example, highlights the following specific areas of uncertainty in this field:

First, uncertainty as to the terms under which a U.S. business may enter into a joint venture with a competitor, either American or foreign, to engage in business abroad;

Second, uncertainty as to the extent to which U.S. business may cooperate in association with foreign competitors, even when the association is required or permitted by the laws of the foreign country where the activity takes place;

Third, uncertainty as to the extent to which a U.S. business may include territorial and other limitations in patents, trademarks, and know-how licenses;

Fourth, uncertainty due to conflicts between antitrust laws of the United States and the laws of foreign countries and, most unfortunately, economic communities, such as the European Common Market; and

Fifth, protests by foreign governments due to the extraterritorial application of U.S. antitrust laws to their nationals.

The list of critical cases which the proposed Commission would be charged with studying could be elaborated at much greater length. But these are some of the major areas of concern.

In the last analysis the enormous job of studying, recommending, and enacting the antitrust laws is with the Congress. The tendency has been in recent years for a major part of the antitrust policy to be articulated by the enforcement agencies and the courts. The Commission I propose would enable Congress, if it will, again to establish basic antitrust policy; and such policy is basic to the economic future of the United States at home and abroad and to its leadership in world affairs.

In short, the keystone to effective operation of the modern American economy may be a revision of the antitrust laws. Our antitrust laws, now over 80 years old, have become obsolete. It is high time that Congress take the matter in hand and determine our national policy on U.S. business—marvel of our world and of economic history. We could help enable it to perform its legendary feats for our people and for peace and well-being and justice in the world, if we reviewed the rules under which it operates.

Mr. President, I have introduced somewhat similar bills in other Congresses, generally with one cosponsor, or none; but this bill enjoys very distinguished cosponsorship including the ranking Republican member of the Committee on the Judiciary, the committee which is required to deal with legislation of this kind.

In addition, I would like to state that I believe this bill is quite consistent with everything the administration believes in, and I hope that the administration will not only be for the bill but also be a leader in getting it enacted. I think that the administration, more than previous administrations, has a commitment to the American people to provide the most effective and efficient administration of American business of which it is capable under our law; and here we have laws—the antitrust statutes—which are out of date and harmful in their operation, working in reverse to what they were intended to do in many cases.

I hope very much that this proposal to study and revise the antitrust laws will, at long last, have the effective and positive action which it so richly needs and deserves in the interest of the American economy.

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

EXHIBIT 1

S. 1486

A bill to establish an Antitrust Review and Revision Commission

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established an Antitrust Review and Revision Commission (hereinafter referred to as the "Commission") constituted in the manner hereinafter provided.

PURPOSE OF THE COMMISSION

SEC. 2. The Commission shall study the antitrust laws of the United States, their applications, and their consequences, and shall report to the President and the Congress the revision, if any, of said antitrust laws which it deems advisable on the basis of such study. The study shall include the effect of said antitrust laws upon:

(a) price levels, product quality and service;

(b) employment, productivity, output, investment and profits;

(c) concentration of economic power and financial control;

(d) foreign trade and international competition; and

(e) economic growth.

MEMBERSHIP OF THE COMMISSION

SEC. 3. (a) NUMBER AND APPOINTMENT.—The Commission shall be composed of eighteen members appointed by the President as follows:

(1) four from the executive branch of the Government;

(2) four from the Senate, upon the recommendation of the President of the Senate;

(3) four from the House of Representatives, upon recommendation of the Speaker of the House of Representatives; and

(4) six from private life.

(b) REPRESENTATION OF VARIED INTERESTS.—The membership of the Commission shall be selected in such a manner as to be broadly representative of the various interests, needs, and concerns which may be affected by the antitrust laws.

(c) POLITICAL AFFILIATION.—Not more than one-half of the members of each class of members set forth in clauses (2), (3), and (4) of subsection (a) shall be from the same political party.

(d) VACANCIES.—Vacancies in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

ORGANIZATION OF THE COMMISSION

SEC. 4 The Commission shall select a Chairman and a Vice Chairman from among its members.

QUORUM

SEC. 5. Ten members of the Commission shall constitute a quorum.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 6. (a) MEMBERS OF CONGRESS.—Members of Congress, who are members of the Commission, shall serve without compensation in addition to that received for their services as Members of Congress, but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) MEMBERS FROM THE EXECUTIVE BRANCH.—Notwithstanding section 5533 of title 5, United States Code, any member of the Commission who is in the executive branch of the Government shall receive the compensation which he would receive if he were not a member of the Commission, plus such additional compensation, if any, as is necessary to make his aggregate salary not exceeding $36,000 and he shall be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of the duties vested in the Commission.

(c) MEMBERS FROM PRIVATE LIFE.—The members from private life shall each receive not exceeding $200 per diem when engaged in the performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

POWERS OF THE COMMISSION

SEC. 7. (a) (1) HEARINGS.—The Commission or, on the authorization of the Commission, any subcommittee thereof, may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memoranda, papers, and documents as the Commission or such subcommittee may deem advisable. Subpenas may be issued under the signature of the Chairman or Vice Chairman, or any duly designated member, and may be served by any person designated by the Chairman, the Vice Chairman, or such member.

(2) In case of contumacy or refusal to obey a subpena issued under paragraph (1) of this subsection, any district court of the United States or the United States court of any possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is being carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(b) OFFICIAL DATA.—Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairman, such information as the Commission deems necessary to carry out its functions under this Act.

(c) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an executive director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $200 a day for individuals.

(d) The Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

SEC. 8. The Commission shall transmit to the President and to the Congress not later than two years after the first meeting of the Commission a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable. The Commission may also submit interim reports prior to submission of its final report.

EXPIRATION OF THE COMMISSION

SEC. 9. Sixty days after the submission to Congress of the final report provided for in section 8, the Commission shall cease to exist.

Mr. HRUSKA. Mr. President, I welcome the opportunity to join the distinguished senior Senator from New York (Mr. JAVITS) in sponsorship of a bill which would establish a Commission to review Federal antitrust laws.

The able Senator has set forth many good reasons why such a study should be made. I shall not repeat them here. I have in the past and shall continue in the future to stress, however, the need for action now while this bill makes its way through the legislative process.

What action can we take now? On March 2, 1971, Representative LOUIS C. WYMAN, of New Hampshire, said in the other body:

Over the years anti-trust enforcement has been effective in curbing monopoly, price fixing, and other business abuses . . . Congress has legislated definitively in this field but being careful not to curtail or infringe upon legitimate business activity. For example, Congress has consistently rejected the proposition that size alone should be a test in anti-trust proceedings. Congress has refused to so legislate and the courts have been equally adamant in rejecting the bigness alone argument.

Those views have been echoed on many occasions by this Senator, Mr. President, in public hearings and elsewhere throughout the United States. It is my opinion that the executive branch should immediately review and reconsider enforcement practices that go beyond the laws of Congress, especially those in which the courts have sustained the congressional view.

The need becomes more significant at this time, when the confidence of business and the consumer is needed to overcome the economic sluggishness resulting from the inflationary policies of the past administration.

Aside from the confidence it will instill in business and the consumer, appropriate and logical enforcement of our antitrust laws will do much to lessen the load on our Federal courts. We are all acutely aware of the fact that the courts have fallen far behind in their workloads.

I am informed by the Administrative Office of the U.S. Courts that Federal antitrust cases have increased in number and in time consumed, thus contributing materially to the burden. The number of antitrust cases rose 17 percent in 1970 over 1969.

Recent data reveals antitrust cases are heavily responsible for the mounting burdens of docket congestion in Federal district courts. This demonstrates an urgent need for thoughtful reassessment of existing antitrust enforcement machinery.

The weight assigned to Government antitrust cases, for example, is 8.0 compared with 1.2 for tax cases and 1.7 for condemnation cases. Private antitrust cases are weighted at 4.0 compared to only 1.8 for civil rights cases and 0.7 for Fair Labor Standards Acts suits. In both instances, this means a greater time burden is placed upon the higher weighted cases.

It is my hope that this legislation will move forward speedily. In the meantime, however, a review such as I have discussed would be extremely helpful in many ways. It should be made promptly by the executive branch. It should have the cooperation and participation of appropriate committees of the Congress.

In a statement to this body in 1969, the Senator from New York said:

I am particularly concerned that the manner in which the anti-trust laws are now being applied may be having an adverse effect upon our domestic productivity, on our long-range economic growth, and on our foreign trade policy generally. . . .

But it is evident that the anti-trust laws are only one of a whole series of devices presently available to Government to control excesses in our economic system . . . government licensing, tax policy, money supply and interest rates, securities registration, limitation on foreign private investment and lending and labor-management relations to name just a few.

The essence of the problem is that we have allowed the courts, the FTC, and the Justice Department to make our antitrust policy, whereas in my view this responsibility is in Congress.

The responsibility is definitely ours, Mr. President, and we should assert our prerogatives to the fullest extent.

By Mr. SPARKMAN (for himself, Mr. MONDALE, Mr. TOWER, and Mr. PACKWOOD):

S. 1487. A bill to provide for continuation of authority for regulation of exports. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SPARKMAN. Mr. President, I send to the desk for myself, Senator Mondale, Senator Tower, and Senator Packwood, a bill that would extend the Export Administration Act of 1969 from June 30, 1971, through June 30, 1975—in other words, a 4-year extension of this act.

Very briefly the Export Administration Act of 1969 authorizes the President to regulate exports of U.S. goods and technology to the extent necessary: First to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of abnormal foreign demand; second, to further significantly the foreign policy of the United States and

to fulfill its international responsibilities; and third, to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.

One of the policy declarations in the act encourages trade with all countries with which the United States has diplomatic or trading relations, except those with which such trade has been determined by the President to be against the national interest. Another policy declaration provides that U.S. economic resources and trade potential should be used to promote the sound growth and stability of the economy, as well as to further national security and foreign policy objectives.

Mr. President, this is an administration bill. We see no particular objection to it, and hope that early action on it may be obtained.

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

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

S. 1487

A bill to provide for continuation of authority for regulation of exports

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 14 of the Export Administration Act of 1969 (83 Stat. 847; 50 U.S.C. App. 2413) is amended by striking out "1971" and inserting in lieu thereof "1975".

By Mr. MUSKIE (for himself, Mr. ANDERSON, Mr. HART, Mr. HUMPHREY, Mr. METCALF, Mr. STEVENSON, and Mr. MONDALE):

S. 1488. A bill to require an immigrant alien to maintain a permanent residence as a condition for entering and remaining in the United States, and for other purposes. Referred to the Committee on the Judiciary.

IMMIGRATION AND NATURALIZATION AMENDMENTS OF 1971

Mr. MUSKIE. Mr. President, I introduce for appropriate reference a bill (S. 1488) to prevent aliens from unfairly taking jobs from American citizens and to assist education, housing, manpower training, and economic development in our troubled border communities. This bill, which is a reintroduction of S. 3545 from the 91st Congress with revisions, will amend the Immigration and Nationality Act to require an immigrant alien to establish and maintain a permanent residence as a condition for entering and remaining in the United States. I ask unanimous consent that the text of this bill be printed in the RECORD following my remarks.

The ACTING PRESIDENT pro tempore (Mr. BENTSEN): Without objection, it is so ordered.

(See exhibit 1.)

Mr. MUSKIE. Mr. President, for too long we have tolerated distressing conditions in many of our border areas—a combination of immigration abuse and stagnation of economic development. These conditions have plagued some of our northern border areas, including parts of my own State of Maine, and created substantially greater distress in many of our southwestern border communities.

The problems stem in large part from the entrance of large numbers of alien workers, many of them illegal entrants, who take American jobs. These aliens, especially in the Southwest, have raised unemployment levels, lowered wage scales, forced the welfare rolls upward, and exposed Americans and aliens alike to exploitation by unscrupulous employers.

The disproportionately heavy impact of immigration on border towns, an impact which is probable regardless of what system of immigration is employed, creates a severe strain on schools and housing in many of these areas. And economic development, particularly in the creation of new jobs, has lagged far behind the needs of many of these border areas.

Each year that I have been in the Senate I have received mail from my constituents in the border communities of Maine complaining about these border problems. I am sure Senators and Congressmen representing the 15 border States have heard similar complaints. The looseness of immigration laws and the longstanding neglect of border community needs has led to much unnecessary bitterness.

One of my constituents wrote to me about the loss by American citizens of jobs to alien workers who continue to live in Canada. "A worker in a community who lives in a foreign country adds nothing to the social and economic betterment of the community," he commented:

I could cite you many instances when friends and relatives have been out of work and unable to get employment for long periods of time,

Another man wrote,

While Canadians and other were daily entering the United States . . . to work in the United States and live in Canada. If these circumstances were reversed and happened to your relatives and friends, I am sure that the impact would hit you more directly. . . .

The time has come to rectify these deplorable conditions: To stop the abuse of our immigration system; to stop the loss by Americans of jobs taken by illegal entrants; to stop the strikebreaking and depressed wage rates which have resulted from an uncontrolled influx of alien workers; to commence studies jointly with Mexico and Canada on ways we can revitalize our common border regions; and, to insure that our border residents have adequate schools and decent housing.

Abuse of the immigration system, which lies at the root of many of these problems, has been flagrant for many years. The abuse stems from very loose control over "green cards," the common name for I–151 alien registration receipt cards.

Normally, all immigrants to the United States must have valid immigrant visas upon any entry or reentry to this country. However, green cards are issued as substitutes for valid immigrant visas to persons who are returning to a permanent residence in the United States after a temporary absence abroad not exceeding 1 year.

Abuse of these green cards has developed because "greencarders," who were supposed to have been alien immigrants, frequently have maintained their homes in Mexico or Canada. They commute daily or frequently to work in the United States. Under an "amiable fiction" that they are alien immigrants, they have been able to enter the United States regularly with their green card in lieu of an immigrant visa or reentry permit. Thus, the green card system has been allowed to evolve into a kind of work permit system. And a system of large proportions. A count made by the Immigration Service on October 31, 1969, indicates over 49,000 "greencarders" crossed the Mexican border on that day alone.

In addition, there are estimated to be from 100,000 to 400,000 greencarders who enter this country for several weeks or months at a time to do seasonal migratory farm labor.

The harmful effect of this large, uncontrolled labor influx on the wages and unemployment of American workers has been documented in a report prepared by the U.S. Department of Labor for the Select Commission on Western Hemisphere Immigration. I ask unanimous consent that the pages 113–130 of this report be printed in the RECORD following my remarks.

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

(See exhibit 2.)

Mr. MUSKIE. Mr. President, characteristic of this data is a study made in Laredo, Tex., where unemployment was 11.3 percent of the total domestic work force. Two large garment manufacturing firms were found to employ 88 greencard commuters as sewing machine operators at the very time the Texas Employment Service listed 156 U.S. sewing machine operators at that time were unemployed. A comparison of wages paid by firms employing only U.S. workers was found to be 38 percent higher than the wages paid by firms employing commuters in identical occupations.

Another unfortunate consequence of immigration abuses has been the reports in recent weeks that greencard strikebreakers have been imported to the Abatti Company strike sites in southern California in an effort to cripple legitimate legal strikes by the United Farm Workers Organizing Committee. The greencard commuter system was found to have caused similar strikebreaking and other consequences detrimental to American Workers in Delano, Calif., in May of 1968, by a high-level Labor Department report. I ask unanimous consent that the text of this report be printed in the RECORD following my remarks.

The 1965 amendments to the Immigration and Nationality Act place a limitation of 120,000 on total annual immigration to the United States from all nations in the Western Hemisphere. Given this limited quota, it seems unfair that a single one of these 120,000 positions be used by any person who does

not intend to come to permanently and physically live, work in, and become a part of American society.

The legislation I am introducing today recognizes that the greencard commuter problem will be eliminated only by specific congressional action. Mr. Charles Gordon, General Counsel for the U.S. Immigration and Naturalization Service, wrote in the Case Western Reserve Journal of International Law—volume 1, No. 2, spring, 1969, that legislation is needed. He said:

> It is unlikely that there will be any significant changes in the administrative approach to the (greencard) commuter problem. As I have noted, proposals to end or modify the program have been rejected by the administrators on the ground that they have been enforcing the will of Congress. Consequently, it may be expected that unless changes are enacted by Congress the alien commuter program will continue to operate as it has for the past 40 years. Thus, if changes are to be made they apparently will have to be accomplished by new legislation.

The legislation I am introducing would not entirely bar Mexicans and Canadians from working in the United States. It recognizes that these workers sometimes perform jobs for which there is no American labor available. This is particularly true in some of our economically integrated communities which span the border communities. The bill is designed to insure an orderly, controlled immigration policy which does not have a harmful effect on the American worker.

Specifically, my bill:

First. Would redefine the term "lawfully admitted for permanent residence" under the Immigration Nationality Act so that all immigrants must permanently and physically reside in the United States.

Second. Would establish a nonresident work permit system for communities within 20 miles of the border to replace the greencard commuter system. This new form of border-crossing authorization is needed for economically integrated communities which span the border.

Work permits would be issued only after the Secretary of Labor certified that American workers are not available and, if none are available, that the wages and working conditions of Americans similarly employed would not be adversely affected. I have included a provision for periodic review of such certification. My intention is to give the Secretary of Labor wide discretion in determining under what conditions work permits should be granted or withdrawn. Specifically, I have in mind situations where work-permit holders are used as strikebreakers. In such cases the Secretary of Labor would revoke the work permit. In brief, I would grant to the Secretary of Labor authority to promulgate such rules and regulations as he feels are needed in implementing these amendments.

Third. The bill would establish a 2-year grace period during which time the present greencard commuter system would be phased out. During this time, greencard commuters would have to either become bona fide United States residents by moving to this country or transfer to a nonresident work permit status. During the 2-year period, greencard commuters would be subject to rules and regulations promulgated by the Secretary of Labor for the work permit holders.

Fourth. The bill would authorize a total of 12,000 numbers to be added to the Western Hemisphere numerical limit for use of new permanent resident during the 2-year period following the enactment of this Act. This would provide for greencard commuters who decide to make a bona fide move to the United States under the provisions of this bill. The Immigration and Naturalization Service, for immigration purposes, would extend to an entire family the same priority date as their U.S. "greencard" principal.

Fifth. The bill would eliminate the present exemption applicable to employers from the so-called "harboring" provisions of section 274(a)(4) of the Immigration and Nationality Act. Thus, it would be a criminal offense for employers willfully or knowingly to induce the entry of any alien not lawfully entitled to enter or reside in the United States. This criminal offense currently applies to all nonemployers. This offense would apply to cases involving aliens who accepted United States employment in violation of the law, including green card holders, nonresident work permit holders and Form I–186 visitors.

Sixth. This bill would establish a new civil action provision which may be invoked in a Federal court by any person aggrieved by violations of these amendments. This gives American workers a new form of protection against competition from alien workers.

Seventh. This bill would authorize, on a one-time basis only, $25 million for school systems affected by the influx of greencard commuters moving their families to the United States under provisions of this act, as determined by the Department of Health, Education, and Welfare.

Eighth. This bill would authorize an additional $25 million in Manpower Act—MDTA—funds to provide manpower and employment assistance to green-card commuter families moving to the United States under the provisions of this act. This would be done either directly or through the appropriate State public employment service.

Ninth. This bill would authorize, on a one-time basis only, $50 million for housing to residents of communities within 20 miles of the border whose housing opportunities are adversely affected by the immigration authorized by this act and to immigrants under this act. This provision has been added to S. 3545, the bill I introduced last year.

Tenth. This bill would authorize separate binational study commissions with Mexico and Canada to review the potentialities for binational cooperation in the economic development of border areas, especially in the creation of new jobs. This is also a new provision I have added this year to strengthen the bill. We would join these commissions with the understanding that under no circumstances would American jobs be transferred to the other side of the border.

Mr. President, I urge early and favorable consideration of this bill. This bill recognizes the complexity of the human, economic, and legal problems of our border areas. I can assure you that much thought and expert consultation have been devoted to this legislation, and I feel it is measurably improved on the bill I introduced last year. This bill will bring a greater measure of social justice to the inhabitants of our border communities, especially in the Southwest. It will insure an orderly immigration system and lay the groundwork for revitalizing the economy in some of our depressed border communities.

EXHIBIT 1

S. 1488

A bill to require an immigrant alien to maintain a permanent residence as a condition for entering and remaining in the United States, and for other purposes

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

IMMIGRANTS

SEC. 2. (a) Section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)) is amended to read as follows:

"(20) The term 'lawfully admitted for permanent residence' means the status of an immigrant who—

"(A) has been lawfully accorded the privilege of residing permanently in the United States in accordance with the immigration laws;

"(B) at the time of making an application for an immigrant visa, intends to reside permanently in the United States; and

"(C) following his admission into the United States as a permanent resident, thereafter permanently and physically resides in the United States;

such status not having changed."

(b) Section 212(a) of such Act is amended—

(1) by striking out the period at the end of paragraph (31) and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following new paragraph:

"(32) Any alien who seeks to procure, has sought to procure, or has procured an immigrant visa without any intent to reside permanently in the United States."

(c) Section 221(a)(1) of such Act is amended by inserting after "section 222" the following: "(including the statement and oath required by subsection (a)(2) of such section)".

(d) Section 222(a) of such Act is amended—

(1) by inserting after the subsection designation "(a)" the following: "(1)";

(2) by striking out the following: "whether or not he intends to remain in the United States permanently;"; and

(3) by inserting at the end thereof the following new paragraph:

"(2) Each immigrant shall sign a separate statement, under oath, at the end of such application that he intends to reside permanently in the United States. The statement of such intent shall be considered a material fact of the application."

(e) Section 241(a) of such Act is amended—

(1) by striking out the period at the end of paragraph (18) and inserting in lieu thereof a semicolon and "or"; and

(2) by adding at the end thereof the following new paragraph:

"(19) was admitted as an immigrant and failed to maintain the immigrant status in

which he was admitted or to which it was adjusted pursuant to section 245, or to comply with the conditions of such status."

(f) The introductory matter preceding paragraph (1) of section 244 (a) of such Act is amended by inserting after "suspension of deportation" the following: "(which application shall include a statement signed by the alien, under oath, that he intends to reside permanently in the United States)".

(g) Section 245 (a) (1) of such Act is amended by inserting after "such adjustment" the following: "(which application shall include a statement signed by the alien, under oath, that he intends to reside permanently in the United States)".

HARBORING ALIEN EMPLOYEES

SEC. 3. Section 274 of the Immigration and Nationality Act is amended—

(1) by striking out of subsection (a) (4) the colon and the following: *"Provided, however,* That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring"; and

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

"(c) (1) A person, or his representative, who is aggrieved by another person who commits an act in violation of clause (1), (2), (3), or (4) of subsection (a) of this section, may commence a civil action, without regard to the amount in controversy, in the judicial district in which the defendant resides, has his principal place of business, or in which the defendant may be found.

"(2) If the court finds that the defendant has committed any act in violation of any such clause, it shall order the defendant to cease such violation immediately, and grant such other relief as the court considers appropriate. Failure to obey an order may be punished by the court as contempt of the court."

NONRESIDENT WORK PERMITS

SEC. 4. (a) Section 101(a) (15) (H) of the Immigration and Nationality Act is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following: "or (iv) who is going to commute regularly to the United States to perform skilled or unskilled services or labor at a point not more than twenty miles away from a border between the United States and the foreign country of residence of such alien;".

(b) Section 214(c) of such Act is amended—

(1) by inserting after the designation "section 101(a) (15) (H)" the following: "(i), (ii), or (iii)"; and

(2) by inserting after the first sentence the following new sentence: "The question of importing an alien as a nonimmigrant under section 101(a) (15) (H) (iv) in any specific case or specific cases shall be determined by the Attorney General, upon petition of the person who intends to employ such alien, and only after the Secretary of Labor has certified to the Attorney General that (1) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time and at the place to which the alien is destined to perform such skilled or unskilled services or labor, and (2) the employment of such alien will not adversely affect the wages and working conditions of the workers in the United States similarly employed."

(c) (1) Chapter 7 of title II of such Act is amended by inserting after section 265 the following new section:

"TERMINATION OF EMPLOYMENT STATUS

"SEC. 265A. The status of an alien admitted to the United States as a nonimmigrant under section 101(a) (15) (H) (iv) shall terminate when the employment with the employer petitioning for the admission of such alien ends. The employer filing the petition for such alien, shall, within five days after the alien ceases working for such employer, notify the Attorney General in writing that the employment has terminated and the date of such termination. The employer shall also furnish such additional information as to the Attorney General may require."

(2) The table of contents of such Act is amended by inserting between items 265 and 266 the following new item:

"SEC. 265A. Termination of employment status."

(d) Section 266 of such Act is amended by adding at the end thereof the following new subsection:

"(e) Any employer who fails to give the written notice to the Attorney General, as required by section 265A, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $200 or be imprisoned not more than thirty days, or both."

(e) (1) Chapter 9 of title II of such Act is amended by adding at the end thereof the following new section:

"REVIEW OF NONIMMIGRANT LABOR CERTIFICATIONS

"SEC. 294. Not less than once every six months, the Secretary of Labor shall review the certification he has made under the second sentence of section 214(c) on behalf of an alien admitted as a nonimmigrant under section 101(a) (15) (H) (iv). If upon review the requirements of such sentence are no longer met, the Secretary of Labor shall revoke such certification and shall so notify the Attorney General immediately, and the alien shall be subject to deportation. The Secretary of Labor shall have authority to promulgate rules and regulations necessary to carry out his duties under such sentence and this section."

(2) The table of contents of such Act is amended by inserting after item 293 the following new item:

"SEC. 294. Review of nonimmigrant labor certifications."

(f) An alien lawfully admitted for permanent residence prior to the date of enactment of this Act (as such term was defined in section 101(a) (20) of the Immigration and Nationality Act prior to such date) may be reclassified, if otherwise eligible, as a nonimmigrant alien under section 101(a) (15) (H) of such Act, as amended by this section.

WESTERN HEMISPHERE NUMERICAL LIMITATIONS

SEC. 5. During the two-year period following the date of enactment of this Act, beginning on the first day of the first month following such date, a total of 12,000 aliens may be classified as special immigrants, as defined by section 101(a) (27) (A) of the Immigration and Nationality Act, which total shall be exclusive of special immigrants who are immediate relatives of United States citizens as described by section 201(b) of such Act and shall be in addition to the total authorized by section 21(e) of the Act of October 3, 1965.

ASSISTANCE TO SCHOOL DISTRICTS

SEC. 6. In order to minimize the impact upon school districts resulting from the provisions of this Act, there is authorized to be appropriated to the Commissioner of Education an amount not to exceed $25,000,000, to be administered by the Commissioner for operating expenses of school districts determined by the Commissioner to have an increased enrollment as a result of the provisions of this Act. The Commissioner shall distribute the funds authorized by this section, in such manner and under conditions as he may determine, on an equitable basis after considering the impact of the additional numbers of children enrolled in the schools of each local educational agency as a result of this Act and the amount appropriated pursuant to this Act. Such amount shall remain available until expended.

MANPOWER TRAINING

SEC. 7. There is authorized to be appropriated to the Secretary of Labor an amount not to exceed $25,000,000, to be expended for manpower development and training programs authorized by the Manpower Development and Training Act of 1962, title I of the Economic Opportunity Act of 1964, or any other manpower development and training program administered by or through the Department of Labor, for aliens lawfully admitted to the United States for permanent residence prior to the date of enactment of this Act, and their families. The Secretary shall distribute the funds authorized by this section, in such manner and under such conditions as he may determine, on an equitable basis after considering the numbers of such aliens and their families locating in any State.

ECONOMIC DEVELOPMENT STUDY

SEC. 8. (a) During the two-year period following the date of enactment of this Act, the President, in consultation with the Secretary of Labor, is authorized to create separate study commissions with the Governments of Mexico and Canada to review binational measures that may be undertaken to provide for the economic development of common border areas, and to make recommendations for economic development, especially recommendations which, if adopted, will provide additional jobs in those areas.

(b) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

BORDER HOUSING ASSISTANCE

SEC. 9. (a) Notwithstanding any other provision of law, in the administration of low- and moderate-income housing programs, including but not limited to rent supplement programs, low-rent public housing programs, and programs under sections 235 and 236 of the National Housing Act, the Secretary of Housing and Urban Development is authorized to accord a preference or priority to individuals or families who reside in communities within 20 miles of the southern or northern borders of the United States, and (1) whose housing opportunities are adversely affected by this Act or amendments made by this Act, or (2) who are immigrants who establish permanent residence in such communities.

(b) To carry out the provisions of this section, there is authorized to be appropriated the sum of $50,000,000 during the two-year period following the date of enactment of this Act. Any amount appropriated under this section shall remain available until expended.

APPLICABILITY

SEC. 10. (a) Except as provided in subsection (b), the amendments made by section 2 of this Act shall apply only to an alien who has not been granted an immigrant visa prior to the date of enactment of this Act.

(b) The amendments made by section 2 of this Act shall apply, commencing 2 years after the date of enactment of this Act, to any immigrant who was granted an immigrant visa prior to the date of enactment of this Act.

EXHIBIT 2

THE "COMMUTER" PROBLEM AND LOW WAGES AND UNEMPLOYMENT IN AMERICAN CITIES ON THE MEXICAN BORDER

(Prepared for the Select Commission on Western Hemisphere Immigration by The Bureau of Employment Security, Office of Farm Labor Service, U.S. Department of Labor, April 1967)

For many years the American Government has permitted alien immigrants to the United States to reside in Mexico and Canada and commute to jobs in the United States without losing their immigrant status.

In effect, employment is equated with residence. This practice has been bitterly opposed by residents of U.S. towns on the Mexican border. They feel the Mexican immigrants are not really immigrants to the United States—they only enjoy the material benefits of working for U.S. wages and working conditions while living in Mexico where living standards and costs are much less. With lower living costs than U.S. residents, alien commuters are able, it is argued, to accept less pay than reasonable for U.S. residents to accept. Thus wage rates are undercut and American workers suffer.

It is not just that the commuters settle for lower wages and a lower living standard. They also avoid much of the *costs* of public services in the United States, some of which they enjoy: public highways, medical and police protection services, shopping facilities, and sometimes even schools. This further reduces the real income of U.S. residents.

Opposition to the alien commuter was succinctly expressed in a February 3, 1961, Resolution of the Texas AFL–CIO Executive Board that is typical of feeling on the border.

"The citizens along the U.S.-Mexican border . . . are the victims of the unfair competition for jobs of border crossers who commute daily . . . from the low cost-of-living areas south of the border. These people are willing to work at a wage which is insufficient to provide a decent standard of living for the American citizen living in the United States.

The 'commuters,' moreover, have at times been used as strikebreakers in an effort to destroy unions of American citizens . . .

"There can be no hope that thousands of American citizens living in the Rio Grande Valley or El Paso or other border cities ever will be able to earn a living wage so long as commuting by border crossers is permitted . . ."

This paper examines readily available data that may shed some light on the extent to which U.S. residents living on the Mexican border are affected by commuters. No effort is made to discuss the legal aspects of the American Government's policy permitting commuting which has also been challenged by U.S. groups opposed to the practice. Perhaps the best discussion of this may be found in the House Judiciary Committee's 1963 publciation, "Study of Population and Immigration Problems and Commuters," an unpublished paper prepared by John W. Bowser, Deputy Assistant Commissioner, Inspections. U.S. Immigration and Naturalization Service.

Extent of commuting. Unfortunately commuters are not routinely identified in the operating reports of the Immigration Service. That Agency has made several special identification checks of border crossers to try and pinpoint the volume of commuting; the results of these checks are probably the best measure of commuting. The U.S. State Department and the Mexican governmental agency, Programa Nacional Fronterizo, have also made estimates of commuting that yielded data roughly comparable to the I&NS survey results.

In part, some of the difficulty with understanding the commuter problem lies in the difference between the popular conception of what is a commuter and the technical, legal definition.

The general public probably would regard anyone living in Mexico and working in the United States as a commuter. Furthermore, all aliens working in the United States would also be regarded as part of the commuter problem, even though they do not commute.

In the legal sense, only *aliens* living in Mexico are commuters. United States citizens living in Mexico are not; aliens living and working in the United States are not. The situation is further compounded by the fact that most of the alien commuters have family or friends living in the United States and may themselves reside occasionally in the United States. Very frequently aliens will give U.S. addresses to their employers and may reside some of the time in the United States and some of the time in Mexico.

One other problem exists. American policy basically is designed to facilitate travel between Mexico and the United States. Many thousands of Mexican citizens are permitted to enter this country for business or pleasure with entry documents that do not permit them to work. Undoubtedly some of these visitors do work, despite the best efforts of U.S. authorities. Such illegal, wetback, workers would be regarded in the popular mind as commuters but would not appear in any official or semiofficial estimate of the volume of alien commuters. Indeed, officials of the Immigration Service would probably deny that there are many illegal commuters. But residents of border communities do not agree.

The wide difference between the popular view of the commuter problem and the legal view has been discussed to emphasize that the official statistics really only describe a limited part of a general problem. In an economic sense the public view is right. The existence of a large number of unskilled workers making themselves available for U.S. jobs serve to depress wage rates; it makes no difference whether the worker is an alien or a United States citizen living in Mexico; whether he is an alien residing in the United States; whether he enters and works legally or illegally. The impact is the same: wage rates are lowered.

The latest I&NS special survey identified about 44,000 alien commuters January 17, 1966. Almost 95 percent worked in eight borders areas—El Paso, Laredo, Brownsville and Eagle Pass, Tex.; Nogales and San Luis, Ariz.; and Calexico and San Ysidro, Calif. Illustrating the fact that the alien commuters do not fully describe the economic impact of commuting, another 18,000 United States citizens lived in Mexico and worked in the United States—almost 30 percent of the total commuters. Table 1 lists various estimates of the volume of commuting made by different agencies and at different time periods; table 2 presents a comparison of alien and U.S. citizens commuting at the time of the latest I&NS survey.

TABLE 1.—NUMBER OF MEXICAN ALIEN COMMUTERS

	Jan. 17, 1966 [1]		Jan. 11, 1966 [3]		May 17, 1963 [1]	May 8, 1963 [3]	January 1960 [2]	Jan. 24–Feb. 1, 1960 [1]	Mexican estimates [1]
	Total	In agriculture	Total	In agriculture					
Major points of entry:									
Texas:									
Brownsville	2,032	226	2,552	619	1,796	1,729	135		3,500
Hidalgo	1,163	805	1,000	511	366	532			
Roma	208	187	146	125	89	108			
Laredo	2,581	175	2,239	209	2,490	2,382	3,000		
Eagle Pass	1,604	536	2,195	901	1,586	1,037	1,400		
Del Rio	513	99	489	82	237	314	400		
Fabens	274	219	267	207	307	316			
Ysleta	248	137	266	115				111	
Cordova	2,932	80	3,455	164				2,273	
Santa Fe Street Bridge (El Paso)	8,592	590	7,605	944	13,492	13,332		10,884	15,700
Arizona:									
Douglas	418	96	470	93	307	288			
Naco	127	20	134	19	202	134			
Nogales	1,614	108	1,392	53	1,464	1,854	1,132		
San Luis	4,234	3,583	3,654	3,024	1,239	1,038			
California:									
Calexico	7,616	6,468	8,098	7,324	4,692	5,342	183		
San Ysidro	9,281	3,967	8,460	3,134	5,855	5,374	15,000–20,000		15,000
Minor points of entry	250	161	219	129	87	101			
Grand total	43,687	17,457	42,641	17,653	34,223	33,867			

[1] Special I. & N.S. surveys on dates indicated.
[2] U.S. State Department estimates based on U.S. consulate reports.
[3] Programa Nacional Fronterizo: Tijuana, B.C.; Ciudad Juarez, Chih.; and Matamoros, Tamps., Mexico, 1962. The Mexican figures probably include commuters who are U.S. citizens residing in Mexico.

TABLE 2.—WORKERS RESIDING IN MEXICO COMMUTING TO JOBS IN THE UNITED STATES, MAJOR ENTRY POINTS, JAN. 17, 1966

	Total	Mexican aliens	U.S. citizens	
			Number	Percent of total
Texas:				
Brownsville	3,503	2,032	1,471	42
Hidalgo	2,561	1,163	1,398	55
Laredo	3,715	2,581	1,134	31
Eagle Pass	2,710	1,604	1,106	41
Del Rio	831	513	318	38
Cordova	4,290	2,932	1,358	32
Santa Fe Bridge	12,913	8,592	4,321	33
Arizona:				
Douglas	587	418	169	29
Arizona—Continued				
Nogales	1,882	1,614	268	14
San Luis	4,858	4,234	g24	13
California:				
Calexico	9,957	7,616	2,341	24
San Ysidro	12,333	9,281	3,052	25
Total	60,140	42,580	17,560	29
All other areas	1,806	1,107	699	39
Total	61,946	43,687	18,259	29

[1] Source: Special survey of border crossers by Immigration and Naturalization Service.

Evidence of depressed U.S. wage scales.—Comprehensive information about wage rates is not available for most border areas. Most of the border towns are very small and not included in the statistical series that contain wage rate information. The discussion that follows is based primarily upon very scattered and fragmentary information. Notwithstanding their limitations, the data do show clearly that wage rates are low in the border areas.

The presence of the alien commuters, however, is not the sole cause of low wage rates. Many factors determine wage levels—a surplus or shortage of workers; the kinds of jobs involved (higher-skilled jobs demand higher wages); the kinds of industry (usually durable goods manufacturing pays higher wages); the extent to which viable trade unions exist. In general, the factors which produce high wage rates are not found as frequently in border areas as they are in interior areas. But the factors which produce low wages are commonly present in the border towns and quite often are interrelated with the alien commuter problem.

Most of the border areas have relatively large labor surpluses, partly because of the commuters, but also because of large numbers of low-skilled U.S. citizens and resident aliens residing in the United States. Thus, not all of the low wage problem is due to the commuters.

Comparisons of area wage levels in the same state do not always reveal that wages in the border areas are always the lowest in the state. Interior areas in a border state also have large labor surpluses that cause wages in these areas to be as low, or lower, than wages in the border areas. The northeastern corner of Arizona, far removed from the border, where the poverty-stricken Navajo Indians live, is a case in point.

Some border areas have concentrations of heavy industry, or establishments where the wage structure is determined by collective bargaining agreements or other factors not primarily concerned with conditions in the border towns. In such instances, the wages in the border towns may be higher than in interior areas where no such establishments exist. But wages on the border are seldom, if ever, higher than in the interior for the same kind of work at the same kind of firm.

TEXAS

Farm wage data are available from the monthly reports of the Texas Employment Commission. Monthly estimates of average hourly earnings in manufacturing, durable and nondurable goods industries are published by the Texas Employment Commission. Median earnings data are available from the 1960 census of population for one Texas border city, El Paso, and five other major Texas cities: Fort Worth, Beaumont-Port Arthur, Dallas, Houston, and San Antonio. Two special surveys were made in El Paso and Laredo in 1961 by the Department of Labor specifically designed to explore some aspects of the commuter problem. These surveys contain information about wages in the occupations in which most commuters are employed.

A. *Farm wages.*—Farm wage rates in Texas are lowest in border areas. Average hourly farm wages for seasonal farm work in the three agricultural reporting areas on the border were $0.76 in November 1966—31 percent less than the $1.10 average in the remainder of the state. The lowest wage rates are in the Lower Rio Grande Valley, $0.75; slightly higher in the next area, Rio Grande Plains, $0.77; and highest of all the border areas, $0.83 in the Trans Pecos area.

The highest farm wages in Texas are in the areas farthest removed from the border—$1.20 and $1.24 in the Northern Panhandle and the High Rolling Plains. The following map of Texas shows the geographic pattern of average wage rates for seasonal farmwork.

Large numbers of alien and U.S. citizen commuters are employed in agriculture in the border areas. The January 17, 1966, I&NS survey identified 1,584 citizen commuters and 1,282 alien commuters in the Valley; 531 citizen and 810 alien commuters in the Rio Grande Plains; and 973 citizen and 1,078 alien commuters in the Trans Pecos areas. Commuters to agricultural jobs formed a very large proportion of the commuters in the Valley and the Rio Grande Plains areas. In the former area, 51 percent of the U.S. citizen commuters and 37 percent of the alien commuters worked in farm jobs. The corresponding percentage in the Rio Grande Plains were 21 and 17 percent. In the Trans Pecos area, where most of the commuters went to nonfarm jobs in El Paso, only 11 percent of the citizens and 9 percent of the alien commuters worked in agriculture.

Communters constituted a significant proportion of the seasonal farm work force in the border areas. In the Lower Rio Grande Valley about 15 percent of the seasonal farmworkers were commuters, with alien commuters making up about 7 percent of the seasonal farmworkers. In the Rio Grande Plains, about 9 percent of all seasonal workers were commuters, and 5 percent were alien communters. In the Trans Pecos area almost all seasonal farmworkers were commuters. However, in this area farm work is a very minor activity—only about 1,500 seasonal workers were employed in January 1966, compared to 19,700 seasonal workers in the Valley and 15,600 in the Rio Grande Plains.

Wage rates were higher in the Trans Pecos area than in the other two border areas because of two factors: the area is isolated without a large resident farm population; the bulk of jobs in the area are found in the El Paso metropolitan area where nonfarm wage levels tend to be higher than levels in rural areas. In contrast, the Valley and Rio Grande Plains areas have no large metropolitan areas. They have a large rural population, largely composed of Mexican-Americans, both citizens and resident aliens. The level of economic activity in the latter areas is much lower than in El Paso. The low-wage levels in the Valley and the Rio Grande Plains areas are probably primarily due to the large surplus of poor, unskilled, poorly educated, rural people (most of whom are Mexican-American) residing in the areas. But augmenting this labor surplus by adding commuters from Mexico, persons who are even poorer, more unskilled, and less educated, serves to depress an already intolerable situation.

B. *1960 census of population median earnings data.*—Median earnings data reveal earnings of El Paso workers are significantly lower than in most other major Texas metropolitan areas. Of the 11 major occupational-sex groupings, median earnings were lowest in El Paso for four groupings (male clerical workers, female clerical, sales, and private household workers); and second lowest for three other groupings (male sales, clerical workers, and operatives and kindred workers). The highest El Paso ranked among the six areas was in the male service worker classification where it ranked third.

One other aspect of the census of population data must be mentioned. Since the data are obtained from a household enumeration, residents of Mexico are not included in the census statistics because their households were not enumerated. Thus, for El Paso, the census statistics overstate the incomes of persons that work in that city because they omit the earnings of commuters who work for the most part in the city's lowest paid jobs.

Table 3 contains pertinent median earnings data obtained in the 1960 census of population.

TABLE 3.—MEDIUM EARNINGS IN 1959 OF PERSONS IN THE EXPERIENCED LABOR FORCE BY SEX AND OCCUPATION

[6 standard metropolitan statistical areas in Texas]

Occupation	El Paso		San Antonio		Dallas		Fort Worth		Houston		Beaumont-Port Arthur	
	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank
All male workers	$4,199	(5)	$3,725	(6)	$4,560	(4)	$4,657	(3)	$4,915	(2)	$5,207	(1)
Clerical and kindred	4,186	(6)	4,272	(5)	4,543	(4)	4,904	(2)	4,871	(3)	5,124	(1)
Salesworkers	4,437	(5)	4,414	(6)	5,562	(1)	4,833	(3)	5,526	(2)	4,776	(4)
Craftsmen and foremen	4,691	(5)	4,346	(6)	4,802	(4)	5,056	(3)	5,374	(2)	5,833	(1)
Masons	3,246	(6)	3,566	(5)	4,334	(4)	4,414	(3)	4,634	(2)	5,854	(1)
Painters	3,505	(3)	2,993	(6)	3,454	(4)	3,408	(5)	3,605	(2)	3,739	(1)
Operators	3,388	(5)	2,945	(6)	3,861	(4)	4,131	(3)	4,376	(2)	5,381	(1)
Auto service station attendant	2,172	(4)	1,926	(5)	2,498	(2)	2,527	(1)	2,341	(3)	1,831	(6)
Truckdriver	3,334	(5)	3,021	(6)	3,892	(1)	3,748	(2)	3,717	(3)	3,691	(4)
Welders	4,595	(3)	3,710	(6)	4,471	(5)	4,571	(4)	5,343	(2)	5,625	(1)
Service workers	2,788	(3)	2,362	(6)	2,702	(5)	2,833	(2)	2,771	(4)	3,486	(1)
Barbers	3,022	(4)	3,019	(5)	3,519	(2)	3,507	(3)	3,566	(1)	2,985	(6)
Cooks	2,682	(5)	2,577	(6)	2,719	(3)	2,685	(4)	2,987	(2)	4,678	(1)
Guards	3,793	(1)	3,051	(5)	3,291	(4)	3,671	(2)	3,393	(3)	1,808	(6)
Waiters	2,203	(1)	1,454	(4)	1,856	(3)	1,538	(6)	2,174	(2)	1,635	(5)
Laborers, except farm and mine	2,386	(4)	2,057	(6)	2,367	(5)	2,552	(3)	2,903	(2)	3,027	(1)
Manufacturing	2,775	(5)	2,506	(6)	2,843	(4)	3,322	(3)	3,619	(2)	4,655	(1)
Nonmanufacturing	2,337	(3)	1,904	(6)	2,296	(4)	2,413	(2)	2,526	(1)	2,107	(5)
All female workers	1,836	(5)	1,938	(4)	2,322	(1)	1,970	(3)	2,197	(2)	1,615	(6)
Clerical and kindred	2,656	(6)	2,865	(4)	3,125	(2)	2,867	(3)	3,225	(1)	2,748	(5)
Bookkeepers	2,855	(5)	2,864	(4)	3,286	(2)	2,805	(6)	3,331	(1)	2,887	(3)
Cashiers	1,724	(5)	1,617	(6)	2,089	(1)	1,762	(3)	1,785	(2)	1,751	(4)
Secretaries	3,147	(4)	3,089	(5)	3,568	(2)	3,269	(3)	3,707	(1)	3,015	(6)
Stenographers	3,290	(6)	3,322	(5)	3,417	(4)	3,607	(3)	3,791	(1)	3,733	(2)
Telephone operators	2,996	(6)	3,133	(5)	3,353	(2)	3,276	(4)	3,348	(3)	3,408	(1)
Typists	2,601	(3)	2,927	(1)	2,530	(5)	2,584	(4)	2,707	(2)	1,828	(6)
Salesworkers	1,292	(6)	1,478	(4)	1,817	(2)	1,460	(5)	1,900	(1)	1,513	(3)

TABLE 3.—MEDIAN EARNINGS IN 1959 OF PERSONS IN THE EXPERIENCED LABOR FORCE BY SEX AND OCCUPATION—Continued

Occupation	El Paso		San Antonio		Dallas		Fort Worth		Houston		Beaumont-Port Arthur	
	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank	Earnings	Rank
All female workers—Continued												
Operators	$1,711	(4)	$1,559	(6)	$2,223	(1)	$1,848	(3)	$1,886	(2)	$1,576	(5)
Laundry	1,376	(4)	1,279	(5)	1,544	(1)	1,420	(2)	1,403	(3)	1,184	(6)
Private household	617	(6)	745	(3)	799	(2)	709	(4)	831	(1)	637	(5)
Service workers	1,130	(4)	1,171	(3)	1,321	(1)	1,116	(5)	1,316	(2)	1,002	(6)
Industrial attendants	1,388	(5)	1,588	(2)	1,445	(4)	1,190	(6)	1,599	(1)	1,485	(3)
Cooks	1,071	(6)	1,308	(2)	1,262	(3)	1,175	(5)	1,342	(1)	1,203	(4)
Waitresses	984	(3)	929	(4)	1,014	(2)	906	(5)	1,025	(1)	859	(6)

Source: U.S. Bureau of the Census, "Census of Population, 1960."

C. *Manufacturing average hourly earnings.*—Wages in El Paso manufacturing are extremely low. El Paso ranked lowest of the eight major Texas areas (El Paso, Austin, San Antonio, Beaumont, Corpus Christi, Dallas, Fort Worth, and Houston) for which the Texas Employment Commission published average hourly earnings in manufacturing.

Austin and San Antonio had lower earnings for durable goods, but El Paso had by far the lowest average for nondurable goods.

El Paso did not rank on the bottom for durable goods because it is the location of a large copper refinery and a large copper smelter. Wages in these establishments are high because the workers have effective trade unions. The refinery and smelter are branches of large corporations and collective bargaining between management and labor is on a regional basis, thus causing the unique situation of El Paso with its commuter problem to be of little importance in the determination of wages of El Paso copper workers.

Nondurable goods employment in El Paso is heavily concentrated in garment manufacturing—almost 75 percent of all nondurable goods workers are in this industry. The wage rates in garment manufacturing are little more than the minimum required by the Fair Labor Standards Act. Large numbers of alien commuters (mainly women) are employed in this industry. The existence of this industry is a recent phenomenon and many local residents believe garment firms moved to El Paso to take advantage of the large supply of labor and the low-wage scale; both conditions are due, in part, to the commuter situation.[1]

Table 4 contains average hourly earnings data in manufacturing in El Paso and other Texas cities.

TABLE 4.—AVERAGE HOURLY EARNINGS IN MANUFACTURING INDUSTRIES, 8 MAJOR TEXAS CITIES, 1966

	Average hourly earnings				Average hourly earnings		
	All manufacturing	Durable goods	Nondurable goods		All manufacturing	Durable goods	Nondurable goods
Texas	$2.57	$2.62	$2.52	Corpus Christi	$2.96	$2.57	$3.26
				Dallas	2.37	2.52	2.10
El Paso	1.90	2.46	1.72	Fort Worth	2.81	2.97	2.39
Austin	1.98	1.71	2.26	Houston	3.00	2.87	3.16
Beaumont	3.35	3.03	3.48	San Antonio	1.98	1.92	2.02

Source: "The Texas Labor Market" Texas Employment Commission.

D. *Special commuter survey—Laredo.*—A special study of alien commuter problems—jobs held by commuters, wages received, and availability of domestic workers for these jobs—was made by the U.S. Department of Labor in the summer of 1961.

The study showed that commuters were employed in most occupations and industries, but concentrated most heavily in garment manufacturing, hotels, restaurants, and retail trade and service establishments. A sample of firms employing 3,000 workers was contacted. These firms employed 438 Mexican aliens identifiable as commuters. In addition, the survey team suspected that other alien employees of these firms were commuters, although they had given U.S. addresses to their employers.

When the survey was conducted, unemployment was very heavy in Laredo—11.3 percent. Large numbers of U.S. workers had the same occupational skills as the alien commuters and were unemployed at the time of the survey. For example, the two garment manufacturing firms in the sample employed 88 alien commuters as sewing machine operators. The Texas Employment Commission office files contined applications from 156 unemployed U.S. workers with this occupation.

The survey revealed a very common pattern of firms employing alien communters paying lower wages than did firms employing U.S. workers. From the data collected in the survey, it was possible to make comparitern of firms employing alien commuters sums of the wage rates paid for 19 occupations by firms engaged in similar activities. The firms employing ony domestic workers paid higher rates for 15 of the occupations; in one occupation the rates paid were the same; and for three occupations the firms employing alien commuters paid higher rates. There were also instances where the same firms paid its alien commuters less than it paid U.S. workers for the same work. The average of the wage rates for these 19 occupations paid by the firms employing only U.S. workers was 38 percent higher than the average rates paid by the firms employing alien commuters. Table 5 lists the occupational wage data obtained in survey.

[1] Other border areas in Texas, Laredo and Eagle Pass, have also attracted garment firms recently. A recent economic survey of Eagle Pass reports: ". . . it seems that the factors that have drawn garment manufacturers to Eagle Pass as a production site, *conspicuously the low cost of labor*, are likely to continue in the future." (Italic supplied.) Robert H. Ryan, Charles T. Clark, and L. L. Schkade, "Bridge into the Future Eagle Pass, Texas," Area Economic Survey No. 18 (Austin: Bureau of Business Research, University of Texas, 1964) pp. 82–83. Quoted by Lamar B. Jones, "Mexican-American Labor Problems in Texas," unpublished Ph. D. thesis, University of Texas, 1965.

TABLE 5.—OCCUPATIONAL WAGE STRUCTURE, LAREDO, TEX., JUNE 1961

Industry and occupation	Average wage rate (per week)	
	Firms employing only domestic workers	Firms employing domestic and alien commuter workers
Hotels and motels:		
Cook	$58	$34
Maid	20	17
Hall boy	25	20
Waiter	[1] 15	[1] 18
Busboy	[1] 25	13
Bartender	58	46
Bellboy	[1] 15	[1] 16
Drugstores and related firms:		
Cashier	27	12
Stock clerk	52	40
Fountain girl	16	[2] 23
Drug clerk	77	55
Grocery and related firms:		
Cashier	$24	$24
Stock boy	35	20
Produceman	45	35
Butcher	65	52
Warehouseman	37	31
Miscellaneous retail firms:		
Porter	53	35
Warehouseman	73	21
Stockman	53	45

[1] Plus tips. [2] Plus $3 meal allowance.

Note.—Data were collected in the survey concerning the different rates paid each occupation in each firm. For some occupations monthly rates were reported; these were converted to weekly rates by dividing the monthly rate by 4.33. The number of workers paid each rate was not reported in all cases, making it impossible to compute an average rate weighted by the number of workers paid each rate. The average rates shown in the table represent the average of the highest and lowest rates paid. These averages correspond quite accurately with the weighted averages computed or the few occupations where data were reported for each worker.

E. *Special commuter survey—El Paso.*—The El Paso special study was similar in concept and scope to the Laredo survey discussed above. The survey was made in the summer of 1961. Seventy-five firms were surveyed. At least 1,000 alien commuters were employed by these firms. However, it is believed many more were employed: some firms did not provide information about the residence of their workers. In other cases, workers identified as alien residents of the United States were probably, in fact, residents of Mexico and had provided false addresses. One garment manufacturing firm, for example, claimed none of its employees were commuters; *but it ran a bus to the border to pick up workers.*

For the most part, the alien commuters were employed in the less skilled and more menial occupations—busboy, dishwasher, laborer, salesclerk, maid, housecleaner, sewing machine operator. Alien commuters, however, were also employed in skilled jobs. Many worked in organized firms and were members of trade unions.

The data collected in the El Paso survey cannot be summarized as were the Laredo data (table 5). In some industries studied, all of the sample firms employed commuter aliens. In other industries, the sample firms refused to provide wage information or attempt to determine if any of their employees were alien commuters. The wage structure in other firms was determined by collective bargaining agreements negotiated on a national or regional basis and thus unaffected by commuters.

Where information was supplied, it was apparent that wage rates paid alien commuters were usually low. In about one-half of the occupations studied, the wage rates paid commuters were lower than what unemployed job applicants registered for work with the Texas Employment Commission said they would accept. These occupations were: sales men and women, cooks, laundry workers, painters, carpenters, and general manufacturing workers. In other classifications, salesclerks, kitchen helpers, packinghouse workers, laborers, and truckdrivers, the commuter aliens were paid rates commensurate with the expectations of unemployed domestic workers.

Following is a summary of the survey results:

Eleven construction firms.—Six firms employed only U.S. residents; five employed alien commuters. Two-thirds of the firms employing only U.S. residents paid the union scale. Only 20 percent of the firms employing commuters paid the union scale. The lowest rates were paid by the nonunion firms that employed commuters.

Four retail dry goods stores.—Three firms employed alien commuters. They paid lower wage rates than the firm that employed only U.S. residents.

Four wholesale and warehouse firms.—Three firms employed alien commuters. The firm employing only U.S. residents paid the highest wage rates.

All sample firms in the following industries employed alien commuters: Garment manufacturing (11 firms); restaurants (five firms); meatpacking (three firms); and laundries (four firms). Of interest is the fact that in the one laundry where wage rate data were supplied for both alien commuters and U.S. residents, the commuters were paid less than $0.50 per hour while the U.S. residents were paid about $0.80 per hour.

Insufficient wage and employment data were obtained to make any comparison for seven transportation and storage firms; two cotton processors; and three hotels and motels.

In several industries, refineries (four firms); miscellaneous manufacturing (seven firms); and miscellaneous firms (five establishments), there was no difference in the rates paid by firms employing alien commuters and those employing U.S. workers. One refinery, two miscellaneous manufacturing, and two of the other miscellaneous firms employed commuters.

Six other retail trade firms were included in the sample, but meaningful comparisons could not be made because the nature of their operations and the occupations of the workers they employed were too dissimilar.

F. *Unemployment in Texas border cities.*—The Texas Employment Commission prepares and publishes unemployment estimates for 22 Texas cities. In 1966 these data revealed that unemployment in border towns was substantially greater than in interior cities. Laredo had the highest rate—9.6 percent. The average rate for the four border areas (Brownsville-Harlingen-San Benito; El Paso; Laredo; and McAllen-Pharr-Edinburg) was 6.6 percent, almost 95 percent greater than the 3.4-percent rate in the 18 interior areas.

High unemployment rates are indicative of labor surpluses, surpluses that in turn cause lower wage rates as employers find it unnecessary to bid up wages to attract workers. The fact that unemployment is heavy and wage rates are low in the border towns is not coincidental. Workers residing in Mexico contribute to the labor surplus by filling jobs that United States residents would otherwise have—and frequently take them at wage rates unacceptable to United States residents.

Table 6 lists 1966 local unemployment rates for Texas; table 7 compares the volume of alien commuters in January 1966 with estimated unemployment in each of the Texas border towns for the same time period.

TABLE 6.—UNEMPLOYMENT RATES IN 22 TEXAS CITIES, 1966

City	Rate	Rank	City	Rate	Rank
4 border cities	6.6		18 interior cities—Continued		
Brownsville-Harlingen-San Benito	6.5	21	Galveston-Texas City	4.7	19
El Paso	4.4	17	Houston	2.4	1
Laredo	9.6	22	Longview-Kilgore-Gladewater	3.3	8
McAllen-Pharr-Edinburg	5.8	20	Lubbock	3.8	13
18 interior cities	3.4		Midland-Odessa	3.4	9
Abilene	3.6	11	San Angelo	3.4	9
Amarillo	2.9	4	San Antonio	4.3	16
Austin	2.6	3	Texarkana	3.8	13
Beaumont-Port Arthur-Orange	4.0	15	Tyler	3.3	7
Corpus Christi	3.7	12	Waco	4.4	17
Dallas	2.5	2	Wichita Falls	3.0	6
Fort Worth	2.9	4			

Source: "The Texas Labor Market," Texas Employment Commission.

TABLE 7.—TEXAS BORDER CITIES; UNEMPLOYMENT AND ALIEN COMMUTERS, JANUARY 1966

City	Unemployed U.S. residents		Alien commuters	City	Unemployed U.S. residents		Alien commuters
	Number	Rate			Number	Rate	
Brownsville-Harlingen-San Benito	3,020	6.2	2,032	Laredo	3,365	12.6	2,581
El Paso	5,050	4.8	11,772	McAllen-Pharr-Edinburg	4,190	6.9	1,163

Source: Unemployment data from "The Texas Labor Market," Texas Employment Commission; alien commuter data from I. & N.S. survey, Jan. 17, 1966.

ARIZONA

Alien commuters do not constitute as much of a problem in Arizona as they do in Texas. Only two border towns have any significant volume of alien commuter workers—San Luis, 4,200 and Nogales, 1,600. About 400 alien commuters cross the border at Douglas and another 100 at Naco. Employment and wage data for local Arizona communities are very limited, making it difficult to evaluate the economic impact of commuters. Farm wage data are available from the reports of the Arizona State Employment Service and that Agency has also published some occupational wage data for nonfarm jobs in its annual publication, "Arizona Basic Economic Data." Since Arizona has no sizable border cities, no earnings data are available from the 1960 census.

A. *Farm wage data.*—Data concerning wages for seasonal farm work in Arizona do not reveal any adverse impact exerted by alien commuters, despite a heavy volume of commuting into Yuma County where over half the farm workers employed are commuters who cross at San Luis. In the three major farming areas in Arizona, Maricopa, Pinal, and Yuma Counties, wages were highest in Yuma County, the only county where alien commuting occurs. The average hourly wage for seasonal farmwork in Yuma County, November 1966, was $1.31 per hour versus $1.29 in Pinal County and $1.26 in Maricopa County.

The reason for this anomalous situation, compared to wage patterns in other border areas, stems from unique conditions in the Yuma area. The farm work force in Yuma County for many years was dominated by Mexican aliens—Mexican contract workers admitted under Public Law 78 and/or illegal wetback workers prior to the wetback clean-up in the early 1950's. There was practically no resident domestic work force doing seasonal farm work in Yuma County. The prevailing wage rate in Yuma was whatever the Department of Labor required be paid to the Mexican contract workers.

When Public Law 78 ended in 1964, this situation changed. No longer was the labor force for seasonal farm work furnished by the Government. Growers had to compete with each other for available workers by bidding up wages. For the most part, the workers they were trying to attract were Mexican immigrants, some of whom lived in Yuma County; others lived in Mexico; and still others moved into Yuma from other areas in Arizona and California. In other areas of Arizona, the labor force was not so heavily composed of contract workers and the impact of Public Law 78's termination was not as severe; more local residents were available to replace the contract workers. Thus in Yuma there was more active competition in the wage area; this competition was successful in attracting workers, but many of the new workers were Mexican immigrants who chose to live in San Luis, Mexico, rather than in the United States.

Between May 1963 and January 1966, alien commuting increased almost fourfold, from about 1,100 to about 4,000. (Data are not available concerning the proportion of the 1963 commuters that worked in farm jobs. In 1966, about 85 percent did farm work.) Between 1963 and 1966 wage rates for seasonal farmwork in Yuma County increased 35 percent, compared to a 25-percent increase in Maricopa County, and a 10-percent increase in Pinal County where contract workers were largely eliminated prior to 1963.

B. *Nonfarm occupational wage data.*—The Arizona State Employment Service has published wage rate ranges, by county, for about a dozen occupations. Separate data are published for two Cochise County towns, Douglas and Bisbee. Although the two towns are only about 20 miles apart, there is a significant difference in the pattern of alien commuter employment. Douglas is directly on the border and about 400 aliens commute to jobs in the United States from Agua Prieta, Mexico; about 75 percent of them work in Douglas, the remainder in farm jobs in the Elfrida area, north of the city. There is very limited public transportation between Bisbee and Douglas, and very few alien commuters, or even Douglas residents for that matter, work in Bisbee. While Bisbee itself is only 10 miles from the border, the closest Mexican border town, Naco, is very small. Only about 100 alien commuters cross from Naco to work in the Bisbee area. Thus, alien commuters would have a much greater impact upon Douglas than upon Bisbee, despite the closeness of the towns.

The Employment Service data reveal lower wage rates existing in Douglas than in Bisbee, indicating that the commuter situation may have adversely affected rates in Douglas. As shown in table 8, seven occupations are listed which can be compared. Comparing the low point of the wage ranges shown for each occupation, four of the occupations in Douglas have lower rates while the other three are the same. Comparing the high point of the wage ranges, five of the occupations are lower in Douglas, one higher and one the same.

TABLE 8.—WAGE RATES PAID IN BISBEE AND DOUGLAS, ARIZ.: SELECTED OCCUPATIONS, 1966

Occupation	Bisbee	Douglas
Staff nurse	$425 to $525 per month.	$400 to $525 per month.
Stenographer	$400 to $535 per month.	$350 to $420 per month.
Salesperson	$1.25 to $2.15 per hour.	$1.25 to $2 per hour.
Cook	$10 to $14 per day	$10 to $12 per day.
Carpenter	$2.50 to $4.645[1] per hour.	$2.50 to $4.685[1] per hour.
Auto service station attendant.	$1.25 to $1.50 per hour.	$1 to $1.25 per hour.
Welder	$3 to $4.70 per hour.	$1.50 to $2.75 per hour.

[1] Higher rate is union scale.

Source: "Arizona Basic Economic Data," October 1966, Arizona State Employment Service, Phoenix, Ariz.

Of the three Arizona counties where any appreciable volume of alien commuting occurs, commuting to nonfarm jobs is greatest in Santa Cruz County (Nogales is the major town in this county). The 1,600 alien commuters make up about one-third of the county's work force; over 90 percent work mainly in nonfarm jobs. In contrast, the alien commuters working in Cochise County (Bisbee and Douglas) constitute only about 3 percent of the work force. In Yuma County (San Luis is the border entry point) alien commuters make up 19 percent of the work force, but are heavily concentrated in agriculture. Over half of the farmworkers employed in the county are alien commuters, while only about 5 percent of the nonfarm workers are alien commuters. Thus, any impact of alien commuters upon the nonfarm wage structure in Arizona would be primarily concentrated in Santa Cruz County.

Occupational wage data published in "Arizona Basic Economic Data" clearly show that wage rates in Santa Cruz County tend to be lower than in other areas. Of the nine occupations for which data are available for 12 areas in the State, wage rates in Santa Cruz County are lowest (or tied for lowest) for five occupations—clerk typist, carpenter, auto service attendant, truckdriver, and welder; second lowest for stenographer and cook; third lowest for nurse; and fourth lowest for salesperson. Table 9 lists the occupation wage data published in "Arizona Economic Data."

Mr. Ben Zweig, currently Executive Director of the Santa Cruz County and city of Nogales Economic Opportunity Community Action Committee, and formerly the American Consul at Nogales (1943–51) and Nuveo Laredo (1957–63), commented upon the commuter situation in an interesting fashion before the President's National Advisory Commission on Rural Poverty. Mr. Zweig said, "There is no doubt the daily influx of more than a thousand workers into this small community depresses wages." He went on to state commuters live in Mexico for two reasons: ". . . because living is cheaper, but also because they are unable to obtain immigrant visas for the immediate members of their families." According to Mr. Zweig, the reason visas cannot be obtained is the commuters earn such low wages they cannot prove their families would not become public charges. If Mr. Zweig's comments are correct, we have a situation that would be ludicrous if it were not so pitiful: Mexican aliens are admitted as immigrants. They satisfy the public charges requirements of immigration policy by accepting work in low paid jobs. But the jobs are so low paid they are not viewed as meeting the public charge requirements for the workers' families.

TABLE 9.—WAGE RATES FOR SELECTED OCCUPATIONS, BY COUNTY, 1966

Occupation	Apache and Navajo	Cochise	Coconino	Gila	Graham and Greenlee	Maricopa	Mohave	Pima	Pinal	Santa Cruz	Yavapai	Yuma
Nurse (per month)	$315–$335	$400–$525	$250–$480	$400–$500	$275–$350	$420–$463	$395–$420	$340–$400	$250–$400	$325–$375	$425–$475	$400–$475
Stenographer (per month)	275–325	350–534	285–450	265–310	260–350	325–400	300–325	285–300	275–300	250–325	240–320	200–335
Clerk typist (per month)	240–260	325–410	200–400	220–265	215–260	270–360	250–275	225–315	240–260	200–250	225–275	275–316
Salesperson (per hour)	1–1.25	1.25–2.15	1.10–2	.90–1.25	1–1.25	1.10–1.66	1.25–1.50	1.25–1.40	1.25–1.75	1.25–1.35	1.25–1.35	1.25–1.75
Cook (per day)	12–14	10–14	9–22.50	10–16	10–12	10–18	12–18	14–18	9–11	10–12	10–130	16–20
Carpenter (per hour)	2.25–5.25	2.50–4.685	2.50–4.505	3.20–4.50	3–4	3–4.685	3–5.13	3–4.50	2.50–4.385	2–4.25	2.50–4.505	2.50–4.385
Auto service station attendant (per hour)	1.10–1.40	1–1.50	1.25–1.75	1–1.50	1.25–1.75	.....	1.25–1.50	1.25–1.35	1.10–1.25	1–1.25	1.10–1.35	1.25–1.50
Truck driver, light (per hour)	1.15–1.35	.....	2.12–3.78	1.50–2	1.50–2	.....	1.25–1.50	1.25–1.75	1.25–1.50	1.25	1.50–2	1.35–1.75
Welder (per hour)	2.75–4.97	1.50–4.70	2.76–4.86	3.19–5.04	2–2.50	.....	2–4.25	2.50–4.65	2–2.50	1.50–2	2.25–2.86	2.50–3.25

Source: "Arizona Basic Economic Data," October 1966, Arizona State Employment Service, Phoenix, Ariz.

The 1960 census also contains data relating to the low earnings in Santa Cruz County supporting the previous discussion that indicated wages in this area are among the lowest in the State. According to the census, median earnings in 1959 of Santa Cruz County male residents were $3,666—lower than any county except Apache. (Earnings in this county are depressed because of the large Indian population.) For female residents, Santa Cruz County ranked 11th among the 14 Arizona counties.

CALIFORNIA

Large numbers of alien commuters work in California, crossing at two major points of entry, Calexico and San Ysidro. Calexico is in the rich farming area of the Imperial Valley. About 85 percent of the 7,500 to 8,000 alien commuters work in agriculture. San Ysidro is within the San Diego metropolitan area and about 40 percent of alien commuters work in agriculture with the remainder working in a wide variety of nonfarm jobs. Data concerning the occupational characteristics of the alien commuters working in nonfarm jobs in San Diego are not available, but there is no reason to suspect that such workers would be much different than those crossing into El Paso. There they worked for the most part in the lowest skilled, most menial jobs.

Data concerning wages, employment, and unemployment in border areas and the alien commuter problem in California indicate that in this state, as in Texas and Arizona, economic conditions are much worse on the border.

A. *Farm wages.*—According to data collected by the California Department of Employment, farm wages in California are lowest in the border areas. The average wage for seasonal farmwork in November 1966 was $1.42 per hour in the two border counties, Imperial and San Diego. Wage rates for similar work in the remainder of the state were 6 percent higher.

Most of the seasonal farm work in the border areas is done by alien commuters. The number of alien commuters that cross at Calexico is equal to about 90 percent of seasonal farm employment in Imperial County. Some of the alien commuters actually commute out of Imperial County to jobs in the Coachelle Valley, over 60 miles north of the border. In all, however, alien commuters probably make up about 85 percent of the seasonal work force in Imperial County. The same situation prevails in San Diego County. The number of alien commuters crossing at San Ysidro is equal to

almost all of the workers employed in seasonal farm jobs in the county. Since some aliens also commute out of the San Diego County, the proportion that aliens constitute of the seasonal work force is less than 100 percent—probably about 85 or 90 percent.

There is also a significant volume of commuting by U.S. citizens residing in Mexico. About 1,600 such workers cross at Calexico to do farmwork and another 800 enter the United States at San Ysidro. It is clear that for practical purposes nearly all of the seasonal farmworkers employed in San Diego and the Imperial Valley live in Mexico.

Considering this fact, it is perhaps surprising that farm wage rates are not even lower. They are not because of the same factor present in the Yuma, Ariz., situation—the termination of Public Law 78. When this program was in existence, most of the seasonal farmwork was done by contract Mexican workers. As the program ended, farmers had to compete for whatever domestic workers were available. For the most part, these were Mexican aliens who had previously been admitted as immigrants. They accepted the farm jobs formerly held by alien contract workers at the higher wage rates employers were offering. When the alien contract workers dominated the farm labor force, particularly in Imperial County, farmworker housing was geared to the contract workers. Barracks-type housing for single male workers was the standard. Family housing for farmworkers was available only on a very limited basis. Thus when alien contract workers were replaced by U.S. citizens or alien immigrants, almost the only available family housing was in Mexico.

On the border in California, as in Arizona, the end of the bracero program increased alien commuting. But at the same time it also caused sharp wage rate increases, thus militating against—perhaps disguising is a more apt description—the adverse impact of the commuter situation. Total alien commuting jumped over 50 percent[2] between 1963 and 1966, but seasonal farm wages still increased 35 percent, one-fourth greater than the increase in wages for the same kind of work in the rest of the state.

B. *1960 census of population median earnings data.*—The published statistics of the 1960 census contain data for eight major metropolitan areas, one of which was San Diego. However, the area is so large that the smaller number of alien commuters would not be expected to have very much impact. The total volume of alien commuters amounted to less than 3 percent of the total labor force; those working in nonfarm jobs to only about 1.5 percent of nonfarm employment. Furthermore, the structure of industry in San Diego includes several relatively well paid industries. The Federal Government has a large naval installation in the area and several aircraft manufacturing firms are also present.

Nonetheless, there is evidence to indicate that economic conditions in San Diego are poorer than in other major California cities. San Diego ranked only fifth highest among the eight major cities in median earnings of male workers, and fourth highest for female workers. Earnings were lower in San Diego than in the largest urban areas, but higher than earnings in the interior valley cities where farming is an important activity. Of particular significance are the data for the occupations in which most of alien commuters probably work. The earnings of farm laborers, $1,621, were the lowest of all eight areas. Comparing Los Angeles and San Diego, the earnings of San Diego residents were 8 percent lower for male salesworkers; 18 percent lower for male farmworkers; 5 percent lower for female clerical workers; 8 percent lower for female salesworkers; 18 percent lower for female private household workers; and 14 percent lower for female service workers. As was previously mentioned, the census data, which are collected from households in the United States, do not fully measure the impact of commuters because they reside in Mexico. If commuters were included in the census enumeration, the census median earnings would be lower than was reported. This is demonstrated by social security program data. These data show, for 1965, that average earnings in San Diego County were seven percent lower than in Los Angeles County. However, the census data showed median earnings of all male workers to be only .2 percent lower in San Diego County. The median earnings of women workers were about 8 percent lower. Table 10 lists earnings data from the 1960 census of population.

C. *Unemployment in California border area.*—The California Department of Employment has prepared estimates of unemployment for both San Diego County and the Imperial Valley. The unemployment rate in 1966 in San Diego was 5.2 percent, somewhat higher than the Los Angeles-Long Beach rate of 4.5 percent and San Francisco-Oakland rate of 4.4 percent. In the Imperial Valley, where alien commuters form a much greater proportion of the work force, the unemployment rate was 10 percent, double the average rate for the entire state.

[2] There is reason to suspect alien immigrant commuting increased more than 50 percent. In 1963 alien contract workers employed in the Imperial Valley were permitted to live in Mexico and commute to their jobs. Some of these workers may have been counted as commuters in the 1963 I&NS survey.

TABLE 10.—MEDIAN EARNINGS IN 1959 OF PERSONS IN THE EXPERIENCED LABOR FORCE, BY SEX AND OCCUPATION—MAJOR CALIFORNIA CITIES

Occupation	San Diego	Los Angeles-Long Beach	Bakersfield	Fresno	Sacramento	San Bernardino-Riverside-Ontario	San Francisco-Oakland	San Jose
All male workers	5,672	5,684	5,119	4,498	5,709	5,069	5,705	5,998
Farmers and farm managers	3,331	3,731	6,537	4,317	4,242	3,796	4,070	4,500
Clerical and kindred	5,259	5,108	5,247	4,982	5,179	5,182	5,166	5,344
Salesworkers	5,338	5,828	5,473	5,445	5,554	5,216	5,816	5,971
Salesmen and clerks	5,397	5,885	5,467	5,481	5,639	5,309	5,913	5,090
Retail trade	4,850	4,940	4,817	4,775	4,880	4,552	5,056	5,107
Craftsmen, foremen	6,182	6,088	6,035	5,448	6,113	5,582	6,223	6,435
Carpenters	5,803	5,701	5,398	5,085	5,907	5,119	6,065	6,188
Painters	5,368	4,761	5,165	4,510	5,624	4,634	5,320	5,511
Plasterers	6,468	6,068	6,049	5,978	6,122	5,487	6,011	6,534
Operatives and kindred	5,216	5,089	5,142	4,404	5,078	4,825	5,270	5,339
Attendants, auto	2,750	2,869	2,520	2,802	2,730	2,573	3,003	2,589
Meatcutters	6,051	6,104	5,739	5,804	5,747	5,871	6,096	6,419
Truckdrivers	5,390	5,550	4,650	4,941	5,391	4,987	5,848	5,939
Welders	5,991	5,431	5,879	5,094	5,777	5,322	5,832	5,829
N.E.C. manufacturing	5,237	5,068	5,595	4,306	5,165	4,836	5,320	5,198
Durable	5,305	5,018	4,631	4,195	5,500	4,901	5,113	5,413
Nondurable	4,863	5,169	5,922	4,399	4,784	4,502	5,518	4,674
Service workers	4,042	3,977	3,909	3,594	4,076	3,605	4,193	3,873
Barbers	4,757	4,315	4,244	4,149	4,932	3,873	4,501	4,535
Cooks	3,777	4,234	3,619	3,737	3,942	3,847	4,321	4,533
Guards	5,390	4,416	4,073	3,357	5,094	4,591	4,481	4,258
Waiters	4,266	3,637	3,870	3,489	3,631	3,368	4,090	2,448
Farm laborers and foremen	1,621	1,964	2,281	1,960	1,815	1,785	1,999	2,274
Laborers, except farm and mine	3,753	3,684	3,462	2,924	3,965	3,407	4,473	3,760
Manufacturing	4,413	3,929	4,446	3,109	3,765	4,018	4,292	3,817
Durable	4,457	3,852	4,346	3,007	4,021	4,140	4,295	4,603
Nonmanufacturing	3,761	3,402	3,473	2,883	3,841	3,206	4,066	3,988
Construction	4,370	4,309	4,233	3,944	4,422	3,906	4,313	4,526
All female workers	2,729	2,957	2,154	2,038	3,042	2,307	3,165	2,635
Clerical	3,304	3,484	3,221	2,927	3,512	3,142	3,577	3,226
Bookkeepers	3,318	3,653	3,219	3,016	3,512	3,112	3,638	3,138
Cashiers	2,410	2,937	2,635	2,248	2,491	2,557	3,004	2,408
Office machine operators	3,606	3,612	3,548	3,154	3,526	3,509	3,634	3,384
Secretaries	3,525	4,034	3,649	3,161	3,945	3,338	3,976	3,574
Stenographers	3,589	3,799	3,713	3,648	3,814	3,388	3,885	3,498
Telephone operators	3,285	3,363	3,369	3,351	3,465	3,147	3,659	3,325
Typists	3,081	3,091	2,887	2,814	3,356	2,993	3,244	2,683
All other	3,277	3,287	3,049	2,628	3,420	3,061	3,456	3,093
Salesworkers	1,859	2,021	1,494	1,666	1,936	1,773	2,426	1,805
Retail trade	1,892	1,935	1,494	1,693	1,831	1,783	2,365	1,842
Operatives	2,866	2,676	1,733	1,529	1,976	1,872	2,696	1,947
Laundry	2,226	2,196	2,123	2,273	2,199	1,988	2,467	2,600
Private household	724	886	672	654	643	659	842	691
Live out	667	807	665	635	623	641	780	647
Service	1,698	1,969	1,589	1,594	1,871	1,545	2,191	1,843
Institute attendants	2,369	2,440	2,448	2,309	2,390	2,815	3,043	2,492
Cooks	2,163	2,203	1,773	1,690	2,020	1,901	2,348	2,231
Waitresses	1,464	1,638	1,329	1,312	1,472	1,354	1,802	1,565

Source: U.S. Bureau of the Census, Census of Population, 1960.

SUMMARY

The "commuter" problem and low wages and unemployment in American cities on the Mexican border

About 44,000 alien commuters live in Mexico and work in U.S. cities.

Another 18,000 U.S. citizens commute to their U.S. jobs from residence in Mexico.

90 percent of the commuters are in eight border areas: Brownsville, Laredo, Eagle Pass, and El Paso, Tex.; Nogales and San Luis, Ariz.; Calexico and San Ysidro, Calif.

Unemployment in Texas border cities is almost 95 percent greater than in Texas interior cities.

Alien commuters work most often in the lowest skilled, most menial, and lowest paid jobs: seasonal farmwork, maids, kitchen helpers, salesclerks, sewing machine operators.

Wages for seasonal farmwork in Texas border areas are over 30 percent less than in the rest of the State.

Firms that employ alien commuters tend to pay lower wages than firms that employ only U.S. residents.

Firms that employ alien commuters frequently pay them less than what they pay U.S. residents for the same work.

Wage rates paid to commuters are often less than what unemployed U.S. residents say they are willing to accept.

Greatest number of alien commuters in Arizona cross the border at San Luis for farmwork in the Yuma area. Farm wages, however, in this area are high because the great number of alien commuters is a relatively new phenomenon resulting from efforts to attract a new labor supply after Public Law 78 terminated.

Wage rates for nonfarmwork in Arizona border areas are very low in comparison to rates in other areas. Workers in Santa Cruz County, where most nonfarm alien commuters work, have the lowest earnings in the State, except for Apache County where poverty on the Navajo Indian Reservation depresses earnings.

California farm wage rates are lowest in the border areas. The bulk of the farmwork force in these areas is composed of alien commuters.

Alien commuters loom the largest in the Imperial Valley where they constitute about 30 percent of the total work force, and about 85 percent of the farmwork force. Unemployment in this area was 10 percent of the labor force in 1966, twice the average rate for the entire State.

In San Diego, another area where large numbers of alien commuters work, wage rates were lower, and unemployment higher, than in Los Angeles.

EXHIBIT 3

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, June 19, 1968.

Hon. RAMSEY CLARK,
Attorney General,
Washington, D.C.

DEAR RAMSEY: I am enclosing a report with recommendations from the Labor Department staff on the Delano situation. I have seen a draft of the Immigration and Naturalization Service report, and I realize there are some differences in interpretation of the troubled relations between the INS and the United Farm Workers Organizing Committee in California. Our staff believes that the hostility and mistrust are so deep that there must have been some cause, whether it be poor judgment, lack of communication, or whatever. They also believe some ameliorative steps have been taken. However, the basic problem still lies in the whole concept of immigrants who reside in another country. The aggravation of this low-skilled and low-wage work force on the workers of the Southwest grows daily. Much of the energy and anger of the growing Mexican-American militancy in the Southwest is aimed at the workers who live in Mexico, but who claim the economic benefits of being a U.S. citizen. The Mexican-American social groups and the unions such as the UFWOC cannot rest until this problem has been resolved.

Therefore, I urge that the Federal Government move to control the impact of the commuters. A new and simpler strike regulation which excludes all commuters from struck firms should be promulgated immediately. A system of identifying commuters should be devised, and to that end, I will provide Labor Department staff to help absorb the workload. Ultimately, all commuters should be excluded unless than can prove they are not adversely affecting U.S. workers.

I urge your careful consideration of this matter. Stan Ruttenberg and I would like to discuss this with you personally at the earliest opportunity.

Sincerely,

WILLARD WIRTZ,
Secretary of Labor.

ALIEN COMMUTER PROBLEMS

(Report of Labor Department members of joint Labor-Justice fact-finding group)

Because of pronounced irreconcilable differences in their reactions to meetings and discussions with union officials during the Delano visit, the Task Force members have agreed to submit separate reports. This report, then, is submitted by the Labor Department representatives of the Joint Justice-Labor Task Force.

On Monday, May 6, the members of a joint fact-finding group of the Justice Department and Labor Department met in Bakersfield, California. Present were:

Mario Noto, Associate Commissioner, INS.

Charles Gordon, General Counsel, INS.

Donald Coppock, Deputy Associate Commissioner, in Charge of Border Patrol, INS.

Michael Fargione, Deputy Regional Director, Southwest Region, INS.

Leonard W. Gilman, Associate Deputy Regional Director, Southwest Region, in Charge of Travel Control, INS.

Frank Borda, Deputy Assistant Secretary for Manpower, DOL.

Ken Robertson, Regional Manpower Administrator, San Francisco, DOL.

Lawrence W. Rogers, Assistant to the Administrator, BES, DOL.

Roberto Ornales, Mexican American Desk Director, Manpower Administration, DOL

Mr. Noto outlined the mandate given to the task force by the Attorney General as follows: Review the entire situation concerning the use of commuter green card workers by employers in the Delano area. The examination was to assure that the proper policy emphasis on enforcement of the regulation was made clear to all Immigration and Naturalization Service personnel. The procedures for administering the regulation were to be examined to see what improvements could be made. Finally, meetings would be held with the United Farm Workers Organizing Committee to create a proper liaison with that organization.

The task force discussed the various problems they might encounter in Delano in carrying out the Attorney General's directive. The prominent problem seemed to be the attitude which the union and its members have toward the Immigration and Naturalization Service, which specifically is alleged discrimination by the Service against the union and its members in favor of the employers in this particular area.

Subsequent to the foregoing discussions, the Labor Department representatives urged that the task force convene at Delano, California, since the problems to be reviewed centered around that city. The INS members agreed, although there were some misgivings that undue public attention might result.

Mr. Cesar Chaves, Director.

Mr. James Drake, Member.

Mr. Jerry Cohen, Counsel.

Mr. Leroy Chapfield, Administrative Officer.

Mr. Marshall Ganz, Executive Board Member.

Mr. Larry Itliong, Assistant Director.

Mr. William Kircher, Director of Organization, AFL–CIO.

Mr. Kircher had been present at the meeting with the Attorney General when it was agreed to form the fact-finding committee. He presented the problem of the union. It soon became evident that the basic complaint of the union was that Immigration Service personel were not enforcing the regulation restricting the use of commuter workers at strikebound firms. There were numerous meetings during this one day at which the union representatives fully aired their grievances. The union representatives repeatedly stated they were not asking for special treatment; they were only asking that the regulation be vigorously enforced. In essence, the union's allegations were:

1. The attitude of the Border Patrol is "provincial," anti-union, and anti-Mexican. This attitude was linked to the treatment which the union felt it had received at the hands of INS supervisory field staff. The union reported several instances of brusque and uncooperative encounters with District Directors in San Francisco and Los Angeles and the officers in charge of the Bakersfield office. The union felt that the INS supervisors did not want to cooperate with the union in the enforcement of the regulation, and that this attitude was transmitted to the Border Patrolmen.

2. That the Border patrol favors the "growers" in the enforcement of their responsibilities. Border Patrolmen do not adequately interrogate geen card workers to ascertain if they are subject to the regulation. Field checks are far too brief. Border Patrolmen are too willing to accept inadequate answers as evidence that particular individuals are not subject to the regulation.

3. That the union has additional information regarding aliens illegally in the U.S. but will not furnish it to the Service unless it could be satisfied that the Service will take action on it.

4. That violators of 8 CFR 211.1(b) are not apprehended by the INS and prevented from working in the struck fields. The only exception was 10 cases which the Union maintains were acted on by INS only after a civil suit was filed by the Union against the 10 employees and their employer.

The Union developed one general question which it presented to the INS to elicit answers on the policy and procedures for enforcing 8 CFR 211.1(b). The INS officials offered, instead, a list of 14 questions and answers, prepared by the Service for internal use at all operating levels (Attachment "A"). However, the Union would not examine it nor accept it. There was discussion of various problem situations, and ultimately the INS agreed to provide the Union with a statement about how the regulation works.

In response to Union allegations that the Service had not taken action on violations reported by the Union, the Service offered to furnish to the Union representatives the results of the investigations which have been conducted and actions taken thereon. The Supervisory Patrol Inspectors of the Bakersfield station were called in and they were subjected to examination by the Union representatives and by members of the task force.

During the examination it was apparent that the Union's allegations had merit, at least in the lack of evidence available to

show that the INS had acted on complaints. The demeanor of the officers and the Union representatives made it apparent that considerable hostility and antagonism exists. From the incompleteness of information available concerning the officers' prior investigatory work it appeared that the investigations were either very superficial or the records were totally inadequate to support the conclusions made by the officers.

The Bakersfield officers explained the modus operandi used by the Border Patrol in locating and processing illegal aliens. As evidence of its good faith, the service agreed that with respect to 38 cases in which the Union had expressed an interest and which had been referred by the Border Patrol for further investigation to determine whether there had been any violations of 8 CFR 211.1(b), the Service would furnish them on the following day with detailed information concerning actions taken and results achieved. This was done on the following day and no further question was raised by the Union with respect to these cases.

In response to the allegations made by the Union representatives that the Border Patrol of the Service was not searching for illegal aliens, INS furnished the group with a statistical account of the result of Border Patrol efforts made between February 8, 1968 and April 30, 1968. This was not acceptable to the Union officials since the results showed few persons found on struck farms who were covered by the regulation. Rather, the Union felt this supported their contention that the INS was not doing an adequate job of seeking out violators and properly interrogating suspected violators.

In support of allegations made by the Union that the Service attitude was anti-Union, Union representatives cited alleged instances of remarks made and attitudes shown by Service officers which were interpreted by them to reflect such attitudes. A typical example cited by the Union is reflected in a statement made by a person who alleges to relate an incident between Service District Director at San Francisco and one Jose Lune (Attachment "C"). It is observed at this point that at a conference held with INS officials on May 8, 1968 at San Pedro, California, the Service District Director at San Francisco denied the Union's interpretation of the incident in question, and in support thereof produced a letter which expressed appreciation by Union representatives for what is now characterized as an antagonistic attitude (Attachment "D"). However, it should be noted that the letter essentially is a polite thank you note returning $10 advanced by the District Director.

On May 7, 1968 additional meetings were held. During the morning the members of the task force actually observed and participated in Border Patrol field operations in locating and examining aliens employed on struck farms. While the members of the task force were favorably impressed by the inquiries conducted by Patrol officers during these investigations, the nature and conduct of the investigations indicated that prior investigations, and some of the current procedures, were inadequate to give meaningful protection to U.S. workers as contemplated by the regulations.

1. The questioning of suspect aliens was a time-consuming process. The brief time spent in some prior investigations observed by Union representatives, a charge not denied by the Bakersfield officers, would indicate the prior investigations were rather superficial, if the current investigations are a representative standard.

2. Of the small group questioned a significant number of suspect aliens were found. In fact, one alien who by his own statement was clearly in violation of the regulation, was found.

3. There was no effort made by the Border Patrolmen to immediately remove suspect aliens. The Border Patrol procedures call for only identifying the suspect aliens and their referring the case to other INS personnel for further, more detailed investigation. This permits the suspect alien to leave the employer or the area, only to return clandestinely, if he so chooses, at another time when he is not under scrutiny by INS officials. Unless there is an immediate investigation and removal of suspect aliens the enforcement of the regulation will continue to be a problem.

During the meetings on May 7 the same matters which had been discussed previously were reiterated. The Service representatives agreed to make any necessary changes in the procedures of the Border Patrol. The Union representative demanded that in demonstration of good faith, the group should reduce to writing the matters on which changes in procedures had been agreed to. During this discussion the Justice Department representatives declined to incorporate a commitment made the preceding day that the Service would establish a system to identify all commuters by using some sort of special identification marks on the I–151. The Justice Department representatives felt the expense of such an operation precluded its adoption at this time but that they would consider it further. Unfortunately, the failure to keep what the Union and Labor Department representatives felt was an unequivocal commitment exacerbated relations between the INS and Union representatives.

Additional tension was created when the Justice Department representatives declined to personally investigate some of the aliens cited by the Union as being in violation of the regulation. Earlier the union representatives had made an issue about turning such information over to INS because they felt thorough investigations would not be made. The Union information had been treated with some disdain by INS officials in the past who characterized investigations of their data as "wild goose chases." After being assured that their information would be carefully investigated, they changed their position about not furnishing it to INS as a good faith demonstration on their part. They were completely taken aback by the failure of the task force to make personal investigations. INS did bring officers into Delano immediately to investigate the cases, which helped ease the situation. Both the Justice and Labor Department representatives were invited by the Union to observe the network established by the Union in Delano and surrounding communities to identify suspect aliens. The Labor Department representatives joined the union representatives on such a tour the night of March 7. No investigations were made and none of the commuters were either visited or interrogated.

Notwithstanding the heightened tension at the end of the meetings, the Memorandum of Conversation finally agreed upon (Attachment "E") was accepted by the Union as an act of good faith on the part of INS.

As the meeting came to an end, it was most evident that while there remained an undertone of hostility and suspicion toward INS by the Union representatives, the climate was markedly improved over what it had been. It is believed that the Union has accepted the good faith of the Service as a result of the discussions held.

On May 8 the Immigration members of the Task Force proceeded to San Pedro, California, where a meeting of supervisory officers involved in this operation was convened.

The Labor Department representatives continued meeting with the Union representatives May 8. The Union's picketing operation was observed, its headquarters office was visited. Strike problems and Government policy were discussed at great length. On May 9 the Labor Department representatives met with Members of its regional staff in San Francisco. The Delano discussions and commitments were discussed. Plans were discussed for the investigation of several farms to determine if they were still involved in the labor dispute. The extreme sensitivity of the Delano situation was emphasized and the regional staff was cautioned concerning the necessity of maintaining a fair, impartial and unbiased posture toward both sides in the dispute.

FINDINGS OF LABOR DEPARTMENT REPRESENTATIVES

1. That the issue at Delano really goes far beyond the narrow problem of the enforcement of 8 CFR 211.1(b) or even that of a dispute between a trade union and several employers. Underlying the situation at Delano is the striving of a minority group, Mexican-Americans, that has suffered odious economic, politcial and administrative discrimination for many years. The aspirations of this group are now centered in the Delano struggle, primarily because the Union leader, Mr. Cesar Chavez, has succeeded in projecting himself as not only a trade union leader, but as a charismatic leader of a people fighting for redress of long accumulated grievances. It is highly significant that the Union is refered to as "la causa," that the folk hero of the members is Emilio Zapato, that its patron is the Virgin of Guadalupe. All are symbolic of the struggles of an oppressed people. Unless the Delano issue is recognized for what it is, an integral part of the present civil rights struggle in America, measures to solve the particular issues investigated by the Task Force are likely to be ineffectual.

2. That there is considerable distrust and resentment by the United Farm Workers Organizing Committee, and probably shared by the Mexican-American community, of Government agencies and employees arising both as a survival of past feelings and as a result of current attitudes and practices.

3. That Mexican alien immigrants with homes in Mexico have been, and are now, employed on farms involved in the labor dispute despite the promulgation of 8 CFR 211.1(b). This arises because of insufficient enforcement techniques, but, more importantly, because the regulations do not provide meaningful protection to U.S. workers. In essence, U.S. workers are looking to the regulation to provide more of a safeguard of U.S. wages and working conditions than it can give. Enforcement measures are considered very inadequate and the Government attitude toward the workers' plight viewed as a deceitful sham simply because the regulation is not preventing commuters from working as strike breakers.

RECOMMENDATIONS OF LABOR DEPARTMENT REPRESENTATIVES

1. That the commitments made by the task force be honored. Specifically this means implementing the Memorandum of Conversation (Attachment "E") and furnishing the United Farm Workers Organizing Committee with a response to its questions to the task force.

2. That INS undertake a systematic program of identifying all commuters, seasonal or daily, to facilitate the identification of aliens possibly subject to 8 CFR 211.1(b). To assist in this the Labor Department will make staff help available to INS. Once this identification is completed, only holders of this card could cross the border. The ordinary green card holder would be required to have a re-entry permit.

3. That the enforcement techniques of INS be changed. Aliens suspected of being in violation of 8 CFR 211.1(b) should be removed from the farms in question as soon as grounds for such a suspicion are found. The INS investigatory staff stationed in Delano should be increased: this includes both Border Patrol and INS staff. Union allegations concerning aliens employed in violation of 8 CFR 211.1(b) should be investi-

gated promptly and complete written reports of the investgiations made promptly to the Union. That INS station in Delano an employee of Mexican-American ancestry, in whom the Union has confidence, to work with the Union, as a liaison officer.

4. That the Government agencies involved immediately conduct extensive employee training to eradicate any attitudes of bias or prejudice against Mexican-American farm workers; that if such attitudes cannot be changed, the employees involved be transferred to jobs involving no work responsibilities with Mexican-Americans.

5. That 8 CFR 211.1(b) be amended to preclude the employment with a strike-bound firm of any alien immigrant who maintains a residence outside of the United States. This would eliminate the vexing enforcement problem existing under the present regulation of determining the date of an alien's employment at such a firm and the date and purpose of his entry into the United States.

6. That a regulation be promulgated that would condition any alien's commuter status upon a periodic determination by the Secretary of Labor that his employment in the United States does not adversely affect the wages and working conditions of U.S. workers.

The recommendations of the Labor Department Task Force members admittedly go beyond that Delano strike. But, as stated earlier, the issue itself involves more than the Delano strike. At issue is the relation of the Government, and specifically this administration, toward a minority group that in an era of social revolution is asking redress for accumulated grievances. The action of the Government in the Delano strike, the commuter regulation barring employment of commuter strikebreakers, and its enforcement (or lack of enforcement) is alienating the Mexican-American community from the administration. This will worsen until there is an effective resolution of the whole commuter problem. Unless far-reaching administrative action is taken, and taken soon, there is a real and immediate danger that solution will be sought in the streets with grave national and international repercussions.

Frank Borda.
Kenneth Robertson.
Lawrence W. Rogers.
Roberto Ornales.

ATTACHMENT A

1. Q. An alien previously admitted as an immigrant who maintains a home and family in Mexico commutes daily to and from work in the United States. In May he moves farther north and discontinues returning home each night. After several weeks of varied employment, he secures work at a place where the Secretary of Labor has already determined a labor dispute exists. After a short term of employment, he returns to Mexico to visit his family. Two weeks later he applies for readmission to continue his employment at the place where the dispute exists. Is his Form I–151 valid for reentry?

A. No. His primary purpose is to be employed at the place where the dispute exists and his employment there commenced after the determination of a labor dispute was made.

2. Q. An alien previously admitted as an immigrant who has no residence in the United States and does maintain a residence in Mexico is working close to the border and returning home every week or two to visit his family. The Secretary of Labor determines a labor dispute exists at the alien's place of continuous employment. The determination is made subsequent to commencement of the alien's employment. The alien visits his family for a few days and applies for readmission. Is his Form I–151 valid for reentry?

A. Yes. The alien's employment was continuous since prior to the Secretary of Labor's determination.

3. Q. An alien previously admitted as an immigrant is employed at a place prior to the time the Secretary of Labor determines a dispute exists. Due to seasonal work, the alien is temporarily "laid off." He returns to his home in Mexico and accepts employment there. A few weeks later he applies for readmission to continue his work with his former employer. Is his I–151 valid for reentry?

A. No. We consider the continuity of his employment broken.

4. Q. A legal resident alien who maintains his home and family in the United States accepts employment at a place where the Secretary of Labor has determined a labor dispute exists. He makes a visit outside the United States. Is his Form I–151 valid for reentry?

A. Yes—since his primary purpose in seeking reentry is to resume residence.

5. Q. An alien previously admitted as an immigrant but now domiciled in Mexico attempts reentry for the purpose of seeking work. He has made no arrangement for employment and has no particular place in mind. There are several places in the area where labor disputes have been determined and announced by the Secretary of Labor. The applicant is warned that seeking work where a labor dispute exists will invalidate his Form I–151 for admission. He is subsequently found employed at a place where a determined and announced dispute exists. Is he deportable? Is he excludable at next entry?

A. On the basis of the facts presented the alien would be deportable under section 241 (a) (1) in that he was excludable at time of entry as his Form I–151 was invalid as a document in lieu of a visa or permit to reenter. Absent a waiver or new immigrant visa he would be excludable at his next attempted entry.

6. Q. An alien who was initially admitted as an immigrant in 1956 works each year in northern California for the same employer from March to September, then follows the harvests until December. He spends December, January, and February in Mexico. His wife and children, who were also admitted as immigrants, accompany him. He has no fixed place of residence in the United States and usually he lives in housing furnished by the employer. During the period the alien was in Mexico (December through February) the Secretary of Labor determined and announced a labor dispute at the alien's regular place of employment. In March the alien applies for admission destined to the place where the dispute exists. Is his Form I–151 valid?

A. We now have several factors to consider. Was his employment continuous since before the dispute determination? Apparently not as he usually leaves that employer and follows the harvests in the United States from October through December. Is he seeking admission primarily to accept employment at the place where the dispute exists? Because of his habits there is indication the primary purpose is to resume residence. This would have to be decided by the facts in the case.

7. Q. An alien previously admitted as an immigrant and now domiciled in Mexico last entered the United States after the effective date of the amended regulation (July 10, 1967) at which time he was destined to an employer where no dispute existed. He later accepted employment at a place where a dispute had been determined. Is he deportable?

A. If an alien entered the United States after the announcement of the labor dispute and went to work, even though intervening employment, he is presumed to be in violation of the regulation. Facts should be developed.

8. Q. Is the Form I–151 of the alien described in the last question valid if he goes to Mexico and seeks reentry?

A. No. His employment commenced at the place where the dispute exists subsequent to the determination.

9. Q. An alien and his entire family have been admitted for permanent residence. They work as migrant agricultural workers and follow the harvest nine or ten months each year. In December they establish residence in a border city in Mexico and the principal alien commutes daily to work near the border. His children commute daily to school. He accepts employment at a place where a labor dispute has been determined. Is his Form I–151 valid for entry?

A. No. His primary purpose in seeking admission is to work at the place where the dispute exists.

10. Q. An alien previously admitted as an immigrant commutes daily from Mexico. He is employed in agricultural work but has no definite employer. He is picked up each morning by a labor contractor and does not know exactly where he will be employed. He is paid daily by the contractor. He enters the United States using his Form I–151 in lieu of a visa and is found that afternoon employed by the labor contratcor on a farm where a labor dispute has been determined. Is he deportable?

A. Yes. We believe employment by a labor contractor at a place where a dispute exists to be equivalent to employment by the owner or operator. This rule should also be applied concerning continuity of employment if the employment continues at the same place. However, continuous employment by a labor contractor who places an alien at a place after a dispute is determined shall not exempt the alien from provisions of the regulation.

11. Q. An alien formerly admitted as an immigrant and who maintains no domicile in the United States last entered the United States in 1966 and worked for a labor contractor starting in May 1967. The contractor, who paid the alien's salary, continuously employed the alien on a specific farm. A labor dispute was determined on that farm in July 1967. The alien, although continuing in the same actual employment, was in August 1967, placed on the payroll of the farm where the dispute existed. In September he went to Mexico to visit his family and applied for readmission in October to continue his employment. Is his Form I–151 valid for reentry?

A. Yes. The regulation bars employment at a specified place whether the alien receives his pay from a labor contractor or from the owner or operator. This point is also covered in question and answer no. 10. Therefore if an alien has worked continuously at a place where a labor dispute exists since a date prior to the Secretary of Labor's announcement, the fact that he was subsequently changed from a labor contractor's payroll to the owner's or operator's payroll would not be material.

12. Q. Given the same set of circumstances except the alien continued employment with the labor contractor rather than transferring to the payroll of the disputed place. Is his Form I–151 valid for reentry?

A. Yes. We would consider his employment continuous and it was accepted prior to the effective date of the regulation and the determination.

13. Q. An alien previously admitted as an immigrant who maintains no residence in the United States entered the United States seeking employment. He accepted employment at a place where, a few days later, the Secretary of Labor determined and announced a labor dispute. What action is needed?

A. Even if employment commenced prior to the determination he will be considered in violation if we are satisfied the employment was actually entered into in anticipation of the labor dispute.

14. Q. The Secretary of Labor, on January 2, determined and announced a labor dispute at employer A. An alien previously admitted as an immigrant who maintains his residence in Mexico enters the United States on January 5 destined to employer B, where no dispute exists, and accepts employment there. On January 6 he leaves employer B and accepts employment with employer A. What action, if any, is indicated?

A. He is considered in violation of the regulation in that his actions indicate an intent to circumvent the regulation.

ATTACHMENT C

STATEMENT OF JOANNE EDELSON, HOLLISTER, CALIF.

Mr. Luna then mentioned the incident where Immigration officials went to see Cesar and inspect his green card, calling this very insulting. Mr. Fullilove explained that the officials "did not go to see Cesar", but that Cesar was parked in a car alongside the field where they were checking. They asked to see his green card as part of their routine check of all Mexicans. He says Cesar refused to show it or even simply state he was Cesar Chavez—a behavior Fullilove labeled as "very uncooperative". He explained that Immigration sometimes has a hard time distinguishing between Mexicans and Mexican-Americans, and that they constantly had to be on the look-out for wetbacks.

Then we started to talk about the quotation Willard Wirtz and Ramsey Clark made last summer to the effect that no green carders shall work behind a picketline. Of Mr. Wirtz he said, "Mr. Wirtz is not in my department—he is in the Department of Labor, and Immigration is the Department of Justice." Of Mr. Clark he said, "Ramsey Clark is in Washington—must not know that there are two classes of people with green-cards: resident aliens and commuters. We cannot enforce that law as he stated in the press". He then made the comment (paraphrased). "Don't listen to the journalists, don't listen to the politicians—Mr. Willard Wirtz and Mr. Ramsey Clark are politicians. They are not the ones to be sued if they should apply the law against the resident aliens. I am the one who will be sued". He said they shouldn't have made their statements because they can't be carried out on the local level.

Then he went into a long thing about all the problems Immigration has with wetbacks, and people who slip into Florida illegally from the West Indies.

We asked how many men were assigned to the job of making sure Commuters weren't scabbing. He was very evasive on this, saying only that he would send in as many men as needed to do the job. He then said, "If your Union has positive proof that "commuters", not resident aliens are in Giumarra's fields, and you can furnish a list of names and addresses, then call the border patrol. If they don't act immediately, then you call me and I PERSONALLY will make sure they are thrown out." (He said this about three times).

ATTACHMENT E MEMORANDUM

(A memorandum of conversation between a task force composed of representatives of the Departments of Justice and Labor, and representatives of the United Farm Workers Organizing Committee, AFL-CIO, at Delano, Calif., on May 7, 1968)

1. The Immigration Service will investigate every alien found at certified struck plant.

2. Service will suggest that violators of strikebreaker regulation leave the struck employment. If they fail to do so, proceedings will be brought against violators who refuse.

3. Union will furnish to service any information as to violations and Service will inform Union as to results of such investigations.

4. Service will make every effort to eliminate any provincial attitudes and Union will cooperate with Service in performing its enforcement responsibility.

5. Service will furnish a further statement to Union to clarify scope of strikebreaker regulation.

6. For Greencard holders covered by strikebreaker regulation, the latest date of entry is the one to be considered.

By Mr. McINTYRE (for himself Mr. McGOVERN, Mr. METCALF, and Mr. STEVENS):

S. 1490. A bill to amend the Internal Revenue Code of 1954 and the Social Security Act to provide a comprehensive program of health care for the 1970's by strengthening the organization and delivery of health care nationwide and by making comprehensive health care insurance available to all Americans, and for other purposes. Referred to the Committee on Finance.

THE NATIONAL HEALTH CARE ACT OF 1971

Mr. McINTYRE. Mr. President, on behalf of the distinguished Senator from South Dakota (Mr. McGOVERN, the distinguished Senator from Montana (Mr. METCALF), the distinguished Senator from Alaska (Mr. STEVENS), and myself I introduce for appropriate reference the National Health Care Act of 1971 to amend the Internal Revenue Code of 1954 and the Social Security Act to provide a comprehensive program of health care for the 1970's by strengthening the organization and delivery of health care nationwide and by making comprehensive health care insurance available to all Americans, and for other purposes.

Mr. President, America is living with a new fear—the fear of financial disaster if illness strikes.

It is not simply the fear of losing wages if the breadwinner of the family falls sick. It is the fear of financial ruin if any member of the family is struck down by catastrophic illness.

The cost of medical care, already cresting the inflationary wave, is reaching such proportions that only the rich can afford to get sick—and even they do not rest easy.

But the problem, as you well know, Mr. President, is not simply money, not simply the cost of health care. It is also access to health care.

Nearly 5,000 American communities have no practicing physician. There are inner city ghettoes without a doctor.

There are isolated rural communities without a doctor, some in the north country of my own State of New Hampshire. And there are prosperous Midwestern towns without a doctor.

Many Americans, Mr. President, must wonder how it is possible for us to bring a man back from the moon when they cannot even bring a doctor to their doorstep when their children are sick, or find medical help on a Saturday night or a Sunday morning.

And it will get worse, Mr. President.

The situation is certain to become more critical in rural areas, for instance because family medicine in those areas is practiced for the most part by older physicians who are not replaced when they die or retire.

Right now, Mr. President, there are 325,000 doctors in America.

Right now, Mr. President, this country needs at least 48,000 more doctors.

At the moment, there are 102,000 dentists in America. We need at least 120,000 dentists. And by 1980 we will need still another 57,000.

The same holds true for nurses. The 700,000 we have now are 150,000 less than we need. And by the start of the next decade we will be short more than 200,000. And as for allied health personnel, we are short 266,000 now, and we will be short nearly half a million in the next 10 years.

Now let us consider the first half of the double-edged health care problem—costs.

In 1965 we enacted medicare to relieve those Americans hit hardest by rising health care costs—those over 65.

Medicare brought blessings to millions by putting health care dollars in their pockets.

But it complicated the problem, Mr. President. It complicated it because it did not provide more health care to meet increased demands by those older citizens who were suddenly able to afford it.

It did not provide one more doctor.

It did not provide one more nurse.

It did not provide one more medical assistant to make a doctor more efficient or more productive.

In short, while it provided more dollars for services, it did not provide more services.

And, Mr. President, we all know what happens when supply remains constant and demand goes up. Prices soar. So the price of health care went up—for all of us.

Since 1965, when medicare was enacted, the overall Consumer Price Index has gone up 18 percent.

But in that same period doctor's fees have gone up 30 percent, and daily hospital charges have risen 70 percent.

Mr. President, Americans individually, now are paying 100 percent more for health care than they did just 10 years ago. Health care costs have increased four times more than the aggregate price rise.

And medicare is paying more, too.

When medicare was initiated, the Congress enacted a social security wage tax calculated to cover the projected cost of the program. But just 2 years later—in 1967—the Congress had to vote a 25 percent wage tax increase to keep medicare solvent.

That measure raised the wage base upon which the tax is levied to $7,800, the level at which it now stands. And under that law, the tax rate went from 4.4 to 5.2 percent.

This means that workers making $7,800 a year or more today pay a total Federal wage tax of $405.60. This is matched by the employer.

Self-employed pay about 50 percent more.

But that is not the whole story, Mr. President.

Under the present law, further increases are scheduled to take place. In 1972, the base will go to $9,000, which means everyone making that much or more will pay at least an extra $60. In 1973, the rate will climb to 5.65 percent; in 1976—to 5.85 percent; in 1980—to 5.95 percent; and in 1987—to 6.05 percent. Thus, if there are no new taxes enacted, the wage tax for the average American will still go from $405 to $545.

But, in January of 1969, Health, Education, and Welfare Department experts measured these new tax rates against the rate of rising costs and projected a $49 billion deficit over the next 25 years.

Eleven months later, the same experts revised their projections to forecast a deficit of $127 billion.

And only 3 months after that—in February of 1970—the prediction was bumped up another incredible $85 billion to a total foreseen deficit of $216 billion.

This is the excess of cost over tax income—a deficiency which will have to be made up in some way if the program is to remain solvent for the next quarter century.

Now, clearly, Mr. President, what this means is that a greater and greater wage tax burden will have to be borne by our young and middle-aged workers.

With no change in the present law's schedule of rate increases, the overall increase will be over 33⅓ percent.

Now, we must keep in mind, Mr. President, that this represents a gross tax on wages, a tax imposed on the very first dollar a person earns. No personal exemption is provided. And no provisions are made for deductions of medical expense, work-related expense, casualty loss expense, or for any other of the deduction items allowed under our income tax laws.

Thus, the student, for instance, who earns a very small amount will pay no income tax, but he will pay this tax. And so will the worker with a family whose income tax obligation is canceled out because his earnings are so low.

Indeed, the wage earner is hit from both sides in this situation. On the one hand, he must pay higher wage taxes to finance Government health insurance programs, and at the same time he must pay higher premiums for his own private health insurance because health care costs have been driven up by the pressures of rising demand against limited supply of services.

Simply expanding medicare, Mr. President, would only aggravate the problem, not solve it, because the average citizen would only trade high health insurance premiums for higher taxes, and health care costs would soar even higher.

We do not need higher taxes, Mr. President. We need health care, at a cost we can afford.

So let us stop treating symptoms and go after the disease itself. Instead of feeding the fever of inflation, let us focus some healing radiation on the malignant cause—the shortage of health care services.

Dollars are worthless, Mr. President, if the care is not there to buy.

Simply agreeing to pay for health services for all, simply to write a blank check to the providers of health service, will only boom what already is a seller's market.

It is the buyer we are concerned about, so what we must do, then, is, first, make more medical services available, and, second, make them available to all, at a cost we can all afford.

Now, Mr. President, I am not so naive as to believe private enterprise can solve our every problem or meet our every need. It cannot. Some things private enterprise simply cannot, or will not, do. And then the Government must assume the responsibility.

In short, I believe we can make medical services available, make them available to all at reasonable cost, and preserve the freedom and initiative of our doctors, nurses, and health technicians through the private enterprise system, with the help of Government.

All right. How do we do it?

First, Mr. President, we must strengthen health planning.

Without comprehensive health planning, we cannot possibly know what we are doing or how we are doing. And thus we waste our large, but not limitless resources.

We must have a rational way to identify needs and a rational plan to meet them.

Communities differ, Mr. President. Some need more hospital beds. Others have too many and the temptation to keep them filled is always there, no matter how wasteful and costly.

We need to eliminate duplication of facilities. Every hospital in a given city may want an advanced—and prestigious—cobalt machine or a heart center, for instance, but the community may only need one.

So we need a local planning agency, an agency backed up at the State and the National level, to determine needs, to publicize them, and to review all plans for new facilities.

And it cannot be a paper tiger agency. It must have teeth to insure conformance.

It must be able to cut off any Federal funds, interest subsidies or depreciation allowances under any Federal program to any institution which proceeds to install new facilities without first obtaining the planning agency's approval.

Second, we must increase our health manpower.

We cannot provide health care to all if we do not have the people to do it. And we simply do not have enough doctors, nurses, and allied health personnel to do the job.

Particular attention must be given to training physicians who will provide primary care to families and to developing allied health personnel to help them.

After all, Mr. President, you do not necessarily have to go through medical school to learn how to give an injection or put on a cast. The medical corpsmen in our armed service have demonstrated that.

And we also need doctors trained in the special skill of managing teams of physicians and allied health personnel in health centers.

The brightest health care hope of the future lies in group practice and the use of health centers. But someone has to be in charge.

What we need, then, is the consolidation of all Federal Government loan programs for health manpower into one comprehensive program.

Such a program should allow students to borrow the full cost of tuition, room and board. And the Government should forgive that loan on a year-by-year basis for service in a medically needy area—either rural or urban.

Mr. President, I might point out that the Community Health Act which I introduced on March 3 sought the same goal by providing for Government repayment in full of the education debt incurred by any graduating doctor, dentist, optometrist or health technician who contracted to practice in a medically deprived area for a period of 3 years.

I am not concerned about the mechanics of the incentive. I think the same goal can be achieved either through forgiving a government education loan for medical training or by Government payment of incurred educational costs.

What is important is to get health personnel into those areas so crucially in need.

My own State of New Hampshire may be better off in this regard than many States, Mr. President, but as I pointed out earlier, there are some medically deprived areas, particularly in what we call the North Country, and the statistics bear out the fact that the ratio of doctors to residents is widening in New Hampshire as well as elsewhere.

But training more doctors also will require more training personnel, Mr. President, so Federal grants must be made to medical schools to develop the teachers and courses for the skills that are needed.

As a further incentive, laws applying to the licensing of medical personnel should be reformed and revised to provide for upward mobility on the career ladder.

In other words, each job should be a stepping stone, not a dead end. Nurses aides should be able to earn credits toward a nursing diploma, and nurses credit toward an M.D.

Laws should not only keep out the incompetent, Mr. President. They should encourage the capable.

Take the medical corpsmen returning from Vietnam, for example. Each of these men has received up to $25,000 in training to provide front-line medical care. They could continue to provide supplementary medical care in civilian life if they had the proper encouragement. Certainly they could provide many basic health services and, with further training, have even more mutually rewarding health careers.

Third, Mr. President—and along the same line—we must promote ambulatory care.

Hospital care is the most expensive kind of care—and the hardest to obtain.

Yet we encourage it, because alternatives often do not exist.

Furthermore, many health insurance payments are made only if the patient is admitted to a hospital. So in consideration of the patient's pocketbook, the family doctor often will advise a hospital stay that not only removes the patient from his work—it removes him from the familiar comforts of his home as well.

It is a fact that if we could cut just one day from the average hospital confinement, we could save close to $2 billion a year.

And yet, Mr. President, studies have shown that properly equipped ambulatory centers could do 25 percent of the surgery now done in hospitals, much of the diagnostic X-rays and other tests—and at a cost much less for all of us.

So ambulatory health care benefits should be included in all health insurance programs. And they should be in all Government health insurance programs.

They should be included in all employee group health insurance if the employer expects to get a Federal income tax deduction for premiums paid.

And no health insurance should be approved which would make the patient pay more for an outpatient service than he would pay for the same service in a hospital.

And we must build ambulatory centers, Mr. President, build them through a Federal program of grants and loan guarantees which will encourage their construction and include setup costs.

These loans and grants not only would provide much-needed health care facilities, they would also give a much-needed shot in the arm to the building industry and to the general economy by providing both projects and jobs.

Fourth, Mr. President, we must come up with better cost controls.

Federal dollars should be denied any health care institution that does not have a qualified professional review committee that effectively checks the quality and the necessity of patient treatment.

No Federal dollars should reimburse any professional services that have not been subjected to effective professional peer review—or are found to have been unnecessary.

Nor should payment be made, Mr. President, for any portion of a fee which exceeds the prevailing rate in a given community.

No Federal dollars of any kind should go to any hospital that does not use controlled charges for all its patients.

Under an effective system of controlled charges, Mr. President, an institution would set its charges in advance, according to a budget approved in consultation with a community review agency. If the budget was inefficient, or the charges out of line, the budget would not be approved by that agency.

Under present law, of course, institutions are reimbursed, after much auditing, on a cost basis. There is no incentive to become more efficient.

But under a controlled charge system that institution which delivered its services at a figure below the approved budget level could keep the extra money. This, in effect, then, provides a built-in incentive for more efficient performance.

Fifth, Mr. President, we must establish a National Health Advisory Council.

The President of the United States, and his Cabinet, must have available and available on a continuing basis the most expert advice they can get—advice completely free from political influence and pressures.

The crucial importance of developing a national health policy which, of necessity, will be extremely complex, demands nothing less than free and independent judgment by those who would counsel the leaders of the land.

Finally, Mr. President, we must make health care available to all.

Let me make it clear that my proposal is not directed toward buying health insurance for bankers and doctors and lawyers through higher wage taxes on our workingmen.

It is directed, with the methods I have described, toward bringing costs down to where most of us can afford to pay our own way.

Today 90 percent of the population under 65—a total of 164 million people—are covered by health insurance programs.

And more than 60 percent of our people under 65 are covered under employer group health insurance programs.

There is no need to duplicate this, Mr. President, nor to scrap it and start over.

We should build on it.

We should build on it by establishing Federal minimum standards qualifying group policy-contributing employer for his tax deduction.

We should give individuals who buy their own health insurance a special tax break if that insurance meets Federal standards.

And these standards should encourage ambulatory care and preventive care, allow employees to join approved health maintenance organizations, require coverage for permanent part-timers and temporary workers who stay on the job more than several months, and require continuing the coverage for disabled employees and for dependent children who are totally disabled.

These Federal minimum standards, Mr. President, should prescribe by law the best schedule of benefits our economy is geared to produce.

And as our capacity to deliver health care increases, those benefits, in turn, would be increased.

Mr. President, to insure this, I would have these scheduled increases specified in the law now and for the entire coming decade.

Furthermore, these Federal standards would require coverage for catastrophic illness.

Our citizens—all of our citizens—deserve nothing less, because a truly dread disease in time could bring any of us to bankruptcy.

Federal employees are protected against catastrophic illness with coverage up to $50,000.

Every citizen deserves at least that much protection, Mr. President, and I would propose the legislative establishment of a Federal standard of benefits which could exceed this level.

But what of the poor who are not covered and cannot afford health insurance? Of those who are uninsurable because they cannot pass a physical examination? How can they be protected?

My proposal would require every insurance carrier in every State to participate in an individual State reinsurance pool which would be subsidized by the Federal Government.

This pool would make available to the poor, the near-poor, and the uninsurable a uniform health insurance plan which would meet those Federal minimum standards.

The poor would pay no premiums.

The near-poor would pay only partial premiums.

The uninsurable would pay a full, but reasonable, premium.

All income determinations, Mr. President, would be based on Federal income tax determinations.

An "uninsurable" would be anyone turned down by a private insurance company, a working definition that would cut through bureaucratic redtape and costly administrative determinations.

Under this proposal, the insurance pools would be operated on a State-by-State basis so that any actuarial mistakes would tend to cancel each other out and the chances for any mammoth miscalculations, such as occurred with medicare, would be minimized.

Furthermore, Mr. President, under this proposal all citizens would have health care made available on an equal basis.

There would be no second-class citizens.

Mr. President, earlier in my remarks I said that there were some problems that could not be solved, some needs that could not be met, by private enterprise alone.

I believe that America's health care crisis can be solved, that our people's health care needs can be met by private enterprise—but only in partnership with Government.

The National Health Care Act of 1971 that I am introducing today blends the resources of private enterprise with the resources of Government in the traditional meld that has inspired and accomplished the astonishing progress our Nation has made since its inception.

It is a uniquely American blend, Mr. President, a uniquely American approach to meeting our health care needs by:

Increasing the supply of health manpower.

Promoting ambulatory and preventive health care.

Strengthening health planning.

Improving controls over cost and quality of health care.

Developing national health care objectives.

Making comprehensive health insurance, including catastrophic protection, available to all.

I invite every colleague who shares my reservations about relying exclusively upon Government, or exclusively upon private enterprise to resolve the growing health care crisis to join with me in this partnership approach, an approach deeply rooted in our traditions and soundily proven by the test of time.

Mr. President, I ask unanimous consent at this time to have printed the National Health Care Act of 1971 in the RECORD and further I ask unanimous consent to follow the printing of the bill with a section-by-section analysis of this act.

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

S. 1490

A bill to amend the Internal Revenue Code of 1954 and the Social Security Act to provide a comprehensive program of health care for the 1970's by strengthening the organization and delivery of health care nationwide and by making comprehensive health care insurance available to all Americans, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "National Healthcare Act of 1971".

TITLE I—FINDINGS AND DECLARATION OF PURPOSE

Sec. 101. Findings.

The Congress hereby finds that:

(a) America confronts a critical testing of its capacity to meet for all of its citizens one of the most basic of human needs, that of protecting and maintaining personal health;

(b) Every citizen of the United States of America should have access to quality health care, but too many Americans find it difficult to secure quality health care when they need it, where they need it, at prices they can afford;

(c) The Nation needs systems of health care organizations, delivery, and financing which combine the high scientific and technical competence of the medical and allied health professions; the flexibility, innovativeness, efficiency, and managerial skills of private enterprise; the legislative and fiscal capacities of government at all levels; and the potentialities of consumer and community participation in developing and maintaining such systems of health care.

Sec. 102. Declaration of purpose.

The Congress declares the purpose of the Act to be to improve the organization, delivery, and financing of health care for all Americans by increasing health personnel, promoting ambulatory care, strengthening health planning, establishing national standards of health care benefits, encouraging provision of such benefits through comprehensive health care insurance, and by assisting persons of low income or in poor health to secure that insurance.

TITLE II—PROVISIONS TO INCREASE THE SUPPLY AND IMPROVE THE DISTRIBUTION OF HEALTH CARE PERSONNEL

Sec. 201. Student loans for training in the health professions and nursing.

(a) STUDENT LOANS FOR TRAINING IN THE HEALTH PROFESSION.—Subsection (a) of section 741 of the Public Health Service Act is amended to read as follows:

"(a) In the case of any student, the total of the loans from a loan fund established under this part for any academic year (or its equivalent, as determined under regulations of the Secretary) may not exceed the full cost of tuition and fees, and reasonable expenditures for supplies, books, room and board, and other related costs as determined in accordance with regulations. In the granting of such loans, a school shall give preference to persons who enter as first-year students after June 30, 1971."

(b) CANCELLATION OF STUDENT LOANS.—Subsection (f) of such section is amended to read as follows:

"(f) Where any person who obtained one or more loans from a loan fund established under this part—

"(1) engages in the practice of medicine, dentistry, optometry, or osteopathy in an area in a State determined by the Secretary, upon recommendation by the appropriate State comprehensive health planning agency (designated or established pursuant to section 314(a)(2)(A) of the Public Health Service Act), in accordance with regulations provided by the Secretary, to have a shortage of and need for physicians, optometrists, or dentists; and

"(2) the appropriate State comprehensive health planning agency certifies to the Secretary in such form and at such times as the Secretary may prescribe that such practice helps to meet the shortage of and need for physicians, optometrists, or dentists in the area where the practice occurs; then 20 percent of the total of such loans, plus accrued interest on such amount, which are unpaid as of the date that such practice begins, shall be canceled thereafter for each year of such practice, up to a total of 100 percent of such total, plus accrued interest thereon."

(c) AUTHORIZATION OF APPROPRIATIONS.—Subsection (a) of section 742 of such Act is amended by—

(1) deleting the words "and $35,000,000 each for the fiscal year ending June 30, 1970, and the next fiscal year" in the first sentence and adding the following: $35,000,000 for the fiscal year ending June 30, 1970, $50,000,000 for the fiscal year ending June 30, 1971, $70,000,000 for the fiscal year ending June 30, 1972, and $100,000,000 each for the fiscal

year ending June 30, 1973, and the two succeeding fiscal years."; and

(2) striking out "1972" in the third sentence and inserting in lieu thereof "1976" and striking out "1971" in the same sentence and inserting in lieu thereof "1975."

(d) CONFORMING AMENDMENT.—Section 743 of such Act is amended by striking out "1974" wherever it appears therein and inserting in lieu thereof "1978".

(e) STUDENT LOANS FOR NURSE TRAINING.—Subsection (a) of section 823 of such Act is amended to read as follows:

"(a) In the case of any student, the total of the loans for any academic year (or its equivalent, as determined under regulations of the Secretary) made by schools of nursing from loan funds established pursuant to agreements under this part may not exceed the full cost of tuition and fees, and reasonable expenditures for supplies, books, room and board, and other related costs as determined in accordance with regulations. In the granting of such loans, a school shall give preference to licensed practical nurses and to persons who enter as first-year students after June 30, 1971."

(f) CANCELLATION OF NURSING STUDENT LOANS.—Subsection (b) (3) of such section is amended to read as follows:

"(3) not to exceed 50 percent of any such loan (plus interest) shall be canceled for full-time employment as a professional nurse (including teaching in any of the fields of nurse training and service as an administrator, supervisor, or consultant in any of the fields of nursing) in any public or nonprofit private institution or agency (including comprehensive ambulatory health care centers), at the rate of 20 percent of the amount of such loan plus interest thereon, which was unpaid on the first day of such service, for each complete year of such service, except that such rate shall be 33⅓ percent for each complete year of service as a professional nurse in any area in a State determined by the Secretary, upon recommendation by the appropriate State comprehensive health planning agency (designated or established pursuant to section 314(a)(2)(A) of this Act), in accordance with regulations of the Secretary, to have a substantial shortage of such nurses, and for the purpose of any cancellation at such higher rate, an amount equal to an additional 50 percent of the total amount of such loans plus interest may be canceled;".

(g) AUTHORIZATION OF APPROPRIATIONS.—The first sentence of section 824 of such Act is amended by striking everything after "1970" and adding the following: "$25,000,000 for the fiscal year ending June 30, 1971, $50,000,000 for the fiscal year ending June 30, 1972, and $75,000,000 each for the fiscal year ending June 30, 1973, and the two succeeding fiscal years, and such sums for the fiscal year ending June 30, 1976, and each of the two succeeding fiscal years as may be necessary to enable students who have received a loan for any academic year ending before July 1, 1975, to continue or complete their education.".

(h) CONFORMING AMENDMENT.—Section 826 of such Act is amended by striking out "1974" wherever it appears therein and inserting in lieu thereof "1978".

Sec. 202. Scholarship grants and student loans for training in the allied health professions.

(a) RECOMMENDATIONS OF COUNCIL OF HEALTH POLICY ADVISERS.—Subsection (a) of section 794B of the Public Health Service Act is amended by adding the following after the word "prescribe": ", with due regard to any relevant recommendations of the Council of Health Policy Advisers established pursuant to title IV of the National Healthcare Act of 1971".

(b) SCHOLARSHIP GRANTS FOR TRAINING IN THE ALLIED HEALTH PROFESSIONS.—Subsection (d) of such section is amended to read as follows:

"(d) Any such scholarship awarded from grants under subsection (a) to any individual for any year shall cover such portion of the student's tuition, fees, books, equipment, and living expenses as the agency, institution, or organization making the award determines, in accordance with regulations provided by the Secretary, the student needs for such year on the basis of his requirements and financial resources."

(c) AUTHORIZATION OF APPROPRIATIONS.—Subsection (f) of such section is amended to read as follows:

"(f) For the purpose of carrying out the provisions of this section there is authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1971, $30,000,000 for the fiscal year ending June 30, 1972, and $50,000,000 each for the fiscal year ending June 30, 1973, and the two succeeding fiscal years."

(d) STUDENT LOANS FOR TRAINING IN THE ALLIED HEALTH PROFESSIONS.—Subsection (b) (1) of section 794D of the Public Health Service Act is amended to read as follows:

"(b) (1) In the case of any student, the total of loans from a loan fund established under this section for any academic year (or its equivalent, as determined under regulations of the Secretary) may not exceed the full cost of tuition and fees, and reasonable expenditures for supplies, books, room and board, and other related costs as determined in accordance with regulations. In the granting of such loans, the agency, institution, or organization shall give preference to persons who enter as first-year students after June 30, 1971."

(e) CANCELLATION OF STUDENT LOANS.—Subsection (b) (2) (C) of such section is amended to read as follows:

"(C) not to exceed 50 percent of any such loan (plus interest) shall be canceled for full-time employment as an allied health professional in any public or nonprofit private institution or agency (including comprehensive ambulatory health care centers), at the rate of 20 percent of the amount of such loan plus interest thereon, which was unpaid on the first day of such service, for each complete year of such service, except that such rate shall be 33⅓ percent for each complete year of service as an allied health professional in any area in a State which is determined by the Secretary, upon recommendation by the appropriate State comprehensive health planning agency (designated or established pursuant to section 314(a)(2)(A) of this Act), in accordance with regulations of the Secretary, to be an area which has a shortage of and need for such allied health professionals, and for cancellation at such higher rate, an amount equal to an additional 50 percent of the total amount of such loans plus interest may be canceled;".

(f) AUTHORIZATION OF APPROPRIATIONS FOR LOANS.—Subsection (c) of such section is amended to read as follows:

"(c) There are authorized to be appropriated to the Secretary for Federal capital contributions to the student loan funds pursuant to subsection (a) (2) (B) (i) $7,500,000 for the fiscal year ending June 30, 1971, $15,000,000 for the fiscal year ending June 30, 1972, $40,000,000 for the fiscal year ending June 30, 1973, $60,000,000 for the fiscal year ending June 30, 1974, and $75,000,000 for the fiscal year ending June 30 1975, and such sums for the fiscal year ending June 30, 1976, and each of the two succeeding fiscal year as may be necessary to enable students who have received a loan for any academic year ending before July 1, 1975, to continue or complete their education. Sums appropriated pursuant to this subsection for the fiscal year ending June 30, 1971, or any subsequent fiscal year shall be available to the Secretary (1) for payments into the fund established by subsection (f)(4) and (2) in accordance with agreements under this section for Federal capital contributions to schools with which such agreements have been made, to be used, together with deposits in such funds pursuant to subsection (a)(2)(B)(ii), for establishment and maintenance of student loan funds."

(g) DISTRIBUTION OF ASSETS FROM LOAN FUNDS.—

(1) Subsection (e) of such section is amended by striking out "1977" wherever it appears therein and inserting in lieu thereof "1978."

(2) Subsection (f)(1)(A) of such section is amended by striking out the word "two" and inserting in lieu thereof "four."

(3) Subsection (f)(3) of such section is amended by striking out "$35,000,000" and inserting in lieu thereof "$100,000,000."

Sec. 203. Training for personnel needed in comprehensive ambulatory health care centers.

(a) For purposes of this section, the definition of "comprehensive ambulatory health care center" is the same as in section 645 of the Public Health Service Act, as amended by section 308 of this Act.

(b) Section 795 (1)(A) of the Public Health Service Act is amended—

(1) by inserting "health care center administration," immediately after the first reference to "dental hygiene"; and

(2) by inserting "which shall include the curriculums for various types of allied health professions which the Secretary finds to be necessary for the effective operation of comprehensive ambulatory health care centers (defined in section 645)," immediately after "regulation,".

(c) Section 795(1)(C) of the Public Health Service Act is amended to read as follows:

"(C) which, if in a college or university which does not include a teaching hospital or a comprehensive ambulatory health care center (defined in section 645) or in a junior college, is affiliated (to the extent and in the manner determined in accordance with regulations) with such a hospital or a comprehensive ambulatory health care center,".

(d) Title VII of the Public Health Service Act is amended by adding the following new part H after section 794D as follows:

"PART H—GRANTS FOR PLANNING AND ESTABLISHMENT OF CURRICULUMS FOR TRAINING COMPREHENSIVE AMBULATORY HEALTH CARE TEAMS

"SEC. 794E. (a) There are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1971, $25,000,000 for the fiscal year ending June 30, 1972, $40,000,000 for the fiscal year ending June 30, 1973, and $50,000,000 each for the fiscal year ending June 30, 1974, and the succeeding fiscal year, for special project grants under subsection (b) of this section. The portion of the sums so appropriated for each fiscal year which shall be available for grants under such section shall be determined by the Secretary unless otherwise provided in the Act or Acts appropriating such sums for such year.

"Special Project Grants

"(b) Grants may be made, from sums available therefor from appropriations under section 794E of this title, to assist schools of medicine, training centers for allied health professions (defined in section 795), and other educational institutions—

"(1) to meet the cost of special projects to plan, develop, demonstrate, and evaluate curriculums or establish new programs or modifications of existing programs of education, to train physicians to coordinate teams of health care personnel engaged in providing comprehensive health care on an ambulatory basis; or

"(2) to meet the cost of developing curriculums and training programs for new levels or types of health professions, nurses and

allied health professions needed to staff comprehensive ambulatory health care centers (defined in section 645); or

"(3) to meet the cost of planning experimental teaching facilities or other facilities necessary to initiate, strengthen, improve, or expand programs to train persons to administer and staff such comprehensive ambulatory health care centers.

"Applications for grants

"(c)(1) The Secretary may from time to time set dates (not earlier than in the fiscal year preceding the year for which a grant is sought) by which applications for grants under subsection (b) for any fiscal year must be filed.

"(2) To be eligible for a grant under this part, the applicant must (A) be a public or other nonprofit school of medicine, training center for allied health professions, or other educational institution which includes or is affiliated with a comprehensive ambulatory health care center (defined in section 645), and (B) be accredited by a recognized body or bodies approved for such purpose by the Commissioner of Education, except that the requirement of this clause (B) shall be deemed to be satisfied if in the case of a school which reason of no, or an insufficient, period of operation is not, at the time of application for a grant under this part, eligible for such accreditation, the Commissioner finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of students who are in their first year of instruction at such school during the fiscal year in which the Secretary makes a final determination as to approval of the application.

"(3) The Secretary may approve any application for a grant under this part if he determines, after giving due consideration to any relevant findings or recommendations of the Council of Health Policy Advisers, that the proposed grant will serve to alleviate the shortage of health care personnel.

"(4) A grant under this part may be made only if the application therefor—

"(A) is approved by the Secretary upon his determination that the applicant meets the eligibility conditions set forth in subsection (c)(2) of this section;

"(B) contains such additional information as the Secretary may require to make the determinations required of him under this part and such assurances as he may find necessary to carry out the purposes of this part; and

"(C) provides for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may require to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part.

"(5) In determining priority of projects, applications for which are filed under subsection (c)(1) of this section, the Secretary shall give consideration to—

"(A) the extent to which the project will increase enrollment of full-time students receiving the training for which grants are authorized under this part;

"(B) the relative need of the applicant for financial assistance;

"(C) the extent to which the project may result in development of curriculum, curriculum improvement, or improved methods of training or will help to reduce the period of required training without adversely affecting the quality thereof; and

"(D) the health care needs of the Nation and the extent to which the proposed project will assist in the alleviation of shortages in health care personnel."

Sec. 204. Grants to personnel in the health professions, allied health professions, and nursing for service in areas of critical need.

Title VII of the Public Health Service Act is amended by adding after section 794E (as added by this Act) the following new part I as follows:

"PART I—GRANTS TO PERSONNEL IN THE HEALTH PROFESSIONS, ALLIED HEALTH PROFESSIONS, AND NURSING FOR SERVICE IN AREAS OF CRITICAL NEED

"SEC. 794F. (a) There are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1971, and $50,000,000 for each of the fiscal years in the period beginning July 1, 1971, and ending June 30, 1975, for the establishment and operation of a special fund from which the Secretary shall make grants to personnel in the health professions, allied health professions, and nursing for the purpose of alleviating the maldistribution of such health care personnel and improving health care services in areas having a critical need for such personnel.

"Applications for grants

"(b)(1) The Secretary may from time to time set dates (not earlier than in the fiscal year preceding the year for which a grant is sought) before which applications for grants under this part for any fiscal year must be filed.

"(2) To be eligible for a grant under this part, the applicant must be (A) a health professional, allied health professional, or nurse or (B) a person engaged in a course of training who will, at the time the grant is to commence, be a health professional, allied health professional, or nurse.

"(3) Applications for grants from the special fund established by this part may be approved by the Secretary only if—

"(A) the applicant is qualified by education and training to provide a type of health care service determined by the Secretary, upon recommendation of the appropriate State comprehensive health planning agencies, to be needed in areas which have a critical need for health care personnel;

"(B) the applicant agrees to perform health care services in an area of a State which has been designated by the Secretary, upon recommendation of the appropriate State comprehensive health planning agency, as having a critical need for such health professional, allied health professional, or nurse; and

"(C) the application contains reasonable assurance that the applicant will provide health care services in an area of critical need for a period of not less than two years.

"(4) Any application for a grant filed by a person mentioned in subsection (b)(2)(B) may be approved by the Secretary only on the condition that such applicant shall have met the qualifications of subsection (b)(2)(A) and subsection (b)(3) at or before the time the grant is to commence.

GRANTS FOR SERVICE IN AREAS OF CRITICAL NEED

"(c) The Secretary or his designee is authorized to enter into individual contracts with applicants approved pursuant to subsection (b) of this section. Such contracts shall provide for the payment of grants from the special fund established under this part and shall provide for payment to be made quarterly on an annualized basis. Such contracts shall also specify that at the end of each contract year an additional payment shall be made, if necessary, in an amount sufficient to guarantee that the applicant receives, from all payments made under this part with respect to the contract year and all other income derived during the contract year from providing health care services in the area of critical need, a total amount equal to at least 110 per centum of the national annual median income for persons of comparable education and training or 110 per centum of the applicant's earnings from providing health care services in the previous year, whichever is greater.

"In determining the actual amount of a grant under this part the Secretary or his designee shall take the following factors into account:

"(1) the national median annual income for the applicant's profession, determined in accordance with regulations;

"(2) the cost of living in the area in which the applicant is to serve;

"(3) the background, training, and education of the applicant;

"(4) the amount of income the applicant can reasonably expect to receive from service in the area of critical need;

"(5) the number of persons of the applicant's profession needed in the area of critical need;

"(6) where appropriate, all or part of the reasonable cost of equipment, supplies, and facilities; and

"(7) such other factors as the Secretary deems reasonable."

Sec. 205. Effective date.

Title II of this Act shall take effect upon enactment.

TITLE III—PROVISIONS TO ENCOURAGE COMPREHENSIVE AMBULATORY HEALTH CARE CENTERS

Sec. 301. Amendment of purpose.

Section 600(a) of the Public Health Service Act is amended by inserting ", including comprehensive ambulatory health care centers" immediately after "other facilities".

Sec. 302. Authorization of appropriations for construction and modernization grants.

(a) Section 601 of the Public Health Service Act is amended by adding after paragraph (c) the following new paragraph:

"(d) $200,000,000 for grants for the construction and modernization of comprehensive ambulatory health care centers, and for those administrative, operating, and maintenance costs during the first three years of operation of such centers as may be approved by the Secretary."

(b) The amendment made by subsection (a) shall take effect with respect to appropriations made under such section 601 for fiscal years beginning after June 30, 1971.

Sec. 303. State allotments.

Effective with respect to appropriations pursuant to section 601 of the Public Health Service Act for fiscal years beginning after June 30, 1971, section 602(a)(1) of such Act is amended to read as follows:

"(a)(1) Each State shall be entitled for each fiscal year to an allotment bearing the same ratio to the sums appropriated for such year pursuant to subparagraphs (1), (2), and (3), respectively, of section 601(a), to an allotment bearing the same ratio to the sums appropriated for such year pursuant to section 601(b), and to an allotment bearing the same ratio to the sums appropriated for such year pursuant to section 601(d), as the product of—

"(A) the population of such State, and

"(B) the square of its allotment percentage,

bears to the sum of corresponding products for all of the States."

Sec. 304. Priority of projects.

Section 603(a) of the Public Health Service Act is amended by adding after subparagraph (7) thereof the following new subparagraph:

"(8) in the case of projects for the construction of comprehensive ambulatory health care centers, to facilities located in densely populated areas where such facili-

ties do not now exist, as determined by the Secretary."

Sec. 305. State plans.

(a) Section 604(a) of the Public Health Service Act is amended by redesignating subparagraphs (4)(D) and (4)(E) thereof as subparagraphs (4)(E) and (4)(F) respectively and inserting after subparagraph (4)(C) thereof the following new subparagraph:

"(D) the comprehensive ambulatory health care centers needed to provide adequate ambulatory health care services for patients residing in the State, including many services which traditionally have been rendered in hospitals, and a plan for distribution of such centers throughout the State."

(b) Section 604(a)(5) of the Public Health Service Act is amended by inserting "comprehensive ambulatory health care centers" immediately after "outpatient facilities."

Sec. 306. Recovery of funds.

Section 609(b) of the Public Health Service Act is amended by inserting "comprehensive ambulatory health care center," immediately after "outpatient facility,".

Sec. 307. Loan guarantees and loans for modernization and construction of comprehensive ambulatory health care centers.

Section 621 of the Public Health Service Act is amended by inserting "comprenensive ambulatory health care centers," immediately after "outpatient facilities," in subparagraphs (1) and (2) of paragraph (a) thereof.

Sec. 308. Definition of comprehensive ambulatory health care center.

Section 645 of the Public Health Service Act is amended by adding after paragraph (1) the following new paragraph:

"(m) The term 'comprehensive ambulatory health care center' means a facility (located in or apart from a hospital) which is organized, equipped, and staffed so as to provide to individuals and families, on a coordinated and continuing basis, a broad range of ambulatory health services, including diagnosis, treatment, and rehabilitation services, mental health services, family planning services, dental care, vision care, and drugs, and which:

"(1) has a staff of physicians licensed to practice medicine who provide medical and surgical care for patients not requiring hospitalization;

(2) possesses one or more operating rooms and appropriate recovery rooms, adequately equipped and staffed, in accordance with standards promulgated by the Secretary, to perform those surgical procedures which can be safely performed on a nonconfinement basis;

(3) is equipped to provide a broad range of diagnostic tests, including X-rays and electrocardiograms, and either has its own laboratory facilities or has reasonable access to such facilities;

(4) maintains a unified medical record, stored in a central file, for each patient treated in such facility;

(5) has arrangements with a general hospital and, to the extent possible, with convalescent institutions, home health agencies, and custodial care institutions to assure that services of such institutions will be available to patients of such facility when they can no longer be treated on an ambulatory basis;

(6) provides preventive care services, including a health education program;

(7) has a program of peer review to assure quality care and efficient utilization of services; and

(8) has a program to utilize allied health personnel to assist its professional staff to the maximum extent practicable.

Sec. 309. Effective date.

Except as otherwise provided in this title, the provisions of this title shall take effect upon the date of enactment of this Act.

TITLE IV—PROVISIONS TO STRENGTHEN HEALTH CARE PLANNING

SUBTITLE A—HEALTH REPORT OF THE PRESIDENT; COUNCIL OF HEALTH POLICY ADVISERS

Sec. 401. Health report of the President.

The President shall transmit to the Congress not later than July 1 of each year, beginning in 1972, a health report (hereinafter referred to as the "Health Report") which shall set forth (1) the status and condition of the health care system of the Nation; (2) current and foreseeable trends in the health care needs of the Nation, the organization, financing, delivery, and quality of health care services, and the effects of those trends on the health of Americans and the social, economic, and other requirements of the Nation; (3) the adequacy of available manpower and physical resources for fulfilling the health care needs of the Nation in the light of expected population pressures; (4) a review of the health programs and activities of the Federal Government, the State and local governments, and nongovernmental entities, with particular reference to their contribution to the achievement of the policy set forth in title I of this Act; and (5) a program for carrying out the policy set forth in title I of this Act, together with recommendations for legislation.

Sec. 402. Council of Health Policy Advisers.

There is created in the Executive Office of the President a Council of Health Policy Advisers (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments is exceptionally well qualified to analyze and interpret trends in the health care field; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; and to formulate and recommend national policies to promote the improvement of health care.

Sec. 403. Employment of officers, employees, experts, and consultants.

The Council is authorized to employ and fix the compensation of such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary to carry out its functions under this Act in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

Sec. 404. Responsibilities of Council.

(a) GENERAL FUNCTIONS AND DUTIES.—It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Health Report;

(2) to review and appraise the health programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations with respect thereto;

(3) to develop and recommend procedures for the interagency coordination of Federal health programs, to propose interagency consolidations of programs and eliminations of programs to assure efficient, effective, and economic operation of all Federal health programs and to avoid waste and duplication;

(4) to develop and recommend goals for a national policy to foster and promote the improvement of the organization, financing, delivery, and quality of the Nation's health care;

(5) to conduct studies, surveys, research, and analyses relating to health care in the Nation;

(6) to conduct a continuous evaluation of policies and programs related to the Nation's health care and make recommendations for the revision, expansion, and improvement of such policies and programs, including the assignment of priorities to the implementation of such recommendations in accordance with their relative urgency or desirability;

(7) to develop and recommend measures designed to assure the provision of adequate manpower, services, and facilities for the Nation's health care, including the mobilization, allocation, utilization, and retention of such manpower, services, and facilities;

(8) to develop and recommend guidelines for the allocation of funds for health care designed to furnish all citizens equal access to quality health care; and

(9) to make and furnish such studies, reports thereon, and recommendations with respect to matters of health care policy and legislation as the President may request.

(b) ANNUAL HEALTH REPORT TO THE PRESIDENT.—The Council shall submit to the President a first report not later than April 1, 1972, and an annual report not later than April 1 of each year thereafter. Each such report shall also be transmitted to the Congress supplementary to the next Health Report of the President.

(c) CONTENTS OF INITIAL ANNUAL HEALTH REPORT.—In its first report and in the first of its annual reports to the President as required by subsection (b) of this section, the Council shall (1) specially report on all Federal programs which provide grants, loans, or other financial aids for the training and development of health manpower of any type; (2) appraise the adequacy of such programs to meet the health care needs of the Nation; (3) develop and recommend procedures for the consolidation, coordination, expansion, and improved efficiency of administration of such existing programs; and (4) develop and recommend measures designed to assure the wider dissemination of public information regarding the existence and purpose of such programs, the aids available thereunder, and the advantages and benefits of training for career opportunities in the health, nursing, and allied health professions.

Sec. 405. Consultation with other advisory bodies and representative groups; cooperative utilization of services, facilities, and information.

In exercising its powers, functions, and duties under this Act, the Council shall—

(1) consult with the National Advisory Health Council established by section 217(a) of the Public Health Service Act, with any other advisory council or committee required or permitted to be created under any provision of the Public Health Service Act, and with such representatives of consumer groups, providers of health care, health researchers and educators, insurers, health service organizations, public agencies concerned with health care, voluntary health and welfare organizations, and other groups, as it deems advisable;

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 406. Compensation of members.

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for level II of the Executive Schedule Pay Rates

(5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

Sec. 407. Authorization of appropriations.

There are authorized to be appropriated such sums, not to exceed $1,000,000 in any fiscal year, as may be necessary to enable the Council to carry out its functions under this Act.

SUBTITLE B—DEPARTMENTAL RECOMMENDATIONS AND REPORTS

Sec. 411. Statements regarding effect of departmental proposal on Nation's health care.

(a) The Congress authorizes and directs that, to the fullest extent possible, all agencies of the Federal Government shall include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting human health and the organization, financing, delivery, and quality of the Nation's health care, whether with regard to all citizens generally or only to classes or segments of the public, a detailed statement by the responsible official on—

(1) the impact of the proposed action on human health and the Nation's health care system;

(2) Any adverse effects which cannot be avoided should the proposal be implemented;

(3) alternatives to the proposed action;

(4) the relative priority, if any, assigned to the proposed action (or to any similar or alternative proposal designed to fulfill the same immediate purpose or need) by the Council of Health Policy Advisers established by subtitle A of this title in its most recent report to the President submitted pursuant to section 404(b) thereof; and

(5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

(b) Prior to making any detailed statement required by subsection (a), the responsible Federal officials shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any impact on human health and the Nation's health care system. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies which have responsibilities in such areas shall be made available to the President, the Council of Health Policy Advisers and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes.

Sec. 412. Agency obligations under other federal statutes.

Nothing in section 411 shall in any way affect the specific statutory obligations of any Federal agency (1) to accord priorities or preferences to applications for Federal financial aids in public health and health care programs and activities, based on factors required to be considered by law or regulations pursuant thereto, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting, contingent upon the recommendations or certification of any other Federal or State agency.

SUBTITLE C—COMPREHENSIVE HEALTH PLANNING AMENDMENTS

PART A—DEFINITION OF "APPROPRIATE COMPREHENSIVE HEALTH PLANNING AGENCY"

Sec. 431. Appropriate comprehensive health planning agency defined.

by—

(1) redesignating subsections (m), (n), (o), and (p) thereof as subsections (n), (o), (p), and (q), respectively; and

(2) adding after and below subsection (1) thereof a new subsection (m) as follows:

"(m) The term 'appropriate comprehensive health planning agency' shall have the meaning assigned to it by section 314(h) (4) (C) of this Act;"

PART B—STATE AND AREAWIDE COMPREHENSIVE HEALTH PLANNING AGENCIES

Sec. 441. State agency review and certification.

Section 314(a)(2) of the Public Health Service Act is amended by—

(1) redesignating subparagraphs (D), (E), (F), (G), (H), (I), (J), and (K) thereof as subparagraphs (E), (F), (G), (H), (I), (J), (K), and (L), respectively; and

(2) adding after and below subparagraph (C) thereof a new subparagraph (D) as follows:

"(D) provide for the performance of the functions assigned to it by subsection (c)(3) of this section with respect to certification by the appropriate comprehensive health planning agency;"

Sec. 442. Areawide comprehensive health planning agencies.

Section 314(b) of the Public Health Service Act is amended to read as follows:

"(b)(1) PROJECT GRANTS FOR AREAWIDE HEALTH PLANNING.—

"(A) Grants for Areawide Agency Authorization of Appropriation

"The Secretary is authorized, during the period beginning July 1, 1966, and ending June 30, 1973, to make, with the approval of the State agency administering and supervising the administration of the State plan approved under subsection (a) of this section, project grants to any other public or nonprofit private agency or organization (but with appropriate representation of the interests of local government where the recipient of the grant is not a local government or a combination thereof or an agency of such government or combination) to cover not to exceed 75 per centum of the costs of projects for developing (and from time to time revising) comprehensive regional, metropolitan area, or other local area plans for coordination of existing and planned health services, including the facilities and persons required for the provision of such services and including the provision of services through home health care; except that in the case of project grants made in any State prior to July 1, 1968, approval of such State agency shall be required only if such State has such a State plan in effect at the time of such grants. For the purposes of carrying out this subparagraph (A), there are hereby authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1971, $40,000,000 for the fiscal year ending June 30, 1972, and $60,000,00 for the fiscal year ending June 30, 1973.

(B) Grants for State Agency Acting in Areawide Planning

"Project grants may be made by the Secretary under subparagraph (A) with respect to a particular region or area to the State agency designated or established pursuant to subsection (a), but only if (i) no application for such a grant with respect to such region or area has been filed by any other agency or organization qualified to receive such a grant, (ii) such State agency certifies, and the Secretary finds, that ample opportunity has been afforded to qualified agencies and organizations to file application for such a grant with respect to such region or area and that it is improbable that, in the foreseeable future, any agency or organization which is qualified for such a grant will file application therefor, and (iii) such State agency has made or will make provision for acting as the appropriate comprehensive health planning agency with respect to such region or area for the purposes of subsection (c) of this section.

"(2) Planning agency representation, interests of hospitals, other facilities, and physicians

"No grant may be made under paragraph (1)(A) after June 30, 1971, to any agency or organization to develop or revise health plans for an area unless the Secretary determines that such agency or organization provides means for representation of the interests of hospitals, other health care facilities and practicing physicians serving the general public.

"(3) Additional grant conditions

"No grant may be made under paragraph (1) after June 30, 1971, to any agency or organization unless the application therefor contains or is supported by reasonable assurance that—

"(A) there has been or will be established, in or for the area with respect to which such grant is sought, an areawide health planning council, which shall include representatives of public, voluntary, and nonprofit private agencies, institutions, and organizations concerned with health (including representatives of the interests of local government, of the regional medical program for such area, and of consumers of health services), and that a majority of the members of such council are or will be representatives of consumers of health services;

"(B) such agency or organization had made or will make provision for determining the present and future health needs of its area on a continuing basis;

"(C) such agency or organization has developed or will develop measures designed to coordinate all health care facilities and programs in its area to the fullest extent possible and to assist such facilities in (i) planning their programs for capital expenditures for replacement, modernization, and expansion, consistent with the State plan approved under subsection (a), (ii) developing efficient systems of administration; (iii) incorporating in such systems incentives for optimum use of manpower, facilities, and equipment; (iv) entering into agreements with other facilities and institutions, where feasible, for the combined purchasing of equipment and the cooperative use of services and facilities; and (v) adopting and instituting such other management techniques appropriate to the use of health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner;

"(D) such agency or organization has made or will make provision, when it acts as the appropriate comprehensive health planning agency, for reviewing, commenting on, and, as appropriate, making certifications as to the applications referred to in subsection (c) and pursuant to the procedures set forth therein;

"(E) such agency or organization will make provision for (i) consulting with the areawide health planning council, and other groups as it deems advisable, in connection with the carrying out of its assurances pursuant to this subsection; (ii) enlisting public support for the areawide plan as developed and from time to time revised; and (iii) educating the public in its area concerning the proper use of the facilities and services available therein."

Sec. 443. Comprehensive procedure for review and certification.

Section 314 of the Public Health Service Act is further amended by—

(1) redesignating subsections (c), (d), (e), (f), and (g) thereof as subsections (d), (e), (f), (g), and (h), respectively; and

(2) adding after and below subsection (b) thereof a new subsection (c) as follows:

"(c) When any provision of law or regulation pursuant thereto requires that an application for a Federal grant, loan, loan guarantee, or other Federal financial aid may

be approved by the Secretary or other responsible Federal official only after certification by the appropriate comprehensive health planning agency and the application involves an amount in excess of $100,000, the Secretary or such other responsible official may not approve any such application unless he is satisfied (on the basis of evidence contained in or submitted in connection with the application) that—

"(1) reasonable opportunity for review of and comment on such application has been provided to the appropriate comprehensive planning agency;

"(2) such agency (if it is not the State agency designated or established pursuant to subsection (a)(2)(A)), after review, has communicated its comments in writing to both the person making application and such State agency and, if the appropriate comprehensive health planning agency recommends approval of the application, has made certification as to the essential need for and high priority of the project in the region, metropolitan area, or other local area, as the case may be;

"(3) the State agency designated or established pursuant to subsection (a)(2)(A) has certified as to the need for and priority of the project under the State plan approved pursuant to subsection (a), either (i) following its own initial review and comment on the application as provided in clause (1) hereof, (ii) followng initial review and comment, and certification of need and priority by the appropriate comprehensve health planning agency, as provided in clause (2) hereof, or (iii) if such appropriate comprehensive health planning agency initially received the application but has withheld certification and approval, following the holding by such State agency of a public hearing thereon within the area concerned at which the person making application and such other agency were afforded an opportunity to present views on the application;

"(4) the application is for a project which is entitled to priority over other projects within the State under the State plan approved pursuant to subsection (a);

"(5) if the area for planning of the agency referred to in clause (2) hereof includes areas in two or more States, the State agency for each State designated or established pursuant to subsection (a)(2)(A) has made a separate certification to the need for and priority of the project within such State."

Sec. 444. Definitions: "Appropriate Comprehensive Health Planning Agency" and various other definitions relating to Federal assistance.

Section 314(h) of the Public Health Service Act (formerly section 314(g) thereof as redesignated by section 443 of this Act) is amended by—

(1) striking out "subsection (d) of this section" in clause (1) thereof and inserting in lieu thereof "subsection (e)";

(2) striking out "subsection (a) or (d) of this section" in each of clauses (2) and (3) thereof and inserting in lieu thereof at each place "subsection (a) or (e) of this section";

(3) striking out "and" at the end of subparagraph (A) of clause (4) thereof;

(4) deleting the period at the end of subparagraph (B) of such clause (4) and inserting in lieu thereof a semicolon; and

(5) adding after and below subparagraph (B) of such clause new subparagraphs (C) and (D) as follows:

"(C) The term 'appropriate comprehensive health planning agency' means—

"(i) in the case of a project affecting an entire State, the State agency designated or established pursuant to subsection (a)(2)(A), or

"(ii) in the case of a project affecting a region, metropolitan area, or other local area, either the agency or organization which has received a project grant with respect to such area pursuant to subsection (b)(1)(A), the State agency which has received a project grant with respect to such area pursuant to subsection (b)(1)(B), or such other public or nonprofit private agency which is determined in accordance with regulations to be performing health planning functions for such area similar to those performed by an agency or organization of the kind referred to in subsection (b)(1)(A); and

"(D) As used in subsection (c), the term 'other Federal financial aid' includes a Federal contract; the term 'application' with reference to a contract includes a bid, offer, or proposal to contract; and the term "project' means the object of the Federal grant, loan, loan guarantee, or other Federal financial aid, whether such object be facilities or goods, services, training or scholarship."

Subtitle D—Effective Date

Sec. 451. Effective date.

Except as otherwise provided in this title, the provisions of this title shall take effect upon the date of enactment of this Act.

TITLE V—PROVISIONS TO MAKE COMPREHENSIVE HEALTHCARE INSURANCE AVAILABLE TO ALL

Subtitle A—Establishment of Minimum Standard Healthcare Benefits

Sec. 501. Definition of minimum standard healthcare benefits

(a) In General.—Section 213 of the Internal Revenue Code of 1954 is amended by adding at the end thereof (following the new subsection (g) thereof added by this Act) the following new subsection:

"(h) Definition of Minimum Standard Healthcare Benefits.—

"(1) In General.—Except as otherwise provided in this subsection or in other provisions of law to which the provisions of this subsection are made applicable, the Minimum Standard Healthcare Benefits, and the priority designations thereof, shall be as specified in the Table in subparagraph (A).

"(A) Table of minimum standard healthcare benefits.—The Table referred to in the first sentence of this paragraph is as follows:

"TABLE OF MINIMUM STANDARD HEALTHCARE BENEFITS

	Benefit—The plan shall pay the charges described in this column	Copayment except that the covered individual shall pay such portion of such charges as is specified in this column	Priority and required coverage for any such charge shall be in accordance with the priority indicated in this column
1.	Charges made by a licensed physician for professional services rendered—		
	(a) At a physician's office (by the physician or, at his direction by his staff of nurses (RN) and allied health professionals)—		
	(i) For diagnosis and treatment of one or more conditions (except pregnancy) other than by surgery or radiation therapy:		
	(A) On the first 3 days of such care per year per individual	$2 per day per physician's office	I.
	(B) On the next 3 days of such care per year per individual	do	II.
	(C) On any additional day of such care per year per individual:		
	Mental conditions	50 percent	III.
	All other conditions (except pregnancy)	$2 per day per physician's office	III.
	(ii) For 1 or more surgical procedures for treatment of conditions (other than pregnancy) including any charge for anesthesia or the rendering thereof, for casts, dressings, or other surgical supplies, and for postoperative visits—all days of such care per year per individual).	do	I.
	(iii) For radiation therapy for treatment of conditions (other than pregnancy) by X-ray or radioactive materials including charges for such materials—all days of such care per year per individual.	do	I.
	(iv) For diagnostic X-rays, laboratory tests, electrocardiograms, and other diagnostic tests required in connection with care described in (i), (ii), (iii) above and (b) below.	None	I.
	(v) For counseling on birth control and for fitting of contraceptive devices	do	II.
1. (a)	(vi) For pregnancy—see item 9 below		
	(vii) For periodic health examinations, including immunizations:		
	(A) For infants under age 5 (well baby care)—during first 6 months following birth—first 6 such exams.	None	I.
	During next 18 months—first 6 such exams	None	II.
	During next 3 years—first 3 such exams	None	III.
	(B) For individuals ages 5 through 39—1 such exam every 5 years	None	III.
	(C) For individuals ages 40 and over—1 such exam every 2 years	None	III.
	(viii) For physical therapy	20 percent	II.
	(ix) For speech therapy	20 percent	III.
	(x) For eye examinations—see item 5 below		
	(b) At the individual's home or elsewhere (other than at a hospital, extended care facility, or the physician's office) by the physician for diagnosis and treatment of—		
	(i) Mental conditions	50 percent	III.
	(ii) All other conditions (except pregnancy)	$5 per day per physician	III.
	(c) At a hospital, by the physician for the diagnosis and treatment of one or more conditions other than pregnancy:		
	(i) During first 30 days of the confinement	$2 per day (applicacable only to the charges of the attending physician).	I.
	(ii) During 31st through 120th days of the confinement		II.
	(iii) During 121st through 300th day of the confinement		III.
	(iv) In any day of the confinement for which no hospital benefit is payable under item 6(a) below	$5 per day per physician	I.

"TABLE OF MINIMUM STANDARD HEALTHCARE BENEFITS—Continued

Benefit—The plan shall pay the charges described in this column	Copayment except that the covered individual shall pay such portion of such charges as is specified in this column	Priority and required coverage for any such charge shall be in accordance with the priority indicated in this column
(d) At an extended care facility by the physician for the diagnosis and treatment of one or more conditions other than pregnancy:		
(i) During first 60 days of confinement	$2 per day (applicable only to the charges of the attending physician).	I.
(ii) During 61st through 120th days of the confinement		II.
(iii) During 121st through 180th days of the confinement		III.
(iv) On any day of the confinement for which no extended care benefit is payable under Item 7(a) below.	$5 per day per physician.	I.
2. Charges by a qualified independent laboratory for laboratory examinations prescribed by a licensed physician pursuant to his rendering the services described in item 1.(a) (i), (ii), (iii) and item 1.(b) above.	None	I.
3. Charges by a licensed dentist for professional services rendered either by the dentist or at his direction by his office staff of allied health professionals for—		
(a) Annual oral examination (including prophylaxis and dental X-rays)—		
(i) Individuals under age 19	None	II.
(ii) All others	None	III.
(b) Amalgam fillings, extractions, dentures for—		
(i) Individuals under age 19	20 percent	II.
(ii) All others	do	III.
(c) Other dental care (except orthondontia)	50 percent	III.
4. Charges for the following when prescribed by a licensed physician:		
(a) Drugs requiring a prescription, and insulin, digitalis, and such other life-preserving nonlegend drugs as are specified by the Secretary of Health, Education, and Welfare.	$1 per prescription	II.
(b) Contraceptives for birth control	None	II.
(c) Prosthetic appliances	20 percent	II.
(d) Services of physical therapist	do	II.
(e) Services of speech therapist	20 percent	III.
5. (a) Charges for eye examinations by a licensed physician or optometrist for—		
(i) Individual under age 19—no more than 1 examination per year	None	III.
(ii) Individual age 19 and over—no more than 1 examination every 3 years	50 percent	III.
(b) Charges for eyeglasses prescribed by a licensed physician or optometrist—		
(i) Individual under age 19—no more than 1 set of frames and lenses per year	None	III.
(ii) Individual age 19 and over—no more than 1 set of frames and lenses every 3 years	50 percent	III.
6. (a) Charges by a hospital for ward or semi-private accommodations and for ancillary services used while the individual is confined as an inpatient for 2 or more conditions other than pregnancy:		
(i) first 30 days of the confinement	$10 first day and $5 per day thereafter	I.
(ii) 31st through 120th days of the confinement	$5 per day	II.
(iii) 121st through 300th days of the confinement	$5 per day	III.
(b) Charges by a hospital for services rendered by it on a non-inpatient basis	Same as for equivalent services under Item 1(a).	
7. (a) Charges by an extended care facility for ward or semi-private accommodation and for ancillary services used while the individual is confined as an in-patient for one or more conditions other than pregnancy:		
(i) first 60 days of the confinement	$2.50 per day	I.
(ii) 61st through 120th days of the confinement	$2.50 per day	II.
(iii) 121st through 180th days of the confinement	$2.50 per day	III.
(b) Charges by an extended care facility for services rendered by it on a non-in-patient basis	Same as for equivalent services under Item 1(a).	
8. Charges by a home health agency for home health services rendered by it under a plan except for services rendered in connection with pregnancy:		
(i) first 90 days of the plan	$2.50 per day of services rendered	I.
(ii) 91st through 180th days of the plan	$2.50 per day of services rendered	II.
(iii) 181st through 270th days of the plan	$2.50 per day of services rendered	III.
9. Pregnancy—Charges for any of the services referred to in Items (1), (2), (6), (7), and (8) above when such services are rendered in connection with a pregnancy and any complications thereof during the period commencing with the date of inception of the pregnancy and ending with the 90th day following termination of the pregnancy.	20 percent	II.

"(B) LIMITATIONS.—In applying subparagraph (A), any two or more periods of confinement shall be considered a single period of confinement unless separated by at least 60 days without any confinement for any cause.

"(C) EXCLUSIONS.—The benefits specified in subparagraph (A) do not include any of the following:

"(i) any charge for care for any injury or disease arising out of and in the course of employment;

"(ii) any charge for hearing aids;

"(iii) any charge for treatment for cosmetic purposes;

"(iv) any charge for travel (other than travel by local professional ambulance to the nearest health care institution qualified to treat the illness or injury);

"(v) any charge for confinement in a private room to the extent in excess of the institution's charge for its most common semi-private room; or

"(vi) any charge by health care institutions specified in the table to the extent that it is determined under section 208 of title XX of the Social Security Act that the charge exceeds the rates approved thereunder, or any charge for services or supplies rendered or prescribed by a physician, dentist, or other health care personnel specified in the Table to the extent that it is determined under the procedures established in section 2002 (e) (2) of title XX of the Social Security Act that the charge is unreasonable or that the services for which the charge is made are not medically necessary.

"(D) DEFINITIONS.—The following terms in the Table of Minimum Standard Healthcare Benefits in subparagraph (A) shall have the following meanings:

"(i) The term 'physician' means a doctor of medicine (M.D.), doctor of osteopathy (D.O.), and, for purposes of oral surgery only a doctor of dental surgery (D.D.S.).

"(ii) The term 'physician's office' means any facility in which the physician usually treats his ambulatory patients. For purposes of determining the amount of copayment due in subparagraph (A), a physician will be considered to have a separate office unless he is a member of a group of physicians who have joined together under a contractual arrangement and bill as a single entity, in which case the group of physicians shall be considered to have a single 'physician's office.'

"(iii) The term 'attending physician' means the physician having primary responsibility for the medical care rendered the individual.

"(iv) The terms 'extended care facility,' 'home health agency' and 'hospital' (herein referred to as 'health care institutions'), and 'home health services' shall have the meanings assigned to them in section 1861 of the Social Security Act.

"(v) The term 'licensed' means that the practitioner or health care institution is legally authorized by the State to provide the services rendered in that State.

"(2) PRESIDENTIAL POWER TO DEFER PHASE-IN OF BENEFITS.—The President of the United States, after receiving from his Council of Health Policy Advisers the Council's Annual Health Report for any year, may find that there are not then in being in the Nation sufficient health care facilities and services to supply any benefit in the Table of Minimum Standard Health Care Benefits having a priority designation such that the benefit is not then required (under the applicable provisions of law otherwise fixing the time for phase-in of such benefit) to be provided as a condition to qualification of a Qualified Employee Health Care Plan (defined in section 280(c)), a Qualified Individual Health Care Plan (defined in subsection (g)) or a Qualified State Health Care Plan (defined in section 2002 of title XX of the Social Security Act). If he so finds, the President may, by Executive order issued not less than 12 months prior to the time otherwise scheduled for phase-in of such benefit under such a plan, defer the time for phase-in of such benefit. If the President, by Executive order issued by him pursuant to the provisions of the preceeding sentence, defers the time otherwise scheduled for phase-in of a benefit under such a plan, no such benefit shall be required to be provided under such a plan until such date as shall be fixed by Executive order issued by the President for phase-in of such benefit."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

SUBTITLE B—QUALIFIED EMPLOYEE HEALTH CARE PLANS

SEC. 511. EMPLOYER'S DEDUCTION FOR EMPLOYEE HEALTH CARE EXPENDITURES.

(a) IN GENERAL.—Part IX (relating to items not deductible) of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

"SEC. 280. EMPLOYER'S DEDUCTION FOR EXPENDITURES FOR EMPLOYEE HEALTH CARE.

"(a) LIMITATION ON DEDUCTION.—Except as provided in subsection (b), no deduction shall be allowed for one-half of any amount otherwise allowable as a deduction for the taxable year under section 162, 212, or 404 for any amount paid or incurred by the taxpayer for medical care of any employee of the taxpayer or of any dependent or relative of such employee.

"(b) EXCEPTION WHERE EMPLOYER MAINTAINS QUALIFIED EMPLOYEE HEALTH CARE PLAN.—The limitations of subsection (a) shall not apply for any portion of any taxable year during which the taxpayer has in force a Qualified Employee Health Care Plan which satisfies all the requirements of subsection (c).

"(c) QUALIFIED EMPLOYEE HEALTH CARE PLAN DEFINED.—For the purposes of this title, the term 'Qualified Employee Health Care Plan' means a plan of employee health care benefits (as defined in subsection (d)(4)) which satisfies all of the following requirements:

"(1) IN WRITING.—The plan must be in writing.

"(2) ADOPTED BY EMPLOYER.—The plan must be adopted by the taxpayer employer.

"(3) COMMUNICATION TO EMPLOYEES.—The terms of the plan must be communicated by the taxpayer to his employees.

"(4) MINIMUM STANDARD HEALTHCARE BENEFIT PRIORITIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the plan must provide at least the Minimum Standard Healthcare Benefits (described in section 213(h)) in accordance with the following schedule:

"(i) Priority I benefits after December 31, 1972;

"(ii) Priority I and II benefits after December 31, 1975; and

"(iii) Priority I, II, and III benefits after December 31, 1978.

"(B) PRESIDENTIAL DEFERRAL OF SCHEDULE FOR PHASE-IN OF BENEFITS.—The President of the United States, by Executive order issued by him pursuant to the provisions of section 213(h), may defer the date otherwise scheduled under subparagraph (A)(ii) or (A)(iii) for phase-in of any priority II or priority III benefit, but only if such Executive order defers on like terms the date otherwise scheduled for phase-in of such benefit for purposes of Qualified Individual Healthcare Plans (described in section 213(g)).

"(5) ELIGIBILITY.—The plan must be one under which the individuals eligible to be covered include—

"(A) all active full-time and all part-time employees of the taxpayer who work not less than 20 hours a week for not less than 26 weeks during the calendar year,

"(B) any such employee's spouse, and

"(C) any such employee's dependent unmarried child under age 19.

The plan also must make any new employee of the taxpayer eligible for coverage within 3 months after commencement of his employment.

"(6) COVERAGE CONTINUATION.—The plan must provide for continuation of coverage under each of the following circumstances:

"(A) Coverage for the employee and his covered dependents must be continued for at least 1 month during a layoff or labor dispute, with no increase in required contributions and with provision for continuation for up to 11 more months during such layoff or labor dispute, subject to the employee not being required to contribute at a rate more than the premium then required under the plan for the coverage of the employee and his covered dependents for such period.

"(B) Upon termination of employment, other than as a result of death of the employee, the employee must be permitted to have coverage under the plan continued for himself and for his covered dependents for 3 months, subject to payment at the date of termination of employment of the premium then required under the plan for such 3-month period.

"(C) Upon the death of an employee, his covered dependents must be permitted to have coverage under the plan continued for 3 months, subject to payment, within 15 days following the date of death, of the premium then required under the plan for such 3-month period.

"(D) During an employee's absence due to illness or injury, coverage for the employee and his covered dependents must be permitted to continue for up to 24 months from the beginning of such absence. The employee must not be required to contribute more for such continued coverage than he would have contributed had he remained an active employee.

"(E) Coverage for an employee's dependent unmarried child must be permitted to continue until the child's twenty-first birthday, provided the child was covered under the plan prior to attaining age 19, became totally disabled prior to that age, and remains so disabled. The employee must not be required to contribute more for such coverage than would have been required were the child a dependent under age 19.

"(F) Any employee or dependent entitled to continuation of coverage under any of the above subparagraphs at a time when the employer changes his plan and who would thereby lose his continuation of coverage, must be eligible under any successor plan for not less than the continuation of the coverage that would have been required to be continued had the prior plan remained unchanged.

"(G) For purposes of this paragraph, a "covered dependent" is any individual, other than the employee, who by reason of his relationship to the employee was covered as a dependent under the plan just prior to the event described in subparagraph (A), (B), (C), or (D) above. A child born after the event described in subparagraph (A), (B), (C), or (D) but before the end of the continuation period so specified, shall be deemed a covered dependent. Coverage for a covered dependent shall not be required to be continued beyond the date the dependent would have ceased to be eligible for coverage as a dependent if the event described in subparagraph (A), (B), (C), or (D) above had not occurred.

"(H) Notwithstanding subparagraphs (A), (B), (C), and (D), coverage need not be continued for a covered individual beyond the date such individual first becomes eligible for benefits under title XVIII of the Social Security Act.

"(7) COORDINATION OF BENEFITS PROVISION.—The plan must include a provision identical with or substantially similar to the suggested model group anti-duplication provision contained in exhibit B of the first report of the industry task force on coordination of benefits attached to the minutes of the E-7 Subcommittee to Study Benefits and Coordination of Accident and Health Insurance of the National Association of Insurance Commissioners as set forth in volume II of the 1970 proceedings of the National Association of Insurance Commissioners.

"(8) EMPLOYEE ELECTION FOR COVERAGE BY APPROVED HEALTH MAINTENANCE ORGANIZATION.—The plan must permit any employee required to be made eligible for coverage thereunder to elect instead to apply for coverage from any approved health maintenance organization (as defined in subsection (d)(5)) and to have the employer pay toward the cost of coverage by such organization an amount equal to the amount the employer would pay toward the cost of coverage of such employee under the employer's plan. Such election shall be required to be permitted in respect of any particular approved health maintenance organization only if—

"(A) 10 or more eligible employees of the employer so elect and are accepted by such organization, and

"(B) the employer has 50 or more employees who are eligible under paragraph 5(A) for coverage under the employer's plan.

"(9) OPTIONAL PROVISIONS.—The plan shall not be treated as failing to meet the reuirements of this subsection by reason of the inclusion therein of any one or more of the following optional provisions:

"(A) DEDUCTIBLE.—The plan may require a deductible (in addition to the authorized copayments) which may apply before benefits for some or all types of health care expenses are payable. The amount of the deductible may not be greater when a service is rendered on an ambulatory basis than when that service is rendered on an inpatient basis in a hospital or other health care institution. With respect to the expenses for which Minimum Standard Healthcare Benefits must be provided in any calendar year pursuant to paragraph (4), there shall be a maximum limit on the aggregate of the deductibles for that year for the employee and all covered members of his family, which shall in no event exceed $100.

"(B) COPAYMENTS.—In lieu of the copayment amounts prescribed under section 213(h)(1)(A) in the Table of Minimum Standard Healthcare Benefits, the plan may requre copayments for health care expenses in excess of any required deductible in an amount not to exceed 20 percent of such expenses, except where a higher percentage copayment for a given benefit category is provided for in such Table of Minimum Standard Healthcare Benefits. With respect to the expenses for which minimum Standard Healthcare Benefits must be provided in any calendar year pursuant to paragraph (4), there shall be a maximum dollar limit on the aggregate of the deductible and copayments required in that year for the employee and all covered members of his family, which shall in no event exceed $1,000.

"(C) ADDITIONAL BENEFITS AND COVERAGE.—The plan may provide any benefits for medical care in addition to those required under the Table of Minimum Standard Healthcare Benefits and may also cover any individual in addition to the individuals required under paragraph (5) to be made eligible for coverage.

"(D) EMPLOYEE CONTRIBUTIONS.—The plan may require employee contributions toward its cost.

"(d) DEFINITIONS.—For purposes of this section—

"(1) EMPLOYEE.—The term 'employee' shall have the meaning prescribed by section 3121(d).

"(2) MEDICAL CARE.—The term 'medical care' shall have the meaning prescribed by paragraph (1), as limited and modified by paragraphs (2) and (3) of section 213(e).

"(3) DEPENDENT.—The term 'dependent' as used in this section in reference to a dependent of an employee means an individual over half of whose support, for the calendar year in which the taxable year of such employee begins, was received from such employee.

"(4) PLAN OF EMPLOYEE HEALTH CARE BENEFITS.—The phrase 'plan of employee health care benefits' as used in subsection (c) includes—

"(A) a contract or contracts of insurance (whether one or more group contracts or a group of individual contracts) covering medical care for employees;

"(B) any uninsured arrangement established by an employer to provide medical care for employees;

"(C) an arrangement to secure medical

care for employees from any approved health maintenance organization; and

"(D) any combination of (A), (B), or (C) above.

"(5) APPROVED HEALTH MAINTENANCE ORGANIZATION.—The term 'approved health insurance organization' shall have the meaning prescribed by section 2015(d) of title XX of the Social Security Act."

(b) CONFORMING CLERICAL AMENDMENTS.—(1) Section 162(h) of the Internal Revenue Code of 1954 (relating to cross references) is amended by adding at the end thereof the following new paragraph:

"(3) For limitation on employer's deduction for employee health care, see section 280."

(2) Section 404 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsection:

"(g) CROSS REFERENCE.—

"For limitation on employer's deduction for employee health care, see section 280."

(3) Section 212 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following cross reference:

"CROSS REFERENCE.—

"For limitation on employer's deduction for employee health care, see section 280."

(4) The table of sections for part IX of subchapter B of chapter I of subtitle A of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new item:

"Sec. 280. Employer's Deduction for Expenditures for Employee Health Care."

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1972.

(2) CERTAIN COLLECTIVELY BARGAINED PLANS.—In the case of any plan providing benefits for medical care of employees which was established by an employer taxpayer pursuant to an agreement which resulted from collective bargaining between the employer and representatives of his employees and which has not expired at the time specified in paragraph (1), the amendments made by this section shall not apply to such employer taxpayer until the first taxable year beginning on or after the date such agreement first expires or the date 3 years after the time specified in paragraph (1), whichever such date occurs first.

SUBTITLE C—QUALIFIELD INDIVIDUAL HEALTHCARE PLANS

SEC. 521. Qualified individual healthcare plans.

(a) UNLIMITED DEDUCTION FOR MEDICAL INSURANCE EXPENSES OF INDIVIDUAL COVERED BY QUALIFIED HEALTHCARE PLAN.—Section 213 (a) (2) (relating to individual's deduction for medical insurance expense) of the Internal Revenue Code of 1954 is amended to read as follows:

"(2) the sum of—

"(A) an amount (not in excess of $150) equal to one-half of the expenses (other than those deductible under subparagraph (B)) paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents (as defined in section 152); and

"(B) in the case of a taxpayer who at any time during the taxable year is covered under a Qualified Individual Healthcare Plan (as defined in subsection (g)), a Qualified Employee Healthcare Plan (as defined in section 280(c)), or a Qualified State Healthcare Plan (as defined in section 2002 of title XX of the Social Security Act), an amount equal to all the expenses paid during the taxable year for any insurance (whether provided under such a qualified plan or otherwise) which constitutes medical care for the taxpayer, his spouse, or dependents (as defined in section 152), and which constitutes coverage during such portion of the taxable year as the taxpayer is covered by such a qualified plan.

SUBTITLE C—QUALIFIED INDIVIDUAL HEALTHCARE PLANS

(b) DEFINITION OF QUALIFIED INDIVIDUAL HEALTHCARE PLAN.—Section 213 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsection:

"(g) QUALIFIED INDIVIDUAL HEALTHCARE PLAN DEFINED.—For purposes of this title, the term 'Qualified Individual Healthcare Plan' means insurance which covers medical care referred to in subparagraphs (A) and (B) of subsection (e)(1) and which satisfies all of the following requirements:

"(1) MINIMUM STANDARD HEALTHCARE BENEFIT PRIORITIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the plan must provide at least the minimum Standard Healthcare Benefits (described in subsection (h)) in accordance with the following schedule:

"(i) Priority I benefits after December 31, 1972;

"(ii) Priority I and II benefits after December 31, 1975; and

"(iii) Priority I, II, and III benefits after December 31, 1978;

"(B) PRESIDENTIAL DEFERRAL OF SCHEDULE FOR PHASE-IN OF BENEFITS.—The President of the United States, by Executive order issued by him pursuant to the provisions of subsection (h), may defer the date otherwise scheduled under subparagraph (A) (ii) or (A) (iii) for phase-in of any priority II or priority III benefit, but only if such Executive order defers on like terms the date otherwise scheduled for phase-in of such benefit for purposes of Qualified Employee Health Care Plans (described in section 280(c)).

"(2) CONTRACT REQUIREMENTS.—Each contract of insurance forming a part of the plan must contain provisions—

"(A) which obligate the insurer to renew the contract until at least the date on which the individual in whose name the contract was issued first becomes eligible for coverage under title XVIII of the Social Security Act, which also reserve to the insurer the right to adjust premium rates by classes in accordance with its experience under the type of contract involved;

"(B) which enable the individual in whose name the contract was issued to secure priority II and priority III benefits at such times as those benefits are required to meet the requirements of paragraph (1); and

"(C) which, upon the death of the individual in whose name the contract was issued, permits every other individual then covered under the contract to elect (within such period as shall be specified in the contract) to continue his coverage (under the same or a different contract) until such time as he would have ceased to be entitled to coverage had the individual in whose name the contract was issued lived.

"(3) OPTIONAL PROVISIONS.—An insurance contract shall not be treated as failing to meet the requirements of this subsection by reason of the inclusion therein of any one or more of the following optional features:

"(A) INSURANCE WITH OTHER INSURERS.—The contract may contain a provision coordinating its benefits with any other contract if such provision is approved by the appropriate regulatory authority of the State of issue.

"(B) DEDUCTIBLES.—The contract may require the covered individual to pay a deductible before benefits for some or all types of health care expenses are payable under the plan. The amount of the deductible may not be greater when a service is rendered on an ambulatory basis than when that service is rendered on an inpatient basis in a hospital or other health care institution.

"(C) COPAYMENTS.—In lieu of the copayment amounts described under subsection (h) in the Table of Minimum Standard Health Care Benefits, the contract may require copayments for expenses in excess of any required deductible, in an amount not to exceed 20 percent of covered expenses, except where a higher percentage copayment for a given benefit expense category is provided for under the Minimum Standard Healthcare Benefits.

"(D) ADDITIONAL BENEFITS.—The contract may provide any benefits for medical care in addition to those required under the Table of Minimum Standard Health Care Benefits."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1972.

SEC. 522. Procedure for rulings on qualification of employee and individual healthcare plans.

In exercise of the power to issue rulings which is vested in him under section 7805 of the Internal Revenue Code of 1954, the Secretary (or his delegate) may accept the determination of the state insurance regulatory authority that a plan of health care benefits filed with and approved by such authority is a plan satisfying all requirements for qualification either as a Qualified Employee Healthcare Plan (as defined in section 280(c) of the Internal Revenue Code of 1954) or as a Qualified Individual Healthcare Plan (as defined in section 213(g) of the Internal Revenue Code of 1954).

SEC. 523. Regulations.

Any regulations promulgated by the Secretary (or his delegate) with regard to amendments of the Internal Revenue Code of 1954 made by subtitles A, B, or C of this title shall be promulgated in final form not less than 120 days prior to the first day of the calendar year during which they will apply. Such regulations shall be effective only if (i) promulgated in final form within the time prescribed in the preceding sentence, and (ii) notice of such regulation in proposed form and of opportunity for public hearing thereon shall have been published not less than sixty days prior to the date of promulgation thereof in final form.

SUBTITLE D—GRANTS TO STATES FOR QUALIFIED STATE HEALTHCARE PLANS FOR THE NEEDY AND UNINSURABLE

SEC. 531. Grants to states for qualified state healthcare plans.

The Social Security Act is amended by adding after title XIX the following new title:

"TITLE XX—GRANTS TO STATES FOR QUALIFIED STATE HEALTHCARE PLANS

"APPROPRIATIONS

"SEC. 2001. For the purpose of providing comprehensive health care insurance to needy individuals and families in a manner which will enhance personal dignity, and to make available comprehensive health care insurance coverage to individuals who are uninsurable, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out this title. The sums made available under this section shall be used for making payments pursuant to Qualified State Healthcare Plans which have been approved by the Secretary of Health, Education, and Welfare.

"QUALIFIED STATE HEALTHCARE PLAN DEFINITION

"General Rule

"SEC. 2002. (a) A Qualified State Healthcare Plan shall be a contract or other agreement between a State and an administering carrier (as defined in section 2015(d)), and shall pay to practitioners, health care institutions and other providers, on behalf of the individuals and families required under section 2003 to be made eligible therefor, the Minimum Standard Healthcare Benefits (described in section 213(h) of the Internal Revenue Code of 1954) in accordance with the following schedule:

"(1) Priority I and II benefits for policy years beginning before July 1, 1976, and

"(2) Priority I, II, and III benefits for policy years beginning after June 30, 1976, except as provided in subsection (b).

"Presidential Power To Defer Priority III Benefits

"(b) If the President of the United States, by Executive order issued by him pursuant to section 213(h) of the Internal Revenue Code of 1954, defers the date otherwise scheduled under subsection (a)(2) for phase-in of Priority III benefits, such benefits shall not be required to be provided under Qualified State Healthcare Plans until such date as shall be fixed by the President for phase-in of Priority III benefits.

"Option To Elect Coverage Under an Approved Health Maintenance Organization

"(c) An individual or family eligible for enrollment in the Qualified State Healthcare Plan under section 2003 may, upon written request, submitted to the administering carrier with his enrollment application, elect coverage, if available, under an arrangement between the administering carrier and an approved health maintenance organization (as defined in section 2015(e)), in lieu of coverage under the Qualified State Healthcare Plan: *Provided, however,* That the per capita charges made to the State through the administering carrier for such alternative coverage shall not exceed the premiums then applicable for that risk category for the current policy year for enrollment in the Qualified State Healthcare Plan, as determined pursuant to section 2004(b).

"Reinsurance Condition

"(d) The contract risk under a Qualified State Healthcare Plan shall be reinsured, through the Qualified State Healthcare Benefits Pool described in section 2010, by all carriers (profit and nonprofit) licensed in or otherwise authorized by the State to issue coverage for one or more items of health care, by all health maintenance organizations doing business in the State, and by all other persons in the State who provide uninsured plans.

"Limitations and Exceptions

"(e)(1) The copayments specified in the table of Minimum Standard Healthcare Benefits (described in section 213(h) of the Internal Revenue Code of 1954) shall be limited as follows:

"(A) the aggregate copayments per policy year for a single individual described in section 2003(a) shall be limited to 6 per centum of the excess over $2,000 of the individual's adjusted gross income (as defined in section 2003(a)(2)), or $30, whichever is the larger;

"(B) the aggregate copayments per policy year for a family of two described in section 2003(a) shall be limited to 6 per centum of the excess over $3,000 of the family's adjusted gross income (as defined in section 2003(a)(2), or $30, whichever is the larger; or

"(C) the aggregate copayments for a policy year for a family of three or more described in section 2003(a) shall be limited to 6 per centum of the excess over $4,000 of the family's adjusted gross income (as defined in section 2003(a)(2)), or $30, whichever is the larger.

"(2)(A) No charge for a benefit otherwise described by this section, other than charges by a health care institution, shall be reimbursed to the extent that it exceeds a reasonable charge. In determining the reasonable charge for a given health care service there shall be taken into consideration the charge for the service, when rendered under comparable conditions, which is customarily made by the physician, dentist, or other persons furnishing such service, but in no event shall the payment be in excess of the prevailing charge in the locality for the service. The prevailing charge in a locality shall be the amount at the seventy-fifth percentile of a low to high distribution of the actual charges made for similar services in the same locality during the preceding calendar year. The prevailing charge shall be recalculated each year by the administering carrier upon the basis of the actual charges during the preceding calendar year and such prevailing charge shall be in effect from July 1 of the current year until June 30 of the succeeding year. When a service is rendered a relatively small number of times in a locality in a given year, the prevailing charge for that service shall be determined by the administering carrier in accordance with regulations specified by the Secretary for this purpose.

"(B) No charge for a benefit otherwise described by this section shall be reimbursed to the extent that it is for health care determined not to be necessary according to professionally established guidelines. Payment for health care services beyond such guidelines may be made only if approved, after review, by an appropriate health services review organization, or in the absence of such organization by the health professional staff of the administering carrier of the Qualified State Healthcare Plan.

"(C) No charges for care rendered in any health care institution shall be reimbursed if it is determined, in accordance with and subject to the provisions of section 2008, that the health care institution is not complying with the prospective rate approval conditions established by section 2008.

"(3) No charge for a benefit otherwise described by this section shall be reimbursed to the extent it is a proper reimbursement under any other insurance plan providing health care benefits, including, but not limited to, benefits provided under title XVIII of the Social Security Act.

"ELIGIBILITY FOR ENROLLMENT

"Needy Individuals and Families

"SEC. 2003. (a) Every individual or family (as defined in subsection (c))—

"(1) who is a resident of the State;

"(2) whose individual (combined for a family) adjusted gross income (as defined by section 62 of the Internal Revenue Code of 1954) for his last taxable year preceding the date on which he makes an application to enroll in the Qualified State Healthcare Plan was either—

"(A) less than—

"(i) $3,000 for a single individual,

"(ii) $4,500 for a family of two, or

"(iii) $6,000 for a family of three or more; or

"(B) was greater than the applicable amount in subparagraph (A) and the individual or family is a Federal cash recipient as defined in section 2015(i);

"(3) who is not eligible to enroll in a Qualified Employee Health Care Plan (as described by section 280(c) of the Internal Revenue Code of 1954) on the date on which he makes an application to participate in the Qualified State Health care Plan; and

"(4) who, if eligible to enroll in the supplementary medical insurance program for the aged described in part B of title XVIII of the Social Security Act, is, in fact, enrolled in said insurance program—

shall, in accordance with, and subject to the other provisions of this title, be eligible to enroll in the Qualified State Healthcare Plan.

"Uninsurable Individuals

"(b) Every individual—

"(1) who is a resident of the State;

"(2) who is not eligible to enroll in a Qualified State Healthcare Plan because he fails to meet the conditions specified in subsection (a)(2);

"(3) who is not eligible to enroll in the insurance program described in part B of title XVIII of the Social Security Act;

"(4) who meets the condition specified in subsection (a)(3); and

"(5)(A) who has made an application, to three carriers licensed to issue individual health care insurance in the State, at least one of which is licensed to issue individual health care insurance in all the 50 States and the District of Columbia, for an individual health care insurance policy providing benefits equivalent to the Minimum Standard Healthcare Benefits described in section 2002(a), and each such carrier either—

"(i) refused to issue such a policy, or

"(ii) offered such a policy only for premium rate greater than 200 per centum of the current premium rate being charged to the State for a single individual enrolled in the Qualified State Healthcare Plan, or

"(B) who became disabled while insured under a Qualified Employee Healthcare Plan, has been disabled at least 9 months, and whose coverage has continued under a temporary extension of the Qualified Employee Healthcare Plan—

shall, in accordance with and subject to the other provisions of this title, be eligible to enroll in the Qualified State Healthcare Plan during an open enrollment period.

"Definition of Family

"(c) An individual and his spouse (not legally separated under a decree of divorce or of separate maintenance) and each of their dependents (as defined in the introductory clause of section 152(a) of the Internal Revenue Code of 1954) unmarried children who have not attained the age of 19, or an individual and each of his dependents as defined in this subsection shall be regarded as a family for purpose of this title.

"Rules for Eligibility

"(d) For the purpose of applying the conditions of eligibility under this section, all determinations shall be made on the day application for enrollment for the policy year is made.

"DETERMINATION AND REVIEW OF PREMIUM RATES

"General Rule

"SEC. 2004. (a) The premium rate to be charged under a Qualified State Health-care Plan for each policy year shall be actuarially established in each State for each of the risk categories—

"(1) single individual,

"(2) family of two, and

"(3) family of three or more.

"Composition of Premium

"(b)(1) The premium rate for a given risk category to be charged for the initial policy year shall be determined by the administering carrier on the basis of the sum of only the following factors—

"(A) the arithmetic average of the separate estimates of incurred claim costs for that risk category for the first policy year filed with the insurance regulatory authority of the State pursuant to requests by such authority of two nondomestic insurance companies licensed to issue health care insurance in the 50 States and the District of Columbia, two domestic insurance companies licensed to issue health care insurance in the State, one domestic nonprofit hospital expense indemnity organization, and one domestic nonprofit medical expense indemnity organization;

"(B) the charge for administration as set for the policy year by the administering carrier; and

"(C) a risk charge equal to 1 per centum of the amount determined in subparagraph (A).

"(2) The premium rate for a given risk category to be charged for each subsequent policy year shall be determined by the administering carrier on the basis of the sum of only the following factors—

"(A) the incurred claim costs for that risk category for the prior policy year;

"(B) an amount equal to any projected increase or decrease in incurred claim costs for that risk category for the policy year;

"(C) an amount, if needed, to repay in full any pool losses (described in subsection 2010(c)) of prior years borne by the reinsurers of the pool and not yet recovered by them;

"(D) the charge for administration as set for the policy year by the administering carrier; and

"(E) a risk charge equal to 1 per centum of the sum of the amounts in subparagraphs (A) and (B).

"Review of the premium rates

"(c)(1) The premium rates determined for each State for each policy year pursuant to subsection (b) and the utilization and other assumptions underlying the rates are to be filed by the State with the chief actuary for the Social Security Administration, and if, within ninety days after such filing, the chief actuary determines that the rates are unjustifiably high for the State, he shall recommend to the Secretary a commensurate reduction in the Federal Healthcare Percentage described in section 2012(e). The Secretary, to the extent he concurs in and adopts such recommendation, shall advise the State of the reduction he proposes to promulgate.

"(2) The State may request a hearing within thirty days after receipt of notice of the proposed reduction pursuant to paragraph (1). In such event, the Secretary shall, upon request by the State for a hearing and within thirty days thereof, appoint a hearing board of three actuaries, each of whom shall be a member in good standing of the American Academy of Actuaries, including one actuary who shall be appointed with the concurrence of the Governor of the State, and one actuary who shall be appointed with the concurrence of the administering carrier.

"(3) If a State does not request a hearing, or if the hearing board appointed pursuant to paragraph (2) concurs in the finding that the rates are unjustifiably high, the Secretary shall promulgate the proposed reduction in the Federal Healthcare Percentage, which shall apply throughout the period that the rates on which the hearing was based remain in effect.

"(4) If the hearing board appointed pursuant to paragraph (2) determines that the rates are not unjustifiably high for the State, the Federal Healthcare Percentage shall not be reduced.

"PROCEDURE FOR ENROLLMENT

"General rule

"SEC. 2005. (a)(1) The appropriate State agency shall enroll each Federal cash recipient, required under section 2003 to be made eligible therefor, in the Qualified State Healthcare Plan, and shall file his application with the administering carrier on forms to be provided by the administering carrier.

"(2) All other individuals, or the member of a family who provides the family's chief support, otherwise required under section 2003 to be made eligible therefor, may enroll in a Qualified State Healthcare Plan upon filing an application with the administering carrier on a form to be provided by the administering carrier.

"Information Required of Each Applicant

"(b) Each eligible applicant described in section 2003 shall provide the administering carrier all information and evidence required to make an eligibility determination, and provide or certify any other essential information required under regulations prescribed by the Secretary, including but not limited to—

"(1) certification of his eligibility as a Federal cash recipient;

"(2) certification of his, or his family's, adjusted gross income as defined by section 2003(a)(2); and

"(3) certification that he and his applicable family members, if eligible for the supplementary medical insurance program for the aged described in part B of title XVIII of the Social Security Act, are enrolled thereunder; or, if not then eligible, certify that he and his applicable family members who may become eligible during the policy year for the insurance program described in part B of title XVIII will enroll in such program.

"Enrollment Periods

"(c) Applications for enrollment in a Qualified State Healthcare Plan shall only be made and filed during an open enrollment period which shall be the calendar month of April of each year for coverage commencing for the policy year beginning the following July 1, except applications for enrollment—

"(1) shall be made by the appropriate State agency on behalf of an individual or family who establishes (other than during an open enrollment period) that he is a Federal cash recipient eligible for enrollment, but not then enrolled; and shall be filed with the administering carrier by the appropriate State agency within thirty days following the day on which such individual or family establishes eligibility as a Federal cash recipient; or

"(2) may be made by other individuals or families who meet the conditions for eligibility under section 2003(a)—

"(A) if such individual or family was eligible to enroll in a Qualified Employee Healthcare Plan during the latest enrollment period, but prior to the next open enrollment period ceases to be eligible for enrollment in a Qualified Employee Healthcare Plan, and

"(B) if the application is filed with the administering carrier by the individual or family within thirty days following the day on which such individual or family ceased to be eligible for continued enrollment in the Qualified Employee Healthcare Plan.

"Covered periods

"(d)(1) Except as otherwise provided in section 2007, Qualified State Healthcare Plan coverage for individuals and families properly enrolled during an open enrollment period shall commence for the forthcoming policy year beginning July 1, and coverage shall remain in force for the balance of the policy year for each individual who was eligible for enrollment on the day the application for his or his family's enrollment was made.

"(2) Except as otherwise provided in section 2007, Qualified State Healthcare Plan coverage for individuals or families properly enrolled (other than during an open enrollment period) in accordance with subsection (c) shall commence the first day of the third month following the month in which the application of the individual or family was filed with the administering carrier, and coverage shall remain in force for the balance of the policy year for each individual who was eligible for enrollment on the day the application for his or his family's enrollment was made.

"INDIVIDUAL AND FAMILY CONTRIBUTIONS AND STATE PREMIUM PAYMENTS

"Individual and family contributions

"SEC. 2006. (a) Individuals and families enrolled in a Qualified State Healthcare Plan shall be required to contribute toward the cost of the plan only as follows:

"(1) Each single individual described in section 2003 (a) shall pay to the administering carrier a contribution equal to 18 per centum of the excess over $2,000 of the individual's adjusted gross income (as defined in section 2003(a)(2)), reduced (but not below zero) by the total premium, if any, paid for that year by the individual to the Social Security Administration for enrollment in the supplementary medical insurance program for the aged described in part B of title XVIII of the Social Security Act.

"(2) Each family of two described in section 2003(a) shall pay to the administering carrier a contribution equal to 18 per centum of the excess over $3,000 of the family's adjusted gross income (as defined in section 2003(a)(2)), reduced (but not below zero) by the combined aggregate premium, if any, paid for that year by the family to the Social Security Administration for enrollment in the supplementary medical insurance program for the aged described in part B of title XVIII of the Social Security Act.

"(3) Each family of three or more described in section 2003(a) shall pay to the administering carrier a contribution equal to 18 per centum of the excess over $4,000 of the family's adjusted gross income (as defined in section 2003(a)(2)), reduced (but not below zero) by the combined aggregate premium, if any, paid for that year by the family to the Social Security Administration for enrollment in the supplementary medical insurance program for the aged described in part B of title XVIII of the Social Security Act.

"(4) Each individual described in section 2003(b) shall pay to the administering carrier a contribution equal to the full premium determined under section 2004 to be applicable for the risk category of a single individual.

"Exceptions

"(b)(1) Each individual or family who enrolls in a Qualified State Healthcare Plan during an excepted enrollment period as provided by section 2005(c) shall have his contribution prorated on the basis of the number of months of coverage remaining in the current policy year as at the date coverage commences.

"(2) Each individual or family who, but for this subsection, would be required to make a contribution pursuant to subsection (a), and who has established that he is a Federal cash recipient at the time his application for enrollment in a Qualified State Healthcare Plan was filed, shall not be required to pay such contribution, but the amount of the contribution thus waived nevertheless shall be paid by the State to the administering carrier.

"(3) Each individual or family, who establishes eligibility as a Federal cash recipient during a calendar month subsequent to the calendar month in which his application for enrollment in a Qualified State Healthcare

Plan was filed, shall not be required to pay any installment or installments of the contribution for that policy year that fall due on or after the first day of the third calendar month in which the individual or family established eligibility as a Federal cash recipient, but such installment or installments shall nevertheless be paid by the State to the administering carrier.

"State's Share of the Premium

"(c) Each State which has a Qualified State Healthcare Plan shall pay the administering carrier an amount equal to the total premium cost for the policy year less the total amount of contributions actually paid to the administering carrier by the individuals and families as provided for in this section.

"Nonvariability of Contributions and Premiums

"(d) The amount of annual contribution and the amount of annual premium shall be established by family size category on the day application for enrollment was made, and shall not change as a result of a change in family size thereafter.

"Due Date of Contributions and State Premium Payments

"(e)(1) Except as provided in this subsection, any contribution required of an individual or family, or of the State on behalf of a Federal cash recipient, for the forthcoming policy year or the balance of the policy year shall be due and payable in advance of the effective date of that individual's or family's coverage under the Qualified State Healthcare Plan.

"(2) An individual or family who enrolls during an open enrollment period and whose total contribution for a policy year exceeds—

"(A) $40, may elect to pay one-fourth of the contribution in advance of the policy year, and one-fourth prior to the first day of the third, sixth, and ninth months following the first month of the policy year, or

"(B) $120, may elect to pay one-twelfth of the contribution in advance of the policy year, and one twelfth prior to the first day of each of the eleven months following the first month of the policy year.

"(3) Any individual or family member who qualifies for payment of his contribution in installments in accordance with subsection (e)(2) and who is an employee (as defined in section 3121(d) of the Internal Revenue Code of 1954) may require his employer to make periodic deductions from his wages, and remit each contribution installment to the administering carrier on or before the due date specified in subsection (e)(2).

"(4) The premium payments required to be made by the State in accordance with subsection (c) shall be due in equal monthly installments to the administering carrier prior to the first day of each calendar month. If payment of any installment is not received by the first day of the month it is due, the administering carrier shall not be liable for benefit payments thereafter.

"State Payment of Premiums for Part B Medicare Benefits

"(f) Each State which has a Qualified State Health-care Plan shall be required to make available, and pay premiums for, supplementary medical insurance benefits under part B of title XVIII of the Social Security Act to any individual or family member who is enrolled in that State's Qualified State Health-care Plan, who is eligible for such supplementary medical insurance benefits and who either:

"(1) has established eligibility as a Federal cash recipient at the time his application for enrollment in the Qualified State Health-care Plan is made; or

"(2) had individual (combined for a family) adjusted gross income (as defined by section 62 of the Internal Revenue Code of 1954), for the last taxable year preceding the day on which his most recent application for enrollment in the Qualified State Healthcare Plan was made, less than—

"(A) $2,000 for a single individual,

"(B) $3,000 for a family of two, or

"(C) $4,000 for a family of three or more.

Such benefits shall be made available pursuant to an agreement entered into under section 1843 of the Social Security Act, or by reason of the payment of premiums under such title by the appropriate State agency on behalf of the individuals.

"EXTENSION AND TERMINATION OF COVERAGE

"General Rule

"SEC. 2007. (a) Except as provided in subsection (d), subject to timely payment as specified in section 2006(e) of any contribution required under section 2006 by the individual or family and subject to timely payment of the State's share of the premium as specified in section 2006(e), Qualified State Healthcare Plan coverage shall remain in force for the balance of the policy year for each individual who was eligible for enrollment on the day the application for his or his family's enrollment was made.

"Extended Coverage

"(b) Qualified State Healthcare Plan coverage shall immediately extend to any child born to, or adopted by, any eligible family member subsequent to the day the application for enrollment was made, and shall continue in force until the beginning of the policy year following the next open enrollment period.

"Continued Coverage

"(c) Qualified State Healthcare Plan coverage during the policy year shall not be terminated because an individual who was an eligible family member on the day the application for enrollment was made ceases to be an eligible family member subsequent to the date of application.

"Termination of Coverage

"(d)(1) Qualified State Healthcare Plan coverage shall not commence or shall terminate as of the first day of any month if any contribution due prior to such date pursuant to section 2006(e) has not been paid by such date.

"(2) If Qualified State Healthcare Plan coverage is terminated in accordance with paragraph (1) and a request for reinstatement is made within 30 days following the day coverage terminated, the individual or family will be extended continuous coverage upon payment of the overdue contribution or installment and all remaining installments due during the balance of that policy year plus a reinstatement expense charge of $10.

"(3) If Qualified State Healthcare Plan coverage is terminated in accordance with paragraph (1) and the individual or family fails to request reinstatement as provided for in paragraph (2), the individual or family shall not qualify for the payment of contributions in installments specified in section 2006(e) for the next policy year.

"(4) If a Federal cash recipient described in section 2003(a)(2)(B) ceases to be eligible for public cash assistance after the State has enrolled the individual or family, the State shall so notify the administering carrier within thirty days of such cessation and Qualified State Healthcare Plan coverage shall terminate as of the first day of the fourth month following the month in which eligibility for public cash assistance ceased.

"APPROVAL OF INSTITUTIONAL RATES OF REIMBURSEMENT BY STATE HEALTH CARE INSTITUTIONS COST COMMISSIONS

"State Commission

"SEC. 2008. (a) In the operation of a Qualified State Healthcare Plan no charge for services rendered or supplies furnished by hospitals, extended care facilities or Home Health Agencies (herein collectively referred to as "health care institutions") shall be reimbursed to the extent that such charges exceed the rates approved by a State Health Care Institutions Cost Commission. Such Commission shall be a State agency designated by the Governor of each State for the purpose of performing the functions described in this section. Such Commission shall operate with the advice of a council appointed by the Governor. The council shall include at least two consumer representatives, one hospital representative, one extended care facility representative, one Home Health Agency representative, one hospital service organization representative, one insurance company representative, and one representative of the State health planning council established pursuant to section 314(a)(2)(B) of the Public Health Service Act. One of the representatives shall be designated as chairman of the advisory council.

"Review of Budgets and Charges

"(b) The Commission shall review budgets and proposed charges for the health care institutions in the State in order to establish prospectively approved charges for purposes of reimbursement under this title. Once each year, each health care institution shall file its budget and proposed charges with the Commission. The Commission may approve the use of a single charge for all of a group of services commonly rendered a class of patients or a single all-inclusive daily charge for all in-patient services of the health care institution. Filed charges shall be deemed approved unless disapproved by the Commission within 60 days after filing.

"Standards for Health Care Institutions

"(c) In reviewing the proposed charges of health care institutions in the State, the Commission shall require at least the following standards of each such institution—

"(1)(A) an active review committee of qualified physicians and other personnel that effectively determines whether the services rendered are—

"(i) of good quality,

"(ii) needed for the proper treatment of the patient, and

"(iii) provided only as long as necessary within the health care institution; and

"(B) management that takes effective and prompt action with respect to adverse findings;

"(2) utilization of a standard system of accounting and cost finding established by the Commission;

"(3) utilization of the approved charges for all patients; and

"(4) a budget of its expenses for the fiscal years, using the approved standard system of accounting and cost finding, and established charges for services reasonably related to the cost of efficient production of such services.

The Commission shall also take into consideration economic factors in the health care institution's geographical area, costs of comparable institutions providing comparable services, capital requirements, and the need for incentives to improve service and institute economies which might be secured from the sharing of joint services with other health care institutions.

"Amortization of Capital Costs

"(d) In reviewing that portion of a health care institution's charges which results from financing costs and depreciation relating to prior capital expenditures, the Commission shall accept the determination, if any, of the appropriate comprehensive health planning agency (as defined in section 2 of the Public Health Service Act) that the construction of such facility was consistent with the health needs of the area.

"Appeal by Health Care Institution Following Disapproval by Commission

"(e) If the budget submitted by a health care institution reveals significant operating inefficiencies or if the proposed charges otherwise appear to be unjustifiably high, the Commission shall disapprove the proposed charges. If the proposed charges are disapproved, the affected health care institution may request consideration of the advisory council constituted by virtue of subsection (a). Upon receipt of such request, the council shall hold a hearing at which the interested parties may appear to present the facts which support the Commission's decision and the facts which support the affected health care institution's position. Following such hearing the council shall advise the Commission of its recommendation, and the Commission shall thereupon render a final decision.

"Federal Appropriation for Cost Commission's Expenses

"(f) The Secretary shall pay to any State which has a Qualified State Health-care Plan an amount equal to 75 percentum of the reasonable amounts expended by the State each quarter as found necessary by the Secretary for the proper and efficient administration of the State's Health Care Institutions Cost Commission and its advisory council except that there shall be no reimbursement by the Secretary for the cost of any institutional audits that may be conducted by the Commission.

"REVIEW OF LEVELS OF INSTITUTIONAL RATES OF REIMBURSEMENT BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE

"Filing With the Secretary

"SEC. 2009. (a) Annually on a date specified by the Secretary, each State Health Care Institutions Cost Commission shall file with the Secretary, on a form prescribed by him, a report of the level of rates of institutional reimbursement approved by the Commission for such categories of health care institutions as shall be established by the Secretary. The categories shall take into consideration the type and size of the institutions and differing economic characteristics by geographic areas within each State so that each category will include institutions with similar conditions of operating cost.

"Review by the Secretary

"(b) In the event the Secretary determines that the level of rates approved for a given category of health care institution in a State is unjustifiably high in relation to those of other States, he shall order a reduction for that State in the Federal Medical Assistance Percentage (as defined in section 1905(b) of title XIX of the Social Security Act), and a reduction in the Federal Healthcare Percentage (as defined in section 2012 (c)) to compensate for the excess cost resulting from the unjustifiably high level of rates for that category of health care institutions in the State. The State may appeal the Secretary's decision, and upon receipt of an appeal, the Secretary shall appoint a hearing board of three members which shall hold a hearing at which the interested parties may appear to present the facts which support the Secretary's decision and the facts which support the appellant State's position. The members of the hearing board shall each be knowledgeable with respect to the costs of operating health care institutions of the category concerned and may not be an employee or an owner of any of the health care institutions concerned. Following such hearing the hearing board shall advise the Secretary of its recommendation, and the Secretary shall thereupon render a final decision. There shall be no further right of appeal or review by the State. If the State, whose Federal percentages have been reduced, takes action to correct the situation which produced the unjustifiably high level of rates for the category of health care institutions, it may so notify the Secretary and request restoration of the full amount of the Federal medical assistance percentage and the full amount of the Federal Healthcare Percentage. If the Secretary is satisfied that corrective action has been taken, he shall restore the Federal percentages to their full amount for that State as of the date he deems the corrective action to have eliminated the unjustifiably high level of rates.

"OPERATION OF THE QUALIFIED STATE HEALTH-CARE BENEFITS POOL

"General Rule

"SEC. 2010. (a) The Qualified State Healthcare Benefits Pool (hereinafter in this section referred to as the Pool) shall be administered by the carrier administering the Qualified State Healthcare Plan.

"Fiscal Operation

"(b) (1) The premiums collected pursuant to this title, 2004 the fees for reinstatement of coverage described in section 2007(d) (2) and the reimbursements for Pool losses described in subsection (c) (2) shall be paid into the Pool.

The Pool shall be available—

"(A) without fiscal year limitation to pay all Qualified State Healthcare Plan benefit claims certified by the administering carrier;

"(B) without fiscal year limitation to pay premiums to approved health maintenance organizations (as defined in section 2015(e));

"(C) to pay the risk charges specified in section 2004(b);

"(D) to repay to Poll reinsurers the losses, if any, specified in section 2004(b) (2) (C);

"(E) to pay the administrative charges of the administering carrier described in section 2004(b); and

"(F) to pay any other charges for which the Pool has a liability.

"(2) The moneys in the Pool shall be invested and reinvested in interest-bearing obligations, which may be sold for the purpose of the Pool. The interest on, and the proceeds from the sale of, such obligations become a part of the Pool.

"Experience Accounting

"(c) (1) At the close of each policy year, an experience accounting for the Pool for the policy year shall be prepared by the administering carrier and submitted to the Secretary, to the State, and to all reinsurers specified in section 2002(d).

"(2) (A) All reinsurers shall participate in any Pool losses in accordance with such formula as the Pool participants may devise with the approval of the State. The aggregate Pool losses for any policy year, to be apportioned among the Pool participants, shall be limited to 3 per centum of the Qualified State Healthcare Plan premiums collected by the Pool for the year. Losses in excess of this limitation shall be borne by the State.

"(B) The State shall collect the uninsured plans' share of the Pool losses, and remit such amount together with the State's payment for its share of the losses to the administering carrier within forty-five days after the experience accounting has been submitted. The other reinsurers shall remit their share of the loss to the administering carrier within thirty-one days after the experience accounting has been submitted.

"(3) If the experience accounting reflects a gain (computed after deduction of the reinsurers' risk charge described in section 2004(b)) for the policy year, the gain shall be retained in the pool and used to minimize future premiums to be paid by the State.

"FURNISHING OF INFORMATION BY OTHER AGENCIES

"General Rule

"SEC. 2011. (a) The head of any Federal or State agency shall furnish such information as the administering carrier needs for purposes of spot auditing eligibility for the Qualified State Healthcare Plan, or verifying other information with respect thereto.

"Carrier's Liability

"(b) A reliance by the administering carrier on information furnished by any Federal or State agency shall relieve the carrier from liability for failure to charge sufficient premiums, overpayment of benefits, or any other erroneous act resulting from the carrier's reliance on such information.

"PROVISIONS AND CONDITIONS FOR FEDERAL APPROPRIATION

"Appropriation for Qualified State Healthcare Plan Premiums

"SEC. 2012. (a) The Secretary shall pay to any State which has a Qualified State Healthcare Plan an amount equal to the product obtained by multiplying the total premiums for the Qualified State Healthcare Plan paid by State to the administering carrier by the Federal Healthcare Percentage defined in subsection (e). In applying the preceding sentence, the amount used as total premiums paid by a State for a Qualified State Healthcare Plan shall not include any portion thereof that is determined by the Secretary to be attributable to benefits provided under the Plan which are in excess of the Minimum Standard Healthcare Benefits then required by section 2002(a) to be provided. "Appropriation for Qualified State Healthcare Benefits.

Pool Losses

"(b) The Secretary shall pay to any State which has a Qualified State Healthcare Plan an amount equal to the product obtained by multiplying the excess Pool losses paid by the State to the administering carrier (as provided by section 2010(c) (2) (A)) by the Federal Healthcare Percentage defined in subsection (e). For the purpose of this subsection, the Federal Healthcare Percentage shall be as determined before any reduction thereof provided for under section 2004(c) (3), or section 2009.

"Condition for Payment

"(c) The amounts appropriated by the preceding subsections shall not be paid to the State unless the State has filed with the Secretary sufficient evidence to substantiate the expenditures described by the preceding subsections.

"Payments Under Titles V and XIX Conditioned on State Compliance

"(d) In order for a State to be eligible for Federal appropriations on or after July 1, 1973, pursuant to titles V and XIX of the Social Security Act, it must have in operation a Qualified State Health Care Plan.

"Federal Healthcare Percentage

"(e) The term 'Federal Healthcare Percentage' for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska and Hawaii); except that (1) the Federal Healthcare Percentage shall in no case be less than 70 per centum or more than 90 per centum, and (2) the Federal Healthcare Percentage for Puerto Rico, the Virgin Islands, and Guam shall be 70 per centum. The Secretary shall promulgate the Federal Healthcare Percentage for each State as soon as possible after enactment of this title, which promulgation shall be conclusive for each of the four quarters in the period beginning July 1, 1972, and ending with the close of June 30, 1973. Thereafter, the Federal Healthcare Percentage for any State shall be promulgated in accordance with the provisions of section 1101(a) (8) (B) of title XI of the Social Security Act.

"ELIGIBILITY OF THOSE NOW COVERED UNDER CERTAIN STATE OR FEDERAL PROGRAMS

"Federal Programs

"SEC. 2013. (a) Any class of individuals or families, other than employees of the Federal Government and their families, whose members at the time of enactment of this Act, are receiving all, or substantially all, of their medical care under a Federal program, other than a program pursuant to the Social Security Act, shall not be eligible for coverage under a Qualified State Healthcare Plan unless—

"(1) all members of the class who are resident in the State are enrolled in the Plan;

"(2) the Federal Government pays the premium for supplementary medical insurance benefits under part B of title XVIII of the Social Security Act for all such members of the class as are eligible therefor;

"(3) the Federal Government arranges for the enrollment of such individuals and families in the Qualified State Healthcare Plan and pays the full premium therefor on behalf of such persons without requiring any sharing by the State; and

"(4) the Federal Government agrees to pay the State that proportion of any excess Pool losses, charged to the State pursuant to section 2010(c)(2)(A), which the average number of such persons enrolled in such Plan during the policy year bears to the average number of all persons enrolled in such Plan during that year. In applying section 2012(b), the amount of such payment shall reduce the excess Pool losses to which the Federal Healthcare Percentage would otherwise be applied.

"State Programs

"(b) Any class of individuals or families, other than employees of a State or local government and their families, whose members, at the time of enactment of this Act, are receiving all, or substantially all, of their medical care under a State program of medical care, other than a program pursuant to the Social Security Act, and who are not otherwise eligible for enrollment in the Qualified State Healthcare Plan, shall be eligible for coverage in a Qualified State Healthcare Plan provided—

"(1) all members of the class who are resident in the State are enrolled in the Plan;

"(2) the State pays the premium for supplementary medical insurance under part B of title XVIII of the Social Security Act for all such members of the class as are eligible therefor;

"(3) the State arranges for the enrollment of such individuals and families in the Qualified State Healthcare Plan and pays the full premium therefor on behalf of all such persons; and

"(4) the State agrees to absorb, without any sharing by the Federal Government, that proportion of the excess Pool losses, charged to it pursuant to section 2010(c)(2)(A), which the average number of such persons enrolled in such plan during the policy year bears to the average number of all persons enrolled in such Plan during that year. In applying section 2012(b), such amount shall reduce the excess Pool losses to which the Federal Healthcare Percentage would otherwise be applied.

"PREMIUM TAXES

"SEC. 2014. In order to be eligible for Federal appropriations pursuant to this title, a State (or any political subdivision thereof)—

"(1) may not impose any tax of any kind on or with respect to any premium, benefit, income, or other transaction or occurrence connected with any Qualified State Healthcare Plan or Benefits Pool provided for under this title, and

"(2) may not impose any tax on or with respect to any health care insurance contract, the premiums therefor, or the benefits provided thereunder unless such tax is applied equally to all carriers which provide health care insurance in the State.

"DEFINITIONS

"SEC. 2015. As used in this title the following terms shall have the following meanings:

"Health Care

"(a) 'Health care' means the medical care referred to in subparagraphs (A) and (B) of section 213(e)(1) and all of the services and supplies described in section 213(h) of the Internal Revenue Code of 1954.

"Secretary

"(b) 'Secretary' means the Secretary of Health, Education, and Welfare.

"States

"(c) 'State' shall include each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

"Administering Carrier

"(d) 'Administering carrier' means either:

"(1) a carrier licensed to issue health care insurance in each of the 50 States and the District of Columbia, or

"(2) an assemblage of domestic carriers operating statewide which in the aggregate issue 10 per centum of the total health care insurance issued in the State and operate as one administering unit. The administering carrier for a Qualified State Healthcare Plan shall be designated by the State and approved by the Secretary.

"Approved Health Maintenance Organization

"(e) 'Approved health maintenance organization' means a public or private organization (profit or non-profit) which—

"(1) provides, either directly or through arrangements with others, health care services to enrollees on a per capita prepayment basis;

"(2) provides with respect to such enrollees all of the Minimum Standard Healthcare Benefits specified in section 213(h) of the Internal Revenue Code;

"(3) provides physicians' services directly through physicians who are either employees or partners of such organization or under an arrangement with an organized group or groups of physicians which is or are reimbursed for services primarily on the basis of an aggregate fixed sum or on a per capita basis;

"(4) demonstrates to the satisfaction of the Secretary proof of financial responsibility and proof of a capability to provide either directly or through arrangements with others comprehensive health care services, including institutional services, efficiently, effectively, and economically; and

"(5) has arrangements for assuring that the health care services required by its enrollees are received promptly and appropriately and that the services that are received measure up to quality standards which it establishes in accordance with regulations.

"Policy Year

"(f) 'Policy year' means a period beginning any July 1 and ending the close of the following June 30.

"Carrier

"(g) 'Carrier' means an insurance company, hospital service or hospital expense indemnity organization, a medical service or medical expense indemnity organization, dental service or dental expense indemnity organization or other similar organization providing coverage for one or more types of health care.

"Uninsured Plans

"(h) 'Uninsured plan' means a plan provided by a person (other than a carrier or a health maintenance organization) having an arrangement which has been communicated or described in writing to covered individuals, and which covers at least 26 individuals for at least 26 weeks of the calendar year, and which provides, pays for, or reimburses the whole or any part of the cost of the health care of such individuals, but shall not include the Federal Government with respect to programs established by it.

"Federal Cash Recipient

"(i) 'Federal cash recipient' means an individual or family who has established eligibility for public cash assistance under a program financed in whole or in part by Federal funds.

"REGULATIONS

"SEC. 2016. Any regulations promulgated by the Secretary (or his delegate) with regard to this title shall be promulgated in final form not less than nine months prior to the first day of the policy year during which they will apply. Such regulations shall be effective only if (i) promulgated in final form within the time prescribed in the preceding sentence, and (ii) notice of such regulation in proposed form and of opportunity for public hearing thereon shall have been published not less than sixty days prior to the date of promulgation thereof in final form."

Sec. 532. Conforming amendments to title V of the Social Security Act.

Section 505(a) of title V of the Social Security Act is amended by deleting the word "and" at the end of paragraph (13), substituting "; and" for the period at the end of paragraph (14), and adding a new paragraph (15) as follows:

"(15) effective upon adoption of a Qualified State Healthcare Plan under title XX of this Act, but in no event later than July 1, 1973, excludes payment of any services covered (or co-payment required) under a Qualified State Healthcare Plan."

Sec. 553. Conforming Amendments to Title XVIII of the Social Secuirty Act.

Title XVIII of the Social Security Act is amended—

(1) by adding after section 1837(e) the following new subsection:

"(f) In lieu of the limitations provided by subsections (a), (b), (c), and (d), there shall be a general enrollment period during the month of April in each year for individuals who are enrolling for the first time in a Qualified State Healthcare Plan described in title XX of the Social Security Act."; and

(2) by adding after section 1843(h) the following new subsection:

"(i) The Secretary shall, at the request of a State, enter into a modification of an agreement entered into with such State pursuant to subsection (a) under which the covered group described in subsection (b) and specified in such agreement is broadened to include individuals who are described in section 2006(f) of title XX of the Social Security Act."

Sec. 534. Conforming Amendments to Title XIX of the Social Security Act.

Title XIX of the Social Security Act is amended by adding at the end thereof the following new section:

"EXCLUSION FROM COVERAGE

"SEC. 1908. Notwithstanding any other provision of this title, no payment may be made under this title (a) for any expenses incurred for items or services (1) which are covered under a Qualified State Healthcare Plan (as defined in title XX), (2) which are incurred after July 1, 1973, and would have been covered under a Qualified State Healthcare Plan had the State adopted such a plan, or (b) for any co-payment required under a Qualified State Healthcare Plan."

Sec. 535. Conforming amendments regarding "reasonable costs."

Wherever reference is made in titles V, XVIII, and XIX of the Social Security Act to

making payments to a provider on the basis of "reasonable costs" or "reasonable charges", with regard to any amount paid after June 30, 1972, that payment shall not be considered reasonable to the extent that it exceeds the amount which would be determined to be reasonable and necessary under section 2002(e)(2) of title XX of the Social Security Act.

Sec. 536. Conforming amendments to the Internal Revenue Code.

The Internal Revenue Code of 1954 is amended by striking the period at the end of paragraph (2) in section 115(a) and inserting in lieu thereof "; or" and by adding after paragraph (2) the following new paragraph:

"(3) interest, or any other item of income, derived from any investment by a Qualified State Healthcare Benefits Pool (as defined in section 2010 of title XX of the Social Security Act)."

Sec. 537. Carrier Compliance.

Nothing contained in antitrust legislation enacted by the Congress of the United States or by the legislatures of one or more of the several States shall be construed as limiting or in any other way applying to carriers in any activity undertaken in compliance with or in an effort to comply with any provision of title V of this Act.

Sec. 538. Effective date.

The amendments made by this subtitle shall become effective on the date of enactment of this Act, except that a Qualified State Healthcare Plan provided for under new title XX of the Social Security Act shall not provide benefits before July 1, 1972.

SUBTITLE E—EFFECTIVE DATE

Sec. 541. Effective date.

Except as otherwise provided in the title, the provisions of this title shall take effect upon the date of enactment of this Act.

NATIONAL HEALTHCARE ACT, SECTION-BY-SECTION ANALYSIS

TITLE I—FINDS AND DECLARATION OF PURPOSE

Section 101: This section states that: (a) America confronts a critical testing of its capacity to meet for all of its citizens one of the most basic of human needs, that of protecting and maintaining personal health; (b) every citizen of the United States of America should have access to quality health care, but too many Americans find it difficult to secure quality health care when they need it, where they need it, at prices they can afford; (c) the nation needs systems of health care organization, delivery, and financing which combine the high scientific and technical competence of the medical and allied health professions; the flexibility, innovativeness, efficiency, and managerial skills of private enterprise; the legislative and fiscal capacities of government at all levels; and the potentialities of consumer and community participation in developing and maintaining such systems of health care.

Section 102: This section declares the purpose of the Act to be to improve the organization, delivery, and financing of health care for all Americans by increasing health personnel, promoting ambulatory care, strengthening health planning, establishing national standards of health care benefits, encouraging provision of such benefits through comprehensive health care insurance, and by assisting persons of low income or in poor health to secure that insurance.

TITLE II—PROVISIONS TO INCREASE THE SUPPLY AND IMPROVE THE DISTRIBUTION OF HEALTH CARE PERSONNEL

Student loans for training in the health professions and nursing

Section 201: The medical student loan provisions of the Public Health Service Act are amended to allow a medical student to borrow the full cost of tuition, fees, and reasonable amounts for room, board, books, supplies, and other related costs. The loan will be forgiven at the rate of 20 percent a year in return for practice in an area found by the Secretary of HEW and the appropriate State comprehensive planning agency to be in need of physicians, optometrists, or dentists.

The bill authorizes $50 million for FY 1971, $70 million for FY 1972, and $100 million a year for FY 1973, 1974, and 1975 for this purpose.

Loan provisions for student nurses are amended to allow loans covering the full cost of tuition, fees, and reasonable amounts for room, board, books, supplies and other related costs. Up to half of the loan may be forgiven at the rate of 20 percent a year for service in a public or nonprofit private institution or agency. Up to 100 percent of the loan may be forgiven at the rate 33⅓ percent a year for appropriate service in an area designated as having a substantial shortage of nurses.

The bill authorizes $25 million for FY 1971, $50 million for FY 1972, $75 million a year for FY 1973, 1974, and 1975 for this purpose.

Scholarship grants and student loans for training in the allied health professions

Section 202: Scholarship grants may, in accordance with regulations of the Secretary of HEW, be awarded according to the needs of the individual, up to the full cost of his tuition, fees, books, equipment and living expenses.

The bill authorizes for this purpose $10 million for FY 1971, $30 million for FY 1972, and $50 million a year for FY 1973, 1974, and 1975.

Loan provisions for students in the allied health professions are amended to allow loans covering the full cost of tuition, fees, and reasonable amounts for room, board, books, supplies, and other related costs. Up to half of the loan may be forgiven at the rate of 20 percent a year for service in a public or nonprofit private institution or agency. Up to 100 percent of the loan may be forgiven at the rate of 33⅓ percent a year for appropriate service in an area designs having a substantial shortage of allied health professionals.

The bill authorizes $7.5 million for FY 1971, $15 million for FY 1972, $40 million for FY 1973, $60 million for FY 1974 and $75 million for FY 1975 for this purpose.

Training for personnel needed in comprehensive ambulatory health care centers

Section 203: For purposes of training grants under the Public Health Service Act, this section amends the term "training center for allied health professions" to include junior colleges, colleges and universities which offer training in health care center administration or curriculums providing the allied health-professionals needed to operate comprehensive ambulatory health care centers.

It also establishes a new program of special project grants to help education institutions meet the cost of developing curriculums and training programs to develop the skills needed to administer and staff comprehensive ambulatory health care centers.

The bill authorizes $10 million for FY 1971, $25 million for FY 1972, $40 million for FY 1973, and $50 million a year for FY 1974 and 1975 for this purpose.

Grants to personnel in the health professions, allied health professions, and nursing for service in areas of critical need

Section 204: This section establishes a program of Federal grants to medical personnel in return for service in urban and rural areas of critical need to alleviate the maldistribution of health care personnel.

The Secretary of HEW is authorized to contract with individual health professionals, nurses, or allied health professionals who agree to provide health care services for a period of at least two years in an area designated by the Secretary, upon recommendation of the appropriate State comprehensive health planning agency, as having a critical need for those services.

The purpose of the grant is (1) to compensate the individual for providing health care services in an area where his normal compensation for services is less than equivalent health personnel receive elsewhere, and (2) to compensate the individual for his loss of time in getting established in a more lucrative area.

The amount of the grant, therefore, is that amount which, when added to the recipient's income from providing health care services for each contract year, provides a total income equal to 110 percent of the national annual median income for persons of comparable education and training, or 110 percent of his earnings from providing health care services in the previous year, whichever is greater.

In determining the precise amount of the grant, the Secretary may consider such factors as he deems relevant. He must consider, however:

(1) the national median annual income for the applicant's profession;

(2) the cost of living in the area of need;

(3) the background, training, and education of the applicant;

(4) the amount of income the applicant can reasonably expect to receive from service in the area;

(5) the number of persons of the applicant's profession needed in the area; and

(6) where appropriate, cost of equipment, supplies, and facilities.

The bill authorizes $10 million for FY 1971 and $50 million a year thereafter until June 30, 1975, for this purpose.

Effective date

Section 205: Title II becomes effective upon enactment.

TITLE III—COMPREHENSIVE AMBULATORY HEALTH CARE CENTERS

The purpose of this Title is to provide for grants to comprehensive ambulatory health care centers (as defined in amendments made by Section 309). The Public Health Service Act currently provides for grants for the construction or modernization of "out-patient facilities," but no funds are earmarked specifically for such facilities, nor are the facilities required to provide comprehensive ambulatory health care services. This Title would set up a special category of grants to comprehensive ambulatory health care centers which offer a greater range of medical services than current law now specifies for "out-patient facilities" grants.

Amendment of purpose

Section 301: This section amends the declaration of purpose of Title VI of the Public Health Service Act to recognize specifically the concept of a comprehensive ambulatory health care center.

Authorization of appropriations for construction and modernization grants

Section 302: For fiscal years commencing after June 30, 1971, an additional $200 million is provided hereunder in grant authority to be used for the construction of comprehensive ambulatory health care facilities, or the modernization of such existing facilities. This sum is provided through a new allotment category which is separate from existing allotment categories for construction and modernization of hospitals and other medical facilities. It is contemplated that a portion of the funds available for grants hereunder will be used to assist nearly-constructed facilities to pay initial start-up and operation expenses during the first three years of operation of such centers.

State allotments

Section 303: Funds available for the construction and modernization of comprehensive ambulatory health care centers will be allotted to the several states on the same basis as allotments are now made for construction of hospitals and other medical facilities. Transfers from allotments for the construction and modernization of comprehensive ambulatory health care facilities to allotments for the construction of other types of facilities are not authorized. Existing law permitting carryovers of unused allotments from one fiscal year to the other is unchanged.

Priority of projects

Section 304: Priorities for awarding grants to comprehensive ambulatory health care centers would be given to proposed facilities in densely populated areas now lacking such facilities. This is to relieve pressures on general hospitals in such areas, to bring preventive and treatment facilities to populous areas not now receiving coordinated health care, and to create lower-cost facilities in lieu of expanding high-cost in-patient facilities.

State plans

Section 305: In its evaluation of the health needs of its citizens, the State health planning agency would be required to determine as part of its planning process the number of comprehensive ambulatory health care centers needed in the state and a plan for distribution of such centers. It would also have to adopt a program providing for construction of those comprehensive ambulatory health care centers identified as needed in its State plan, or for modernizing such existing facilities.

Recovery of funds

Section 306: This section would add comprehensive ambulatory health care centers to the list of types of health facilities from which recovery of federal funds may be made by the federal government from facilities which no longer qualify.

Loan guarantees and loans for modernization and construction of comprehensive ambulatory health centers

Section 307: The Public Health Service Act provides for loans, guarantees and interest subsidies for qualified agencies wishing to construct or modernize health facilities. This section adds comprehensive ambulatory health care centers to the list of types of facilities which qualify for such loans, guarantees and interest subsidies.

Definition of comprehensive ambulatory health care center

Section 308: Comprehensive ambulatory health care centers are specifically defined so as to encompass only facilities which provide a wide range of preventive, diagnositic and treatment services for ambulatory patients and thus relieve overutilization of general hospitals and make health care more accessible.

TITLE IV—PROVISIONS TO STRENGTHEN HEALTH CARE PLANNING

Subtitle A—Health Report of the President; Council of Health Policy Advisers Health Report of the President

Section 401: Beginning in 1972, the President shall make a health report to the Congress no later than July 1 of each year on the status of the nation's health needs and health care system with a program for meeting those needs.

Council of health policy advisers

Section 402: This section creates a three-man Council of Health Policy Advisers in the Executive Office of the President, its members appointed by the President with the advice and consent of the Senate.

Employment of officers, employees, experts and consultants

Section 403: The Council is authorized to hire officers, employees and such experts and consultants as may be needed.

Responsibilities of council

Section 404: This section outlines the responsibilities of the Council in assisting the President in the preparation of his Health Report and the setting and coordination of overall health policy.

The Council is required to make an annual health report to the President not later than April 1 of each year, starting in 1972. This report shall be transmitted to the Congress as a supplement to the next Health Report of the President to the Congress. In its first report to the President the Council shall specifically review and advise the President on health programs. The Council shall develop and recommend goals for a national health policy to promote efficiency, eliminate waste and duplication in the utilization of health facilities and resources, and shall recommend specific programs to streamline and consolidate health manpower programs.

Consultation with other advisory bodies and representative groups—cooperative utilization of services, facilities and information

Section 405: The Council shall consult with the National Advisory Health Council, other advisory councils or committees as well as such representatives of the private sector as it deems advisable and shall utilize the services, facilities and information of other public and private organizations to the fullest extent to avoid unnecessary overlapping or duplication of effort.

Compensation of members

Section 306: The Chairman shall be compensated at the rate of Level II and the other members at the rate of Level IV of the Executive Schedule Pay Rates.

Authorization of appropriations

Section 407. Authorizes such sums as are needed to enable the Council to function, not to exceed $1 million in any fiscal year.

Subtitle B—Departmental Recommendations and Reports

Statements regarding effect of departmental proposal on Nation's health care

Section 411: Every agency of the Federal Government is required to include, to the fullest extent possible, in each report on proposals for legislation or other major Federal action significantly affecting health or the health care system, the impact of the proposal on the nation's health care system, adverse effects, alternatives, the relative priority established by the Council of Health Policy Advisers, and any irreversible or irretrievable commitments of resources involved. Prior to making this report the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise relative to the health impact of the proposal. These comments, with comments of appropriate Federal, State and local agencies shall be made available to the President, the Council, and the public, and shall accompany the proposal through the existing agency review process.

Agency obligations under other Federal statutes

Section 412: The preceding section (sec. 411) shall not affect the obligations imposed on Federal agencies by other Federal statutes.

Subtitle C—Comprehensive Health Planning Amendments

Part A—Definition of "appropriate comprehensive health planning agency"

Section 431. Adopts for purposes of the entire Public Health Service Act the definition of "appropriate comprehensive health planning agency" provided in section 444 of this bill.

Part B—State and areawide comprehensive health planning agencies

State agency review and certification

Section 441: In order to qualify for the comprehensive health planning grants currently provided by section 314 of the Public Health Service Act, a State plan for comprehensive State health planning must, in addition to existing requirements, provide for the project certification procedures established by this Part B.

Areawide comprehensive health planning agencies

Section 442: This section increases the funds authorized for project grants for areawide health planning to $25 million for FY 1971, $40 million for FY 1972 and $60 million for FY 1973.

To be eligible for the grants the agency must be prepared to function as the "appropriate comprehensive health planning agency" for the area or region. The agency must be prepared to play a strengthened role in coordinating areawide health affairs, including the determination of health needs, capital expenditure programs, cooperative use of facilities, optimum use of available manpower, and improved management techniques. The agency must provide for consultation with the areawide health planning council and other groups, for the representation of health care facilities and physicians, for enlisting public support, and for educating the public concerning the proper use of facilities and services available.

Comprehensive procedure for review and certification

Section 443: In the case of applications for Federal grants, loans, or other financial aid involving more than $100,000 which require certification by the appropriate comprehensive health planning agency, the application may be approved by the Secretary only after he is satisfied that the review provisions of this section have been met. The section, strengthening the role of the agency, requires that it have reasonable opportunity to review and comment on the application, and has certified to its essential need and high priority. If the "appropriate comprehensive health planning agency" is a metropolitan or other local planning agency, that agency, after reviewing the application, must have communicated its comments to both the applicant and the State agency. The State planning agency must make its own determination that the application fits in with the State's overall needs and priorities as expressed in the State plan. If two or more States are involved, each State agency must make a separate certification as to the need and priority of the project in its State.

Definitions

Section 444: In the case of a project affecting an entire State, the appropriate comprehensive health planning agency is the agency designated in the State plan. In the case of a project affecting a region, metropolitan area, or other local area, the appropriate comprehensive health planning agency is the agency or organization designated under section 442 of this bill or such other public or nonprofit private agency determined in accordance with regulations to be performing the required health planning functions.

TITLE V—PROVISIONS TO MAKE COMPREHENSIVE HEALTH CARE INSURANCE AVAILABLE TO ALL

Title V of the bill contains provisions designed to accomplish three major objectives:

(1) To establish minimum nationwide standards for individual health care benefits;

(2) To establish a system of nationwide health care insurance, utilizing both privately and publicly financed plans, which will assure that every individual requiring medical care will have the funds required to pay the cost of the care when his need for it arises, irrespective of his economic status; and

(3) To control the cost and quality of medical care to the consumer by strengthening controls over the prices charged by institutional and individual providers of medical care that may be exercised by the public and private insurers who pay the providers' charges. Provisions to achieve the first of these objectives appear in Subtitle A, which establishes the Minimum Standard Healthcare Benefits, as well as in provisions of the remaining subtitles which implement these minimum standards by requiring that they be met as a condition to eligibility for the tax and other public financial incentives provided under those other subtitles. Provisions to serve the second of these major objectives appear in Subtitles B and C, which provide federal tax incentives for the establishment of private health insurance plans by employers and individuals, and in Subtitle D, which supplies public financial assistance, to be shared by federal and state governments, for state health care insurance plans designed to meet the needs of needy and uninsurable individuals. Provisions to accomplish strengthening controls over the cost and quality of medical care to the consumer, although woven into the fabric of all the provisions of Title V, appear mainly in the institutional rate reimbursement provisions of Subtitle D, in those provisions of Subtitle A which permit private insurers to impose limits on the charges for which providers of medical care may be reimbursed, as well as in those provisions of Subtitle A which, through the definition of minimum standard health care benefits, shift emphasis from high-cost in-patient hospital care to lower-cost types of ambulatory and preventive care.

SUBTITLE A

Minimum nationwide standard health care benefits established

Section 501: Minimum national standards for the health care of all individuals are prescribed by section 501 of the bill. The terms of the bill by which these standards are to be put into effect will make them nationwide in their application; will guarantee that the minimum standards of health care required will be at least as high or higher for needy and uninsurable individuals as for others; will assure that the standards prescribed will operate to set a minimum rather than a maximum for health care actually obtainable by an individual; will shift emphasis from the present day concentration on high-cost institutional and specialized health care to lower-cost ambulatory and preventive care which serves the comprehensive health care needs of an individual; and will permit the minimum standards to be phased in over a period of time in accordance with a schedule of priorities that will not give rise to unrealistic expectations for medical care beyond the level of medical facilities and professional talent the Nation is capable of delivering.

Nationwide application of minimum health care standards laid down by section 501 is effected by insertion in federal law, namely the Internal Revenue Code and the Social Security Act, or requirements that benefits paying for not less than the health care required under the minimum standards must be included in private or state established health care plans as a condition of eligibility for the federal tax or other public financial assistance accorded under the bill (see I.R.C. §§ 280 and 213, added by the bill).

To assure that the health care standards prescribed under section 501 will operate only as a minimum and will not discourage an individual's initiatives to secure even higher standards of health care for which he is willing to pay, the bill contains several provisions making it clear that the standards named are only minimums and that provision of benefits for high levels of medical care will not prevent a health care benefit plan from qualifying for advantages accorded under the new law. Such provisions include the one making it clear the standards established are only minimums (I.R.S. § 213(h); the ones specifically permitting additional benefits (I.R.C. §§ 280(c)(9)(C) and 213(g)(3)(D); the ones permitting a qualified private health care plan to provide for a covered individual's payment of medical expenses exceeding established "deductible" and "co-payment" standards (I.R.C. §§ 280(c)(9) and 213(g)(3)); and the ones permitting qualifying health care plans to include various other "optional" provisions (I.R.C. §§ 280(c) and 213(g)(3)).

Provisions in the bill to assure that the minimum standards of health care required to be provided needy and uninsurable individuals will be no less than those required for the more fortunately situated appear in the sections that apply the defintion of minimum standard health care benefits to private and publicly assisted plans alike (Social Security Act § 2002(a); I.R.C. §§ 280(c)(4) and 213(g)(1)), as well as in the benefit phase-in schedules requiring the timing of benefit implementation to be faster under publicly assisted plans for needy and uninsurable individuals (Social Security Act § 2002(a)) than under private qualified plans (I.R.C. §§ 280(c)(4) and 213(g)(1)).

Provisions in the bill to stimulate a shift in emphasis to the provision of comprehensive health care on an ambulatory and preventive care basis, and away from reliance on higher-cost in-patient institutional care appear throughout the definition of the Minimum Standard Healthcare Benefits generally (see I.R.C. § 213(h)) and particularly in provisions which bar higher co-payments for ambulatory-treatment of a given condition than for institutional treatment of the same condition.

The bill contains provisions to meet the problem of preventing the required minimum standard of health care benefits from outstripping the Nation's health care delivery capabilities. This is accomplished by provisions in the bill which assign one of three "priority designations" to each of the benefits in the Table of Minimum Standard Healthcare Benefits (I.R.C. § 213(h)(1)(A)) and by related provisions which require benefits in the several priority categories to be phased-in in accordance with a schedule prescribed in the law (I.R.C. §§ 280(c)(4)(A) and 213(g)(1)(A)). To permit the flexibility required to deal with unexpected shortfalls in development of the health care facilities and services needed to deliver the care covered by a particular benefit, the President is empowered, under restricted conditions stated in the law, to defer the scheduled time for phase-in of benefits that have not become legislatory at the time he acts.

The initial Minimum Standard Healthcare Benefits for individuals covered under qualified private plans and those for individuals covered under qualified public plans include the following:

(A) For non-occupational accidents and illnesses other than pregnancy:

(1) Diagnosis and non-surgical treatment by a physician in his office or at a hospital on a non-in-patient basis—three visits per year for individuals covered under private plans and six visits per year for individuals covered under public plans. Patient pays $2.00 per visit.

(2) Treatment by surgery or radiation therapy by a physician in his office or at a hospital on a non-in-patient basis—unlimited visits under both private and public plans. Patient pays $2.00 per visit.

(3) X-rays, laboratory tests, electrocardiograms, and other diagnostic tests performed in connection with care provided in (1) or (2) above—unilimited coverage under both private and public plans. No co-payment required.

(4) Birth control counseling by a physician in his office—covered only under public plans. No co-payment required.

(5) Well-baby care during first six months—six examinations covered under both private and public plans. No co-payment required.

(6) Well-baby care during next 18 months—six examinations covered only under public plans. No co-payment required.

(7) Physical therapy rendered or prescribed by a physician—covered only under public plans. Patient pays 20%.

(8) Diagnosis and treatment of any condition by a physician in a hospital or extended care facility—unlimited subject to co-payment of $3.00 per day during the first 30 days of confinement and $5.00 per day thereafter for individuals covered under private plans, and $2.00 per day for the first 120 days of confinement and $5.00 per day thereafter for individuals covered under public plans.

(9) Annual oral examination by a dentist (including prophylaxis)—applicable only to children under age 19 covered under public plans. No co-payment required.

(10) Amalgam fillings, extractions, and dentures—applicable only to children under age 19 covered under public plans. Patient pays 20%.

(11) Drugs requiring a prescription and certain life-preserving non-legend drugs prescribed by a physician—covered only under public plans. Patient pays $1.00 per prescription.

(12) Prosthetic appliances—covered only under public plans. Patient pays 20%.

(13) Hospital services (semi-private accommodations and ancillary services while confined as an in-patient)—the first 30 days of confinement for individuals covered under private plans and the first 120 days of confinement for individuals covered under public plans. Patient pays $10.00 the first day and 5.00 for each additional day of covered confinement.

(14) Extended care facility services (semi-private accommodations and ancillary services while confined as an in-patient)—the first 60 days of confinement for individuals covered under private plans and the first 120 days of confinement for individuals covered under public plans. Patient pays $2.50 per day of covered confinement.

(15) Home health agency services under a prescribed plan—those rendered during the first 90 days of the plan for individuals covered under private plans and during the first 180 days of the plan for individuals covered under public plans. The patient pays $2.50 per day of services rendered.

(B) For pregnancies. Diagnosis, treatment, and institutional confinement for pregnancy and any complications thereof from date of conception until the ninetieth day following termination of the pregnancy—covered only under public plans. Patient pays 20%.

Co-payments by patients have been used as a deterrent to excessive utilization of certain services. However, families have been protected against having these co-payments be a serious financial burden by means of a limit on the total amount of co-payments that may be required in any one year.

In the absence of a Presidential deferral, those Minimum Standard Healthcare Benefits that are initially provided individuals covered under qualified public plans but not private plans will become available to individuals covered under qualified private plans on January 1, 1976. Similarly the proposed 1976 improvements in the Minimum Stand-

ard Healthcare Benefits for qualified public plans will become effective for qualified private plans in 1979.

SUBTITLE B AND C

Qualified employee and individual healthcare plans

Subtitles B and C of the bill provide significant federal income tax incentives to stimulate the extension of comprehensive health care insurance under qualifying privately financed plans maintained by employers for employees, or by individuals for themselves and their dependents.

Qualified employee healthcare plans

Section 511: The bill amends the Internal Revenue Code to restrict the federal income tax deduction otherwise allowable to an employer for any amount paid or incurred by the employer for medical care of any employee or his dependents. This deduction is restricted to 50 percent of the described expense for medical care of the employee. If the employer establishes and maintains a Qualified Employee Healthcare Plan, the restriction will not apply, and 100 percent of the described expense is deductible. This section is applicable to taxable years commencing after December 31, 1972, except that, in the case of any employer plan providing medical care for employees which was established pursuant to a collectively-bargained agreement, the restrictions on the deduction will not apply until the expiration of the agreement, or December 31, 1975, whichever occurs first.

Each Qualified Employee Healthcare Plan must provide at least the Minimum Standard Healthcare Benefits described in Subtitle A. A qualified plan must be in writing, adopted by the employer, and communicated to his employees. Substantially all active full-time employees must be eligible to be covered, and the coverage must continue upon certain terminations of employment or certain temporary absences of the employee. A coordination of benefits provision must be included in a qualified plan to avoid costly duplication of coverage. The plan also must permit eligible employees to seek coverage instead from any approved health maintenance organization in cases which specified conditions are satisfied.

Qualified individual health-care plans

Section 521: The Internal Revenue Code presently restricts an individual's deduction for his expenses paid for insurance which constitutes medical care to an amount (not in excess of $150) equal to 50 percent of the amount actually paid. The portion of the expense not so deductible may be deducted only to the extent that it exceeds 3 percent of adjusted gross income. The bill amends the Internal Revenue Code, for taxable years commencing after December 31, 1972, to remove these restrictions and to allow 100 percent of medical care insurance premiums as a deduction, if such expenses are paid by an individual who is covered by a Qualified Individual Healthcare Plan, a Qualified Employee Healthcare Plan, or a Qualified State Healthcare Plan.

Each Qualified Individual Healthcare Plan must provide at least the Minimum Standard Healthcare Benefits described in Subtitle A. A qualified individual insurance contract must contain provisions which obligate the insurer to renew the policy, and allow covered dependents to continue their coverage under the policy after the death of the insured as if he were still alive.

SUBTITLE D

Grants to States for qualified State healthcare plans for the needy and uninsurable

Section 531: The bill adds a new Title XX to the Social Security Act to provide for the establishment of publicly subsidized health care insurance plans on a state by state basis. Each state will have a health insurance pool, which all private entities in that state (both profit and non-profit) which currently indemnify the cost of health care would be required to underwrite. One or more private insurance carriers will be designated by the state to administer the state plan on a retention accounting basis. These state plans will guarantee that Minimum Standard Healthcare Benefits are made available to individuals and families who previously were unable to purchase health care insurance, either because of their low income or their extremely poor health (secs. 2001; 2002(a); 2002(d); 2003(a); 2003(b); 2010; 2015(d) of Title XX).

In order to encourage a state to establish a plan, federal appropriations otherwise payable to the state pursuant to Titles V and XIX of the Social Security Act are conditioned on the state's having in operation a Qualified State Healthcare Plan. The benefits required to be provided by a state plan are designed to stimulate the nationwide development of improved methods for organizing and delivering health care services (secs. 2002(a) and 2012(d) of Title XX).

Individuals or families who are eligible to receive public cash assistance under a program financed in whole or in part by federal funds will be enrolled in the state plan automatically, and without cost. Those individuals who are financially capable of procuring health insurance, but who are uninsurable because of poor health, may enroll in the state plan at their own expense; however, these individuals may not be charged more than the established rate for other individuals enrolled in that state plan. Enrollment of other individuals and families who had low incomes the previous year (less than $3,000 for single individuals, less than $4,500 for a family of two, and less than $6,000 for a family of three or more) is voluntary. Such individuals and families would elect to be enrolled once each year and would be required to make modest contributions toward the cost of insuring their own health care, depending on the size of their family and the amount of their income. No assets or other means tests are required (secs. 2003(a); 2003(b); 2005(a); 2005(c); 2006(a); 2006(b) of Title XX).

The premiums to be charged for each policy year under a state plan will be actuarially determined in each state, and for each family size risk category. The established premiums are subject to annual review by designated federal and state agencies, and if the premiums are found to be unjustifiably high within a particular state, the Secretary of Health, Education, and Welfare may direct a reduction in the federal appropriation for that state's premium cost. Each state has the primary obligation to provide the uncontributed premium cost for its plan; but if the state implements and utilizes controls which are designed to promote the delivery of lower-cost higher-quality institutional health care services, if it exempts Qualified State Healthcare Plan transactions from state taxation, and if it eliminates discriminatory state tax treatment of health care insurers, then the state will receive federal appropriations reimbursing it for a percentage of its total uncontributed premium cost. This federal percentage reimbursement is greater in poor states than in richer states. The base figure may be between 70 and 90 percent, depending on the state's per capita income, but further adjustments to this percentage may be made if institutional rates charged in any particular state for health care services are unjustifiably high in comparison with other states. States are given the authority to review in advance the rates to be charged by health care institutions for their services, and to refuse to approve these rates for payment under the state plan. The cost and quality of health care services provided by physicians and other medical practitioners will be controlled in each state.

A professional service, otherwise covered by these state plans, shall be reimbursed only if it falls within professionally established utilization guidelines or is found to be necessary health care by a qualified peer review committee. Furthermore, no charge for a necessary service shall be reimbursed to the extent that it exceeds the prevailing charge in a locality for similar services (secs. 2002(e)(2); 2004; 2006(e); 2008, 2009; 2010 (c)(3); 2012(a); 2012(e) 2014 of Title XX).

If the premiums collected and other monies received under the state plan are not sufficient to pay the claims incurred and the other costs of operating; the state plan, the private underwriters of the plan shall bear the losses to the extent of 3 percent of the premiums collected for that year. The state will bear the excess losses and will receive a federal appropriation reimbursing it for that portion of the excess losses equal to the base federal percentage for that state's premium costs (secs. 2010 and 2012(b) of Title XX).

To avoid costly duplication of coverage, enrollment is not available to those individuals or families covered under a Qualified Employee Healthcare Plan; enrollment is not generally available to classes of individuals or families who will receive substantially all of their medical care under a non-Social Security federal or state program; all eligible state plan enrollees must have Medicare Part B supplementary medical insurance coverage, the material cost of which would be borne by the state and the benefits of which would be coordinated with state plan benefits (secs. 2002(e)(3); 2003(a)(3); 2003(a)(4); 2013 of Title XX).

Specific provision is made in the bill (sec. 2012 of Title XX) to protect the federal government against having to bear such part of the cost of a Qualified State Healthcare Plan as may be attributable to a state's decision to have the plan provide greater benefits than the minimum required for qualification under Title XX.

Applicants for enrollment in the state plan must provide and certify all information required to make an eligibility determination. Any federal or state agency may be required to furnish information deemed by the administering carrier to be necessary to verify eligibility (secs. 2005 and 2011 of Title XX).

Conforming amendments to title V of the Social Security Act

Section 532. The bill amends Title V of the Social Security Act (Maternal and Child Health and Crippled Children's Services) to avoid unnecessary and costly duplication of federally subsidized health care programs. Title V presently pays for the cost of various medical items and services which will be required to be provided under Qualified State Healthcare Plans. On July 1, 1973, or upon a state's establishment of a Qualified State Healthcare Plan, whichever occurs first, payment for items and services now covered under Title V would be excluded, if they also would be covered under a Qualified State Healthcare Plan. Title V will continue to pay for items and services which are not covered by Qualified State Healthcare Plans.

Conforming amendments to title XVIII of the Social Security Act

Section 533: Individuals and families eligible for enrollment in the Medicare Part B supplementary medical insurance program are required to be enrolled in said program as a condition for enrollment in a Qualified State Healthcare Plan. Section 1837 of Title XVIII of the Social Security Act is amended by the bill to remove existing limitations on Medicare Part B enrollment which might prevent otherwise eligible state plan enrollees from qualifying for Qualified State Healthcare Plan coverage. Each state which has a Qualified State Healthcare Plan is required to pay the premium for supplementary medical insurance benefits under Part B of Title

XVIII of the Social Security Act for individuals and families who are eligible to enroll in the Part B program and who are also eligible to receive public cash assistance under a federally financed program. Section 1843 of Title XVIII is amended by the bill to allow a state to enter into an agreement with the Secretary of Health, Education, and Welfare pursuant to which all of these indigent state plan enrollees will be enrolled under the program established by Part B of Title XVIII.

Conforming amendments to title XIX of the Social Security Act

Section 534: The bill amends Title XIX of the Social Security Act (Grants to States for Medical Assistance Programs), to avoid unnecessary and costly duplication of federally subsidized health care programs. Title XIX presently pays for the cost of various medical items and services which will be required to be provided under Qualified States Healthcare Plans. On July 1, 1973, or upon a state's establishment of a Qualified State Healthcare Plan, whichever occurs first, payment for items and services now covered under Title XIX would be excluded if they also would be covered under a Qualified State Healthcare Plan. Title XIX will continue to pay for items and services which are not covered by Qualified State Healthcare Plans.

Conforming amendments regarding "reasonable cost"

Section 535: The bill (sec. 531 of the bill and secs. 2002(e)(2); 2008; and 2009 of the new Title XX it adds) establishes standards for strengthening controls over the quality and cost to enrollees for health care services provided by physicians or other medical practitioners and for health care services rendered to state plan enrollees in health care institutions. The bill provides that these standards shall apply to determine "reasonable cost" under the existing federally subsidized health care programs established by Titles V, XVIII, and XIX of the Social Security Act.

Conforming amendments to the Internal Revenue Code

Section 536: The premiums and other monies received pursuant to the operation of a Qualified State Healthcare Plan will, to the extent feasible, be invested by the administering carrier in interest-bearing obligations and other income-yielding securities. The bill amends Section 115 of the Internal Revenue Code to exempt this interest or other income from federal income taxation.

Carrier compliance

Section 537: The bill requires insurance carriers to pool their efforts and resources to insure that all individuals and families will receive higher-quality, lower-cost health care benefits. This section provides that these carriers will not be subject to federal or state antitrust legislation solely as a result of their efforts to comply with the provisions of Title V of the bill.

Effective date

Section 538: Sections 531, 532, 533, 534, 535, 536, and 537 of the bill are to become effective upon enactment, except that Qualified State Healthcare Plans will not provide benefits before July 1, 1972, and the federal tax exemption for investment income derived pursuant to Qualified State Healthcare Plan investments will apply only to taxable years ending after June 30, 1972.

By Mr. STEVENS:

S. 1495. A bill to amend the Internal Revenue Code of 1954 to permit a deduction from gross income based upon the cost of living in certain States. Referred to the Committee on Finance.

COST-OF-LIVING TAX ADJUSTED

Mr. STEVENS. Mr. President, today I am introducing legislation to exempt from Federal taxation a portion of the income earned by non-Federal employees who reside in States in which Federal employees receive an allowance based on living costs and other conditions.

At present, the Federal Government provides a 25-percent cost-of-living adjustment to Civil Service employees who reside in Alaska. This nontaxable adjustment is added to the base pay of such employees. Private employers and the State government cannot and should not be required to provide proportionate salary increases based on the cost of living.

An alternate approach is provided in my bill. Under this legislation, the gross income of an individual who resides and is employed in a State in which Federal employees receive an allowance under section 5941 of title 5, United States Code, would not include a percentage of income received during the taxable year as compensation for personal services equal to the percentage of basic pay received by employees of the Federal Government as an allowance under this section. Because Federal employees already receive such an allowance in certain States, the cost-of-living adjustment provided in my bill would not apply to them. Moreover, if an individual resides for only part of the taxable year in a State which qualifies under section 5941, the provisions of my bill would apply only to compensation attributable to the period during which the individual resided in such a State.

The bill which I have just outlined would help to lighten the tremendous tax burden presently imposed on non-Federal employees, who are not eligible for the 25-percent cost-of-living adjustment provided in section 5941. However, this legislative approach is not the entire answer. Federal employees in States like Alaska, where the cost of living is 40 percent above the national average, continues to be subject to a very heavy tax burden which is only partly offset by the 25-percent Federal adjustment. Similarly, providing an analogous 25-percent differential to non-Federal employees will not completely resolve their Federal tax problem. Accordingly, I have introduced another measure which would allow a taxpayer to deduct the percentage of the total amount of his personal exemptions equal to the percentage by which the cost of living in the State in which he resides during the taxable year exceeds the average cost of living in the United States for that year.

I believe that the combination of these two bills will provide much-needed Federal tax relief to the beleaguered taxpayers of my State and certain others where the cost of living is very high. Moreover, these bills should also help to accelerate the economic and social progress of these States. Business concerns will find it more attractive to locate in them, and citizens from other parts of the country will not be deterred from residing in them solely because of the high cost of living. Accordingly I urge the careful consideration of this legislation.

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

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

S. 1495

A bill to amend the Internal Revenue Code of 1954 to permit a deduction from gross income based upon the cost of living in certain States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by redesignating section 218 as 219, and inserting after section 217 the following new section:

"SEC. 218. COST OF LIVING DEDUCTION

"(a) Allowance of Deduction.—In the case of an individual, there shall be allowed as a deduction a percentage of the total amount of the personal exemptions to which he is entitled equal to the percentage (determined by the Secretary or his delegate under subsection (c)) by which the cost of living in the State in which he resides during the taxable year exceeds the average cost of living in the United States for that year.

"(b) Limitations.—The amount of the deduction allowable under subsection (a) shall be adjusted appropriately for any period of time during a taxable year during which the taxpayer was not residing in the State on which he bases his deduction under such subsection. In the case of a taxpayer who, during any taxable year, resides in more than one State which qualified him for such deduction, the amount of the deduction shall reflect the proportionate periods of time during which he resided in such State. In the case of a taxpayer whose taxable year is not the calendar year, the amount of the deduction shall reflect proportionately the calendar years which fall within his taxable year.

"(c) Determinations by the Secretary.—On or before December 1 of each year, the Secretary or his delegate shall determine with respect to each State whether the cost of living in such State is greater than the average cost of living in the United States. If the Secretary or his delegate determines that the cost of living in any State is greater than the average cost of living in the United States, he shall determine and make available the percentage (rounding off to the nearest whole percent) by which the cost of living in such State exceeds the average cost of living in the United States. The determination shall be made for each year on the basis of indices and other information available from all departments and agencies of the Government covering the first nine months of such year, and the determination of the cost of living in each State shall be made on the basis of such indices and information applicable to the three largest cities or metropolitan areas in such State.

"(d) Finality of Determinations.—Determinations by the Secretary or his delegate under subsection (c) shall be final and shall not be subject to review by any other officer of the United States or by any court.

"(e) Regulations.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section."

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

"Sec. 218. Cost of living deduction.

"Sec. 219. Cross references."

Sec. 2. Section 62 of such Code (relating to the definition of adjusted gross income) is amended by inserting after paragraph (9) the following new paragraph:

"(10) Cost of living deduction.—The deduction allowed by section 218."

Sec. 3. The amendments made by this Act shall apply with respect to taxable years beginning after December 31, 1970.

By Mr. STEVENS:

S. 1496. A bill to amend the Internal Revenue Code of 1954 to exempt from tax a portion of the income of individuals not employed by the Federal Government who live in a State in which Federal employees receive an allowance based on living costs and conditions of environment. Referred to the Committee on Finance.

EQUALIZATION OF PERSONAL EXEMPTIONS

Mr. STEVENS. Mr. President, today I am introducing legislation to provide much-needed Federal tax relief to the beleaguered taxpayers of Alaska and other States where the cost of living is above the national average.

My bill would allow a taxpayer to deduct a percentage of the total amount of his personal exemptions equal to the percentage by which the cost of living in the State in which he resides during the taxable year exceeds the average cost of living in the United States for that year. The amount of the deduction allowable under this provision would be adjusted for any period during the taxable year when the taxpayer was not residing in the State on which he bases his deduction. In such cases, the amount of the deduction would reflect the proportionate periods of time during which he resided in different States. Under my bill, the Secretary of the Treasury would be responsible for determining the relationship of the cost of living in each State to the national average.

This legislation is introduced in recognition of the tremendous tax burden imposed on citizens who reside in States, such as Alaska, where the cost of living is significantly above the national average. Thus, for example, the cost of living in my State of Alaska is 40 percent above the national average. In recognition of this fact, the Federal Government provides a 25-percent cost-of-living adjustment to Civil Service employees living in that State. This nontaxable adjustment is added to the base pay of such employees. However, even this additional income does not truly compensate Alaskan Federal employees for the extremely high prices which they must pay for food, shelter, clothes, and other essentials. Moreover, workers in the private sector and in State government receive no Federal tax relief.

The Alaskan price structure, which is largely due to the tremendous costs incurred in transporting goods and material to Alaska and within the State, has impeded the economic and social progress of our people. Business concerns often find it unattractive to locate in Alaska, and people from the "South 48" States who might choose to reside in the State are deterred from doing so because of the high cost of living. Regrettably, senior citizens who have resided in Alaska most of their lives are often compelled to return to the continental United States after retirement since the high cost of living has an especially deleterious impact on people with fixed incomes.

These manifestations of the cost of living situation are also experienced in other States where the cost of living significantly exceeds the national average. I believed that the bill which I have introduced today will go a long way toward ameliorating the heavy tax burden which so complicates the already exacerbated situation.

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

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

S. 1496

A bill to amend the Internal Revenue Code of 1954 to exempt from tax a portion of the income of individuals not employed by the Federal Government who live in a State in which Federal employees receive an allowance based on living costs and conditions of environment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items specifically excluded from gross income) is amended by redesignating section 124 as 125, and inserting after section 123 the following new section:

"SEC. 124. PARTIAL EXCLUSION OF INCOME OF INDIVIDUALS RESIDING IN CERTAIN STATES.

"(a) General Rule.—In the case of an individual who resides and is employed in a State in which employees of the Goverment of the United States receive an allowance under section 5941 of title 5, United States Code, gross income does not include a percentage of income received during the taxable year as compensation for personal services (including fees, commissions, and similar items) equal to the percentage of basic pay received by employees of the Government of the United States as an allowance under such section.

"(b) Limitations.—

"(1) Federal employees.—The provisions of subsection (a) shall not apply to amounts received by an employee of the Goverment of the United States as pay and allowances from the Government.

"(2) Residents for less than a taxable year.—If an individual does not reside in such a State for the entire taxable year, the provisions of subsection (a) shall apply only to compensation attributable to the period during which such individual resides in such State.

"(c) Regulations.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section."

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

"Sec. 124. Partial exclusion of income of individuals residing in certain States.

"Sec. 125. Cross references to other Acts."

SEC. 2. The amendments made by this Act shall apply to taxable years beginning after December 31, 1971.

By Mr. STEVENS:

S. 1497. A bill to authorize certain additions to the Sitka National Monument in the State of Alaska, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. STEVENS. Mr. President, today I am introducing, for myself and Senator GRAVEL, legislation to authorize an addition to the Sitka National Monument in the State of Alaska.

Our bill authorizes the Secretary of the Interior to acquire the Russian mission site and related lands identified on the map referred to in the bill for addition to the present Sitka National Monument. Our bill also redesignates the monument as the "Sitka National Historical Park" and directs that this park be administered in accordance with existing legislation relating to such parks. Section 3 of this measure authorizes the appropriation of the sums necessary to carry out these purposes.

In order to appreciate fully the need for this legislation, one must know something of Sitka's rich history. Little more than a century ago, this city was the center of trade and civilization in the Northeast Pacific—the chief outpost of the Russian-American company in a vast and little known land. Because of its commercial importance, Yankee Clipper ships from New England stopped in Sitka on their way to the Orient. In addition, Sitka became the center of commerce between Russian merchants and the Indians of southeastern Alaska. As such, it was the site of the only Indian battles fought in Alaska.

Today, there are few remaining vestiges of Alaska's early history. Most of the structures which were built during the city's Russian period have long since disintegrated with age or have been destroyed. One of the remaining buildings is the Russian mission and school. Built of logs in 1842 and used continuously for 128 years, this valuable historic structure can be saved only through its inclusion in the Sitka National Monument.

While there are other structures, such as the Blockhouse Hill complex, which also have great historical value and should be preserved, the mission is in the most dire need of immediate protection. At present, this building is exposed to the elements and is vulnerable to vandalism. Recognizing the urgency of this situation, the people of Sitka have requested that Senator GRAVEL and I introduce a bill specifically designed to preserve the Russian mission. Accordingly, we are proposing this legislation which will provide the National Park Service with the authority to acquire and preserve this unique historical treasure.

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

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

S. 1497

A bill to authorize certain additions to the Sitka National Monument in the State of Alaska, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to preserve in public ownership for the benefit and inspiration of present and future generations of Americans an area which illustrates a part of the early history of the United States by commemorating Czarist Russia's exploration and colonization of Alaska, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to acquire by donation, purchase with donated or appropriated funds, or exchange, for addition to the Sitka National Monument, the lands and interests therein, and improvements thereon, including the Russian Mission, as generally depicted on Drawing Numbered 314–91,001, dated April

1970, which shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. Lands and interests in lands within such area owned by the State of Alaska or any political subdivision thereof may be acquired only by donation.

SEC. 2. The Sitka National Monument is hereby redesignated as the Sitka National Historical Park, and it shall be administered, protected and maintained by the Secretary in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4) as amended and supplemented, and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 *et seq.*).

By Mr. NELSON (for himself and Mr. MCGOVERN):

S. 1498. A bill to provide for the control of surface and underground coal mining operations which adversely affect the quality of our environment, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

STRIP MINING

Mr. NELSON. Mr. President, recently Congressman KEN HECHLER of West Virginia introduced a bill to ban strip mining for coal in the United States in 6 months. Today I am introducing the same bill in the Senate, with the Senator from South Dakota (Mr. MCGOVERN) as a cosponsor. Although other measures are pending before us, including my proposal, S. 77, to deal with the environmentally devastating practice of strip mining, Congressman HECHLER's measure also merits the consideration of the Senate.

In introducing his bill, Congressman HECHLER has raised the question whether strip-mined lands can ever be effectively restored, especially in mountainous areas.

The damage from strip mining, Congressman HECHLER argues, "is so great that even the best of reclamation practices does not eliminate some of its ugly scars."

Already, an estimated 1.8 million acres have been disturbed by strip mining in this country. And at presently accelerating rates, the figure will reach 5 million acres, an area about the size of New Jersey, by 1980, the Interior Department estimates.

Yet the Department finds that only 56,000 acres have thus far been reclaimed after strip mining.

If the damage from strip mining cannot be undone, the consequence is not only the loss of natural beauty, but a permanent handicap on the economy of the strip mined area. What promise of future economic strength and diversity can there be in an area whose landscape is left polluted and barren forever, with reclamation efforts making only the most superficial progress toward recovery?

Is this country willing to trade away the future of whole regions and their people just to provide the supposed easiest, cheapest way out of meeting our endless resource demands?

What price Appalachia? What price the areas of the 37 States with significant coal or lignite deposits in them?

These are the questions that must be considered just as seriously as any other economic issue that may be raised in the coming debate over action on strip mining. Indeed it is true that human resources, and jobs, and the quality of life, and the strength of the economy are in the balance in these grave environmental matters. And in the long run, this country will find that paying the price now of environmental cleanup is going to be far less than continuing to pay the gigantic and rapidly mounting annual toll in damages from environmental problems we continue to ignore.

In considering strip mining legislation, Congress must frankly ask whether reclamation is possible, and if so, in what circumstances. And we must also review the environmental impact and the cost of recovery involved in the alternative of underground mining.

Thus, I introduce the measure to ban all strip mining for coal because it raises serious questions which must be considered in any action on this critical, unresolved environmental and human problem confronting the Nation.

And if environmental action on strip mining causes an economic impact on a mined area in the short run, I would support Federal aid to help in the transition.

Because I have explained my own measure in earlier statements in this and previous Congresses, I will only briefly review it here: In addition to banning surface mining in areas where reclamation is not feasible, this proposal would regulate present and future strip mining through a Federal-State program which would set and require compliance with standards, and provide financial assistance for reclamation.

By Mr. EASTLAND:

S. 1499. A bill to amend title 18, United States Code, with respect to certain offenses against the security of the United States;

S. 1500. A bill to amend the Immigration and Nationality Act, and for other purposes;

S. 1501. A bill to amend titles 18 and 28, United States Code, with respect to proceedings before committees of the Congress, and for other purposes;

S. 1502. A bill to amend the Internal Security Act of 1950, and for other purposes;

S. 1503. A bill to amend the Foreign Agents Registration Act of 1938; and

S. 1504. A bill to provide for the internal security of the United States Government, and for other purposes. Referred to the Committee on the Judiciary.

Mr. EASTLAND. Mr. President, I send to the desk six bills, and ask that they be appropriately referred. Mr. President, considered together these six bills make up a package which includes substantially all the provisions that were contained in my bill S. 12, which died on the calendar of the Senate Committee on the Judiciary at the end of the 91st Congress, after having been reported favorably by the Internal Security Subcommittee.

Senators will recall that S. 12 proposed to rewrite the Internal Security Act quite extensively, so as to plug various loop holes, and restore the efficacy and enforceability of various segments of our internal security laws along the lines suggested by a series of Supreme Court decisions which found these various security provisions inadequate in one respect or another, or ineffective to accomplish their purposes.

Mr. President, 20 Senators join me in sponsoring S. 12, and yet the bill spent nearly 2 years on the calendar of the Judiciary Committee without action. I have come to the conclusion that one reason for this may have been the fact that the bill involves so many different provisions in a single package that Senators were reluctant to take it up while they were faced with various other responsibilities of great importance, as the Committee on the Judiciary was during both sessions of the 91st Congress.

Mr. President, I will not take the time today to discuss at length each of the several bills I have introduced; but I want to identify them so that Senators may have a general idea of what they involve.

The first of these six bills is a proposed Security Offenses Act of 1971. It would amend the criminal code in various ways for the purpose of strengthening security. Among its major provisions are: First, strengthen definitions of "war premises" and "national defense premises"; second, a provision for suspension of the running of the statute of limitations applicable to offenses involving the performance of official duty by Government employees; third, the statute of limitations on the crimes of treason, espionage; fourth, a series of amendments to restore the efficacy of that law; and fifth, a prohibition against the giving of aid or comfort to a foreign government engaging our Armed Forces in combat.

The next of these six bills in the order in which I have sent them to the desk is a bill to amend the Immigration and Nationality Act, with a view toward increasing both immigration security and passport security. This bill carries the short title of the Immigration and Passport Security Act. Among other provisions, this bill embraces a short travel control act which would give the Secretary of State, subject to the approval of the President, necessary authority for travel control, entirely independent of passports.

The third of the six bills which I have sent forward is a proposed Congressional Inquiries Act of 1971, which contains necessary provisions for facilitating congressional investigations. Among these provisions is a new immunity statute for congressional witnesses, provisions dealing with the service of congressional subpenas abroad, a section prohibiting reprisals against congressional witnesses, and a section providing that no court of the United States shall presume to decide whether a congressional committee is performing or has performed its duties effectively or satisfactorily, any such determination being an exclusive legislative prerogative.

The fourth of the six bills is a series of amendments proposed to the Internal Security Act of 1950, which together bear the short title "Internal Security Act of

1971." Among other provisions, these amendments would:

First, make a series of changes in the Subversive Activities Control Act to increase the efficiency and effectiveness of the Subversive Activities Control Board;

Second, effectively prohibit the employment of Communists in Defense Facilities;

Third, prohibit employment of Communists as teachers in any school system supported wholly or partly by Federal funds;

Fourth, deny tax exemptions to subversive organizations or individuals, and

Fifth, disallow tax donations to Communist organizations.

The fifth of the six bills I have introduced today would amend the Foreign Agents Registration Act of 1938.

The sixth and last of these bills which carried the short title of the Government Security Act of 1971, would provide for the establishment of an independent agency in the executive branch of the Government to handle all of the investigations and evaluations in personnel security cases, except with respect to employees of agencies in the intelligence community and employees of the armed services. This new Central Security Agency would not grant clearances, that power being left to the heads of the respective employing agencies or departments.

Mr. President, I hope it may be possible to move at least some of these bills to the floor of the Senate during the present session. It will be my purpose to do what I can to see that all of them move toward the floor of the Senate as rapidly as possible, so that the Senate may work its will with respect to these matters, which so urgently concern the internal security of this country.

By Mr. PROUTY:

S. 1505. A bill to amend the Social Security Act so as to add thereto a new title XX under which blind or disabled individuals will be assured a minimum annual income of $1,800. Referred to the Committee on Finance.

Mr. PROUTY. Mr. President, I send to the desk, for appropriate reference, a bill to establish the Blind and Disabled Income Assurance Act of 1971. This bill is a companion measure to the Older Americans Income Assurance Act, S. 1384, which I introduced on March 25.

Our Nation's welfare system has evolved into a mystic maze of costly, inadequate programs. There are currently five general categories for Federal welfare assistance. Three of these categories offer assistance to those adult Americans who have little possibility of maintaining completely self-sufficient lives. Old-age assistance, aid to the blind, and aid to the permanently and totally disabled are programs which offer assistance to a relatively stable number of individuals. Old-age assistance now serves about 2 million older Americans. In the categories of aid to the blind and aid to the permanently and totally disabled there are just under 1 million recipients. These programs now cost the States a billion dollars annually.

Recently, we have read that the Committee on Ways and Means in the House is considering welfare reform proposals which will completely federalize the adult welfare categories. This approach should be commended. It will relieve some of the burden carried by our States by increasing available resources. The reforms will affect those federally assisted programs which have the least amount of conflict developed between competing ideas as to the best way to assist these persons in need.

When I introduced the Older Americans Income Assurance Act, I stressed the fact that my proposal should be seen as a supplement to the President's revenue-sharing proposals. My proposal will take those programs which can most easily benefit from revenue sharing. It will federalize those programs where cash assistance is the best possible strategy for aiding persons in need.

The adult categories of Federal welfare assistance are those in which the recipient can benefit most from a simple cash grant. The problems of how best to care for the dependent children in our society are ones which deserve extensive discussion of alternative proposals.

Our aid to dependent children program is designed to assist those families who cannot adequately care for their own. Our aid goes to parents to assist them in raising their young. In these programs we are hopeful that our adult recipients will develop into useful and productive citizens. In essence, it should be the goal of our program for aid to dependent children to relieve this group of their need for assistance. Our training and education programs for the blind and disabled have the more limited goal of assisting those recipients in learning how to function in spite of their disability.

The rehabilitation services available to those blind and disabled Americans now receiving Federal welfare assistance are well established. It will be a simple matter to federalize the cash assistance for these citizens.

By federalizing welfare payments in these three categories we will be utilizing a function which the Federal Government can perform most efficiently—the distribution of cash income. The Federal Government has proven its capabilities to those 26 million Americans who receive a social security check each month.

The Blind and Disabled Income Assurance Act will guarantee every blind or disabled American qualifying under the act a minimum cash income of $150 per month. The Social Security Administration will make payments to individuals to bring their cash income to the guaranteed level. Payments for the Blind and Disabled Income Assurance Act will be made from the general revenues. In determining income, both earned and unearned income will be computed. Under my bill the computation of income for married persons will consider one-half of the spouse's income to establish a base payment.

One of the major problems of the present system, which will be eliminated by my bill, is the variation in standards which now face those receiving aid. Currently, our blind and disabled Americans face a myriad of confusing regulations for qualification. In the programs for aid to the blind there are five different age levels which individual States apply for qualification. There are three standards of citizenship. There are at least eight standards established for need. Evaluations of property and income limitations vary widely from State to State.

Mr. President, is there any reason why blind Americans can receive benefits as early as age 5 in one State and must wait until age 21 in another? If there is not, then why should we allow these inequities to continue?

My bill will also establish uniform definitions of blindness and disability throughout the Nation. Currently, there are variations in definitions of blindness and disability which perpetuate inequities between States. What qualifies for disability assistance in one State may not qualify in another. There is no reason for this patchwork therapy.

The average payment for aid to the blind stretches from a high of $175.55 to a low of $66.70 per month. In the disabled categories this disparity runs between a high of $173.80 and a low of $49.65 per month. My bill will bring the minimum monthly standard in every State to $150. For those States which now average more than $150 my bill includes a hold harmless provision to insure that the sum paid to the individual will be equal to the benefits he would have received as of May 1, 1971, if they are greater than the established minimum.

The entire process will be administered through the Social Security Administration. The federalization of these programs will thus lower the cost of overhead for the programs by eliminating the need for individual State agencies to administer the programs and distribute benefits. It will create a more efficient distribution system by eliminating much of the duplication of effort now present in the system.

The simplicity and directness of my program will add savings to the administration costs of the program, as well as insuring the dignity and self-respect for the citizens receiving benefits.

Mr. President, the reforms proposed in my Older Americans Income and Blind and Disabled Income Assurance Acts offer a better, less complicated system for those receiving assistance. My bills also offer the States over $1 billion in added revenue.

Most importantly, my bills offer the essential ingredient lacking in our system today. Those Americans now receiving assistance in the adult categories will be assured economic security and self-respect.

Mr. President, I ask unanimous consent that the text of my bill and several tables and explanations be added at the conclusion of my remarks.

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

S. 1505

A bill to amend the Social Security Act so as to add thereto a new Title XX under which blind or disabled individuals will be assured a minimum annual income of $1,800

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Blind and Disabled Income Assurance Act of 1971."

SEC. 2. The Social Security Act is amended by adding after Title XIX thereof a new title XX as follows:

"TITLE XX—ASSURED MINIMUM ANNUAL INCOME BENEFITS FOR THE BLIND AND DISABLED

"ELIGIBILITY FOR BENEFITS

"SEC. 2001. Every individual who—

"(1) is blind or disabled,

"(2) is a resident of the United States (as defined in section 2009),

"(3) has an annual income (as determined pursuant to section 2004) of less than $1,800 (or a sum equal to the amount to which he would have been entitled in his State of residence on May 1, 1971, if greater)

"(4) has filed application for benefits under this title, shall (subject to the succeeding provisions of this title) be entitled to assured minimum annual income benefits for the blind and disabled.

"PAYMENT OF BENEFITS

"SEC. 2002. (a) Benefits under this title shall be paid on a monthly basis, except that, if the benefit payable to an individual for any month is less than $5, such benefit may be paid on such other basis (but not less often than semi-annually) as the Secretary shall by regulations provide.

"(b) Benefits under this title shall be payable to any individual only for months (i) after the month in which his entitlement thereto is established pursuant to an application therefor filed under section 2001, and (ii) prior to the month in which such individual dies.

"AMOUNT OF BENEFITS

"SEC. 2003. The amount of the monthly benefit of any individual under this title shall be equal to one-twelfth of the amount by which $1,800 (or a sum equal to the amount to which he would have been entitled in his State of residence on May 1, 1971, if greater) exceeds the amount of such individual's annual income (as determined under section 2004) for such year.

"DETERMINATION OF ANNUAL INCOME

"SEC. 2004. (a) For the purposes of this title, the term 'annual income' means, in the case of an individual, the total amount of income (other than income derived by reason of benefit payments under this title) from all sources received in the calendar year with respect to which a determination of annual income is made except that, in determining the annual income of any individual who, during the calendar year, engaged in any trade or business, there shall be deducted any expenses incurred in carrying on such trade or business, and except that, income derived from the sale or exchange of property shall be taken into account only to the extent of the gain derived therefrom.

"(b) In determining the amount of annual income, for purposes of this title, of any individual who is married and living with his spouse, the annual income of such individual shall be regarded as one-half the sum of the annual income of such individual and of the spouse of such individual.

"REPORT OF INCOME TO SECRETARY

"SEC. 2005. (a) Any individual applying for benefits under this title shall submit with his application for such benefits and thereafter reports to the Secretary of his income and of any other matter which is relevant to his entitlement to receive, or the amount of, any benefit payable under this title. Such reports shall be filed at such time, in such form, and shall contain such information as the Secretary shall by regulations prescribe.

"(b) Benefits otherwise payable to an individual for any month shall be suspended until such time as any report required pursuant to subsection (a) to be filed prior to such month shall have been received and evaluated by the Secretary.

"SUSPENSION OF BENEFITS FOR MONTHS WHEN INDIVIDUAL IS ABSENT FROM THE UNITED STATES

"SEC. 2006. Any benefit otherwise payable to an individual under this title for any month shall not be paid if such individual is physically absent from the United States (as defined in section 2009) during all of such month, or if such individual is not, during all of such month, a resident of the United States (as so defined).

"OVERPAYMENTS AND UNDERPAYMENTS

"SEC. 2007. Whenever the Secretary finds that more or less than the correct amount of payment has been made to any individual under this title, proper adjustment or recovery shall be made in accordance with regulations of the Secretary patterned so as to conform, to the maximum extent feasible, to the provisions of section 204 (relating to overpayments and underpayments of benefits under title II).

"ADMINISTRATION

"SEC. 2008. This title shall be administered by the Secretary and (to the extent feasible) through the organization and personnel engaged in the administration of title II.

"DEFINITIONS

"SEC. 2009. For purposes of this title—

"(a) the term 'United States' means the fifty States and the District of Columbia.

"(b) the term 'blind' refers to an individual who is suffering from blindness (as defined in section 216(i)(1); and

"(c) one term 'disabled' refers to an individual who is disabled from engaging in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

"APPROPRIATION

"SEC. 2010. There are hereby authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this title."

EXPLANATION: BLIND AND DISABLED INCOME ASSURANCE ACT OF 1971

BACKGROUND

The present welfare system is admittedly inadequate and inefficient. The present system has five categories: old age assistance; aid to the blind; aid to the disabled; aid for dependent children; and general assistance.

The Older Americans Income Assurance Act (S. 1384) and the Blind and Disabled Income Assurance Act would in effect completely federalize the first three categories of the present welfare system.

HOW IT WORKS

All aged, blind and disabled persons would be assured a minimum annual income. The Social Security Administration would make monthly payments sufficient to bring an individual's cash income up to a guaranteed level. Both earned and unearned income is subtracted from the guaranteed level in order to determine the exact payment. Payments are made from general revenue and in no way affect the Social Security Trust Funds.

Levels: Older Americans Income Assurance Act:

Individuals age 65 or over—$150 per month—($1800 per year)

Couples age 65 or over—$200 per month—($2400 per year)

Blind and Disabled Income Assurance Act:

$150 per month for individuals eligible as disabled or blind (or a sum equal to the amount paid by the State of residence on May 1, 1971, if greater)

REVENUE FOR STATES

S. 1384, the Older Americans Income Assurance Act—revenue of over $659 million for State and local governments.

The Blind and Disabled Americans Income Assurance Act—revenue of over $440 million for State and local governments.

Total revenue for State use is over $1 billion for the first year following enactment.

EXAMPLES

Blind and Disabled Americans Income Assurance Act:

1. Joe Smith is determined to be blind. He has trust income of $240 a year ($20 per month); $840 a year from the Lighthouse for the Blind ($70 per month) and $120 per year ($10 per month) from family gifts. His annual income is $1,200; therefore, he would get $50 per month ($600 per year) from the Social Security Administration. Any food stamps, vocational education, free lodging or free medical care would not count as unearned income.

2. Mary Jones is determined to be disabled. She has no cash income but lives with her parents. She would receive the full $150 a month since she has no cash income. Her free lodging would not be considered income.

3. Bill Baker is determined to be disabled. The State Vocational Rehabilitation Agency provides training for Bill and pays his travel expenses to and from the vocational training school. He earns $100 a month and free lodging as a hotel night clerk. His payment would be $50 per month since neither his free lodging or free travel would count as earned or unearned income.

Older Americans Income Assurance Act—S. 1384:

1. Mr. and Mrs. Smith are age 65 and own their own home. Together they receive $1,800 a year in regular Social Security benefits. They have no other income. They would receive $600 a year under the Older Americans Income Assurance Act ($50 a month) to bring their cash income up to $2400 a year. Ownership of their home would not be considered in computing their income.

2. Miss Jones is 65. She has a teacher's pension of $100 a month and interest on savings of $300 a year ($25 per month). She would receive $25 per month ($300 per year) to bring her annual cash income up to $1,800 per year.

CHART A.—AVERAGE MONTHLY BENEFITS PAID BY STATES TO AID TO BLIND AND AID TO DISABLED AND NUMBER OF RECIPIENTS

State	Aid to the blind		Aid to the permanently and totally disabled	
	Number of recipients	Average monthly payment	Number of recipients	Average monthly payment
Total	80,700	$103.40	912,000	$95.10
Alabama	1,900	70.60	19,100	49.65
Alaska	92	175.55	820	173.80
Arizona	530	80.90	8,500	79.40
Arkansas	1,700	80.10	11,400	72.80
California	13,900	157.65	182,000	132.35
Colorado	220	86.30	10,300	83.10
Connecticut	250	97.95	7,400	127.15
Delaware	360	104.75	1,400	119.55
District of Columbia	210	102.95	7,400	108.65
Florida	2,300	73.55	21,400	71.70
Georgia	3,200	67.25	35,200	62.65
Hawaii	67	127.95	1,800	132.70
Idaho	110	82.60	2,800	80.95

State	Aid to the blind: Number of recipients	Aid to the blind: Average monthly payment	Aid to the permanently and totally disabled: Number of recipients	Aid to the permanently and totally disabled: Average monthly payment
Illinois	1,600	$93.35	43,700	$90.20
Indiana	1,300	72.90	5,500	59.05
Iowa	1,200	122.85	3,100	142.55
Kansas	410	80.10	6,000	77.55
Kentucky	2,100	74.10	17,100	73.85
Louisiana	2,400	77.25	22,300	55.50
Maine	220	88.90	3,900	98.30
Maryland	360	93.25	16,400	86.60
Massachusetts	2,800	151.25	17,800	129.90
Michigan	1,400	105.60	29,000	106.25
Minnesota	860	95.20	11,000	66.15
Mississippi	2,100	59.90	22,100	59.05
Missouri	4,000	91.55	19,700	77.35
Montana	190	93.05	2,300	90.40
Nebraska	330	94.10	4,700	75.00
Nevada	170	95.85	----------	----------
New Hampshire	230	168.90	850	142.85
New Jersey	980	100.30	13,700	105.70
New Mexico	360	79.05	8,700	75.20
New York	3,800	129.15	87,800	129.70
North Carolina	4,500	84.35	27,900	77.10
North Dakota	84	109.20	2,200	98.65
Ohio	2,700	75.10	31,800	76.65
Oklahoma	1,300	106.30	22,500	96.70
Oregon	620	102.65	7,700	74.75
Pennsylvania	8,000	120.45	40,200	96.45
Rhode Island	120	81.75	4,100	92.35
South Carolina	1,900	66.70	10,600	56.00
South Dakota	120	94.40	1,500	71.40
Tennessee	1,800	70.65	26,100	68.10
Texas	4,000	79.20	23,600	66.45
Utah	170	90.20	9,300	70.70
Vermont	110	99.15	2,000	102.65
Virginia	1,100	87.40	8,200	82.65
Washington	490	96.15	17,600	96.55
West Virginia	560	70.90	11,700	64.15
Wisconsin	680	90.05	7,300	94.95
Wyoming	35	(1)	890	66.30

(1) Averages not computed on base of fewer than 50 recipients.

CHART B—ANNUAL COST FOR AID TO THE BLIND AND AID TO DISABLED BY STATES

	Maintenance assistance fiscal year 1971 estimate total, Federal, State and local: Blind	Disabled
Alabama	1,725,000	12,447,000
Alaska	180,000	1,643,000
Arizona	494,000	8,016,000
Arkansas	1,945,000	14,572,000
California	27,923,000	320,012,000
Colorado	249,000	13,218,000
Connecticut	314,000	10,575,000
Delaware	493,000	2,112,000
District of Columbia	270,000	10,357,000
Florida	1,996,000	17,772,000
Georgia	2,494,000	26,983,000
Hawaii	106,000	3,165,000
Idaho	107,000	2,779,000
Illinois	2,645,00	69,297,000
Indiana	2,203,000	11,725,000
Iowa	1,702,000	5,700,000
Kansas	449,000	11,022,000
Kentucky	1,803,000	15,496,000
Louisiana	2,301,000	16,563,000
Maine	334,000	5,135,000
Maryland	459,000	17,949,000
Massachusetts	5,970,000	31,300,000
Michigan	1,798,000	39,292,000
Minnesota	1,266,000	31,996,000
Mississippi	1,552,000	17,063,000
Missouri	3,240,000	17,981,000
Montana	234,000	2,567,000
Nebraska	630,000	7,134,000
Nevada	226,000	----------
New Hampshire	471,000	1,675,000
New Jersey	1,188,000	17,278,000
New Mexico	366,000	8,891,000
New York	5,442,000	99,953,000
North Caolina	4,687,000	26,935,000
North Dakota	105,000	2,430,000
Ohio	2,806,000	34,277,000
Oklahoma	1,737,000	27,568,000
Oregon	1,077,000	15,991,000
Pennsylvania	12,230,000	39,300,000
Rhode Island	155,000	4,870,000
South Carolina	1,604,000	8,102,000
South Dakota	132,000	1,862,000
Tennessee	1,510,000	24,447,000
Texas	4,242,000	27,817,000
Utah	211,000	7,426,000
Vermont	154,000	2,520,000
Virginia	1,342,000	10,519,000
Washington	536,000	22,333,000
West Virginia	466,000	5,224,000
Wisconsin	783,000	7,742,000
Wyoming	43,000	981,000
Total	106,545,000	1,144,757,000

CHART C.—DIRECT REVENUE SAVINGS ACCRUING TO STATES UNDER PROUTY PROPOSAL

	Blind	Disabled	Total
Alabama	371,000	2,671,000	3,042,000
Alaska	126,000	1,163,000	1,289,000
Arizona	142,000	2,613,000	2,755,000
Arkansas	394,000	2,950,000	3,344,000
California	13,962,000	160,006,000	173,968,000
Colorado	109,000	5,785,000	5,894,000
Connecticut	157,000	5,288,000	5,445,000
Delaware	274,000	1,212,000	1,486,000
District of Columbia	135,000	5,178,000	5,313,000
Florida	551,000	4,801,000	5,352,000
Georgia	613,000	6,561,000	7,174,000
Hawaii	52,000	1,559,000	1,711,000
Idaho	33,000	864,000	897,000
Illinois	1,323,000	34,648,000	35,971,000
Indiana	875,000	4,721,000	5,596,000
Iowa	761,000	2,550,000	3,311,000
Kansas	191,000	4,654,000	4,845,000
Kentucky	457,000	3,631,000	4,088,000
Louisiana	647,000	3,795,000	4,442,000
Maine	106,000	1,626,000	1,732,000
Maryland	219,000	7,368,000	7,587,000
Massachusetts	2,985,000	15,650,000	18,635,000
Michigan	899,000	19,646,000	20,545,000
Minnesota	545,000	13,774,000	14,319,000
Mississippi	264,000	2,900,000	3,164,000
Missouri	1,002,000	5,559,000	6,561,000
Montana	83,000	906,000	989,000
Nebraska	279,000	2,580,000	2,859,000
Nevada	107,000	----------	107,000
New Hampshire	192,000	684,000	876,000
New Jersey	594,000	8,639,000	9,233,000
New Mexico	92,000	2,226,000	2,318,000
New York	2,721,000	49,977,000	52,698,000
North Carolina	1,579,000	7,015,000	8,594,000
North Dakota	31,000	1,723,000	1,754,000
Ohio	999,000	12,306,000	13,305,000
Oklahoma	510,000	11,694,000	12,200,000
Oregon	470,000	6,980,000	7,450,000
Pennsylvania	5,552,000	17,842,000	23,394,000
Rhode Island	76,000	2,353,000	2,429,000
South Carolina	393,000	1,821,000	2,214,000
South Dakota	40,000	560,000	600,000
Tennessee	381,000	6,180,000	6,561,000
Texas	1,257,000	7,560,000	8,817,000
Utah	65,000	2,359,000	2,424,000
Vermont	54,000	883,000	937,000
Virginia	469,000	3,677,000	4,146,000
Washington	268,000	11,166,000	11,434,000
West Virginia	116,000	1,120,000	1,236,000
Wisconsin	351,000	3,468,000	3,819,000
Wyoming	14,000	306,000	320,000

CHART D.—AVERAGE INDIVIDUAL MONTHLY BENEFIT GAIN UNDER PROUTY PROPOSAL

	Aid to the blind	Aid to the permanently and totally disabled
Alabama	$79.40	$100.35
Alaska	----------	----------
Arizona	69.10	71.60
Arkansas	69.90	77.20
California	----------	17.65
Colorado	63.70	66.90
Connecticut	52.05	22.85
Delaware	45.25	30.45
District of Columbia	47.05	41.35
Florida	76.45	78.30
Georgia	82.75	87.35
Hawaii	22.05	17.30
Idaho	67.40	69.05
Illinois	56.65	59.80
Indiana	77.10	90.95
Iowa	27.15	7.45
Kansas	69.90	72.45
Kentucky	75.90	76.15
Louisiana	72.75	94.50
Maine	61.10	51.70
Maryland	56.75	63.40
Massachusetts	----------	20.10
Michigan	44.40	43.75
Minnesota	54.80	83.85
Mississippi	90.10	90.95
Missouri	58.45	72.65
Montana	56.95	59.60
Nebraska	55.90	75.00
Nevada	54.15	----------
New Hampshire	----------	7.15
New Jersey	49.70	44.30
New Mexico	70.95	74.80
New York	20.85	20.30
North Carolina	65.65	72.90
North Dakota	40.80	51.35
Ohio	74.90	74.35
Oklahoma	45.70	53.30
Oregon	47.35	75.25
Pennsylvania	29.55	53.55
Rhode Island	68.25	57.65
South Carolina	83.30	94.00
South Dakota	55.60	78.60
Tennessee	79.35	81.90
Texas	70.80	83.55
Utah	$59.80	$79.30
Vermont	50.85	47.35
Virginia	62.60	67.35
Washington	53.85	53.45
West Virginia	79.10	85.85
Wisconsin	59.95	54.05
Wyoming	----------	83.07
National average	46.60	54.90

By Mr. WILLIAMS:

S. 1506. A bill to amend section 37 of the Internal Revenue Code of 1954 to update the retirement income credit. Referred to the Committee on Finance.

UPDATING THE RETIREMENT INCOME CREDIT

Mr. WILLIAMS. Mr. President, I introduce, for appropriate reference, a bill to update the retirement income credit for retired teachers, policemen, firemen, and other Government annuitants.

This proposal is identical to S. 4345, which I introduced during the last Congress. That measure was adopted in modified form as an amendment to the 1970 social security legislation.

However, no final action was taken because a conference committee could not be called to resolve the differences in the House and Senate-passed social security bills.

The retirement income credit was originally enacted in 1954 to provide Government pensioners with comparable tax relief as social security beneficiaries.

Social security benefits are, or course, exempt from Federal income tax. Government annuitants or persons with little or no social security benefits receive comparable tax treatment by claiming a 15-percent credit on their qualifying retirement income—pensions, annuities, rents, interest, and dividends.

Today the maximum amount for computing the credit is $1,524 for a single person and $2,286 for a couple. This maximum base must be reduced though by the amount of, first, tax exempt pensions, such as social security and railroad retirement, and, second, earned income, depending upon the individual's age and the extent of his earnings.

But the retirement income credit no longer provides equivalent tax relief because it has not been modernized for 9 long years. During this time there have been four badly needed social security raises, which I have strongly supported.

But we must not forget our Government pensioners or other individuals, with little or no social security coverage. They must not become second-class citizens under our tax system.

For far too long a time, their needs have been overlooked or ignored. For too long, they have had to struggle with an outdated tax relief measure.

Equity in our tax system presents a compelling argument to place these taxpayers on an equal footing with social security beneficiaries.

The bill that I introduce today would help to correct this longstanding inequity.

First, it would raise the maximum amount for computing the 15-percent credit from $1,524 to $2,278 for a single

person, and from $2,286 to $3,417 for an elderly couple. These amounts would be consistent with the maximum benefits now payable under social security. For a retired single person, this could mean a tax savings up to $113. And for an elderly couple, this measure could provide $170 in badly needed tax relief.

In addition, the maximum amount for computing the credit would be adjusted automatically with increases in social security benefits. This will be especially helpful in protecting Government annuitants from long delays in updating the credit.

Last year significant improvements were made in simplifying the retirement income credit schedule. As a result of hearings and a report issued by the Committee on Aging, the number of computations and schedule transfers on this year's tax form have been reduced substantially. Moreover, elderly taxpayers can elect to have the IRS compute their credit, provided they list the amount of their qualifying retirement income, tax-exempt pensions, and earned income.

If it is possible to make these procedural changes to protect the aged from overpaying their taxes, then I believe substantive changes can also be made in the law to provide fair and equitable tax treatment for these overburdened taxpayers.

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

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

S. 1506

A bill to amend section 37 of the Internal Revenue Code of 1954 to update the retirement income credit

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 37 of the Internal Revenue Code of 1954 (relating to retirement income credit) is amended—

(1) by striking out "$1,524" in subsection (d) and inserting in lieu thereof "$2,278",

(2) by striking out "2,286" in subsection (i)(2)(B) and inserting in lieu thereof "$3,417"; and

(3) by redesignating subsection (j) as (k) and by inserting after subsection (i) the following new subsection:

"(j) Annual Adjustments of Limitations.—

"(1) Certification by Secretary of Health, Education, and Welfare.—Before the beginning of each calendar year (beginning with 1972), the Secretary of Health, Education, and Welfare shall certify to the Secretary or his delegate the largest old-age insurance benefit that could be payable for any month during such year under title II of the Social Security Act to any individual who, in such year, attained age 65 and first became entitled to monthly insurance benefits under such title.

"(2) Substitution of limitations.—For taxable years beginning within the calendar year 1972 and each calendar year thereafter—

"(A) subsection (d) shall be applied by substituting, for the $2,278 amount contained therein, the amount certified under paragraph (1) for such calendar year; and

"(B) subsection (i)(2)(B) shall be applied by substituting, for the $3,417 amount contained therein, one and one-half times the amount certified under paragraph (1) for such calendar year."

(b) The amendments made by subsection (a) shall apply to taxable year beginning after December 31, 1971.

By Mr. PEARSON (for himself, Mr. ALLOTT, Mr. BENNETT, Mr. BURDICK, Mr. GRAVEL, Mr. HART, Mr. HATFIELD, Mr. HOLLINGS, Mr. HUGHES, Mr. HUMPHREY, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MANSFIELD, Mr. METCALF, MONDALE, Mr. MONTOYA, Mr. NELSON, Mr. PROUTY, Mr. RANDOLPH, Mr. STEVENS, Mr. STEVENSON and Mr. THURMOND):

S. 1507. A bill to provide for the establishment of a National Rural Development Center, and for other purposes. Referred to the Committee on Agriculture and Forestry.

NATIONAL RURAL DEVELOPMENT CENTER ACT

Mr. PEARSON. Mr. President, I introduce, for appropriate reference, a bill to create a National Rural Development Center.

I am pleased to have the following Senators join in cosponsoring this measure:

Senators ALLOTT, of Colorado; BENNETT, of Utah; BURDICK, of North Dakota; GRAVEL, of Alaska; HART, of Michigan; HATFIELD, of Oregon; HOLLINGS, of South Carolina; HUGHES, of Iowa; HUMPHREY, of Minnesota; MCGOVERN, of South Dakota; MCINTYRE, of New Hampshire; MANSFIELD, of Montana; METCALF, of Montana; MONDALE, of Minnesota; MONTOYA, of New Mexico; NELSON, of Wisconsin; PROUTY, of Vermont; RANDOLPH, of West Virginia; STEVENS, of Alaska; STEVENSON, of Illinois; and THURMOND, of South Carolina.

Mr. President, the need for a comprehensive, continuing effort to stimulate the economic and social development of our rural areas so as to achieve a more balanced national growth is now widely accepted. President Nixon in his state of the Union message of 1970 declared:

We must create a new rural environment that will not only stem the migration to urban centers, but reverse it.

Also in 1970 the Congress committed itself to the objective of achieving a sound balance between rural and urban America—Public Law 91-524, title IX.

In recent years there have been many other manifestations of interest in and support for the objective of rural development, variously referred to as rural-urban balance, nonmetropolitan area development, and balanced national growth.

Thus Mr. President, I believe it is fair to say that we have come to see rural development and balanced growth as a national necessity.

Mr. President a few concrete legislative and administrative actions have been taken. Others have been proposed and we should move ahead with their consideration and adoption. But we also know that the objective of rural development and balanced national growth will not be quickly or easily achieved and that there is much we do not understand about the development process. The long-range prospects for achieving a fully successful rural development effort are dimmed by the absence of satisfactory supporting institutional arrangements for basic and applied research and policy evaluation. The state of our knowledge about the dynamics of the economic and social development of rural areas is insufficient and the institutional machinery for increasing our fund of knowledge is inadequate.

Mr. President, 70 percent of our people now live on 1 percent of the land. Thirty-five percent live in only 25 metropolitan centers. Eighteen percent are concentrated in the urbanized strip between Boston and Washington, D.C. And, if present trends continue, at least three-fifths of our people will be concentrated in but four such giant metropolitan strips by the year 2000.

Traditionally, we have considered the economic and social forces, which have produced this great gathering-in of people and industry, to be not simply desirable but inevitable. Only recently have we come to recognize that the results have not been altogether desirable and, therefore, only recently have we begun to question their inevitability. But as this sense of questioning has grown we have come to perceive the need for expanding and improving our knowledge of how best to control and guide these forces to achieve our desired objectives.

Mr. President, there are a great number of urban research centers and institutions around the country as well as urban studies programs in many of our universities. But there are no adequate institutional counterparts to foster the study and understanding of the total rural community and its development. But clearly the specialized problems and needs of rural America demand specialized institutional attention.

DESCRIPTION OF THE BILL

Mr. President, the effort to redirect the ongoing trends of spatial economic and population growth represents an undertaking of revolutionary proportions and will be several decades in the making.

If the effort is to succeed, and to succeed in a way that all elements of American society benefit, it must be based on the best possible informational foundation. The creation of the National Rural Development Center which I propose today would constitute an important and vital part of that foundation.

It would carry on an extensive research program of its own. It would also serve as a catalytic agent for research by other institutions and would function as a clearinghouse for all relevant information on rural development. While basically a research institution it would have a limited-action role in the area of technical assistance and field experimentation. Beyond these tangible activities the establishment of the Center would provide an institutitonal focus for the general rural development movement.

The specific functions as provided in the bill are:

First, the Center would conduct basic and applied research programs aimed at broadening and deepening our understanding of all aspects of the rural community, the dynamics of change and growth, and the process of community, area, and regional development.

I would not attempt to suggest a list of research topics but I would anticipate that the Center carry on research programs in such areas as: the economies and/or diseconomies of varying patterns of population concentration, the admin-

istrative and political structures necessary to area planning and development, the motivational factors of migration and the costs and/or gains of migration, the role of transportation and communications in the development process, the factors of industrial location, the relationship between community infrastructure and growth, the economic and social components of development, the relationship between family farm agriculture and the overall rural economy, to mention only a few general categories.

The increase of knowledge is good in and of itself but as the operational goal here is the redirection of population and economic growth trends, the Center would contribute to proposing and evaluating National, State, and local policies for rural development.

Another important aspect of the research effort would be the development of new techniques and the application of advances in science and technology to the rural development effort. For example, there is a need for the development of technologies particularly adapted to invigorating the smaller-scale enterprises in rural areas or for creating new enterprises capable of achieving economic vitality. New technologies in transportation and communication can reduce the disadvantages of distance and lack of population density. Small-scale sewage and water systems for towns and villages can be improved. New medical technologies can strengthen health delivery systems in rural areas. Information gathering and communications technology can be adapted to strengthen administrative capacities of smalltown governments. Technologies to strengthen small- and medium-scale farming systems can be developed.

Second, the Center would be charged with the function of information exchange and the promotion of communication among individuals, institutions, and organizations interested in rural development as well as among officials of Federal, State, and local governments.

In almost all areas our state of knowledge is usually considerably greater than our general awareness of it. And as we move into a new policy area such as rural development, the function of information exchange and communication is particularly important.

But the Center would function as more than a passive conduct for coordinated information exchange and communication. It would play a leadership role in stimulating research and information gathering by other institutions and would help to foster and delineate the national debate on rural development and balanced national growth.

Third, the Center would be assigned a limited action responsibility. From time to time it would be appropriate and useful for the Center to design and to conduct, or cause to be conducted, experimental field projects intended to test out research findings. In these situations, the principal contribution of the Center would be through its expert and entrepreneurial talents rather than its financial resources.

In addition, the Center would be authorized to offer technical assistance to public officials of rural areas upon request and as the Center's Director deemed appropriate after considering the other demands upon the Center. In addition, the Center, after establishing the requirements for technical assistance in carrying out a comprehensive rural development effort, would seek to encourage other institutions to develop adequate technical assistance programs.

Mr. President, the Center itself would have the authority and the resources to carry out programs in all the functional responsibility assigned to it. It would also have the authority and the resources to make grants and contracts so as to stimulate additional activity in other private and public institutions.

The Center would be governed by a Board of Trustees appointed by the President. To assure a blend of action officials, experts, and the general public, five members would be appointed from among officials of Federal, State, and local public agencies, five would be appointed from among individuals engaged in educational, research, or other scholarly work, and five would be appointed from the general public, and who by virtue of their residence, interest, or vocation are specially qualified to serve on the Board. In making the appointments the President would give consideration to achieving geographical, interest, organization and political balance on the Board.

To assure independence, the Center would have the authority to receive grants from private sources and would be encouraged to do so. The Board rather than the President would appoint the Director of the Center. Terms of the Board members would be staggered and would be for 6 years. The terms of the Director and Deputy Director would also be for 6 years.

Mr. President, I have not at this time suggested an appropriations level for the Center. This will be determined after further study and by the deliberation of the committee to which the bill is referred. However, the funding should be at such a level needed to suggest a very substantial research effort, both by the Center's own personnel and by personnel of other institutions supported by the Center's grant and contract program.

Finally, Mr. President, I would point out that no attempt is made in the language of the bill to precisely define the term rural. In current usage, the term is assigned a variety of meanings. The Bureau of the Census defines rural as farming areas, other open countryside and incorporated places of under 2,500 in population. The Congress has given the Farmers Home Administration authority to carry out its rural housing program in places up to 10,000 in population. For the purpose of delineating certain program jurisdictions, the present administration has defined rural as all those communities outside the standard metropolitan statistical areas. A few individuals even suggest that the term rural should be used to encompass cities of up to 100,000 in population.

As a result of committee hearings a precise definition of the term rural may be written into the bill. However, I would think that this is not of vital importance and that it would be more appropriate to establish only basic guidelines, leaving to the Center the flexibility necessary to a research institution.

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

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

S. 1507

A bill to provide for the establishment of a National Rural Development Center, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Rural Development Center Act."

DECLARATION OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress hereby finds and declares that—

(1) it is essential to the national interest to stimulate the economic and social development of the rural areas, including farm communities and the smaller towns and cities of the Nation;

(2) a more effective use of the resources of the rural areas of America will contribute to a stronger and more stable national economy;

(3) successful rural development efforts will help to slow the migration from rural areas and thereby help to reduce the increasingly complex pressures on urban centers;

(4) a greater exchange of information and communication among the various public and private agencies whose activities are related in one way or another with rural development and welfare is essential; and

(5) a comprehensive continuing research and information exchange program designed to analyze the problem of rural areas and the interrelationship between rural and urban America and to stimulate the economic and social development of rural areas should be conducted by a specialized qualified institution.

(b) It is therefore the purpose of this Act to establish a National Center for Rural Development.

CENTER ESTABLISHED

SEC. 3. (a) There is hereby established an independent agency of the Federal Government to be known as the National Rural Development Center.

(b) The Center shall be subject to the supervision and direction of a Board of Trustees. The Board shall be composed of fifteen members who shall be appointed by the President, by and with the advice and consent of the Senate, of whom five shall be appointed from among officials of Federal, State, and local public agencies concerned with some significant aspect of rural development; five shall be appointed from among individuals who are engaged in educational, research or other scholarly work relating to the development of rural communities; and five shall be appointed from among individuals from the general public and who by virtue of their residence, interest or vocation are specially qualified to serve on the Board. In making appointments, the President is requested to give due consideration to the appointment of individuals who, collectively, will provide appropriate regional, interest, organization, and political balance on the Board.

(c) The term of office of each appointive trustee of the Center shall be six years; except that (1) the members first taking office shall serve as designated by the President, five for terms of two years, five for terms of four years, and five for terms of six years, and (2) any member appointed to

fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed. No member may serve for a period in excess of eight years.

(d) Members of the Board who are not regular full-time employees of the United States shall, while serving on business of the Center, be entitled to receive compensation at rates fixed by the President, but not exceeding the rate prescribed for GS–18 of the General Schedule under 5332, title 5, United States Code, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

(e) The President shall call the first meeting of the Board of the Center, at which the first order of business shall be the election of a Chairman and a Vice Chairman, who shall serve until one year after the date of their appointment. Thereafter each Chairman and Vice Chairman shall be elected for a term of two years. The Vice Chairman shall perform the duties of the Chairman in his absence. In case a vacancy occurs in the chairmanship or vice chairmanship, the Board shall elect an individual from among the members of the Board to fill such vacancy.

(f)(1) A majority of the trustees of the Center shall constitute a quorum.

(2) The Board shall meet at least four times a year.

OFFICERS

SEC. 4. There shall be a Director and a Deputy Director of the Center who shall be appointed by the Board. In making such appointments the Board shall give due consideration to the recommendations of the President. Under the direction of the Board, the Director shall be responsible for carrying out the functions of the Center, and shall have authority and control over all personnel and activities thereof. The Deputy Director shall perform such functions as the Director, with the approval of the Center, may prescribe, and be acting Director during the absence or disability of the Director or in the event of a vacancy in the office of the Director. The Director and the Deputy Director shall each serve for a term of six years unless previously removed by the Board. The Director shall be compensated at a rate equal to the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Deputy Director shall be compensated at a rate equal to the rate prescribed for level V of the Executive Schedule.

FUNCTIONS OF THE CENTER

SEC. 5. (a) In order to carry out the purposes of this Act, the Center shall—

(1) conduct basic and applied research programs with respect to—

in lieu of subsistence, as authorized by

(A) a further understanding of the dynamics of the economic and social development of rural areas in the United States and their interrelationship with urban areas;

(B) the formulation and effectiveness of national, state, and local policy concerning rural development;

(C) to the effectiveness of existing institutions and the need for, and the appropriate form of, new institutions, such as regional development centers, necessary to contribute to advancing the purposes of this Act:

(D) the development of new techniques and the application of advances in science and technology to the problems of rural areas;

(2) collect, analyze, and disseminate to the public where appropriate, as well as to officials of Federal, State, and local governments, relevant information on rural development, especially information developed by the Center and facilitate the exchange of other relevant information on rural development among officials of rural areas, officers of quasi-governmental agencies in such areas, and appropriate educational and research institutions and private welfare and citizens organizations;

(3) conduct, or cause to be conducted, short-term educational programs for the personnel of public and private agencies of rural areas or serving the interests of such areas on matters of interest to such personnel; and

(4) design and conduct, or cause to be conducted, experimental projects and provide such technical assistance to public officials and rural areas upon request as the Director deems appropriate after considering the other demands made upon the Center.

(5) prepare at least annually a report concerning its activities together with such recommendations, including recommendations for additional legislation, as the Board deems advisable.

(b) In carrying out the functions of the Institute under this section, the Board may establish such laboratories and facilities as it deems necessary to be operated by the personnel of the Center. With a view to obtaining additional scientific and intellectual resources available, the Director shall, whenever feasible, enter into contracts with public or private educational or research institutions for the purpose of undertaking any particular study or research project authorized by this Act.

ADMINISTRATIVE PROVISIONS

SEC. 6. (a) In addition to any authority vested in it by other provisions of this Act, the Center, in carrying out its functions, is authorized to—

(1) prescribe such regulations as it deems necessary governing the manner in which its functions shall be carried out;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Center; and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(3) in the discretion of the Center, receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)) money and other property donated, bequeathed, or devised to the Center with a condition or restriction, including a condition that the Center use other funds of the Center for the purposes of the gift;

(4) appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments as deemed desirable to advise the Center with respect to its functions under this Act;

(5) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this Act without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no more than three individuals so appointed shall receive compensation in excess of the rate prescribed for GS–18 in the General Schedule under section 5332 of title 5, United States Code;

(6) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed the rate prescribed for GS–18 in the General Schedule under section 5332 of title 5, United States Code;

(7) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(8) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this Act, and such contracts or modifications thereof may, with the concurrence of two-thirds of the members of the Board, be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(9) provide for the making of such reports (including fund accounting reports) and the filing of such applications in such form and containing such information as the Director may reasonably require;

(10) make advances, progress, and other payments which the Board deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529);

(11) make other necessary expenditures.

(b) Each member of a committee appointed pursuant to paragraph (4) of subsection (a) of this section who is not an officer or employee of the Federal Government shall receive an amount equal to the maximum daily rate prescribed for GS–18 under section 5332 of title 5, United States Code, for each day he is engaged in the actual performance of his duties (including travel time) as a member of a committee. All members shall be reimbursed for travel, subsistence and necessary expenses incurred in the performance of their duties.

DEFINITIONS

SEC. 7. As used in this Act the term—

(1) "Board" means the Board of Directors of the National Rural Development Center;

(2) "Center" means the National Rural Development Center; and

(3) "Director" means the Director of the National Rural Development Center.

AUTHORIZATION

SEC. 8. There are authorized to be appropriated to the Center such sums as may be necessary to carry out the provisions of this Act.

By Mr. MONDALE:

S. 1508. A bill to amend the Wild and Scenic Rivers Act by designating a certain river in the State of Minnesota as a potential addition to the national wild and scenic rivers system. Referred to the Committee on Interior and Insular Affairs.

Mr. MONDALE. Mr. President, we have been regrettably slow to protect the natural state of our great rivers.

The degradation of our rivers has been a national disgrace. To drink from any sizable river in the United States is foolhardy, and a safe, clean swim in a river is a memory from distant youth. Boating on major streams is often a cruise through trash heaps, many of them publicly maintained.

We have seen river pollution burn on the water's surface. We have erected dams and impoundments which have forever flooded irreplaceable natural wonders like Glen Canyon. In the name of developments we have bulldozed the banks of some of our greatest scenic rivers.

The National Wild and Scenic Rivers Act, Public Law 90–542, protects some of our most valuable natural treasures, our rivers, specifically those which possess outstanding geologic, scenic, historic, or wildlife values.

The act is designed to preserve these rivers "in free-flowing condition, that they and their immediate environments shall be protected for the benefit and enjoyment of present and future genera-

tions." The Congress declares in the act that the established national policy of dam and other waterway construction ought to be complemented by a policy preserving and protecting rivers wherever possible.

Having reviewed the guidelines established by the Secretaries of Interior and Agriculture for inclusions in the wild and scenic system, I am aware that Minnesota is fortunate enough to contain several such rivers.

At the same time, Minnesota includes and adjoins population centers of the North Central States area; preservation of wild and scenic rivers in this area insures that millions of our people will have access to waters preserved in their free-flowing, natural state.

One of the most impressive rivers in Minnesota which meets the wild and scenic guidelines is the Big Fork River, in the north-central section of our State.

In 1966, the Minnesota Department of Conservation recommended the Big Fork for inclusion in a State recreational river system.

The Big Fork was given the first priority over all other Minnesota rivers in wilderness classification, and was also given the No. 1 designation as a State canoe river. I believe that this magnificent river ought to be included in the national wild and scenic rivers system, and I am today introducing legislation to accomplish that objective.

The Big Fork River watershed unit has a total area of 2,063 square miles and is roughly 75 miles from south to north, with an average width of about 30 miles. The main stream follows a widely curving course to the north to its junction with Rainy River. The largest falls in the river, with a drop of 35 feet, are to be found at Big Falls.

The river starts at Dora Lake in the sandy outwash plain of the lake region in west central Itasca County. The river flows in a wide channel from this plain along the southeasterly edge of a glacial till area, through the Chippewa National Forest, an excellent recreation area. The river water is clean and clear, and the bottom is a mixture of sand and gravel, with a large amount of plant growth in the water. Rock outcroppings left by glaciers are visible in the river and offer numerous navigable rapids.

In general, no spot on the American Continent is better endowed with natural growth than the Big Fork Valley. Heavy stands of sugar maple cover the ridges in the Bowstring area. Fields of wild rice are found on the upper reaches of the stream. Fur-bearing animals abound, with beaver on every tributary. Waterfowl are abundant during their migrations, and moose graze in the shallows and marshes. Heavy stands of pine line much of the stream from source to mouth.

The exact time that a canoe first rode the waters of the Big Fork is not known, but no doubt the native Chippewa Indians with their birchbark craft used the stream and its tributaries as a means of transportation long before the white man made his appearance some 200 years ago. In keeping with these historical aspects, the Big Fork River canoe trail starts at Inger with its nearby Indian village. Further down are several Chippewa colonies where the descendants of the Red Man still live. Here, during the wild rice harvest, the Indians still use the same campgrounds and gather the cereal by the same primitive methods as did their ancestors of centuries past. On the west bank of the river, where the Popple joins the Big Fork, a historical plaque marks the site of what is believed to be the first wild rice processing mill in Minnesota. At Big Falls, Indians gathered on the rocky ledges to make their arrowheads. It was near the falls too, that Dan Campbell, the first white settler, squatted in 1877.

Where the Sturgeon River joins the Big Fork, east of Big Falls, a Hudson Bay trading post once stood. It is also the site of an old Indian campground and many artifacts may be found here. This is the ancient water route, via the Sturgeon and Tamarack Rivers to Red Lake—traveled by Indians of many years ago. Another Hudson Bay trading post was located near Keuffner's Landing further north of Big Falls.

At the mouth of the Big Fork, on the east bank, ancient burial grounds are to be found. These are under investigation at the present time by archeologists and the area is being considered as a site for Grand Mounds State Park.

With the railroad reaching Kenora, Ontario, in 1879, the Big Fork River and its tributaries for the next 30 years carried millions upon millions of feet of pine logs to the mills at Kenora and later to Spooner and Baudette. In a single season, as high as 100 million feet of timber floated down the stream into Rainy River on its way to the various mills.

The Big Fork represents a frontier past and, for the most part, the area is still a sparsely settled wilderness. Practically every species of wildlife that existed 200 years ago can still be seen. Resting a paddle for a moment's reflection, one realizes that he has traveled the same route in the same manner as did the Indians, the fur traders, the loggers and the frontier settlers.

I urge prompt inclusion of this great river in the national wild and scenic river system.

By Mr. BURDICK (for himself, Mr. SCOTT, and Mr. TUNNEY):

S. 1509. A bill to encourage and help implement improvements in the judicial machinery of our State and local courts by creating an Institute for Judicial Studies and Assistance, the purpose of which shall be to make grants to State and local courts and nonprofit organizations to carry out the objectives of the act and to serve as a reservoir of up-to-date information on court management and organization. Referred to the Committee on the Judiciary.

STATE COURT ASSISTANCE ACT

Mr. BURDICK. Mr. President, the recent National Conference on the Judiciary held at Williamsburg, Va., which was attended by over 450 representative judges, court administrators and lawyers from almost all of the States, has once again focused attention upon a problem that has been under consideration in the Senate since 1966. In the 89th Congress, former Senator Joseph D. Tydings, of Maryland, introduced a bill then entitled the "National Court Assistance Act"—S. 3725—and a bill to like effect has been introduced in both the 90th and 91st Congresses. Extensive hearings were held during the years 1967 and 1970, and resulted in several amendments to the original form of the bill.

Basically the bill has a twofold thrust: First it would create an Institute for Judicial Studies and Assistance, whose purpose it would be to collate existing studies and to further the adoption and development of improvements in the organization, procedure and administration of local and State courts; and second, it would authorize a grant-in-aid program, totaling 15,000,000 in the first 3 years, to assist in the planning and implementation of programs conceived by the States for improving the administration of justice in State and local courts.

The bill in its early form in the 89th and 90th Congresses would have created an agency within the Department of Justice operated by a Director, appointed by the President, and advised by a seven-member Advisory Council on Judicial Assistance also appointed by the President. This form of the bill evoked criticism from those who feared an extension of Federal influence into the court systems of the States and who saw a possibility of executive branch interference with the independence of the State courts. To overcome this objection, the bill was redrafted to provide for the creation of an independent agency known as the Institute for Judicial Studies and Assistance, supervised by a seven-member board composed of four State judges, two State court administrators and one attorney engaged in private practice, all of whom would be appointed by the President. The Director of the Institute would be appointed by the board. Another amendment required that an application for a grant to any local or State court must be approved by the highest judicial authority in the State.

This then was the form of the bill at the end of the 91st Congress and as such it had overcome many of the earlier objections to the proposal for Federal assistance to State court systems.

In reintroducing the bill, which I have more accurately entitled as the State Court Assistance Act, I do so fully aware that additional hearings may establish the need to make further amendments to the bill in order to take into account developments which have occurred since it was first conceived by Senator Tydings. There are at least three such developments to be considered:

First is the fact that since 1966 many of the States have conducted, in greater or lesser degree, studies of their own court systems. Beginning in 1967 with the exhaustive report of the President's Commission on Law Enforcement and Administration of Justice, the Federal Government has financially assisted the

States in making studies of its criminal justice system. Each State was offered through the Office of Law Enforcement Assistance a $25,000 grant for the purpose of evaluating its own criminal justice system. Additionally, some States have supplemented these Federal funds with public and private funds in order to broaden the effort toward reform of State courts. However, I have recently received correspondence indicating that many States, perhaps as many as a third, have not been able to make adequate studies for want of State financing.

Also, many of the studies made in the States have recognized that a court system has both a criminal side and a civil side and that the entire system must be improved if we are to insure that our courts are effectively administering justice to the people of this country.

A second development was the establishment in 1968 of the Federal Judicial Center and one of its functions is to conduct research in and the study of improved administration of the Federal courts.

A third development originated as a result of the recent Williamsburg Conference whereby an ad hoc committee was designated to assist in the planning for the creation of what has been called a National Center for State Courts. The purpose and function of such a center has not yet been spelled out. This ad hoc committee, originating from an unprecedented gathering of State jurists, should be given an opportunity to make an assessment of the merits of the proposed State Court Assistance Act.

It seems clear that additional hearings must be held to determine what limitations should be put on the use of funds for further studies, to determine whether there is an overlap with the Federal Judicial Center, and to determine whether Federal funds will be sought to carry out the reforms and improvements recommended by the Williamsburg Conference.

Mr. President, in reintroducing the State Court Assistance Act, I think it appropriate to point out that we must be careful lest the present emphasis on improvements in the criminal justice system has a secondary effect of impeding our courts in administering justice to civil litigants. We must recognize that the attainment of a goal of criminal trials within 60 days of indictment would still leave injustice in a court system whose civil calendar has backlogs of 2 to 5 years.

Mr. President, it is hoped that the State Court Assistance Act will serve as an appropriate vehicle to furnish Federal assistance to those States which have a sincere desire to improve the efficiency of their own court systems according to their own needs.

Mr. President, I ask unanimous consent that a statement prepared by the Senator from California (Mr. TUNNEY) be printed in the RECORD at this point.

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

STATEMENT OF SENATOR TUNNEY

Mr. TUNNEY. Mr. President, five years ago Senator Joseph Tydings of Maryland took the floor to introduce a bill which he called the "National Court Assistance Act" with these words:

"It is a matter of common knowledge that the dockets of many State and local courts across the nation are in a sorry condition. Their judicial machinery is creaking beneath the weight of heavy caseloads, a situation which seriously threatens the integrity of the judicial process."

In the five years that have passed since that day, the strength of our judicial system has been tested by riots in our cities, crime in our streets, bloodshed on our campuses and a war that sends some youth into exile and tries others for murder. Never before in our history have we demanded so much of our system of laws.

Yet at the same time we spend less on our federal judicial system than we spend on three days of warfare in the jungles of Southeast Asia.

In the words of the Chief Justice, in 1971 we are still trying to operate the courts with fundamentally the same basic methods, procedures and machinery that were inadequate in 1906. When the speed of our highways is seventy miles per hour, we are driving in a Model A Ford with a top speed of twenty.

The price we are paying is obvious in numerical terms. For example, in fiscal 1970 the backlog of civil cases in Los Angeles County Superior Court was 62,000 cases. The average time from filing a civil complaint to actual trial was approximately two years. These figures, I might add, resemble the blink of an eyelish when compared with other major metropolitan areas. In Philadelphia and Boston, the comparable time from filing to trial is barely under four years and in the Circuit Court of Chicago it is almost five years.

On the criminal side the delays are only slightly less dramatic. The average time from arraignment to sentencing in most major cities in this country in 1970 ranged from a low of four months to a more typical average of one year.

The social costs are less obvious but infinitely more dangerous to our society. A characteristic basic to democratic society is that its citizens take their complaints into court rather than out on the streets and yet the weight and frustration of the swelling backlog of cases could crush faith in our judicial system and leave the streets as the only alternative. The ancient adage that Justice delayed is justice denied has never held more truth. The robbery victim who waits ten months to testify against his assailant, the ghetto mother who loses her furniture to a fraudulent default judgment, the motorist who spends two days in court waiting to protest an unjust traffic ticket, these are the true measure of the crisis in our courts and in our society. Yet the delays and congestion are only a part of the crisis.

There is also the crisis of unequal access to our courts. We have entered an era in which the high promise of free legal services is threatened by application of political litmus tests by State governors who fear challenges to their policies by the poor. The result is a dangerous perversion of law and order into law for the rich, order for the poor.

There is the crisis of unequal legal representation. We are living in a time when corporate polluters can hire hundred man law firms while indigent defendants rely on public defenders, who must spread their efforts among scores of defendants.

Finally, there is the crisis of confidence in the fairness of our judicial system—we have seen the day in which the President of Yale University voiced doubts that a black man could receive a fair trial.

It is against this backdrop, that I rise today to reintroduce, together with my colleagues Senators Burdick and Scott, the bill shepherded by Senator Tydings through five years and three sets of hearings. We have labelled it more accurately as the State Court Assistance Act, but the bill is in all other respects identical to S. 3289 of the 91st Congress.

The bill is directly responsive to the summons issued by the President and the Chief Justice in February at Williamsburg for a national center for state courts. It creates an Institute for Judicial Studies and Assistance, operated and controlled by state court judges, to serve as a national center for information and assistance to state judicial systems. It is authorized to make grants to state and local courts to study and evaluate their systems, to develop proposals for reform, and to implement those proposals at the State and local level.

We have chosen to reintroduce the bill in substantially the same form as its predecessor in order that it may profit from the substantial record of examination and scrutiny which the earlier bill received. Thus it benefits from the gradual process of amendments designed to answer criticisms and fears of Federal interference in state judicial systems which were voiced in the hearings. From its original version featuring an office within the Department of Justice, the bill has evolved to its present form in which the governing board of the Institute is composed of two State appellate judges, two State trial judges, two State court administrators, and one attorney in private practice.

Similarly the bill now requires the approval of the highest court or judicial body in a state for any project to be funded in that state and expressly prohibits the Institute from exerting any control or influence over State or local courts.

In choosing to reintroduce the bill in identical form, however, we must look to additional hearings and amendments to refine further the concept of operation of the Institute.

It has become clear to me that many state judges are convinced that the studies are already available and that the need now is for money to implement them. Last week I met with a number of California state judges and the chief judge of the U.S. District Court in Los Angeles to discuss ways in which the Federal government can assist state courts. The message was loud and clear: Money to try some of the studies already completed.

The recommendations of some of those studies indeed show great promise. My home state of California has long been noted as a leader in court reform and innovation. Some of the reforms which have already been implemented there include jury selection without the presence of a judge, short-form procedures for personal injury cases, broader court conciliation sources, settlement conference panels and many other innovations. the Institute created by this bill, California's experience with these prodecures can be examined and evaluated by other states.

At the same time, recommendations as yet untried can likewise be launched through the Institute. Thus, for example, the Special Judicial Reform Committee of the Los Angeles Superior Court has recommended an entire series of substantive reforms designed to remove from our courts cases which can more properly be handled outside them. For example, it recommends a series of quasi judicial panels to handle technical and complex controversies such as those between insurance companies litigating policy coverage and interpretation. Grants by the Institute could allow some of those recommendation to be tried.

This bill is an excellent beginning. It is my hope that the ad hoc committee of state judges which has arisen from the Williamsburg conference to work for a state court center, will scrutinize this bill carefully and help us to build upon the substantial foundation which it provides. Their wisdom

and the wisdom of all our judges will be of prime importance if we are to strengthen and improve the administration of our laws.

The State Court Assistance Act can provide a beginning. As the Chief Justice said at Williamsburg, in calling for a national center: "The time has come and I submit that it is here and now."

By Mr. TOWER:

S. 1510. A bill to amend title 10, United States Code, to remove the restriction on the use of certain private institutions under the dependents' medical care program. Referred to the Committee on Armed Services.

AMENDMENT OF MILITARY MEDICARE ACT

Mr. TOWER. Mr. President, I would like to introduce today a bill to remove a restriction in the so-called Military Medicare Act, which excludes private profit institutions from qualification as accredited institutions for the care of military children. The existing act states that military dependents may only be place "in private nonprofit, public and State institutions and facilities . . ." for institutional care.

It is my feeling that private institutions should not be excluded from participation in any governmentally supported program where there is no reasonable basis for limiting participation to nonprofit institutions. The choice of an institution for child care is a parental decision, and parents should be able to select from among institutions which qualify under various local, State, or Federal regulations and licenses, as the case may be. The various prices, qualities, locations and other characteristics of each available institution, private or public, are the functional criteria for making this choice. There is no reason to exclude the class of profit institutions from the program since this class can compete with nonprofit institutions in all of the aspects relating to selection and should have the opportunity to do so.

Mr. President, I ask unanimous consent that the text of my bill be printed at the conclusion of my remarks.

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

S. 1510

A bill to amend title 10, United States Code, to remove the restriction on the use of certain private institutions under the dependents' medical care program

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1079(d)(4) of title 10, United States Code, is amended by striking out the word "nonprofit".

SEC. 2. No payments shall be made to any person by virtue of the amendment made by the first section of this Act for any period prior to the date of enactment of this Act.

By Mr. MILLER:

S.J. Res. 82. A joint resolution expressing a proposal by the Congress of the United States for securing the safe return of American and allied prisoners of war and the accelerated withdrawal of all American military personnel from South Vietnam. Referred to the Committee on Foreign Relations.

Mr. MILLER. Mr. President, I introduce a joint resolution and I ask unanimous consent that the text of the joint resolution be printed in the RECORD at this point.

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

S.J. RES. 82

A joint resolution expressing a proposal by the Congress of the United States for securing the safe return of American and allied Prisoners of War and the accelerated withdrawal of all American military presonnel from South Vietnam

Whereas the President of the United States in his address on peace in Indochina on October 7, 1970 publicly announced a series of proposals for consideration by the government of North Vietnam at the talks being held in Paris; and

Whereas one of the President's proposals was the humanitarian offer to immediately and unconditionally exchange all prisoners of war held by both sides; and

Whereas no precondition was indicated by the President for negotiation and action on this proposal; and

Whereas the purpose of the President's program of Vietnamization is to give the people of South Vietnam a reasonable opportunity to achieve the capability of defending themselves and their country against armed aggression from North Vietnam and against subversion and terror directed, controlled, and supplied from North Vietnam in order that the principle of national self-determination under the Charter of the United Nations may be maintained without further involvement of American military personnel in South Vietnam; and

Whereas the program of Vietnamization has been rapidly moving towards successful completion, permitting a continued reduction of large numbers of American military personnel in South Vietnam; and

Whereas it is the intention of the Congress of the United States that all American military personnel be withdrawn from South Vietnam consistent with the time reasonably necessary for completion of the program of Vietnamization and in conformity with the so-called "Nixon Doctrine" announced by the President at Guam on July 25, 1969; and

Whereas the flagrant violation by North Vietnam of the Geneva Agreement covering treatment of prisoners of war has destroyed the credibility of the offer of representatives of the government of North Vietnam to negotiate the exchange of prisoners of war after the complete withdrawal of American military personnel from South Vietnam: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress of the United States proposes that the United States agree to the complete withdrawal of all American military personnel from South Vietnam within twelve months following completion, under appropriate international supervision, of the exchange of prisoners of war as proposed by the President in his public announcement of October 7, 1970, and the accounting for men missing in action; and

Resolved further, That the Congress of the United States will fully support any efforts made by the President and his Administration to implement this proposal.

Mr. MILLER. Mr. President, the joint resolution I introduce today expresses a proposal of the Congress for securing the safe return of American and allied prisoners of war and the accelerated withdrawal of all American military personnel from South Vietnam.

The proposal calls for the complete withdrawal of all American military personnel from South Vietnam within 12 months following completion, under appropriate international supervision, of the exchange of prisoners of war, as proposed by the President last October 7, and accounting for men missing in action.

It will be recalled that last October 7 the President in his televised address on peace initiatives in Southeast Asia announced a series of proposals for consideration by the Government of North Vietnam at the talks being held in Paris. These called for a ceasefire-in-place, an Indochina Peace Conference, negotiation of an agreed timetable for complete withdrawals as part of an overall settlement, a political settlement in South Vietnam reflecting the will of the South Vietnamese people, and the immediate and unconditional release of all prisoners of war held by both sides. The President indicated that negotiations could proceed with respect to all or any of these proposals.

As all of us know, the other side in Paris has refused to enter into serious negotiations and has, not unexpectedly, merely used the meetings as forums for propaganda purposes.

Of major humanitarian concern to the United States and most other countries of the world has been the safe return of American and allied prisoners of war. This is understandable because of the flagrant violation by North Vietnam of the Geneva agreement covering treatment of prisoners of war.

Representatives of North Vietnam have offered to negotiate the exchange of prisoners of war after complete withdrawal of United States military personnel from South Vietnam. However, the flagrant violation by North Vietnam of the Geneva Agreement covering treatment of prisoners of war has destroyed the credibility of this offer.

The fatal and terrible defect of the majority views of the Senate and House Democratic Party caucuses is that they imply credibility to the North Vietnamese proposal. They would have all American military personnel withdrawn from South Vietnam by the end of this Congress and trust the fate of our prisoners of war to the unilateral dictation of the leaders in Hanoi. The socalled end the war proposals, establishing a fixed date for complete withdrawal of all American military personnel, are similarly defective. Additionally, as has often been pointed out, they would preclude settlement of the war by negotiations.

It is dismaying to read that 100 of 201 House Democrats voted, in caucus, to support complete withdrawal of American military personnel by December 31 of this year.

Their position and, indeed, that of the majority of both caucuses is almost impossible to understand unless it might be interpreted as the result of a psychopathic guilt complex over their Party's dismal record in the previous administration. But this does not excuse their cruel and cynical attitude towards our prisoners of war.

A Nation which has a conscience cannot rest until our prisoners of war are safetly returned. What is needed is an

incentive for the leaders in Hanoi to act on the President's proposal for the immediate and unconditional exchange of all prisoners of war. Because of the great emphasis the representatives of North Vietnam have placed on complete withdrawal of all United States military personnel from South Vietnam, it would seem that an agreement to do so would be the most effective incentive that could be offered.

This is what my resolution does.

Also, by providing for complete withdrawal within 12 months following completion of the exchange of prisoners of war, my resolution coincides reasonably with the President's Vietnamization program which has been rapidly moving forward. This program has been designed to give the people of South Vietnam a reasonable opportunity to achieve the capability of defending themselves and their country against armed aggression from North Vietnam and against subversion and terror directed, controlled, and supplied from North Vietnam in order that the principle of national self-determination under the Charter of the United Nations may be maintained without further involvement of American military personnel in South Vietnam. Under the socalled "Nixon Doctrine" announced by the President at Guam on July 25, 1969, financial and military equipment assistance would have to continue as long as Red China and the Soviet Union continue such assistance to North Vietnam; otherwise a military power balance could not be maintained.

If there were a complete exchange of prisoners by July 1 of this year, for example, I am satisfied that all American military personnel could be phased out of South Vietnam by July 1, 1972, consistent with the concept of reasonably opportunity for South Vietnam to handle its own military manpower problems. Also, an orderly withdrawal of all American military personnel and equipment other than that turned over to South Vietnam would require many months.

It would be to the advantage of North Vietnam to act quickly on this proposal, because the sooner the exchange of prisoners of war, the sooner the 12-month period would begin to run and the sooner all American military personnel would be out of South Vietnam.

It may be said that the President is already withdrawing large numbers of American military personnel, and there are intimations that the rate of withdrawal may be stepped up. Nevertheless, the President has made clear that there will be a substantial residual force maintained in South Vietnam until the prisoner of war problem has been resolved. Accordingly, the incentive for North Vietnam to act quickly on this proposal remains.

I hope that my colleagues will consider this resolution most carefully, and I trust that the Chairman of the Senate Foreign Relations Committee will include it for consideration by his committee at the hearings which he has indicated will soon be held on measures of similar import.

By Mr. PROXMIRE:

Senate Joint Resolution 83. A joint resolution to provide for a study and investigation of the effectiveness of the interdiction bombing by the United States in Southeast Asia. Referred to the Committee on Armed Services.

HOW COSTLY AND EFFECTIVE IS U.S. INTERDICTIVE BOMBING IN SOUTHEAST ASIA

Mr. PROXMIRE. Mr. President, in a recent speech on the Defense Department's "Electronic Battlefield" programs, I questioned the alleged effectiveness of our interdiction bombing campaign in Southeast Asia.

I pointed out that we have yet to see on the public record any evidence that it has seriously disrupted the flow of military supplies from North to South Vietnam. And I questioned the need, if indeed it has been effective, for our recent support of South Vietnamese ground troops themselves seeking to disrupt the same flow of supplies.

I want to return to this subject again today. What is at stake far transcends the more than $1 billion we have spent over the last 5 years for sensor surveillance and related equipment—the intelligence "eyes" of our bombing operations.

Based on my review of the public record, it is my belief:

First, that we have spent to date from $15 to $20 billion and are now spending at an annual rate of as much as $2 to $3 billion in support of our Southeast Asian interdiction operations;

Second, that a 50-percent reduction in the present sortie rate would almost certainly give us the same meager results at greatly reduced costs; and

Third, that the President should be urged to commission immediately an impartial and expert study of the true costs and effectiveness of U.S. interdiction bombing operations in Southeast Asia, a study analogous to the Strategic Bombing Survey ordered by President Roosevelt in 1944, so that we might know then, in the midst of a war for our very survival, the true impact of our bombing campaign in Europe.

THE SCOPE AND COSTS OF THE INTERDICTION CAMPAIGN

Interdiction operations—designed to limit the enemy's ability to sustain combat operations by destroying and disrupting his industry and transportation systems and his actual supply movements—have accounted for only a part of the costs of the overall air-war in Southeast Asia. Close air support and air-lift operations have also been extensive.

Nonetheless, interdiction strikes have obviously accounted for a substantial part of total air war expenditures. As one former Defense Department official has noted:

> Deep interdiction missions are very expensive in terms of resource requirements. Since they go far into enemy territory and hit at well-defended targets, the attrition is usually much higher than on close-support missions. And, since the attack aircraft must penetrate into heavily defended areas, they must be supported with expensive electronic countermeasures (ECM) aircraft and fighters, which raise the cost of the mission. For example, *for the same amount of money to fly one interdiction mission per day* against a power plant or a railroad yard in a war in Asia, *the United States could fly some three to seven close-support sorties per day with fewer pilot losses.*" (Emphasis added).

There have been two phases to our interdiction operations to date. From February 1965, to March 1968 the main target of operations was North Vietnam itself. During the course of those 3 years, our attack sorties against the North quadrupled in intensity, from 26,000 in 1965—the last year for which sorties figures were officially released—to an annual rate of approximately 100,000 just prior to the bombing halt. This increase in the intensity of the bombing raids was accompanied by a rising crescendo of public protest against them, due primarily to the belief that they would not succeed in their political objective of bringing an end to North Vietnamese aggression.

Since March 1968, public attention has been focused elsewhere, but the interdiction effort has quietly gone on, now with the primary objective of disrupting the flow of military supplies to the South.

The scope of these post-1968 operations have never been fully recognized by the American people. In fact, they have been carefully concealed.

It is clear from press reports, however, that immediately following the March 1968 bombing halt, the Johnson administration merely redirected the attacks previously flown throughout North Vietnam to the 170-mile deep area below the 19th parallel, the total number of sorties remaining very much the same.

Gradually, in the time since, the bulk of our interdiction efforts have been transferred to the Ho Chi Minh Trail through Laos, with interdiction operations elsewhere—the southern part of North Vietnam, Cambodia, and South Vietnam itself—being conducted at a lower level.

It is impossible from the public record to determine just how many interdiction sorties have actually been conducted in any of these areas. Successive administrations have persisted in revealing only the total number of strike sorties authorized for Southeast Asia as a whole, refusing to break this total down either by mission or geographical location. Prior to June of last year, B–52 sorties in Southeast Asia were programed at 1,400 per month, and other tactical air strikes at 14,000 per month.

Beginning with fiscal year 1971, the authorized rates became 1,200 and 10,000 respectively. Whether this reduction in total sorties was accompanied by a reduction in interdiction strikes, however, is not very clear, especially in light of the reduced level of ground fighting, and presumably, close air support missions during the past year. It is interesting to note that President Nixon, commenting on the reduction in a television address last year, said only that:

> We have cut tactical air operations in South Vietnam by more than 20 percent.

The Air Force candidly admitted last year to the Senate Armed Services Committee that:

> The Interdiction effort is our most significant current activity in Southeast Asia.

One hint of just how significant the Laotian part of the effort may have become as early as 1969 is contained in the January 21, 1970, issue of the Air Force Times. The Times listed B–52 missions over South Vietnam for the first 11 months of 1969 at 2,461. While the Times made no mention of other B–52 sorties, it takes no advanced mathematics to recognize that these sorties represented only 20 percent of the 15,400 sorties authorized for the first 11 months of 1969 at the prevailing 1,400 per month rate. Nor is it an unreasonable deduction that the other 80 percent of our B–52 sorties were directed primarily to the Ho Chi Minh Trail.

Recent press reports confirm that little has changed since 1969. The February 15, 1971, edition of the U.S. News and World Report, for example, contains a story indicating that cutting the Ho Chi Minh Trail remains the No. 1 priority of U.S. air power. According to the story:

> As of early February, B–52 bombers had dropped more than 100,000 tons of bombs on the Trail, and American fighter-bombers were flying between 300–400 attack missions per day.

And only in the past few days we have reportedly stepped up our bombing to prevent the reestablishment of recently cut supply routes.

The costs of this continuing interdiction campaign in Southeast Asia have never been revealed to the American people.

Yet unofficial estimates of the air war against the North alone have run as high as $20 billion.

While this estimate may be rather high, it has been officially acknowledged that almost $6 billion worth of aircraft were shot down over the North. It would certainly not be unreasonable, in light of the large number of sorties flown, the vast quantities of munitions dropped, and the new air bases and support facilities erected to aid the bombing effort to presume that total expenditures during these 3 years were at least $12 billion.

It also seems probable that expenditures since March, 1968 have continued at a rate of $2 to $3 billion per year.

For example, the costs of our 14,400 B–52 sorties per year at the presently authorized rate are not difficult to calculate at least in rough terms.

The largest single component of these costs are air munitions, which as a rule of thumb have cost roughly $1 per pound in Southeast Asian operations. A single B–52 can carry an ordnance load of 29 tons, which would yield munitions costs alone per B–52 sortie of $58,000. B–52 ordnance, however, consists primarily of relatively inexpensive iron bombs, rather than the more expensive cluster bomb units carried by the F–4's, F–105's, and other fighter-bombers. Allowing for this fact that the possibility of less than fully loaded aircraft, a conservative estimate of munition costs per sortie might be $30,000.

But there are other variable costs also associated with individual interdiction sorties, costs for such items as fuel, attrition rates, consumable aircraft parts, the reconnaissance aircraft which locate targets, tanker refueling, pilots' flight pay, and other similar items. All these costs together might well equal another $30,000 per sortie.

If $60,000 per sortie is indeed a reasonable estimate, our 14,400 B–52 sorties alone are costing us $864 million per year.

Interdiction strikes by tactical aircraft such as our F–4's and F–105's may at the same time be costing us $800 million more.

And no provision has been made thus far for costs of a relatively fixed nature, costs unlikely to change with the number of sorties flown.

I have in mind such costs as the more than $1 billion we have invested to date on surveillance and data-processing gear to aid in our bombing strikes, together with the personnel and operating costs of our land and carrier air bases not only in Southeast Asia but in Guam and Okinawa as well. If these costs are considered, it is not unreasonable to conclude that the total costs of our interdiction campaign in Southeast Asia may well be running in excess of $2 billion per year.

THE EFFECTIVENESS OF INTERDICTION

Whatever the exact cost of our interdiction campaign to date, that cost has been quite substantial. And far more important than the precise figure is just what we have to show for the vast expenditures we have made.

According to official dogma, these expenditures have at least produced results. They have, it is argued, disrupted the flow of enemy supplies, thereby saving American and allied lives.

Yet the fact of the matter is that no adequate documentation of this claim has ever been presented to the American people. Not only have successive administrations concealed the real costs of our interdiction operations, they have also asked that we accept at face value the productiveness of the money spent.

Notwithstanding the wall of secrecy which has been erected, bits of very damaging information have from time to time slipped through.

Some of the best evidence of the relative futility of our interdiction efforts can still be found in the testimony of Secretary of Defense McNamara to the Preparedness Investigating Subcommittee during its 1967 hearings on the air war against the North.

McNamara must have found himself at the time in a rather uncomfortable position. Having himself directed the air war against the North, he was now required to defend that operation, the futility of which seems clear from his testimony, against a powerful group of Senators who sought more bombing still. Only months later, McNamara resigned. Shortly thereafter, the bombing itself was stopped.

After pointing out that North Vietnam has no real war making industrial base and hence none which could be destroyed by bombing, McNamara told the Preparedness Subcommittee:

> North Vietnam's ability to continue its aggression against the South thus depends on imports of war-supporting material and their trans-shipment to the South. Unfortunately for the chances of effective interdiction, this simple agricultural economy has a highly diversified transportation systems consisting of rails and roads and waterways. The North Vietnamese use barges and sampans, trucks and foot power, and even bicycles capable of carrying 500-pound loads to move goods over this network. The capacity of this system is very large—the volume of traffic it is now required to carry, in relation to its capacity, is very small.
>
> Precise figures on the amount of infiltrated material required to support the Vietcong and North Vietnamese Forces in the South are not known. However, intelligence estimates suggest that the quantity of externally supplied material, other than food, required to support VC/NVA forces in South Vietnam at about their current level of combat activity is very, very small. The reported figure is 15 tons per day, but *even if the quantity were five times that amount* it could be transported by only a few trucks. This is the small flow of material which we are attempting to prevent from entering South Vietnam through a pipeline which has an outlet capacity of more than 200 tons per day. (emphasis added)

When members of the Preparedness Subcommittee questioned the accuracy of his 15-ton-per-day estimate, noting that it amounted to only 2 ounces per man based on current estimates of enemy troop strength in Vietnam, McNamara replied as follows:

> I think it is perfectly clear that these calculations are inapplicable to the situation. A substantial percentage of their explosives comes from South Vietnam itself. The duds alone from our air and ground munitions supply them with a tremendous stock of ammunition.
>
> And beyond that . . . their combat maneuver battalions in effect are in combat only about 1 day per month, and these are factors that the intelligence estimators take into account. But I don't want to argue the 15 tons. Make it anything you want to within reason, and the argument stands.

McNamara was asked repeatedly during his appearance before the Subcommittee whether an increase in the bombing would not result in fewer allied casualties in the South. Repeatedly his answer was "No." Even more surprising, in light of his position as a defender of administration policy, were his thoughts on the effects of a possible reduction in interdiction missions:

> There are many who believe, and there is much evidence to support the conclusion, that the flow of men and material into the South is not determined by the air campaign in the North, but by the ability of the Vietcong and the North Vietnamese, *operating by the way, without, for all practical purposes, a single wheeled vehicle in all of South Vietnam,* to accept the men and material from the North (Emphasis added.)
>
> There is considerable evidence to indicate that it has been the inability of the logistical system of the Vietcong and North Vietnamese in South Vietnam to expand more rapidly that has limited the flow into that country, and that there has been a balance between the logistical system in the South and the movement from the North, determined in larger part by the capacity of the South rather than the input from the North.

Finally, when presented on his suggestion that the North Vietnamese could move greater quantities of supplies into South Vietnam anytime they wanted to, the Secretary said:

Let me read to you from the latest intelligence report, dated July 28th. It covers the operations through July 18th. It is a monthly report. I should be receiving another one within a matter of a few days:

"The North Vietnamese still retain the capability to support activities in South Vietnam and Laos at present or increased combat levels and force structure."

That exact appraisal has been in every report that I recall seeing during the past year." (Emphasis added.)

Other former Defense Department officials have likewise pointed to the almost complete futility of our air war against the North. They have noted the enemy's ability to offset all increases in American air strikes by a variety of simple tactics—moving by night rather than by day, multiplying the number of usable roads, increasing the number of trucks involved in the supply network, and improving antiaircraft defenses, to name only a few.

Alain Enthoven and Wayne Smith tell in their recent book about the conclusions of one Systems Analysis study of the interdiction campaign:

In the face of steadily intensified bombing, the flow of men and supplies from North Vietnam had continued to increase. While the bombing may have destroyed roughly 10% of the men and supplies in a given flow going to the South, the enemy was able to replace these losses and still maintain or increase the desired flow.

Similarly, the study indicated that the U.S. bombing in North Vietnam had little observable effect on enemy forces or activity levels in South Vietnam. Between 1965 and 1968, U.S. attack sorties against North Vietnam increased about four-fold. Over the same period, the enemy's main force increased its strength levels by 75 percent, its attacks five-fold, and its overall activity level nine-fold. For example, in the critical I Corps area (the area immediately south of the DMZ) VC/NVA attacks increased eightfold between 1966 and 1968. Over the same period interdiction sorties in the DMZ and immediately to the north increased fourteenfold; and tactical sorties in the I Corps itself doubled.

Things have changed little since attacks on the North ceased almost 3 years ago. Our interdiction strikes continue at a high rate. So does the movement of enemy supplies.

As the Chairman of the Joint Chiefs testified to the Senate Armed Services Committee last year:

The most significant current indicator of enemy intention is the sharp increase in the level of his logistical activity. The enemy has initiated a major resupply program in the Laos panhandle, and activity in this area is greater than that observed at this time last year. In addition, he is making a determined effort to restore, improve, and protect his lines of communications in Laos. . . . These measures increase the enemy's capability to not only improve his logistical system, but to protect it as well. The enemy continues to import substantial amounts of war material.

And, according to the recent story on enemy supply efforts in U.S. News and World Report:

The Air Force claims that, during the October 15th to January 12th period, only one ton in 32 actually reached front-line troops. To offset this high rate of destruction, the Communists are risking massive losses of trucks and critically scarce drivers to send more and more vehicles down the Trail. As a result, U.S. experts think that by the time the dry season ends, the Reds, through sheer saturation, will be delivering about one in every five tons.

Even in recent days—after years of bombing and a ground incursion as well—reports persist that up to 1,500 trucks remain in operation along the Ho Chi Minh Trail.

The Air Force itself has on rare occasions been candid about the effects of its interdiction efforts. Last year it requested $10 million of R. & D. funds to continue its truck interdiction development program, explaining the request with these words:

During the intensified interdiction campaign of 1969, we determined that although we attacked and actually observed hits on a large number of vehicles, relatively few were destroyed. Although this limited truck-killing success cannot be blamed entirely on munitions, we feel that improvements to our present anti-vehicular devices and identification of optimum munitions combinations will improve our performance.

Mr. President, the evidence on the record seems clear to me. We may have killed a sizable number of trucks and bridges, but every increase in our interdiction activities has been offset by changes in the enemy's logistics systems.

We have forced him to move at night, either with more trucks, on foot, or even at times with 500-pound bicycles, but we have not stopped him from moving.

Our bombing of the North did not prevent the Tet offensive of 1968. And why, if it has disrupted the flow of supplies through Laos, have we recently been engaged in the support of South Vietnamese ground troops themselves seeking to disrupt the same flow of supplies?

Mr. President, my own review of the public record convinces me that we should effect at once at least a 50-percent reduction in the number of interdiction sorties now being flown in Southeast Asia.

Such a reduction, it seems to me, would pose no danger to American ground troops in South Vietnam, might save as much as $800 million this year, and could produce a significant decrease both in the number of Laotian refugees and the number of American pilots seized as prisoners of war.

Such a reduced rate would prevent the North Vietnamese from getting a free ride in the movement of their supplies. Selective, harrassing air strikes could upset the timing of enemy movements, preventing offensives from being launched until allied forces were fully ready.

Moreover, a reduced number of sorties would insure the continued diversion of numerous North Vietnamese regulars to logistics operations. According to recent official estimates, as many as half of the more than 60,000 North Vietnamese soldiers now in Southern Laos are at work repairing the damage from our air strikes. There would admittedly be an increased danger of allied casualties if these men became free to move into South Vietnam. But a much reduced sortie rate itself might keep them occupied. We surely need not fire at every truck coming down the Trail.

Our experience to date should have convinced us, I submit, that a diversion of enemy manpower and a disruption of enemy timing is all we can hope for from our interdiction efforts.

And there is one other thing I would like to make very clear. The problem has not been that our pilots have been inadequate, our planes unsuited to the interdiction mission, and our new surveillance equipment subject to malfunctions. The problem instead has been far more fundamental. We have misapplied our valuable resources—both human and material—to the performance of a task we have had no hope of accomplishing. Our most basic failure has been a failure to perceive the options by which the enemy could offset our every move.

THE BROADER IMPLICATIONS

But however important a reduced sortie rate may be—in terms of dollars saved, Laotians not made homeless, and American pilots kept free—it is the long-term implications of our present interdiction policy which most concern me.

We have heard a great deal during the past year about a winding down of the war, about the progress of Vietnamization. But our interdiction campaign is not winding down and is not about to be Vietnamized.

While we are helping the South Vietnamese to improve their close-air support capabilities, we are not turning over responsibility for interdiction operations. As Secretary of the Air Force Seamans told the Senate Armed Services Committee last year:

As far as their air force is concerned, the plan calls for an increase from the present 20 squadrons to around (deleted) Squadrons. Admittedly, this force is for incountry operation. It would not give them a capability of interdicting the Ho Chi Minh Trail. It would purposely not give them a capability of being aggressive, going up into say North Vietnam.

What this means, of course, is that we will continue to bear the costs of the interdiction campaign, not only this year but indefinitely into the future.

It means, too, that interdiction operations will account in the future for a constantly increasing share of our total war expenditures.

And there is also a danger, as air strikes gradually become our only means of influencing the course of the war, that pressures for stepped-up bombing will slowly begin to build.

Such pressures are already strong in some corners, where the belief persists that the main mistake we made in the air war against the North was in not bombing heavily enough.

Advocates of this viewpoint can be expected to point to the new sensor equipment, new laser target designators, and other surveillance devices still not fully installed back in 1968.

And they will argue also the increased importance of supply systems from the

North now that the port of Kompong Som is closed.

Faced with these arguments, enemy capability to offset greatly increased bombing might possibly be overlooked. Overlooked, also, might be the words of Secretary McNamara, when the bombing of Haiphong was formerly urged on him:

> The present heavy reliance on Haiphong reflects convenience rather than necessity. Haiphong represents the easiest and cheapest means of import. If it and the other ports were to be closed, and on the unrealistic assumption that closing the ports would eliminate all seaborne imports, North Vietnam would still be able to import over 8,400 tons a day by rail, road and waterway. And even if, through air strikes, its road, rail, and Red River waterway capacity could all be reduced by 50 percent, North Vietnam could maintain roughly 70 percent of its current imports . . . The present level of North Vietnamese military efforts in South Vietnam . . . cannot, on the basis of any reports I have seen, be stopped by air bombardment—short, that is, of the virtual annihilation of North Vietnam and its people.

It is regrettable that the present administration has already evidenced its belief in the dubious capabilities of stepped-up bombing. Consider the remarks of President Nixon at his recent January 11 news conference with four network correspondents. Speaking of the U.S. Forces which will remain in South Vietnam as Vietnamization continues, the President said:

> Now, the President of the United States, as Commander-in-Chief, owes a responsibility to those men to see that they are not subjected to an overwhelming attack from the North. That is why we must continue reconnaissance, and that is why also, if the enemy at a time we are trying to de-escalate, at a time we are withdrawing, starts to build up its infiltration, starts moving troops and supplies through the Mu Gia Pass and the other passes, then I, as Commander-in-Chief, will have to order bombing strikes on those key areas.
>
> I have said that on eight different occasions on national television and national radio. I have said it also in other messages to them that have gotten to them very loud and very clear. So there is no question about (their) understanding.

That is why a study along the lines of the Strategic Bombing Survey is so crucial at the present time, before, rather than after, we compound our past mistakes.

The facts of our Southeast Asia interdiction operations have been shrouded in secrecy too long. It is difficult to see how revelation of the costs of these operations could possibly jeopardize our national security. And the enemy already knows more about their effectiveness than any Member of Congress.

Mr. President, it is high time that the American people had an accurate picture of just what our bombing can and cannot do.

Such a study is needed, moreover, regardless of the future course of the war in Indochina. We may, despite our hopes, face a new war in the future when interdiction bombing may again become an issue. Only if we understand the lessons of Southeast Asia will we be able to act wisely then, should the need in fact arise.

And such a study could significantly influence our procurement policies in the years immediately ahead. It is no secret that the Air Force has emphasized the interdiction mission heavily in its recent aircraft buys. An accurate assessment of our interdiction campaign in Indochina might cause us to change that emphasis. It could surely indicate what kinds of aircraft are most effective for interdiction use—fast, expensive planes like our F–4's and F–105's, or slower, more accurate planes which in Indochina have been used more sparingly.

On September 9, 1944, President Roosevelt wrote to the Secretary of War that:

> It would be valuable in connection with the air attacks on Japan and for postwar planning to obtain an impartial and expert study of the effects of the aerial attack on Germany which was authorized in enlarged scale as the combined bomber offensive at the Casablanca Conference.

The survey which resulted from that directive eventually covered Japan as well. It was directed, not by military men, but by a panel of independent consultants, of such stature that they could not be suspected of covering up military mistakes or of defending the record of the Roosevelt administration.

The chairman was Franklin D'Olier, president of the Prudential Life Insurance Co.; the vice-chairman, Henry C. Alexander, head of the Morgan Guarantee Bank; the secretary, Charles C. Cabot, distinguished Massachusetts lawyer and overseer of Harvard. Also on the panel were George Ball, John Kenneth Galbraith, Paul Nitze, and others. These men were assisted by a military-civilian staff of more than 600 specialists, ranging from engineers to diplomats.

One year after these men were chosen, their survey was completed and a public report submitted. The report showed that more than 1,440,000 bomber sorties and 2,680,000 fighter sorties of an interdiction nature had been flown against the Germans, and that almost 2,700,000 tons of bombs were dropped. It showed that United States expenditures on the campaign had exceeded $43 billion. It estimated civilian deaths from the bombing at 305,000 and wounded at 780,000.

Finally, the report—supported by more than 200 detailed studies—was candid in appraising both successes and failures of the air war. It was thoroughly covered by the press, and its recommendations were received with respect in Congress, the White House, and the Pentagon. They formed a basis for much of the country's postwar military policy.

The large costs and apparent ineffectiveness of our Southeast Asian interdiction campaign to date, together with the prospect of a step-up in that campaign, demand that a similarly impartial and expert study be commissioned by the President at once. Only such a study, by men inside and outside the Government, men every bit as able and objective as the directors of the 1944 survey, can resolve with any finality the merits of our present campaign, and perhaps keep it from becoming anew as contested a public issue as it was 3 years ago.

Accordingly, I am introducing in the Senate today a joint resolution of Congress which would require the President to establish immediately a Southeast Asian Interdiction Bombing Survey Commission.

Under the terms of that resolution, the Commission would be composed of 15 members.

Nine of these members would be chosen by the President. One, a private citizen of unimpeachable intelligence and integrity, would be designated by him as the Commissions' chairman. Of the other eight no more than four could be individuals serving in the executive branch of the Government.

The other six members of the Commission would be congressional appointees. Three would be chosen by the President of the Senate, on the recommendation of the majority leader two of whom would be members of that body, while the third would be a private citizen, who would serve as Vice-Chairman of the Commission. The remaining three members would be chosen by the Speaker of the House of Representatives, two from among the House membership and a third from private life, the latter to be designated as Secretary of the Commission.

The resolution would direct the members of the Commission to assemble a combined military-civilian staff of their own choosing, and it would authorize the funds necessary for the Commission to conduct its work.

The resolution would also give to the Commission all the powers—including the power of subpena—necessary for its investigation.

Due to the rapid progress of World War II in the months immediately following President Roosevelt's directive, the Directors of the 1944 Survey were able to follow the advancing front lines across Europe and to inspect the effects of the bombing campaign at first hand. Similar on-the-ground studies of the effects of interdiction strikes in Southeast Asia will probably not be possible.

Nevertheless, the members of the new Commission should be able to collect quickly significant amounts of information in the field—by making their own aerial photographs, by questioning prisoners and defectors, and by interviewing journalists and diplomats, from neutral as well as friendly countries. In addition, the Commission members should have complete access to American intelligence files and be authorized to talk freely and in confidence to anyone who might be useful, from bomber pilots to Vietnamese or Laotian peasants.

Finally, the resolution would call upon the Commission to report simultaneously to the President and the Congress within 1 year after the resolution is enacted into law.

Mr. President, I ask unanimous consent that I may introduce the resolution at this time, that it be appropriately referred, and that it be printed at the end of my remarks in the RECORD.

The ACTING PRESIDENT pro tempore (Mr. BENTSEN). Without objection, it is so ordered.

(See exhibit 1.)

It is the best means I can think of for assuring an impartial, nonpolitical assessment of our air strikes of the last 6 years.

We have already dropped in Southeast

Asia more than twice as many tons of bombs as we dropped in Germany in World War II. Is it not time we looked at the results?

EXHIBIT 1

S.J. RES. 83

Joint resolution to provide for a study and investigation of the effectiveness of the interdiction bombing by the United States in Southeast Asia

Whereas the United States has now pursued for more than six years a policy of seeking through interdiction air strikes to disrupt and reduce the flow of men and supplies from North Vietnam to forces associated with that nation elsewhere in Southeast Asia; and

Whereas vast human and material resources have been expended and also destroyed in the pursuit of this policy and this objective; and

Whereas it has been deemed necessary to supplement these air strikes with ground incursions into Cambodia and Laos for the purpose of disrupting and reducing the same flow of men and supplies; and

Whereas it may be deemed necessary, in the event of increased military activity by North Vietnam and the forces associated with that nation, to increase these air strikes in the future; and

Whereas the costs of such air strikes, the effect of such air strikes on the movement of men and supplies, and the impact of such air strikes on United States casualties both in the air and on the ground have never been comprehensively studied and reported to the American people; and

Whereas a study of these matters, together with an evaluation of other matters affecting the merits of alternative United States interdiction policies, would serve as a valuable guide both in determining the future policy of the United States in Southeast Asia and in long-term post-war planning: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

ESTABLISHMENT OF COMMISSION

SEC. 1. There is hereby established a commission to be known as the Southeast Asian Interdiction Bombing Survey Commission (hereinafter referred to as the "Commission").

MEMBERSHIP OF THE COMMISSION

SEC. 2. (a) The Commission shall be composed of fifteen members appointed as follows:

(1) three members appointed by the President of the Senate, on the recommendation of the majority leader two from the membership of the Senate and one from outside the Federal Government;

(2) three members appointed by the Speaker of the House of Representatives, two from the membership of the House and one from outside the Federal Government;

(3) nine members appointed by the President, at least five of whom shall be from outside the Federal Government.

(b) The President shall designate one of the members of the Commission appointed from outside the Federal Government to serve as Chairman of the Commission.

(c) The member of the Commission appointed by the President of the Senate on the recommendation of the majority leader from outside the Federal Government shall be Vice Chairman of the Commission, and the member appointed by the Speaker of the House of Representatives from outside the Federal Government shall be Secretary of the Commission.

(d) All persons selected for appointment to the Commission shall be selected solely on the basis of their knowledge, experience, and qualifications to study and investigate the matters with which this joint resolution is concerned and not because they represent or favor any particular point of view with respect to any such matters.

(e) Eight members of the Commission shall constitute a quorum.

(f) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

DUTIES OF THE COMMISSION

SEC. 3. (a) The Commission shall conduct a comprehensive study and investigation of the effectiveness of the interdiction bombing by the United States military forces in Southeast Asia since February 1965. In carrying out such study and investigation the Commission shall, among other things, specifically consider—

(1) the annual costs of such interdiction bombing and the total cost thereof to date, together with an analysis of the constituent elements of such costs, both fixed and incremental;

(2) whether such interdiction bombing has been successful in disrupting and reducing the flow of men and supplies from North Vietnam to other areas of Southeast Asia, and if so to what extent;

(3) whether the sensor surveillance systems and related devices used by the United States have contributed to the effectiveness of such interdiction bombing, and if so to what extent;

(4) the ability of North Vietnam and the forces associated with that nation to offset the impact of such interdiction bombing by changes in their logistics systems;

(5) the degree of dependence of North Vietnamese and associated forces in South Vietnam on sources of military supplies from outside South Vietnam;

(6) the impact of such interdiction bombing on United States military casualties in Southeast Asia, both in the air and on the ground;

(7) the impact of such interdiction bombing on Vietnamese and other civilian casualties in Southeast Asia;

(8) the impact on the cost of such interdiction bombing, on the effectiveness of such bombing in disrupting and reducing the flow of men and supplies from North Vietnam to other areas of Southeast Asia, and on United States military casualties in Southeast Asia and on Vietnamese and other civilian casualties in Southeast Asia under each of the following conditions:

(A) if there had been an increase in the intensity and/or scope of such bombing;

(B) if there had been a decrease in the intensity and/or scope of such bombing;

(C) if there had been a change in the precise military targets and objectives of such bombing; and

(D) if there had been a change in the kinds of aircraft and aircraft support forces used in such bombing;

(9) the relative effectiveness of interdiction bombing and alternative actions available to the United States, such as the use of ground combat forces, in disrupting and reducing the flow of men and supplies from North Vietnam to other areas of Southeast Asia; and

(10) the conclusions to be drawn from the use of interdiction bombing by the United States in Southeast Asia that may prove useful in formulating future United States policy in Southeast Asia and in planning for the postwar period.

(b) Within one year after the date of enactment of this Act, the Commission shall submit simultaneously to the President and the Congress a report on the results of its study and investigation, together with such comments and recommendations as it deems appropriate.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 4. (a) Members of the Commission who are Members of Congress or who are officers or employees of the executive branch of the Federal Government shall receive no compensation for their services as members of the Commission, but shall be allowed necessary travel expanses (or in the alternative, mileage for use of privately owned vehicles and a per diem in lieu of subsistence not to exceed the rates prescribed in sections 5702 and 5704 of title 5, United States Code), and other necessary expenses incurred by them in the performance of duties vested in the Commission, without regard to the provisions of subchapter I, chapter 57 of title 5, United States Code, the Standardized Government Travel Regulations, or section 5731 of title 5, United States Code.

(b) The members of the Commission appointed from outside the Federal Government shall each receive compensation at the rate of $100 for each day such member is engaged in the actual performance of duties vested in the Commission in addition to reimbursement for travel, subsistence, and other necessay expenses in accordance with the provisions of the foregoing subsection.

POWERS OF THE COMMISSION

SEC. 5. (a)(1) The Commission, or at its direction any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this joint resolution, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such subcommittee or member. Subpenas may be issued under the signature of the Chairman or Vice Chairman and may be served by any person designated by the Chairman or the Vice Chairman.

(2) In the case of contumacy of refusal to obey a subpena issued under paragraph (1) of this subsection by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such court, upon application made by the Attorney General of the United States, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee or member thereof, thereto produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may be punished by the court as a contempt thereof.

(b) The Commission is authorized to acquire directly from the head of any Federal department or agency information deemed useful in the discharge of its duties. All departments and agencies of the Government are hereby authorized and directed to cooperate with the Commission and to furnish all information requested by the Commission to the extent permitted by law. All such requests shall be made by or in the name of the Chairman or Vice Chairman of the Commission.

(c) The Commission shall have power to appoint and fix the compensation of such personnel as it deems advisable without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and such personnel may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no individual shall receive compensation at a rate in

excess of the maximum rate authorized by the General Schedule. In addition, the Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates for individuals not in excess of $100 per diem.

(d) The Commission is authorized to negotiate and enter into contracts with private organizations and educational institutions to carry out such studies and prepare such reports as the Commission determines are necessary in order to carry out its duties.

(e) In providing for its staff under this joint resolution, the Commission shall have a combined civilian military staff. Members of the armed forces shall be assigned to assist the Commission with the approval of the Secretary of Defense.

(f) The Secretary of Defense and the Director of the Central Intelligence Agency shall cooperate with the Commission to the maximum extent possible in making information available to the Commission for study and in making personnel of their respective department and agency, available for questioning. The Secretary of Defense shall also cooperate with the Commission to the maximum extent possible by making available for questioning prisoners held by the South Vietnamese forces and defectors from the North Vietnamese and associated forces, and by permitting the Commission and its staff to personally inspect areas before and after bombing raids and in obtaining its own aerial reconnaissance of air strike targets.

GOVERNMENT DEPARTMENTS AND AGENCIES AUTHORIZED TO AID COMMISSION

SEC. 6. Any department or agency of the Government is authorized to provide for the Commission such services as the Commission requests on such basis, reimbursable or otherwise, as may be agreed between the department or agency and the Chairman or Vice Chairman. All such requests shall be made by or in the name of the Chairman or Vice Chairman of the Commission.

TERMINATION OF THE COMMISSION

SEC. 7. Thirty days after the submission of the report provided for in section 3 of this joint resolution, the Commission shall cease to exist.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There are hereby authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this joint resolution.

By Mr. CRANSTON (for himself, Mr. NELSON, and Mr. TUNNEY):

Senate Joint Resolution 84. A joint resolution to establish Tule Elk National Wildlife Refuge. Referred to the Committee on Interior and Insular Affairs.

TULE ELK NATIONAL WILDLIFE REFUGE

Mr. CRANSTON. Mr. President, I introduce for appropriate reference a joint resolution to establish the Tule Elk National Wildlife Refuge.

On October 14, 1969, I introduced S. 3028, a bill to authorize a feasibility study of the desirability of establishing a national wildlife refuge for California's meager population of tule elk. A number of companion bills were introduced in the House. Subcommittee hearings were held during March 1970, in both the Senate and the House, but no action was taken primarily because the Interior Department indicated in an October 20, 1970, letter from Assistant Secretary Leslie L. Glasgow that "a number—of tule elk—substantially more than now exists is a desireable objective." Mr. Glasgow further promised to report back to Congress when "our plan of action to increase the tule elk numbers is complete."

I was delighted by this development, which seemed to indicate that steps would be taken to insure the herd would be allowed to increase in the Owens Valley.

Since then, however, there has been a notable turnover of Interior Department leadership, including Leslie Glasgow.

One of the most fortunate consequences of my tule elk bill is that it led to hearings in the House Subcommittee on Fisheries and Wildlife Conservation, which is chaired by the distinguished and able Representative from Michigan, JOHN D. DINGELL. Congressman DINGELL became quite interested in the plight of California's dwarf elk. After listening to testimony and reviewing the evidence, the Congressman concluded that the tule elk population should be expanded to 2,000. The Interior Department's proposal to increase the herd size was in response to what has become known as the Dingell plan.

The resolution I introduce today constitutes a legislative implementation of the Dingell plan. Congressman DINGELL is introducing the same bill this week in the House.

Briefly stated, the resolution declares that it is Federal policy to increase the tule elk herd to at least 2,000 members. To carry out this policy the Secretary of the Interior is authorized to acquire such lands in the Owens Valley as may be necessary to effect the increase. Such acquired lands and all other lands in the Owens River watershed under Interior Department jurisdiction shall constitute the Tule Elk National Wildlife Refuge. In addition, the Secretary is authorized to relocate some of the elk in various other areas of California under Federal or State jurisdiction where the elk may be ecologically compatible and where there is mutual agreement among the various parties involved.

The Secretary is also authorized by the resolution to enter into a cooperative wildlife management agreement with the State of California so long as such an agreement is compatible with the purposes of the resolution.

Finally, the Secretary of Agriculture is required to manage the Inyo National Forest in compliance with the purposes of this resolution, which may specifically involve decreasing the number of grazing permits issued by the U.S. Forest Service.

Mr. President, the 290 tule elk in the Owens Valley are the only free-roaming, unfenced survivors—unhybridized—of a species which formerly was common to the Sacramento and San Joaquin Valleys of California. The tule elk has waged a persistent and remarkable struggle for survival during the past century, having, in 1885, been reduced to a minimum of 28 animals. In fact, the harrassment of the tule elk was so intense that it survives today in an area where it is not indigenous. It was introduced to the Owens Valley, which is east of the Sierra Nevadas, only 40 years ago. The elk has not survived unfenced and free-roaming in California's central valleys where it is endemic.

The reasons for saving the tule elk range from scientific to ethical to pragmatic. Perhaps the best way I can summarize my feeling about the urgency of insuring a future for this little elk is that in an age when man's defilement of the biosphere has reached a state where there is serious question about whether environmental degradation is still reversible, at such a time every variety of life form must be considered a precious resource to be treasured and nurtured. This is particularly true since ecologists are only beginning to understand the function or importance of diversity among life forms in the defenses and survival of the ecosystems which perpetuate the biosphere. In a manner not yet perceived or understood, the preservation of large native mammals may be an asset in man's environmental struggle for survival.

The Dingell plan will substantially enhance the tule elk's prospects for survival. I believe it should become Federal policy.

Mr. President, I ask unanimous consent that the text of the joint resolution to establish the Tule Elk National Wildlife Refuge be printed at this point in the RECORD.

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

S.J. RES. 84

Joint Resolution to establish the Tule Elk National Wildlife Refuge

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, Whereas, the tule elk once roamed the grasslands of central California in large numbers but has had to wage a persistent struggle for survival during the past century, as evidenced by the fact that the population was reduced to 28 animals at one time; and

Whereas, the tule elk, which is considered to be a rare, but not an endangered, species by the Department of the Interior, presently exists in a herd of approximately 290 head in the Owens Valley area of California where such animals were introduced four decades ago, but large scale grazing of cattle in that area has resulted in a reduced amount of forage available for the tule elk; and

Whereas, it is a well established criteria among conservationists that any species of less than 2,000 in number is a vanishing one that is highly subject to extinction, particularly if an epidemic should occur; and

Whereas, there is no scientific evidence that the present depleted population of tule elk is adequate to assure the species' survival, but the prospects for survival of the tule elk would be substantially enhanced if the herd were expanded to at least 2,000 animals; and

Whereas, the protection and maintenance of tule elk in a free and wild state is of educational, scientific, and aesthetic value to the people of the United States and its struggle to survive epitomizes the world-wide threat to the larger browse and graze mammals whose environments are shrinking and are being depleted as a result of civilization's incursions: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this joint resolution, the term "Owens River watershed area" means that area of land in Inyo County, California, which is south of

Laws but not south of the northernmost point of Owens Lake and which is bounded on both east and the west by the Inyo National Forest.

SEC. 2. (a) The Secretary of the Interior (hereafter referred to in this joint resolution as the "Secretary") is authorized to acquire any land and any easements, grazing rights, or other interests in land within the Owens River watershed area which he determines to be suitable for carrying out the purposes of this joint resolution; except that nothing in this Act shall be construed as authorizing the Secretary to acquire any rights to water which are held on the date of the enactment of this Act or may be acquired after such date by any State of local agency. All lands and interests in lands acquired pursuant to the preceeding sentence and all lands (including withdrawn lands) within the Owens River watershed area which on January 1, 1971 were under the jurisdiction of the Secretary shall be known as the Tule Elk National Wildlife Refuge (hereafter referred to in this joint resolution as the "refuge") which shall be established and maintained in an ecologically and environmentally sound manner in accordance with the laws and regulations relating to the National Wildlife Refuge System subject to the following conditions:

(1) The refuge shall be managed so as to build and sustain a herd of tule elk which at no time numbers less than 2,000 and, in order to achieve this purpose, the Secretary shall to the extent necessary limit the issuance of grazing and other land use rights within the refuge; except that if the Secretary at any time finds that the herd within the refuge cannot be maintained at a minimum of 2,000 head, he shall take such action as may be necessary to insure that the total number of tule elk at least equals such number, and such action may include the relocation of an appropriate number of tule elk to—

(A) other land within California under the jurisdiction of the Department of the Interior,

(B) land within California under the jurisdiction of any other Federal agency, but the relocation and management of such elk shall be subject to such arrangement as may be mutually agreeable to the Secretary and the chief executive officer of such agency,

(C) land under the jurisdiction of the State of California, but the relocation and management of such elk shall be subject to such cooperative agreement as may be mutually agreeable to the Secretary and the appropriate official of the State, or

(D) any combination of (A), (B), and (C);

(2) The Secretary and the appropriate official of the State of California may enter into, and from time to time modify, a cooperative agreement consistent with the purposes of this joint resolution with respect to the management of fish and wildlife within the refuge and such agreement may provide that—

(A) all or part of the laws and regulations of the State of California relating to the taking of fish and wildlife shall apply within the refuge; and

(B) no person may take any fish or wildlife within the refuge unless he holds a valid fishing or hunting license, as the case may be, issued by the State of California.

(b) The Secretary of Agriculture, in cooperation with the Secretary, shall, to the extent practicable, limit grazing and other public uses in the areas of the Inyo National Forest which adjoin the refuge in a manner appropriate to achieve the purposes of this joint resolution.

SEC. 3. (a) There are hereby authorized to be appropriated, to remain available until expended, such sums as may be necessary for the acquisition of lands and interests in lands the acquisition of which is authorized by this joint resolution.

(b) For the purposes of section 6 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460–9), the tule elk shall be deemed to be a species of wildlife that is threatened with extinction and the Tule Elk National Wildlife Refuge a national area authorized for the preservation of such species.

ADDITIONAL CO-SPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 10

At the request of Mr. MCCLELLAN, the Senator from Florida (Mr. GURNEY) was added as a cosponsor of S. 10, to establish a national policy relative to the revitalization of rural and other economically distressed areas by providing incentives for a more even and practical geographic distribution of industrial growth and activity and developing manpower training programs to meet the needs of industry, and for other purposes.

S. 211 AND 212

At the request of Mr. BELLMON, on behalf of Mr. FONG, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 211, a bill to amend the Civil Service Retirement Act so as to permit retirement of employees with 30 years of service on full annuities without regard to age; and S. 212, a bill to provide certain retirement benefits under title 5, United States Code, for air traffic controllers.

S. 282

At the request of Mr. NELSON, the Senator from Alaska (Mr. GRAVEL) was added as a cosponsor of S. 282, a bill to amend the Solid Waste Disposal Act.

S. 685

At the request of Mr. PACKWOOD, the Senator from Kentucky (Mr. COOK), the Senator from New Hampshire (Mr. COTTON), the Senator from Arizona (Mr. FANNIN), and the Senator from Hawaii (Mr. FONG) were added as cosponsors of S. 685, the Humane Seal Protection Act of 1971.

S. 717

At the request of Mr. PACKWOOD, the Senator from Indiana (Mr. BAYH), the Senator from New York (Mr. JAVITS), and the Senator from Minnesota (Mr. MONDALE) were added as cosponsors of S. 717, a bill to establish the Hells Canyon-Snake National River in the States of Idaho, Oregon, and Washington.

S. 731

At the request of Mr. JAVITS, the Senator from Connecticut (Mr. WEICKER) was added as a cosponsor of S. 731, a bill to make rules respecting military hostilities in the absence of a declaration of war.

S. 732

Mr. BYRD of West Virginia. Mr. President, at the request of my senior colleague from West Virginia (Mr. RANDOLPH), I ask unanimous consent that, at the next printing, the name of the Senator from Oregon (Mr. HATFIELD) be added as a cosponsor of S. 732, to amend the Public Works Acceleration Act to make its benefits available to certain areas of extra high unemployment, to authorize additional funds for such act, and for other purposes.

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

S. 862

At the request of Mr. NELSON, the Senator from Wisconsin (Mr. PROXMIRE) was added as a cosponsor of S. 862, to authorize the Secretary of the Interior to protect, manage, and control free-roaming horses and burros on public lands.

S. 907

At the request of Mr. MCCLELLAN, the Senator from Texas (Mr. BENTSEN), the Senator from Arizona (Mr. FANNIN), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Florida (Mr. GURNEY), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Nebraska (Mr. HRUSKA), the Senator from Utah (Mr. MOSS), the Senator from Georgia (Mr. TALMADGE), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 907, to consent to the interstate envircnment compact.

S. 1037

At the request of Mr. WILLIAMS, the Senator from Oklahoma (Mr. HARRIS) and the Senator from Rhode Island (Mr. PASTORE) were added as cosponsors of S. 1037, a bill for improving and increasing adult education.

S. 1124

At the request of Mr. WILLIAMS, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 1124, a bill to amend the Older American Act of 1965.

S. 1300

At the request of Mr. MONDALE, the Senator from New Mexico (Mr. MONTOYA) was added as a cosponsor of S. 1300, a bill to amend the Agricultural Act of 1949, to require the Secretary of Agriculture to make advance payments to producers under the feed grain program with respect to crops of wheat.

S. 1315

At the request of the Senator from Oklahoma (Mr. HARRIS), the Senator from Florida (Mr. CHILES), the Senator from Hawaii (Mr. FONG), the Senator from Wisconsin (Mr. NELSON), the Senator from California (Mr. TUNNEY), the Senator from New Jersey (Mr. WILLIAMS), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Nevada (Mr. BIBLE), the Senator from New York (Mr. JAVITS), the Senator from Minnesota (Mr. MONDALE), the Senator from Indiana (Mr. BAYH), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from California (Mr. CRANSTON) were added as cosponsors of S. 1315, the Ocean Mammal Protection Act of 1971.

S. 1331

At the request of Mr. WILLIAMS, the Senator from Oklahoma (Mr. HARRIS) and the Senator from Illinois (Mr. STEVENSON) were added as cosponsors of S. 1331, a bill to amend the Public Health Service Act, to continue and

broaden eligibility of schools of nursing for financial assistance, to improve the quality of such schools and for other purposes.

S. 1382

At the request of Mr. MUSKIE, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 1382, a bill to authorize the Secretary of Transportation to carry out a special program of transportation research and development utilizing the unique experience and manpower of the airframe and defense industries.

S. 1383

At the request of Mr. WILLIAMS, the Senator from Nevada (Mr. BIBLE), the Senator from Washington (Mr. JACKSON), the Senator from Montana (Mr. METCALF), the Senator from Utah (Mr. Moss), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Texas (Mr. TOWER) were added as cosponsors of S. 1383, a bill to prohibit flight in interstate or foreign commerce to avoid prosecution for the killing of a policeman or fireman.

S. 1408

At the request of Mr. MUSKIE, the Senator from South Dakota (Mr. McGOVERN), the Senator from Missouri (Mr. EAGLETON), the Senator from Rhode Island (Mr. PELL), the Senator from Wisconsin (Mr. NELSON), and the Senator from Minnesota (Mr. MONDALE) were added as cosponsors to S. 1408, a bill to amend the Internal Revenue Code of 1954 so as to permit certain tax-exempt organizations to engage in communications with legislative bodies.

S. 1428

At the request of Mr. PERCY, the Senator from Nevada (Mr. BIBLE), the Senator from Tennessee (Mr. BROCK), the Senator from Oklahoma (Mr. HARRIS), and the Senator from Pennsylvania (Mr. SCOTT) be added as cosponsors of S. 1428, a bill to amend title 18 of the United States Code by adding a new chapter 404 to establish an Institute for Continuing Studies of Juvenile Justice.

SENATE JOINT RESOLUTION 80

Mr. BYRD of West Virginia. Mr. President, at the request of my senior colleague from West Virginia (Mr. RANDOLPH), I ask unanimous consent that, at the next printing, the name of the Senator from Maine (Mr. MUSKIE) be added as a cosponsor of Senate Joint Resolution 80, a joint resolution expressing the support of Congress that the United States should convene in 1971 an International Conference on Ocean Dumping.

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

SENATE RESOLUTION 96—SUBMISSION OF A RESOLUTION RELATING TO THE COURT-MARTIAL SENTENCE OF 1ST LT. WILLIAM L. CALLEY, JR.

Mr. CHILES submitted a resolution relating to the court-martial sentence of 1st Lt. William L. Calley, Jr.

The resolution (S. Res. 96), which reads as follows, was referred to the Committee on Armed Services:

S. RES. 96

Whereas a United States Army court-martial has determined that First Lieutenant William L. Calley, Junior, is guilty of certain crimes committed in the village of Mylai, South Vietnam, and has sentenced him to life imprisonment at hard labor; and

Whereas this Nation cannot condone the intentional killing of helpless men, women, and children, but neither can it allow Lieutenant Calley, a product of this Nation's system of military training and indoctrination for combat, to be held solely responsible for what happened at Mylai; and

Whereas the trial of Lieutenant Calley was confined to the narrow question of guilt or innocence of very specific acts, thus leaving unanswered the much broader questions of how much responsibility Lieutenant Calley should bear as opposed to his military superiors; and

Whereas Lieutenant Calley's military superiors should share the responsibility for the tragedy that occurred at Mylai: Now, therefore, be it

Resolved, That it is hereby declared to be the sense of the Senate that Lieutenant Calley should not be allowed to be the scapegoat for what occurred at Mylai and that the reviewing authorities, up to and including the President of the United States, should consider Lieutenant Calley's guilt and sentence in the total perspective of the events and circumstances surrounding the Mylai incident and should take appropriate action to reduce his sentence accordingly.

ADDITIONAL COSPONSOR OF RESOLUTIONS

SENATE RESOLUTION 10

At the request of Mr. SCHWEIKER, the Senator from Washington (Mr. JACKSON) was added as a cosponsor of Senate Resolution 10, designating January 22 as Ukrainian Independence Day.

SENATE RESOLUTION 38

At the request of Mr. STEVENS, the Senator from Georgia (Mr. GAMBRELL) was added as a cosponsor of Senate Resolution 38, a resolution to give the Select Committee on Small Business authority to consider and report legislation relating to the problems of American small business.

NOTICE OF HEARING ON HOME RULE LEGISLATION

Mr. INOUYE. Mr. President, on behalf of Senator EAGLETON, who is holding Senate hearings out of town today, I wish to announce that the Senate District Committee will begin hearings on home rule legislation on Monday, April 26, 1971.

Hearings will be on a comprehensive home rule bill which Senator EAGLETON intends to introduce after the recess. The bill will be similar to bills introduced by Senators BIBLE, Tydings, and MATHIAS in previous Congresses. It is the hope of the committee that the administration will in the near future also come forward with its proposals for home rule for the District so that a comprehensive set of hearings may occur.

Persons wishing to testify or submit statements for the record on the problem of home rule should contact the District of Columbia Committee, 6222 New Senate Office Building, within the next 10 days.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PRESIDENT NIXON TO DISCUSS FUTURE COURSE FOR THIS NATION IN SOUTHEAST ASIA

Mr. BELLMON. Mr. President, on Wednesday night President Nixon will go before the TV audience of the world to discuss a future course for this Nation in Southeast Asia. Recent events cause the junior Senator from Oklahoma to be somewhat more sensitive than usual to the effects this historic appearance may have on the future developments in many parts of the world.

In the Southeast Asian war, President Nixon inherited one of the most difficult and tragic problems ever handed to an incoming American President. He has set a new course for our country in that war and a new policy for our Nation in dealing with future conditions of that kind. He has succeeded dramatically in strengthening the will and the ability of the South Vietnamese Government and people in protecting and preserving their national rights of self-determination. The same seems to be true in other Southeast Asian nations and elsewhere in the world. I believe he has followed a wise and courageous course which merits the support American citizens generally have accorded it. Had this policy received the support it deserves from Congress, that war might well have been concluded.

The manpower and materials now being consumed in the battlefield could now be deployed in rebuilding by both friend and foe.

The President's statement Wednesday night comes at a time when seemingly the prospects for peace are improving all around the world. The Laotian battle appears to give the North Vietnamese the face-saving opportunity they may have needed to allow them to negotiate seriously. I hope President Nixon in his TV appearance will preserve this possibility remote as it may seem.

Statements by leaders of Israel, Egypt, and even Russia seem to show that the possibilities of a "spring peace offensive" are real. President Nixon, who has demonstrated his courage and tenacity in adhering to a difficult course, now has the opportunity to further demonstrate his national and world statesmansh'p by noting and enhancing these hopeful trends. While Mr. Nixon needs no advice from the junior Senator from Oklahoma,

I trust the new policies to be announced will be weighted heavily on the side of peace.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the Saturday Review of April 3, 1971, and two newspaper articles from the Washington Sunday Star.

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

[From the Saturday Review, Apr. 3, 1971]

DAVID BEN-GURION TALKS ABOUT ISRAEL AND THE ARABS: "PEACE IS MORE IMPORTANT THAN REAL ESTATE"

(By John McCook Roots)

(NOTE.—John McCook Roots, foreign correspondent, author, and editor, has been a close observer of Middle Eastern affairs for more than thirty years.)

Amid the imponderables of a Middle East thrown violently out of focus by the death of President Nasser, one towering personality remains—Israel's legendary elder statesman, David Ben-Gurion, father of the Jewish state, for fifteen years its iron-handed first Prime Minister, author of its declaration of independence, creator of its incomparable armed forces, and possibly the closest our age has come to the "philosopher-king" concept immortalized by his favorite author, Plato.

Today, when the question of conquered Arab territories has become a key issue, Ben-Gurion's forthright views on the terms and spirit of the final settlement assume a unique importance. Long enough out of office to see beyond the battle, yet intimately involved with the struggle for survival whose guidelines he originally laid down, the architect of Israel's rebirth as a nation speaks from a wealth of experience possessed by none of the current leaders on either side. Most Arab heads of state were figuratively in knee pants when Ben-Gurion first became a world figure. Most of those in the present Israeli cabinet are his pupils.

Recently I spent an afternoon with this remarkable man at his desert retreat—kibbutz Sde Boker—deep in the Negev. With Nasser's funeral rites in Cairo still a vivid memory, I wanted to know how Nasser's long-time rival envisaged the future of the Middle East. I was also anxious to probe the questing mind that, during early Egyptian air raids, immersed itself in the Greek and Chinese classics, to see if there might be found wisdom to illumine some of the confusions of the world scene.

The omens for peace were not auspicious. Israel's resolute Prime Minister Golda Meir, herself a Ben-Gurion protégée, was still insisting her country would never re-enter negotiations until the controversial Soviet-Egyptian anti-aircraft missiles had been moved back from the Suez cease-fire zone. Egypt's new President, Colonel Anwar Sadat, now firmly in the saddle, had responded by declaring once more that in that case a fresh round of fighting was inevitable. To Western reporters familiar with the long-embittered fears, frustrations, cynicism, and pent-up fury in both Jerusalem and Cairo, this dismal routine of charge and counter-charge, so happily broken for a few days by Secretary Rogers's summer truce proposal, appeared to offer no hope whatever for the peace both sides longed for so deeply and needed so much.

What did Ben-Gurion think about it all? The stocky figure, encased in a huge, gray turtle-neck sweater against the desert's winter chill, shot upright in his chair. The leonine head, massive atop the sturdy torso and crowned by the familiar aureole of now-thinning white hair, thrust close to mine. the blue eyes blazed as a stabbing forefinger punctuated his fluent, heavily accented English.

"Peace, *real* peace, is now the great necessity for us," he said. "It is worth almost any sacrifice. To get it, we must return to the borders before 1967. If I were still Prime Minister, I would announce that we are prepared to give back all the territory occupied in the Six-Day War except East Jerusalem and the Golan Heights—Jerusalem for history's sake, the Golan for security."

These were startling and controversial views. With the future of his country at stake, and considering the tough public line of his own government, did he really wish to go on record as strongly as this?

"Certainly," he shot back. "I am a realist and see things as they are. When I think of the future of Israel, I only consider the country before the Six-Day War. We must return to 1967. We should give all gains back, except Jerusalem and the Golan, and these we should negotiate about." Then, as if anticipating the obvious query: "Sinai? Sharm el Sheikh? Gaza? The West Bank? Let them go. Peace is more important than real estate. We don't need the territory. With proper irrigation we now have enough land right here in the Negev to care for all the Jews in the world—if they come. And they certainly will not all come. No, we don't require more land.

"As for security, militarily defensible borders, while desirable, cannot by themselves guarantee our future. *Real* peace with our Arab neighbors—mutual trust and friendship—that is the only true security."

Ben-Gurion, who studiously avoids political discussions, smiled at mention of the Gahal hard-liners whose clamor for even more territory than that gained in 1967 led last summer to their rejection of the American peace plan and resignation from the government.

"Of course," he conceded, gesturing toward a picture of Abraham Lincoln on the wall, "these frontiers I have indicated would be, from our point of view, far from ideal. But a bad peace is better than a good war."

Asked if others in his country now felt the same, he replied, "Yes. Many."

Regarding the question of the Arab refugees, Ben-Gurion believes two things: first, that the Jews cannot be allowed to become a minority in their own country; second, that the refugees clearly have rights which have been far too long denied and must be justly and promptly dealt with.

Concerning the first factor, Ben-Gurion recalled how Chiam Weizmann in 1931 lost his position as head of world Zionism "because he said that Jews would not need a majority in Israel." He quickly added, "Hitler changed his mind." As for the second, Ben-Gurion repeated again and again: "Remember, this land belongs to two peoples—the Arabs of Palestine and the Jews of the world." Undoubtedly, in his view, the unequivocal return of Gaza and the West Bank would contribute to a climate of conciliation in which this extremely thorny issue might be resolved.

Still ruddy and fit after nearly three-quarters of a century devoted to the Zionist cause, Israel's former leader has lived quietly at Sde Boker since his retirement from the government in 1963. The death of his wife Paula two years ago was a searing personal loss. But he maintains close touch with events, he stays trim with a three-mile walk twice a day, and devotes most of his time to work on his memoirs. Only Friday afternoons are available for friends and visitors. Appointments are rigidly controlled through the Tel Aviv office of his one-time aide Defense Minister Moshe Dayan.

The memoirs will be his legacy to the nation he brought into being. The first volume, now complete, covers events to 1933. "But so much happens after that," he quips, "that from then on it may have to be a volume a year!"

The former Prime Minister, long known as the country's leading "hawk," sees no conflict between his present advocacy of territorial withdrawal and his handling of the traumatic Suez crisis in 1956. At that time, in defiance of world opinion, he invaded Sinai, wiped out the hostile fedayeen bases at Gaza, secured the Red Sea outlet by seizing Sharm el Sheikh, and clung to his gains against massive pressure from the United States and the U.N. "If you offer me a choice," he had explained, "between all the ideals in the world, however attractive, and the security of Israel, I would unhesitatingly choose the latter."

Finally, at the last possible moment, after he had made his point and upon receipt of "assurances" from Washington that there would be an easing of the implacable Arab hostility toward his new state, there were a graceful yielding to the inevitable, a general withdrawal order, and an appreciative word from President Eisenhower.

Much of Israel's seeming intransigence today derives from the aftermath of this first withdrawal from conquered Sinai. A senior Foreign Office official in Jerusalem will cite you chapter and verse why Mrs. Meir, then Ben-Gurion's Foreign Minister and chief U.N. spokesman, feels her country was betrayed at that time by the Americans.

"These 'assurances' and 'assumptions' on which our 1956–57 withdrawal was based," he remarks bitterly, "proved meaningless. There was no change in the Arab attitude. Our ships continued to be banned from the canal. The U.N. force at Sharm el Sheikh, it is true, gave us for a while free passage through the gulf. But exactly ten years later U Thant, on Nasser's demand, suddenly pulled his men out, and we had no alternative but to reoccupy Sinai. Then, following the Six-Day War, came the 'Three No's' of the Arab summit at Khartoum—'no recognition of Israel; no negotiation with Israel; no peace with Israel.'"

That position has now changed dramatically. Last spring Secretary Rogers launched his peace initiative. In July President Nasser, confounding the skeptics, accepted the Rogers formula. By doing so, the Egyptian leader executed a spectacular reversal of the Arab position. He disavowed by implication all three "no's," repudiated his own repeated refusal to negotiate while his country was under occupation, risked personal assissination at the hands of the enraged Palestinian commandos, and, at his death in September, left as a legacy to his successors the reluctant but firm Arab acceptance of a permanent Jewish state in the middle East.

Nasser thus introduced a new factor into the current deadlock. Ever since the three-year-old U.N. resolution stipulating *both* Israeli withdrawal from its 1967 war gains *and* Arab recognition of Israel, the heart of the Middle East problem has been a simple matter of trust. In essence, it has been the problem of achieving simultaneous compliance with the terms of the resolution by antagonists who hate, fear, and deeply distrust each other and who therefore each insist that the other act first.

The late Egyptian President's contribution to resolving this dilemma was what amounted to a declaration of intent: If Israel withdrew, Arab recognition would follow. First stated publicly in May to Professor Roger Fisher of Harvard in a little-noted television interview, the declaration was officially confirmed by Nasser's "yes" to Secretary Rogers in July. On December 23, in a talk with James Reston of *The New York Times*, President Sadat repeated in substance the Nasser formula, and during a *Newsweek* interview in February, Sadat made the offer of a peace treaty explicit.

Israel, however, had not been heard from

beyond the references to "safe, secure borders." Official definition of these borders is of course virtually impossible to achieve outside the conference room. Yet the absence of some declaration of intent, coupled with an Israeli occupation of Arab soil already nearly four years old, had fed deepseated fears in Arab capitals. Speaking on American television in December, the moderate King Hussein of Jordan put the matter briefly: "What are Israel's real aims? They have not said what they will do. Do they plan to expand? Our position is very simply that they can have peace or territory, but not both."

Now for the first time Hussein has an indication. Technically, Ben-Gurion's views are unofficial. But they come from Israel's greatest statesman. And they carry a special authority of their own. They mean that the man who as Prime Minister ordered the first withdrawal from Sinai is now willing, despite his earlier disillusionment with the Arab response, to risk withdrawal a second time, believing that in the altered circumstances of today it is an essential prerequisite to peace. What are those altered circumstances?

Undoubtedly the most compelling development has been the shift in the Arab posture brought about by the late Egyptian President before he died. Ben-Gurion spoke of it with amazement. "We have had to live for so many years," he explained, "under the threat of Nasser's hostility. I think I understood how he felt, and the pressures he was up against. And when he accepted the Rogers plan in July, it came as a complete surprise. I was frankly astounded. Perhaps he finally came to realize that Israel was here to stay. He must have changed his mind. And it takes a really big man, a really courageous man, to do that."

Related to this new factor—that responsible Arab opinion no longer expects to "push Israel into the sea"—is another. It is a dawning consciousness among many Israelis that their nation's long and agonizing fight for political identity has essentially been won, that Israel's physical survival over the short term is not now at issue, and that the chief question today concerns the country's relations with its neighbors, the Arab states, which alone can give it the lasting peace and security it craves. This realization is bound to induce a greater sensitivity to Arab desires regarding the final frontiers. It clearly conditions Ben-Gurion's approach to the settlement.

Then there is Russia. Ben-Gurion, like all Israelis, is greatly concerned about the increased Soviet presence in Egypt. He knows that Russia, unlike America, is a Middle East power—that in a showdown in the Mediterranean America would be at a disadvantage roughly comparable to that of Russia in the Caribbean during the Cuban missile crisis. Hence, the urgency about stopping the war on which this Soviet presence feeds.

Finally, there is his own highly developed sense of timing. At certain crises in Israel's brief history, fateful actions were ordered by Ben-Gurion on the authority, in the last analysis, of his inner convictions that "the moment" had arrived.

Clearly, today, Ben-Gurion senses once more that the hour of fate has struck. "In every conflict, there comes a time when to settle is more important than to get everything you want," he said. "And the time has come to settle. Today, above all else, as Jews and as humans, we must have an end to destruction and bloodshed. We must look to the future. The moment has come for peace, and we must seize it.

"One reason I feel so strongly about the need for bold steps now toward a settlement is that I am certain eventual Arab-Israeli cooperation is inevitable. In fact, an Arab-Israeli alliance. Geography and history make it so. The Arabs of the Middle Ages were the most civilized race in the world. They have much to give us, and I believe we in turn have much to give them.

"History has proved the absurdity of regarding traditional enmities as eternal. Nations which have been at each other's throats today may fall on each other's necks tomorrow. Look at France and Germany. Now, with the pace of change so rapid and radical, Arab-Jewish partnership may come faster than we think, and together we could turn the Middle East into one of the garden spots and great creative centers of the earth."

The former Prime Minister spoke again of President Nasser. He spoke with respect. There was a wistful note as he asked about the funeral in Cairo. "I often felt," he recalled, "that if he and I could have sat down together, we might have settled everything between us. He was by far the greatest of the Arabs. He was the one man, and Egypt the one Arab state, strong enough to make peace." Turning to the window, he spread his hands in a gesture of resignation. "And now he's gone," he said with emotion. "What a pity he had to die."

Ben-Gurion, a voracious reader whose long experience with men and affairs enables him to view Israel's dilemma with more detachment than most, then responded to questions on a broad variety of themes, ending with his favorite—world peace.

"The Middle East is not alone in being desperate for peace. Every nation needs it. We neeed to finish with wars and armies. Our Jewish prophets said: 'Nation shall not rise against nation, neither shall they learn war anymore.' Not only should we not make war, we should not *learn* war. It's nonsense to kill people. What is achieved? Why do it?

"Those who say that abolishing war is impossible forget that not long ago it was considered impossible to abolish slavery. Now it is slavery, not abolishing it, that is considered impossible. And war is worse than slavery."

[From the Sunday Star, Apr. 4, 1971]

BETTER UNITED STATES-SOVIET RELATIONS SEEN POSSIBLE BY GROMYKO

Moscow.—Soviet Foreign Minister Andrei A. Gromyko said yesterday the Indochina war "is the most dangerous and bloody military conflict since World War II," but he held out hope for an improvement of Soviet-American relations.

"The Soviet Union stands for normal relations with the United States," Gromyko told delegates to the 24th congress of the Soviet Communist party. "It believes that an improvement of Soviet-American relations is possible." Such an improvement would be in the interests of both countries, he said, but he added, "Washington must back its statements by concrete acts.

"ZIGZAGS" BY THE UNITED STATES

"We do not favor negotiations which resemble fencing. We are for serious negotiations," Gromyko said. But he complained that "zigzags in U.S. foreign policy . . . make dealings with the United States much more difficult."

"The United States' aggression against the peoples of Vietnam, Cambodia and Laos is the most dangerous and bloody military conflict since World War II," Gromyko said.

"Without direct support by the United States, Israel's aggression against its Arab neighbors would have petered out from the start and, most probably, would not have started at all."

Gromyko's speech seemed basically a reiteration of the foreign policy remarks Tuesday by party chief Leonid I. Brezhnev in his keynote address.

But Gromyko carried his boss' appeal for international understanding and cooperation a bit further.

NO TERRITORIAL CLAIMS

"We have no territorial claims to any state in the world and have no intention of doing damage to anybody's legitimate rights and interests," Gromyko said.

"But we also demand the same in respect of our country. Those who are really prepared to reach an agreement with us on questions demanding solution will always find the Soviet Union a serious partner with a sense of responsibility."

Gromyko urged a moderate tone in international relations with the statement: "Two things are equally untypical of us: to succumb to imperialist threats and to be carried away by ultrarevolutionary phrase mongering."

This appeared to be a jib at Communist China, the Soviet Union's main rival for leadership of the Communist movement, which has often accused the Russians of not being revolutionary enough.

"In short," Gromyko said, "either faintheartedness and failure to keep one's nerves in check during a collision with imperialism or ostentatious, pose striking ultrarevolution is not Marxism-Leninism. And our party resolutely rejects this."

TAKES POKE AT CHINA

Gromyko jabbed at the Chinese contention that "any agreement with capitalist states is declared to be something just short of 'collusion'."

Gromyko did not refer directly to China in this context—at least in the excerpts of his speech distributed by the Soviet news agency Tass. But only yesterday, China's party magazine, Red Flag, accused the Soviet Union of "colluding with U.S. imperialism and contending with it for world hegemony."

Despite criticism of some of China's policies, Gromyko echoed Brezhnev's appeal for better relations between the two Communist giants.

"As is known, our party and country have always attached great importance to questions concerning our relations with China," Gromyko said.

He added that improved relations would have "tremendous significance . . . for the common struggle imperialism and aggression.

[From the Washington Star, Apr. 4, 1971]

ISRAELIS EXPECTED TO REJECT SADAT OFFER, MAY COUNTER IT

Israel is expected to reject Egypt's new peace offer at a cabinet meeting today despite President Anwar Sadat's threat of renewed fighting along the Suez Canal by the end of this month, sources close to the cabinet said.

The sources said Premier Golda Meir would probably reject the Sadat proposal outright.

They said Israel may counter later with the so-called Dayan plan for reopening the canal. This plan, attributed to Defense Minister Moshe Dayan, calls for a gradual thinning of Israeli and Egyptian forces on both sides of the Suez with Egyptian technicians permitted to cross onto the Israeli-held east side for canal-clearing operations.

Sadat, quoted as saying a solution must be reached in April, offered to accept a new cease-fire and to reopen the canal if Israeli troops would pull back from the waterway and from part of the Sinai Peninsula. Under his proposal, Egyptian troops would then cross the canal and take up the territory now held by the Israelis.

Israeli officials condemned Sadat's offer but Deputy Premier Yigal Allon, in an interview over the state radio, said Israel has agreed in principle to the canal's reopening. Jerusalem, he said, "would no doubt have to submit soon its own proposal for a partial settlement" covering the canal

that was blocked by scuttled boats in the 1967 war.

Information Minister Israel Galili, one of Mrs. Meir's closest associates, called Sadat's proposal "absurd" during a radio interview in Tel Aviv. Israel could not accept a take-over of the Sinai by an Egyptian army "and perhaps a Soviet army with it," he said.

Apparently stung by initial response to his plan, Sadat was quoted by the semi-official Cairo newspaper Al Ahram as saying that April "is the month which shall decide between a solution and war."

ADDITIONAL STATEMENTS

DYNAMISM OF CURRENT MEXICAN ADMINISTRATION

Mr. MANSFIELD. Mr. President, I commend to the reading of Senators an excellent article by Washington Star staff writer Jeremiah O'Leary, describing the dynamism of the current Mexican administration as typified by its new President, Luis Echeverria.

Dynamism is not new for Mexican leadership. We have seen it in all past Presidents. But Mr. Echeverria seems to have added a new dimension to the term. According to Mr. O'Leary's article, the President's day normally runs from 7 a.m. to beyond midnight. Into these 18-hours days are crammed not only the usual rounds of meetings and conferences, but also, numerous side trips to all parts of Mexico. The effect of this extraordinary energy on the administration is predictable. Everyone must be on call, and this in turn puts a premium on the type of youthful vigor shown by the President. As a result, Mr. Echeverria is surrounded by people who are, for the most part, under 50 years of age.

Perhaps the most remarkable aspect of Mr. Echeverria's dynamism is that it need not occur at all. As head of what is, in effect, Mexico's only major political party, and one who was elected by a massive landslide, he could easily have followed a more leisurely pace. Instead, he has chosen to apply all of his enormous talents and energy, as well as that of his subordinates, to meeting headon the serious problems which face his nation. I wish him the best of success, I ask unanimous consent that the April 3 article, entitle, "Mexico Sheds Its Siesta Image," 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, Apr. 3, 1971]

MEXICO SHEDS SIESTA IMAGE

(By Jeremiah O'Leary)

Mexico's President Luis Echeverria is putting to rest the image of his country as a nation of peons dozing away the days under the shade of a wide sombrero.

In the four months since his inauguration, nobody around the dynamic Echeverria has been loafing. Echeverria, 49, puts in an 18-hour day and spends his weekends traveling around Mexico's 29 states and two territories seeing as many of his 50 million people as possible.

In the pyramid of Mexican governmental structure, the president sets the pace and it affects everyone down the line, especially the cabinet and other members of the official household.

Foreign Minister Emilio Rabasa, 46, thought he had long days and nights when he was ambassador to Washington, but now is almost wistful where he compares those days with his schedule in Mexico City.

YOUTH EMPHASIZED

Echeverria is emphasizing youth. Fausto Zapata Loredo, his press secretary, is 29. A former city editor of El Heraldo in San Luis Potosi, Zapata was once a student at McAlester College and is married to an American, the former Carol Miller.

Gen. Hermenegildo Cuenca Diaz, minister of defense, is the oldest man in the cabinet at 69. The important Interior Ministry is held by 38-year-old Mario Moya Palencia, a man to watch in the hierarchy of the ruling Institutional Revolutionary party.

National Properties Minister Horacio Flores de la Pena is 47; Mexico City's Mayor Alfonso Martinez Dominguez is 49; Hydraulic Resources Minster Lorenzo Rovirosa Wade is 50; Education Minister Victor Bravo Ahuja is 52; Communications and Transport Minister Eugenio Mendez Docurro is 47 and Social Security Institute Director Carlos Galvez Betancourt is 49.

NORMAL WORKING DAY

Zapata pointed out in Washington recently that a normal working day for Echeverria runs from 7 a.m. to 1 or 2 a.m. The way PRI works, which means the Mexican government, there is a domino effect because the whole system functions on political rewards or lack of them and no official dares to be out for siesta in case someone higherup calls. The caller often is the president himself.

Echeverria is changing PRI and he is changing Mexico. He knows that his country, with a population expected to reach 140 million by the end of the century, must modernize and industrialize or collapse.

Zapata said one prime target is to change the mix of college graduates which traditionally has produced more philosphers than technicians. Echeverria, with the canny use of scholarships, is trying to change the recent situation whereby the University of Mexico graduated 800 lawyers a year but only 18 mathematicians.

EXPULSION OF SOVIETS

That the new breed running the show in Mexico City is a tough one is something the Russians discovered recently when five Soviet Embassy staffers were ordered out of the country for the clandestine training of anti-government revolutionaries.

Without precisely saying so, Echeverria is trying to cast Mexico in the role of an industrial producer nation like the United States because he knows his country cannot succeed with 50 percent of the populace living on small dry farms.

If sheer energy and hard work will do the trick, Echeverria will keep Mexico jumping for the remaining 5½ years of his term and the change may be permanent.

INSIDE THE PRISONS OF HANOI

Mr. GRIFFIN. Mr. President, recently President Nixon and Congress participated in the national week of concern for Americans missing in action or being held prisoner of war in Southeast Asia.

Much news was focused on efforts by public officials and private citizens to improve the situation of these men.

This month Reader's Digest carries an excellent article concerning the treatment our men receive in the North Vietnamese prison camps. The story chronicles a day in the life of an American in the infamous Hanoi Hilton POW Camp.

This article is well worth reading. I hope every American will read it and will take time to clip out a coupon at the end of the article and mail it to the Red Cross in Washington, D.C.

The coupon is entitled: "We Want Proof, Not Propaganda." These coupons, hopefully by the millions, will be mailed by the Red Cross to Ton Duc Thang, President of the Democratic Republic of Vietnam.

Mr. President, I ask unanimous consent that the Reader's Digest article entitled "Inside the Prisons of Hanoi," written by Louis R. Stockstill, together with the text of the coupon, be printed in the RECORD.

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

INSIDE THE PRISONS OF HANOI

(By Louis R. Stockstill)

(The following report on the shocking conditions within the prisoner-of-war camps of North Vietnam, and on the threat these conditions pose to the survival of hundreds of U.S. citizens, has been drawn from lengthy interviews with some of the men who have been released, and from informed sources in Washington, Saigon and Paris.)

The truck lurches forward with thrashing gears. On the rough truck bed, an American lies on his back, blindfolded, hands and feet bound. He is jolted by each bump, jarred by thrusts of pain. Hearing clattering street noises and strident automobile horns, he knows they have entered Hanoi. Soon he will be prodded to his feet and led into one of North Vietnam's dread prisoner-of-war camps.

For almost two months, since his capture, the American has been herded from village to village. He is rarely fed. His captors double-time him, on foot, moving steadily northward. In each village, they tether or cage him like an animal so that villagers can file past to strike him or urinate on his body. He is constantly hungry; his weight drops steadily, and nausea and fever plague him.

Eventually, his captors transfer him to a small hut with 12 bamboo cages, force him onto his stomach, thrust his feet into wooden stocks and tie his arms behind his back with wet rope. For 29 days they keep him in this position, freeing him only long enough to gobble a daily bowl of rice and to relieve himself. His face is obscured by a scraggly beard, his eyes burn from sunken sockets. Then he is told that he is to be moved to Hanoi.

Now, three days later, a truck deposits him at the looming triangular mass of the "Hanoi Hilton," an old French penitentiary covering approximately a city block and surrounded by glass-studded concrete walls. Within, two separate sections are reserved exclusively for U.S. prisoners-of-war. As in other POW camps in North Vietnam,[1] its tiny cells are cement-walled and heavily barred; bunks are either cement slabs or rough boards stretched across sawhorses. The only other furnishing is a toilet bucket. Terrazzo-like floors slope

[1] There are two other prisons within the city, one called the "Zoo," the other the "Country Club." If there are others—and there probably are—the U.S. government, to safeguard security, cannot talk about them.

away from a central corridor toward open drains where rats enter and leave. Doors are thick teak, with peepholes.

NIGHT WATCH

The misery and demoralization that American POWs experience in this subhuman environment can best be understood by looking at a typical prison day. Above the prisoner's hard, narrow bunk, with its paper-thin straw mat, a bare light bulb burns day and night. On the bunk he tosses and frets, searching vainly for a comfortable position for his calloused hips and thighs, relief for his pain-ridden body. He sleeps little, thinking daylight will never come, that the hated light bulb will never fade. There is no clock; the hours drag on.

Now it is winter, bringing the cold he detests and fears most. He has wadded a mosquito net around his frigid feet, wrapped one of his two flimsy blankets around the net, and covered his legs and torso as best he can with the other. He still wears his coarse pajama-like shirt and trousers. But the cold penetrates everything, numbing and taunting, him. His empty stomach rumbles, and now he is shaking convulsively, uncontrollably.

He will have to get up. He swings his stiffened legs to the floor, stands with great effort, slaps at his skinny legs, wasted backside and bony chest. The flesh feels dead. Sometimes he hears the muffled movements of another prisoner also fighting the cold. In a nearby cell a man cries out, "Oh, God. Oh, God!" He repeats the words to himself, only vaguely aware that the cry has nudged him into prayer.

How many hundreds of nights like this has he endured? He can no longer remember.

GONGS AND JUDAS HOLES

Finally daylight comes, and he watches the gray light filter slowly through the exposed portion of the small window far up the wall of his cell. He waits. He listens. He has learned to segment the days into sounds. The first one, at 5:30 a.m., is the harsh, reverberating jangle of the "gong," a metal ring periodically assaulted by a metal rod. It echoes and reechoes. And as it fades, he strains to bear the bolt being withdrawn on a distant door. He knows the guard is starting along the cells, slapping open the "Judas Hole" in each door to make certain the man inside is on his feet. Stiffly, the prisoner rises and begins to fold his "bedding." The sounds of the opening and closing of the peepholes come steadily closer until the guard peers into his own cell and passes on.

A loudspeaker over the door squawks to life. The voice of Hanoi Hannah enters his cell, seeking to "re-educate" him about the war. She tells him that the United States is suffering disastrous defeat, and that the American people couldn't care less. She frequently quotes American critics of the war. Her flow of bad "news" is salted with reports on riots and racial problems in the States. The half-hour monologue drones on like a funeral dirge. Then the loudspeaker dies. But he knows Hannah will be back in the evening with more cheerless news. She visits him twice a day, every day.

Now he hears the guard taking one of the men outside to empty his toilet bucket; the man is then returned and locked back up. He listens to a repetition of the same sounds, slowly passing from cell to cell. Soon, he too is taken out to the cesspool and then brought back to await the next event. If it is a wash-day, he will be allowed to wash. For him, this is the week's highlight. But he must await his turn. Precautions are always taken to prevent him from seeing or talking with other prisoners.

He is taken into one of several cubicles, each with a small tub of icy water. The guard locks the door. In the five minutes allotted him, he quickly strips, braces himself and begins sloshing the freezing water onto his body. If there is soap, he lathers and scrubs his skin. But, he must rinse thoroughly, for he knows that any trace of the abrasive, lye-like soap will produce a painful rash. He dresses rapidly and rinses his other suit of "pajamas." The guard returns and marches him back to his cell, allowing him to hang his laundry alongside the dripping clothing of other prisoners.

It is almost noon, time to be fed. He never thinks of the bread and watery soup as food. But he relishes the thought of having something—anything—in his stomach.

As the food is dispensed, each cell door is unlocked and locked in the familiar pattern. When the guard opens the door, the prisoner reaches down for the bowl and bread placed on the threshold. Anything he is given is placed on the floor so that he must always bend down in front of his captor. In appearance, if not in spirit, he must always display humility. (He wryly remembers the staggering blow from the rifle butt when he once, "disrespectfully," crossed his legs in the presence of an interrogating officer.) As he rises with the food, he must come to attention. And so he stands as the guards shuts the door.

Then he eats, forcing himself to chew the bread with great care, watchful for the small stones sometimes embedded in the dough. He has disciplined himself to eat every crumb, every drop. With the last of the bread, he mops the bowl.

He waits again. Soon another "gong" sounds, instructing him to lie down. The room is still cold, but his shrunken stomach is temporarily pacified. Now, more often than not, he is finally able to doze. But the fitful sleep ends abruptly, torn apart by another gong. It is two o'clock. For the next seven hours he can only pace or sit. He is not permitted to lie on his bunk again until 9 p.m. Periodically, unexpectedly, a guards slams open the Judas Hole to check.

BODY AND SOUL

As the prisoner paces, he gropes for something to occupy his thoughts. He has recited the names of the states forward and backward, the names of all the U.S. Presidents he can remember. He has built boats and houses in his mind, gone on imaginary walking tours, retraced most of the memorable events of his life, the plots of books and movies. But the monotony of these efforts has made it increasingly difficult to concentrate. His thoughts skitter away to questions he would prefer to avoid, to a maze of anxieties.

He thinks about the war. Can Hanoi Hannah be right? Has America given in to defeatist views? If so, what will happen to him? He worries about his health. He is half-starved, ridden with tiny things that crawl in his stomach. He has grown steadily weaker.

The question he dreads most, and that now recurs with frightening frequency, is: *Can I last?* And what about my family? Will my wife wait forever? Is she well? Will the children remember me? How do they manage without a father? Sadness overwhelms him.

Occasionally he gets a letter, but this is a recent development. And the six-line note that is permitted can never answer the hundreds of questions that roam his mind. Still, other prisoners have received nothing, so he must be considered fortunate.

At 4:30 he is fed the same food he received earlier, the same that he will also get twice tomorrow, and the next day and the next. There is no meat, nothing green, nothing sweet—always the same tasteless soup and bread. After this second feeding, he will wait 18 hours to be fed again.

It is dark now, and at 8:30 Hanoi Hannah is back. She stays until 9, and as the loudspeaker clicks off, the last "gong" rings out. He must crawl back onto his bunk to face the cold, and his lonely thoughts, until morning. He pleads with his body and soul for strength to survive yet another night under the light bulb.

SHATTERED RULES

How long this man and his fellow captives can last is anyone's guess. But their lives are more gravely threatened with each passing day. Some of the POWs have already died.[2] Others face almost certain death unless their treatment is drastically improved. One careful study of available information, compiled by Lt. Col. Joseph R. Cataldo, a doctor with the Green Berets, indicates that the POWs not only are severely malnourished, but that 80 percent have skin diseases, at least half suffer from intestinal worms, a quarter may have active tuberculosis, and many are afflicted with serious vitamin deficiencies, mental disorientation and muscular wastage.

Hanoi also has weakened men by systematic torture. Prisoners have been denied food or water for long periods, suspended from ceilings by their arms, burned with cigarettes, clubbed with rifle butts and physically beaten. In numerous cases, their captors have refused them adequate medical care, and have neglected to attend to major injuries.

Small wonder, then, that North Vietnam forbids inspection of the camps by the International Red Cross—in direct violation of the Geneva Conventions. Instead, "showcase" prisoners are paraded in propaganda films. When anti-war groups or friendly foreign journalists are selected to talk with or film small groups of prisoners, only the healthiest men, barbered and freshly clothed, are trotted into public view to parrot carefully rehearsed information. What the public never sees are the hidden cells, the men on crutches, those who can walk only with the aid of another prisoner, those with deformities, the badly emaciated, the sick in bed.

The Geneva Conventions require repatriation of the sick and wounded, as well as the release or transfer to a neutral nation of men whose long confinement jeopardizes their health. Yet Hanoi, which is a signatory to the Conventions, has ignored these rules as they apply to the 781 captured and missing in North Vietnam. And the enemy has made no effort to persuade the Vietcong and communist forces in South Vietnam and Laos even to identify the almost 800 other Americans captured or missing in these areas.

For the prisoners, meanwhile, years pile on lonely years. The first men captured are nearing their seventh year in captivity. More than 300 others soon face their fourth, fifth and sixth anniversaries in enemy hands.

Unless help is forthcoming, these men will continue to rot and die.

Here at home, private citizens and concerned organizations are reacting with growing impatience to North Vietnam's inhumane treatment of our prisoners. Public denouncements, mounting press attention, resolutions in the U.S. Congress and the United Nations, letter-writing campaigns and many similar efforts are beginning to have an effect. There is evidence that Hanoi is smarting under the attack.

In the past year North Vietnam's leaders have tried to muffle criticism by easing a few of the harsh restrictions imposed on the prisoners. Hanoi has, for example, permitted

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[2] North Vietnam told U.S. anti-war groups and Senators that 23 prisoners have died. But the lists cannot be regarded as completely accurate: all of the deaths were reported long after they supposedly occurred, and after a number of the men had been held captive up to five years.

an increase in mail between some of the men and their families, authorized more packages for the captives, boosted the weight-limitation on Christmas parcels and permitted families to mail previously forbidden items such as small games, medicines and vitamins.

But conditions are still deplorable. You can show your concern over Hanoi's treatment of our prisoners-of-war by signing the statement below (adding a personal message if you wish) and sending it at once to: "Help Our POWs," American Red Cross, P.O. Box 1600, Washington, D.C. 20013. The Red Cross will tabulate the responses and see that your message gets to the government of North Vietnam. Millions of protests from indignant Americans cannot fail to have impact, even in Hanoi. Don't wait. Sign and mail your letter right now, then call a friend and ask him or her to do the same. The one hope these prisoners have is that their fellow Americans will not forget them.

[Coupon]

President TON DUC THANG,
Democratic Republic of Vietnam, Hanoi, c/o American Red Cross, "Help Our POWs," Box 1600, Washington, D.C. 20013

MR. PRESIDENT: You have claimed repeatedly that American citizens held in your "detention camps" are being treated humanely. But you offer no proof of this. Except under the most restricted circumstances, you will not even allow foreign observers to enter these camps.

Proof of your sincerity would be the immediate repatriation of all sick and wounded captives and the release (or transfer to some neutral nation) of all prisoners whose health has been jeopardized by long confinement. By doing so, you could perhaps end some of the uncertainty and dismay your policies have created throughout the community of nations. I join with millions the world over in urging you to take these steps.

Name and address

If you wish up to ten more of these coupon letters for friends and family, contact your local Red Cross chapter or write to Reprint Editor (POW), The Reader's Digest, Pleasantville, N.Y. 10570.

NEEDED—A MODERN APPROACH TO OUR PUBLIC LANDS—ADDRESS BY SENATOR JACKSON

Mr. METCALF. Mr. President, this morning the Senator from Washington, chairman of the Committee on Interior and Insular Affairs (Mr. JACKSON), gave an important and definitive address before the Legislative Conference of the National Association of Counties.

In that address, Mr. JACKSON discussed and described the Public Domain Lands Organic Act of 1971. The measure will be the subject of hearings before the Interior Committee of both bodies. When its provisions become law, this will be landmark legislation guiding the management of our publicly owned lands.

I. ask unanimous consent that Mr JACKSON's address be printed at this point in the RECORD.

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

NEEDED—A MODERN APPROACH TO OUR PUBLIC LANDS

It is a real pleasure for me to be here to share and exchange with you some ideas about one of the more important resources issues facing our country today—the management of the Nation's public lands. I believe that we have waited much too long to make important and fundamental policy decisions regarding these great assets. Now that the report of the Public Land Law Review Commission has been available for nine months, it is time to proceed with the task before us.

I have already introduced a bill this session which deals with the public domain lands administered by the Bureau of Land Management and with federally owned minerals. Other Members of Congress have submitted similar legislation. I think we are moving toward an idea whose time has come—indeed, an idea for revitalizing and updating the philosophy as well as the statutes which guide the management of our publicly owned lands.

The task is a large one, and it will take time. The Public Land Law Review Commission produced 137 specific recommendations and many, many more general ones. The important point is to get underway, and that is what I am trying to do as Chairman of the Senate Committee which has the predominate jurisdiction. As we are meeting here this morning, Senator Frank Church, Chairman of our Public Lands Subcommittee, is holding oversight hearings on public land management practices.

I compliment the National Association of Counties on your increased interest in public lands and environmental protection. I am also aware that you have a task force on public lands legislation which has been reviewing the report of the Public Land Law Review Commission in considerable detail. As a former member of the Commission, I understand very well the complexities of the issuers you face. As a Senator from a public land State, I know of the great importance of these lands to local economies and local governments.

I was delighted to see that your task force had adopted a 7-point policy relating to public lands which included many programs and concepts which I and other members of the Senate Committee on Interior and Insular Affairs have supported for some time. This included sales of public lands in certain specific situations where their highest and best use would be under private ownership; transfers of Federal lands to State and local governments for public purposes at less than fair market value; and use of Federal lands for the expansion of existing communities and development of new towns. In addition, your recommendation of long-range public land use plans consistent with State and local plans, is a concept embodied in the national land use policy legislation which I sponsored and which the Senate Interior and Insular Affairs Committee reported favorably near the end of the 91st Congress. Incidentally, hearings on this legislation, reintroduced in the 92d Congress as S. 632, are scheduled for May 18th. Your task force's support for strong environmental controls on public lands is most welcome. This reinforces the federal policy for maintenance and enhancement of environmental quality as established by the National Environment Policy Act of 1969.

Your task force has also recommended the concept of "multiple use" as a basic principle of public land management. The Senate last year reaffirmed its support of that principle when it passed my bill, S. 3389, the Public Land Outdoor Recreation Act of 1970, and I have again incorporated this philosophy in S. 921, which I will discuss shortly.

Finally, your task force supported the Commission's recommendations for a system of payment-in-lieu-of-taxes on public lands rather than the present system of shared revenues. This entire subject is extremely complex and will undoubtedly be given very careful study by the Congress before any legislation is passed. I can certainly sympathize with your feeling that any such payments should be made directly to the local governments involved rather than to State governments.

Therefore, in reviewing your own activities, I am pleased to note that there is much common "ground," (no pun intended) upon which we agree. I look forward to working with your legislative staff and the door to my committee is always open to receive your ideas and suggestions.

As many of you probably know, several of my colleagues have joined me in sponsoring Senate Bill 921 in this Congress. This bill relates to the public lands administered by the Bureau of Land Management and to the development of minerals on all Federal lands. I would like to discuss briefly with you today the reasons why I have introduced what we call the Public Domain Lands Organic Act of 1971.

I have long shared the concern of many about the Federal lands. As Chairman of the Senate Committee on Interior and Insular Affairs, and as a member of the Public Land Law Review Commission, I have enjoyed the privilege of carefully reviewing the problems relating to them. These lands comprise one-third of the area of the United States. Sixty per cent of all the Federal lands are administered by one agency, the Bureau of Land Management in the Department of the Interior. My study of the situation has led me to conclude that the Federal Government has by and large overlooked the value of the public domain. This neglect of 450 million acres must come to a halt. Over the years, Congress has legislated rather extensively concerning other categories of public lands, such as national forests, parks, recreation areas and wilderness. However, in my judgment, we have not placed enough emphasis on the public domain.

President Nixon recognized the value of these lands in his environmental message to the Congress. I would like to quote three very pertinent paragraphs from his message:

"The Federal public lands comprise approximately one-third of the Nation's land area. This vast domain contains land with spectacular scenery, mineral and timber resources, major wildlife habitat, ecological significance, and tremendous recreational importance. In a sense, it is the 'breathing space' of the Nation.

"The public lands belong to all Americans. They are part of the heritage and the birthright of every citizen. It is important, therefore, that these lands be managed wisely, that their environmental values be carefully safeguarded, and that we deal with these lands as trustees for the future. They have an important place in national land use considerations.

"The Public Land Law Review Commission recently completed a study and report on Federal public land policy. This Administration will work closely with the Congress in evaluating the Commission's recommendations and in developing legislative and administrative programs to improve public land management."

I am pleased that the President has recognized the need for legislation to modernize our public land laws and I pledge the full cooperation of my Committee in that endeavor.

The bill I have introduced (S. 921) would, I believe, provide the kind of authority the President referred to and would implement many of the recommendations of the Public Land Law Review Commission. While I am not wedded to all of the specific provisions in it, I am committed to the proposition that this kind of legislation must be enacted if we are to meet our responsibilities for proper stewardship of this great public resource.

My bill provides a statement of Congressional policy that public lands should be administered for multiple use and sustained yield of all their resources for the maximum

long-term benefit of the general public. It also expresses the view that sound ecological management of these lands is vital to maintenance of a livable environment and essential to the well-being of the American people. It specifically provides that "multiple use" will not necessarily mean the combination of uses which give the greatest dollar return or the greatest unit output. Environmental values and ecological relationships must be considered in management decision-making. The bill contains a list of goals and objectives for public land management, including

(1) provision of adequate supplies of resources to meet national, regional and local requirements;

(2) development of outdoor recreation values, consistent with Statewide outdoor recreation plans;

(3) preservation of environmental quality;

(4) preparation of comprehensive land use plans;

(5) full public participation in public land decision making;

(6) payment by users of fair market value for land and resources; and

(7) provision of adequate tenure for resource users.

S. 921 would continue the classification process started by the Classification and Multiple Use Act passed in 1964, but the emphasis will be on retention and management of public lands. The bill provides that these lands be designated as national resource lands. This is in keeping with other designations of Federal lands such as national parks and national forests and hopefully will help give these lands the respect which they deserve.

The bill would provide a modern sale statute similar to the Public Land Sale Act of 1964. All sales would be at not less than fair market value of the lands. Sales to local governments would be negotiated while sales to private individuals would be through competitive bidding.

The bill would repeal many of the confused, obsolete disposal laws that now clutter the statute books, thus eliminating much red tape.

It is important for county and other local officials to note that the Recreation and Public Purposes Act would not be repealed. I am aware that this Act has been an extremely useful tool in allowing State and local governments to buy or lease public lands for public purposes at reduced prices. It is our intent that the Secretary of the Interior would still use this authority where appropriate.

The law would also give to the Bureau of Land Management certain basic administrative tools which it now lacks but which other agency land managers possess. These include authority to enforce regulations, acquire land and make land exchanges.

Title II of S. 921 would make major changes in the laws relating to management and development of federally owned mineral resources. The most significant would be the repeal of the 1872 mining law and establishment of single system for all Federal minerals similar to the current leasing system applicable since 1920 to oil and gas and a number of other minerals. Very few are satisfied with the present system of exploration and exploitation of the Federal mineral values under the "location" system of the mining law of 1872. No environmental safeguards are required. Our public officials have no real control or in some cases even knowledge of certain mining activity and the development which accompanies it. Roads may be constructed to get to a deposit without regard to a master plan for a forest or public domain area. Furthermore, exploration by heavy machinery can destroy fragile ecology without any requirement for restoration or rehabilitation.

Abandoned mining claims dot the public domain, casting clouds upon the title to property which belongs to all the people.

I have concluded that 99 years of this situation is enough. There may have been good reason a century ago to provide for disposal of a young Nation's resources in such a manner to encourage settlement and growth, but no longer. Just as we have moved out of the era of the old, solitary prospector with pick and shovel into a highly sophisticated mining technology, we need also to modernize our method of administering our Nation's mineral resources. I believe a mineral leasing system is the most practical way of achieving the proper balance. We must assure access to those lands that are available under existing law for mining, but we must provide for the protection of the land and for the other values at the same time. It is not the purpose of the bill to prohibit mineral activity. Indeed the forecast is for more minerals for the Nation's economy, not less. However, we must update and provide sensible laws for the administration of the land and minerals.

Therefore, the goals and objectives which the Federal leasing program will seek to meet include preserving the environment while also providing a supply of minerals for the Nation to satisfy its economic requirements. The public will have an opportunity to participate in the program, and the Government will receive fair market value for the public resources in a competitive environment. Lessees will be given adequate time to secure a fair return for their investment.

As introduced, S. 921 would make no change in the system of revenue sharing embodied in the present laws. In fact, it provides that the revenue-sharing provisions of the present mineral leasing law will not be affected by enactment of the new leasing system. It was my thought that the question of payments-in-lieu-of-taxes and revenue sharing should be considered in a separate piece of legislation. I would be interested in getting the view of your Association on that question as well as your specific thoughts as to what kind of legislation should be enacted. You may wish to include the "in lieu" question in this bill, and if so, I would be willing to consider your suggested amendments.

The Senate Interior Committee intends to hold executive public hearings on S. 921. I am fully aware that it is a rather sweeping measure which will affect many different interests. However, as I have already indicated, modernization of the public land laws is long overdue and we must get on with the job now.

In view of President Nixon's statement, we hope to have the full cooperation and support of the Executive Branch as we consider the bill.

One of the uncertainties projected into this picture involves the proposed reorganization of the Executive Branch. If there is indeed a new "Department of Natural Resources" as contemplated, then obviously many of our land management practices will be affected. But the need for sound, multiple-use, environmentally oriented principles will remain. It may very well be that the philosophy for proper management of public lands can be written into the reorganization legislation, and may thus serve very well as the "organic" act we have been seeking.

In any event there is no reason for further delay. We must now proceed to reform obsolete land laws. From past history we know it may take years to achieve the basic departmental changes which have been proposed.

County government has a vital interest in the proper management and use of the public lands. While the question of payment in lieu of taxes may be uppermost in your minds, I urge you not to overlook the need for sound legislative guidelines which will preserve this valuable asset for future generations. I believe that the Counties have a special contribution to make in the development of public land policies. I am sure that by working together we can provide the kind of legislative framework which will ensure that the American people realize the maximum benefit from their ownership of our public lands.

THE WAR POWERS ACT, S. 731

Mr. WEICKER. Mr. President, in the summer of 1787 delegates from the 13 Original States gathered in Philadelphia. Slowly they argued, lobbied, caucused, and compromised toward the creation of that greatest of all political documents—the American Constitution.

The world they saw from Philadelphia was well-ordered by today's standards. In 1787, the difference between war and peace was clear. Wars began with formal declarations and ended with formal treaties. Between wars, armies and navies were greatly reduced or disbanded altogether. Transportation was slow, and the threat of military challenge more remote in time. It made perfect sense, therefore, that our Founding Fathers felt they had adequately safeguarded the country against arbitrary and capricious entry into armed confict by dividing the war powers of the new Government between Congress and the President.

The President was made Commander in Chief of the Armed Forces with the power to wage war. Congress was given the power to declare war and to control the purse strings needed to raise and equip the Army and Navy.

With a few minor exceptions, this system worked well until the end of World War II. Before that the United States had remained more or less separated—by geography and inclination—from the intrigues of foreign nations.

The end of the war saw the beginning of a fundamental reversal of our traditions. Our Armed Forces were not disbanded. Our defense budget did not disappear. Conscription did not lapse. In short, at the request of the President, and with the consent of Congress, a permanent and powerful Military Establishment was maintained, reflecting the changed world and our position in it. However, the delicate constitutional balance was upset. No longer did the President—regardless of party—deem congressional action necessary to waging an undeclared war.

At the same time, as the two super powers with their intricate alliances squared off across an ideological void, it became clear that declared wars were not to be.

Slowly, through Korea, the Middle East, the Dominican Republic, Cuba, and Vietnam, we have seen how far the balance in foreign policy has tipped in favor of the President. The military is permanently established as time factors have made it essential that the President be able to act without delay when necessary. Thus, Congress, in the interest of protecting American lives, has been forced to support the troops the President has committed.

Faced, then, today, with the all encompassing power of the Presidency and the erosion of congressional authority, we must act to restore a constitutional balance.

Mr. President, the distinguished senior Senator from New York (Mr. JAVITS) has proposed legislation to deal with this serious problem, and I am proud to join, today, as a cosponsor of his War Powers Act. Hearings on this important bill have started, and I urge Senators to give it careful study. I am sure that after full consideration, all will agree that this bill is not an attempt to usurp the powers of the President, but to restore the balance envisioned by those men in Philadelphia—to restore Congress to the role of a full partner in the formulation of foreign policy

Mr. President, to facilitate the study of this legislation by this body and the American people, I ask unanimous consent that the complete text of S. 731 be printed in the RECORD.

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

S. 731

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That use of the Armed Forces of the United States in military hostilities in the absence of a declaration of war be governed by the following rules, to be executed by the President as Commander in Chief:

A. The Armed Forces of the United States, under the President as Commander in Chief, may act—

1. to repel a sudden attack against the United States, its territories, and possessions;

2. to repel an attack against the Armed Forces of the United States on the high seas or lawfully stationed on foreign territory;

3. to protect the lives and property, as may be required, of United States nationals abroad; and

4. to comply with a national commitment resulting exclusively from affirmative action taken by the executive and legislative branches of the United States Government through means of a treaty, convention, or other legislative instrumentality specifically intended to give effect to such a commitment, where immediate military hostilities by the Armed Forces of the United States are required.

B. The initiation of military hostilities under circumstances described in paragraph A, in the absence of a declaration of war, shall be reported promptly to the Congress by the President as Commander in Chief, together with a full account of the circumstances under which such military hostilities were initiated.

C. Such military hostilities, in the absence of a declaration of war, shall not be sustained beyond thirty days from the date of their initiation except as provided in legislation enacted by the Congress to sustain such hostilities beyond thirty days.

D. Authorization to sustain military hostilities in the absence of a declaration of war, as specified in paragraph (A) of this section may be terminated prior to the thirty-day period specified in paragraph (C) of this section by joint resolution of Congress.

SEC. 2. (A) Any bill or resolution, authorizing continuance of military hostilities under paragraph C (section 1) of this Act, or of termination under paragraph D (section 1) shall, if sponsored or cosponsored by one-third of the Members of the House of Congress in which it originates, be considered reported to the floor of such House no later than one day following its introduction, unless the Members of such House otherwise determine by yeas and nays; and any such bill or resolution referred to a committee after having passed one House of Congress shall be considered reported from such committee within one day after it is referred to such committee, unless the Members of the House referring it to committee shall otherwise determine by yeas and nays.

(B) Any bill or resolution reported pursuant to subsection (A) of section 2 shall immediately become the pending business of the House to which it is reported, and shall be voted upon within three days after such report, unless such House shall otherwise determine by yeas and nays.

SEC. 3. This Act shall not apply to military hostilities already undertaken before the effective date of this Act.

COORDINATION OF WATER AND RAIL TRANSPORTATION—ADDRESS BY JOHN A. CREEDY

Mr. HARRIS. Mr. President, recently in my State of Oklahoma, a further step in the development of the navigational facilities of the Arkansas River was taken by the dedication of the Tulsa Port of Catoosa. At this significant time, a thoughtful speech was made by John A. Creedy, president of the Water Transport Association. Mr. Creedy points out the potentials for improved efficiency and decreasing transportation costs which can result from voluntary cooperation between the different modes of transportation. He places special emphasis on the economies to be realized by coordination of water and rail transportation.

At present, great attention is being directed to the problems of our transportation industries, and various executive and legislative proposals are being considered which would effect major changes in the regulatory patterns affecting these industries. A complete legislative overhaul of the agencies now regulating the various facets of American transportation does not seem unlikely. Such action cannot, however, be undertaken without adequate study. In the interim, benefits to be acheived through voluntary cooperation and coordination of existing modes of transportation can prove highly important to all segments of the transportation industry.

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

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

THE TASK AHEAD: MAKING THE DIFFERENT MODES WORK TOGETHER

It is a great privilege to take part in the dedication of the Tulsa Port of Catoosa. I won't repeat the many things you have already heard about what this waterway is going to do for this great area. It is starting out to be much more successful than was anticipated and that may not be good for you if it leads to complacency and a general letting up of the tremendous efforts which brought this waterway into being. Tremendous efforts are still required.

This waterway is a fundamental addition to the public wealth—a facility which gives your region a whole new dimension for growth and the nation new access to the natural wealth of these states.

You've heard that before of course. I'm just back from Alaska where the Water Transport Association is doing a study of the transport developments of the State of Alaska over the past 10 years and its needs for the next decade. What I have seen there in the past few months has great relevance for you.

Alaska today is what the west must have been like in the middle of the last century—at the early dawn of development. But the key to its development is the same as the key to the development of the west—cheap transportation.

Alaska is a wild and beautiful land. I was unprepared to find it more beautiful, if possible, in winter than in summer. If you count all the miles of short-line of the United States, half of them are in Alaska. It is a difficult environment. I talked a week ago with the Captain of Sea-Land's containership, the Boston. He had just come up the Cook Inlet to Anchorage through heavy ice. He said he had experienced gales in the Gulf of Alaska so severe that they turned his ship around. He had steamed for eight hours in the wrong direction before he dared to turn around.

When smaller tugs were put into service some years ago to bring rail cars on barges from Seattle to Whittier, Alaska, it was not unusual for a tug and barge headed north on its way to connect with the Alaska Railroad to find itself blown at the end of the day 100 miles south of where it was at the beginning of the day. Fairbanks, a few weeks ago had a record cold of minus 70 degrees. At that temperature, railroad wheels freeze to axles so that the wheel is dragged along the rail. Truck tires freeze so that you don't know whether you have a flat until you get the truck into a warm garage. Trucks are modified so that hot air circulates around the fuel tank otherwise the diesel fuel, even the specially winterized diesel fuel, would turn to jelly. In those climates, you don't dare to stop an engine. You'd never get it started again.

Members of our association, Alaska Hydro-Train, Pacific-Alaska-Columbia Company, Foss Alaska Line and their affiliates, have developed a wide variety of ocean barges to fit the needs of the trade. One type of barge is capable of carrying 16 miles of 48" oil pipe across the Pacific from Japan. A similar barge will carry 56 rail cars; two such barges towed in tandem will transport 112 cars, more than the normal unit train. A huge flotilla of tugs and barges delivered 187,000 tons of pipe and supplies to Prudhoe Bay in the few weeks in which the wind blows the polar ice cap away from Point Barrow so that it is possible to sneak past the ice and unload supplies.

I mention all this for two reasons. The first is to emphasize the resourcefulness of the water carriers. The water carriers serving the Arkansas Valley and the Mississippi System are no less resourceful and no less adaptable to the great variety of special transportation tasks necessary for the development of your region.

The second is to stress the need for perspective. The transport modes must work together, as they do in Alaska, for the full benefits of efficient transport to be made available. I think it is highly probable that one of the recommendations we will make in our report on Alaska is for the extension of the Alaska Railroad north to Arctic Ocean and west to the Brooks Range. There will be roads too in a great land where there are few roads today. Cheap transportation provided by an expanded railroad system is essential for the future development of the state.

There are expensive temporary alterna-

tives. Airplanes at over $300 a ton for the trip to the North Slope and winter-time ice road north from Fairbanks at over $200 a ton for 400 miles have both been used. For long term development, an expanded railroad is essential. Its rates would be 10 to 15 per cent of the amounts cited above.

I was shocked recently to read in Senate hearings on the railroads a statement by a leading west coast professor of transportation that the difficulties some of the railroads are encountering today mean that society "wants this technology phased out." Nothing could be greater nonsense.

Traditionally, the various modes have been hostile to each other. But, as more and more leaders of the transportation industry are saying, each does an essential job. What you must do in your new situation is make certain that they all work together as a single system in the interests of the most efficient development of the resources of the region.

The waterway has brought you navigation, the fifth spoke in the wheel of development. The plain fact is that railroads, trucks, pipelines, airplanes *and* navigation are needed for the proper development of a region. It is the interaction or competition of all the different modes that results in optimum transportation efficiency.

We have all heard of the labor theory of value. Add labor to a raw material and the value is increased. My friends in the Ohio River Company have been pointing out that there is also a transport theory of value. Phosphate rock in Florida is worth perhaps 3 to 5 cents a ton underground. It may be worth $4 to $5 a ton when it is mined and brought to the surface. But even this figure is meaningless. When transported 500 miles to the point where it can be processed into fertilizer and sold to farmers, the ultimate value is 20 times that at the mine. And, of course, the lower the transport cost, the more efficient the means of transportation, the more competitive your products are in distant markets.

Your concern therefore should be with the efficiency of all modes of transport. The product which starts by barge or rail is manufactured and delivered finally by truck or air. All modes form an inter-related system. If you know how to make the system work for you, you can accelerate the growth of the region and at the same time keep more of the new wealth in your own pockets.

Let me talk for a minute about what water transportation is. I've given you a glimpse of the extraordinary resourcefulness of those companies which operate ships, towboats and barges.

Typically, a barge company is, by modern standards of size, quite small. The man who runs it holds all the strings of the company in his hands. He knows his engines, the performance characteristics of different barges, his labor contracts, the details of financing, the market and profit alternatives. Overhead in the barge lines is very low and the typical business bureaucracy of the very large corporation is absent. The competition is intense and you should get your answers fast.

The inherent economy of barge lines for those commodities adapted to barge transportation is very great. Barges handle more than 9 per cent of the inter-city freight of the nation for less than half of one per cent of the nation's freight bill. The economies are similar to pipelines—indeed if you could take all the bends out of the rivers, barges would compete with pipelines, but they lose out on circuitry, Not always, of course. Petroleum is still the number one commodity on the rivers even after all the pipelines have been built.

It makes good sense to join the best efficiencies of barging and the best efficiencies of trucking and barging and pipelines and barging. The business relationship is highly cooperative.

But there has been a problem between the water carriers and the railroads. Lack of cooperation between the two modes has deprived shippers of valuable savings in overall transport costs. We are determined to bring about better cooperation. In the interest of efficient development of the resources of the region, we believe you should give this matter priority.

There are three things you should know about coordination of rail and water service.

In the first place there are substantial savings to be achieved in joining the best efficiencies of rail and water. The Water Transport Association studies of this issue indicate savings of from 10 to 30 per cent in overall transport costs and I believe these estimates are conservative because on the whole they do not take into account the impact of new investment in more efficient rail-to-water or water-to-rail transfer systems.

In the second place, the Water Transport Association has started a campaign to sell rail-water cordination to the railroads. It is frequently true that a water connection can result in higher earnings for the railroad than a railroad connection. The railroad, in effect, can share in the savings of water transportation. This is so for several reasons. The overall savings don't have to go to the shipper alone; they can be shared with the railroad. A run to the river port such as Tulsa-Port of Catoosa can give a railroad a long haul and a very quick turnaround on its equipment. And of course speeding the turnaround so that another load can be carried is the secret of improved railroad profitability. In a period of freight car shortages, railroads do not like to see their equipment go off line and often the water connection means that the railroad's equipment stays on line.

There are other advantages. The cheaper overall haul extends the market of a railroad which uses a water connection and this means expanded traffic. It may help reduce its capital requirements. Equipment used more intensively reduces the need for additional equipment. I think we have a lot to sell to individual railroads if they allow us in the front door. And, increasingly, they do.

Of course the most successful force is that of the shipper. If he is aware of the potential of rail-water service, he can knock heads together and get it accomplished. Your port, along with so many other ports in the country, must be alert to this potential and make sure, as we too will try to make sure, that the shippers in the region are aware of the savings available.

Third, the water carriers have invested hundreds of thousands of dollars in legal fees to give life to what seems to us a very clear sentence in Section 3(4) of the Interstate Commerce Act which reads as follows: "As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to Part III." What that means in plain English is that the ICC has the power to prescribe and order joint rail-water rates. There is nothing permissive about that sentence; it is mandatory power.

But it has taken us 25 years to get the ICC to use that power. I believe we are almost at the point at which we can present rail-water coordination to you, not as a permissive thing which the railroads can dodge if they want to, but as a mandatory thing which they have to do. It has taken three trips to the Supreme Court, but the message seems to be getting across.

Both the Commission and ourselves of course would much rather the coordination would be on a voluntary basis.

Let me tell you how we are going about the problem of encouraging voluntary "willing partner" rail-water coordination. There are no secrets today about railroad costs and how railroad rates are constructed. When we want to suggest a coordinated rail-water movement, we hire experts in determining rail costs and in the engineering of the most efficient rail movements. Such rail innovations as unit trains, multiple car movements, mini-trains fit well into the volumes needed for efficient water movement. We search out similar movements the railroads make for similar distances at rates which appear profitable. We put our proposed rail-water movement together, in effect saying to the railroad, if you can move this or a similar commodity from A to B for so much a ton, why can't you move it from C to the port for the same or a similar amount? Our figures indicate, we say, you are being paid, for example, 7/10ths of a cent per ton mile on the movement from A to B; if you connect with a water carrier you can do the same or better than that for a movement the same distance under identical circumstances.

The approach has been effective. I recommend that your port set up a committee on intermodal service to keep on the look-out for rail-water movements which will help build up the traffic in and out of the port. The economics of rail-water coordination are irresistible once they have been laid out properly. After years of litigation on this issue, the time is ripe to reap the benefits if you are willing to join with us in our program.

But it is important to remember my first point. Any major industrial or agricultural area needs us all. You won't hear me saying we can do without the railroads or the trucks, or the pipelines or the airplanes. All are needed and all must be financially healthy. If the Arkansas Waterway follows the example of the rest of the Mississippi System, the railroads of this region 10 years from now will show more benefits than any other part of your regional economy.

In Alaska earlier this month I caught an echo of a growing challenge to our traditional ideas about economic growth. In its most extreme form, it comes out, don't develop Alaska at all; keep it untouched for later generations. Some of our younger people feel this way. They never lived through the 1930's in the south, as I did, or the dust-bowl days. They don't know that as between the 1930's and now, now is better. They don't know how much hard work and dreaming went into the development of waterways such as the Arkansas which, with their multi-purpose objectives of flood control, bank stabilization, hydro-power, recreation, navigation and all the rest are the necessary key to unlocking the wealth of the country.

But although there sometimes appears to be a conflict between the environmentalists and the economic developers, there can be no real conflict, only misunderstanding. I think it was Bertrand Russell who said that if we could coordinate all the complicated calculations of our actions and reactions, we would always do the right thing out of pure self-interest. We believe in properly managed development as much as the environmentalists do. Perhaps we need to listen more closely to what they are saying and they in turn need to listen to what we are saying. We may find we're not as far apart as some people think. After all, one of the great strengths of this country is that from the very beginning we have listened to the young people and have recognized that on some things they make a lot of sense. This generation is no different from any other in that respect.

It is important for the young people particularly to catch the enthusiasm we have for these multi-purpose water resource programs. As friends of our children come through our house by the dozen, they seem to me on the whole better educated, more idealistic than we were at their age. The long hair is a problem for some of us, but, as my wife observed philosophically recently, long matted hair

has been fashionable for many more thousands of years than short neatly combed hair. The U.S. water resource development program is among the most imaginative, massive and successful engineering projects ever undertaken by man. It should have great appeal for young people because, in a world of vague values, the projects have what they often seem looking for, very clear objectives and measurable results. Those interested in improving the environment should be our friends.

We appear to be finding increasing hostility among some of the advisers to the Office of Management and Budget. Those who like to reduce all estimates of future benefits to mathematical models are urging criteria which, if applied years ago, would have prevented this ceremony from ever happening. Equally qualified mathematicians claim that these advisers are working from indefensible assumptions. Some of our leaders in the Congress are warning that wrong assumptions, if they prevail, will bring all water resource development to a stop.

I thought of these experts when I read the recent personal recollections of Vannevar Bush, adviser to the President on scientific matters during World War II. One of his annoyances was the fanatic with silly ideas who had important connections. He tells about a man named Pyke who had an introduction from Winston Churchill and wanted to build an ice island to be used as a mid-Atlantic airport. Pyke got nowhere with British scientists or with Bush or Roosevelt or with an attempt to get Bush fired. But he did waste millions of dollars and unknown quantities of scientific man-hours in Canada, where defenses against fanatics with connections were not as good. The ice island never happened.

There are Pykes trying to advise the Office of Management and Budget today, men with fanatic faith in the magic of their crystal balls. We hope they represent a passing phase.

We should all remember that there is no new wisdom in the numbers these mathematical wizards give us. If they did their additions properly, they would come to the same conclusions today that Senator Robert S. Kerr, Senator John McClellan, former Senator Mike Monroney and Newton Graham and so many others came to years ago.

Mr. Jenkin Lloyd Jones, editor of the Tulsa Tribune, in an article I first read reprinted in the Anchorage Alaska Times, recently paid tribute to the work of the Senator Kerrs of this world "who ate the rubber chicken and panhandled for good causes and schemed for things that would improve the community."

The Arkansas-Verdigris waterway, Mr. Jones said, represents 35 years of planning, promotion and agitation. And in 35 years a lot of people die. Many of the pioneers of this project are gone.

But the Ellenders and the Edmondsons carry on with the same philosophy: so little time, so much to do. Not for me. But for someday.

The day has come for the Arkansas-Verdigris, but not yet for Senator Ted Stevens' dream of a canal between the Yukon River and the Kuskokwim in Alaska or for many other useful water management projects which will be fundamental additions to the nation's wealth.

We have achieved a one trillion dollar economy. If we are to keep our predicted rendezvous with a six trillion dollar economy in the year 2020, we will need all the drive, imagination and the dreams of the kind of citizens who made this project a reality.

COMMENDATION OF PRESIDENT NIXON FOR HIS ACTION IN CALLEY CASE

Mr. CURTIS. Mr. President, I commend President Nixon for the action that he has already taken in reference to Lt. William Calley. Millions of Americans were pleased when the President of the United States issued an order that permitted Lieutenant Calley to remain in his own quarters while his case is pending on appeal. The President's order that he should not be confined to the stockade is a just one.

Mr. President, trials of the type that were conducted in Lieutenant Calley's case are not in accord with sound public policy. The law should always be just. If a particular type of prosecution results in widespread injustice, it is contrary to the best public policy. This has always been the theory of the law.

On September 1, 1970, I joined as a cosponsor in Senate Resolution 444 which had been introduced by the Senator from Oklahoma (Mr. BELLMON). That resolution provided:

That it is hereby declared to be the sense of the Senate that whenever civilian casualties occur in connection with any military operation carried out by members of the Armed Forces of the United States pursuant to lawful orders, the law does not hold such United States military personnel individually responsible for such casualties if inflicted incident to direct ground combat with members of an opposing armed force when the United States military personnel were being resisted by hostile fire from such an opposing armed force.

There are several military authorities which will yet have an opportunity to review Lieutenant Calley's case. In addition, he has a right to appeal to the U.S. Military Court of Appeals, which was set up by Congress following World War II for the very purpose of reviewing cases brought against the members of our Armed Forces. If Lieutenant Calley's case is not disposed of by these reviews and appeals, I then believe the President of the United States should give consideration to the use of executive clemency in this case.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter which I have sent to President Nixon.

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

U.S. SENATE,
Washington, D.C., April 2, 1971.

The PRESIDENT,
The White House.

MY DEAR MR. PRESIDENT: I commend you for the action you have taken in the case of Lt. Calley in saving him from the stockade and permitting him to remain in his quarters while his case is on appeal.

May I further express the hope that if Lt. Calley's case isn't appropriately disposed of upon review and appeal that you give consideration to granting him clemency in this matter.

Respectfully yours,

CARL T. CURTIS,
U.S. Senator.

NORTH CAROLINA PROTECTS RIGHTS OF MENTALLY ILL

Mr. ERVIN. Mr. President, since 1961, the Subcommittee on Constitutional Rights has been actively concerned with the constitutional rights of those in our society who are mentally ill. The 1964 District of Columbia Hospitalization of the Mentally Ill Act was a direct result of the subcommittee's work and has been widely acknowledged as model legislation in the area of civil commitment of the mentally ill. During the 91st Congress, the subcommittee held 7 days of hearings to review recent developments in this area of the law and to evaluate the operation of the 1964 act.

The subcommittee's studies in this field over the last decade have made clear that there still exists a considerable gap between promise and performance in securing the constitutional liberties of those Americans who are so unfortunate as to suffer from mental illness. Even in jurisdictions where legislation has been carefully drafted to protect the rights of the mentally ill, inadequate resources, and spotty implementation of legislative intent have frustrated the efforts to protect the constitutional rights of the mentally ill and to provide necessary medical treatment.

I am encouraged and proud to learn that my own State of North Carolina has taken action to reduce the gap between promise and performance in protecting the rights of the mentally ill. On November 19, 1970, the North Carolina State Board of Mental Health adopted a policy statement and implementing guidelines to enhance the dignity and welfare of the hospitalized patient and to protect his rights as a free man. Incorporated in these guidelines are recognition of the need for legal assistance; the right to fair compensation for work performed by patients for the hospital; the need for specific, individualized treatment programs for each patient; the rights of patients to refuse certain kinds of treatment; the right of privacy as to medical records; and the right of patients to be effectively informed of their rights under the law. In my judgment, the laudatory purposes for which this policy statement and these guidelines were issued and the specificity with which they purport to achieve these purposes make this document a model for other jurisdictions. Therefore, Mr. President, I ask unanimous consent that the policy statement and the implementing guidelines be printed in the RECORD.

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

POLICY ON PATIENT'S RIGHTS

It is the policy of the State Board of Mental Health that every person receiving the services of the Department of Mental Health be accorded, insofar as is within the reasonable capability of the Department and is consistent with therapeutic treatment, such care, treatment and privileges as enhance one's dignity, promote his welfare and protect his rights as a free man.

I. As a means of implementing this policy, the Department of Mental Health is hereby authorized to assure that all persons receiving services, subject to such limitations as may be reasonably necessary and which are entered in his treatment record, shall be allowed to:

1. Wear his own clothes;

2. Keep and use his own personal possessions, including toilet articles;

3. Have access to individual storage space for his personal articles;

4. Keep and spend a reasonable sum of his own money;

5. Receive remuneration for work done of value to facility;

6. Receive visitors on any day;

7. Have reasonable access to telephone, both to make and receive confidential calls;

8. Mail and receive unopened correspondence and access to a reasonable amount of letter writing material and postage;

9. To consult legal counsel.

II. The Department of Mental Health is hereby authorized to formulate procedures which assure:

1. A written therapeutic plan of treatment for each inpatient;

2. A record made of all such treatment and of a periodic review of the patient's treatment;

3. A comprehensive review of the patient's physical and mental condition at least annually and a finding stated in his record as to whether or not he should be retained in the facility or discharged, and any recommendations, for other appropriate treatment or disposition;

4. That physical restraint, including individual confinement, of a patient is to be utilized only to prevent danger of abuse or injury to himself or others, or as a measure of therapeutic treatment, and all instances of such physical restraint or individual confinement shall be recorded in the patient's treatment record;

5. That a patient may refuse electroshock therapy unless determined by a medical doctor, to be incompetent to make that decision and such finding be recorded in his treatment record;

6. That no unauthorized publication or use of a patient's treatment records shall be permitted. A patient's treatment records are deemed confidential and may be disclosed only on the following conditions and circumstances or as otherwise provided by law:

(a) As necessary between professional persons and/or agencies in the provision of services to the patient; or

(b) To those whom the patient or his legal representative designate; or

(c) To the extent necessary to make claims on behalf of a patient for legal or financial aid, insurance, or medical assistance to which he may be entitled; or

(d) To those engaged in research, pursuant to rules of the facility or the Department, provided that researchers maintain no identification and respect confidentiality; or

(e) Upon the order of a court of competent jurisdiction; or

(f) To the extent necessary to explain to a patient or his legal representative the reasons for and nature of a denial or limitation of his rights.

7. That upon discharge a patient receives, if needed, suitable clothing for and means of transportation to his residence;

8. A patient shall not be arbitrarily transferred;

9. All patients shall upon request be informed of their rights under the mental health laws of the state and the related policies and procedures of the Department and the facility. Printed copies thereof shall be furnished and/or posted in appropriate places;

10. That all employees of the Department are effectively informed of the rights of patients and the Department's policies and procedures for the care, treatment and promotion of patient welfare;

11. When any right of a patient or any policy or procedure of the Department is limited or denied, the nature, extent and reason for such limitation or denial shall be entered in the patient's records. Any continuing denial or limitation shall be reviewed every thirty (30) days and shall be recorded in his treatment record.

12. At such time as a person is initially admitted as an inpatient, unless he specifically objects, he shall inform the facility of the name and address of not more than two adults or corporate entities that he desires be advised of his admission, his rights, and the policies and procedures of the Department. The name and address of such persons shall be recorded in the patient's record, and the person notified. The facility shall make diligent effort to secure the name and address of the patient's legal representative, spouse, child, parent, a relative, attorney or friend. If the facility is unable to locate one of the above, that fact shall be entered in the patient's record and the Commissioner of Mental Health shall be notified. A patient may designate other persons upon a subsequent admission.

13. A patient, or a person designated in 12 above, who believes his rights have been or are being violated may give written notice to the facility which in turn shall promptly investigate the same and make *written* reply of its findings and disposition. A copy of both the notice and the reply shall be included in the patient's record. If the patient, or designated person, disagrees with the findings and/or disposition, he may make written request to the Commissioner of Mental Health for review. The Commissioner may cause such additional investigation as he deems necessary and shall make written reply with copy to the facility for inclusion in the patient's record. The Commissioner may make such recommendations or direct such actions as he deems appropriate. The Commissioner from time to time shall make report to the State Board of Mental Health of complaints received and dispositions made.

The Commissioner may designate one or more persons to receive such requests for review, to make investigations, and reply on his behalf.

THE PLIGHT OF SOVIET JEWS

Mr. GURNEY. Mr. President, it has always struck me as the height of hypocrisy for the Soviet Union to profess, before the world, adherence to the lofty principles of the United Nation's Universal Declaration of Human Rights and then systematically to harass and persecute minorities within the Soviet Union. Soviet preachments, as we know from history, are considerably different from Soviet practice.

Earlier this month, on March 14, 1971, I was honored to appear before the annual dinner of the Chesed L'Abraham Society at the Roosevelt Hotel in New York.

This group consists of the friends and supporters of Rabbi Portugal who now resides in New York. Rabbi Portugal, who is a saintly and distinguished cleric, began his rabbinical career in Rumania. After the war, he gathered to himself dozens of Jewish orphans whom he personally supported and instructed in their faith. For his pain, he was accused of antistate activities and was tried and imprisoned. Then the new regime in Rumania came to power, he was freed. He has now come to the United States to continue his humanitarian and educational activities. He is still working to bring Jewish children out from behind the Iron Curtain. Many of these youngsters have come to the United States, many have gone to Israel. He is personally sponsoring several schools in Israel which are providing religious training for newly arrived Israeli citizens.

I ask unanimous consent to have printed in the RECORD my remarks on that occasion.

I also ask unanimous consent to have printed in the RECORD an article by Morris Abram, the former president of Brandeis University, which recently appeared in the New York Times, setting forth legal and moral objections to the Soviet state policy of harassment of its Jewish citizens and Soviet failure to permit its Jewish citizens the right to expatriate themselves.

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

MR. GURNEY'S REMARKS AT CHESED L'ABRAHAM DINNER

Mr. Chairman, Honored Clergy, ladies and gentlemen: it is a pleasure to be with you here this evening.

I wish to pay a tribute to Rabbi Portugal, who is really responsible for bringing us together tonight. I really don't have to tell you about his charity and love of the law, his concern for youngsters, their education and religious training, his courage and dedication. You are familiar with this good man and his works. It is an honor for us to assist him, and I hope that your generosity and the generosity of other sympathetic Americans will permit him to continue his work of charity, education, spiritual and material.

I have recently returned from a trip to Israel and I think that you might be interested in some of my impressions about our friends in Israel and about the prospects for peace in the Middle East.

Mrs. Meir, of course, was an American citizen before she immigrated to what was then the British mandate of Palestine.

We met with Mrs. Meir, Moishe Dyan, Abba Eban and other cabinet members and had very candid and very friendly discussions. I was struck by the calmness and the confidence, not only of high government officials, but of the Israel citizens as a whole. Perhaps living on a war footing for almost 23 years now, the Israelis have developed a poise which allows them to cope with those enormous tensions.

They have been surrounded by hostile nations since independence was achieved in May 1948, neighbors who, on the one hand deny the existence of Israel, and on the other, vow to extinguish that existence. And three times in those years, in '48, '56, and '67, continual tension burst out into full fledged war and against these hopeless odds—80 million to 2½ million, Israel triumphed, preserving, not only its national identity, but earning the respect of fair minded people everywhere.

I think if I had to cite one incident which typified this whole experience for me, I would go back to that day in July of 1967—a month or so after the six day war ended—when prisoners of war were being repatriated. At the Syrian border, the Israeli Government repatriated about 1500 Syrian POW's to effect the release of a single Israeli aviator. I think his jet had run out of gas or developed motor trouble over Damascus: Down the road from the Syrian side came this jaunty redheaded boy, grinning from ear to ear to the welcome of his comrades, while a seemingly endless line of Syrian captives trudged back over their border, grimly and silently.

But, the lightning war of 1967, as we know, really didn't settle anything. For, in many ways, the situation is more ominous today than it was four years ago. And, I mean specifically the influence of the Soviet Union in the Middle East.

Virtually all of the Egyptian hardware captured or destroyed in the six day war has been replaced by the Russians. Sam I and II missiles have been introduced into the UAR by the Russians along with thousands of Russian "advisers". The Soviet fleet in the Mediterranean has increased enormously

since 1967 and it is a modern and very sophisticated striking force. I don't think that there is any doubt that the Russians are in fact calling the shots for the Egyptian Government today. We can demonstrate this by the secret visit of Amuar Sudat to Moscow two weeks ago as the most recent truce was about to expire. It's fair, I think, to say that the relationship between Moscow and Cairo today is the relationship of master to servant. The Russians are systematically exploiting the hysterical Arab hatred of Jews, inflaming these age-old passions, rubbing salt into wounds that are ages old.

That is why I must agree with President Nixon's assessment of the Middle East as potentially the most dangerous situation in our foreign relations—more dangerous than Vietnam or Berlin or any other trouble spot, because it involves, potentially at least, a confrontation between the super powers.

Viewed historically, I think we can see in the Soviet's newest probes, an extension of great Russian expansionism that goes back to the 17th century. Russia expanded unopposed into what is now Soviet Asia in the 18th and early 19th century. Other attempts to establish toeholds in the eastern Mediterranean were blunted by the French and British presence there in the 19th and early 20th centuries. After World War II, however, the British and French influence with the Arab countries diminished—and as they were going out, particularly after the Suez invasion of 1957, the Russian offensive—diplomatic and economic began. The rallying point for this offensive has been, of course, the tiny state of Israel.

There is, of course, nothing new or unusual about Soviet hostility toward the Jews—in and out of the Soviet Union. To a certain extent, it is an extension of Russian state policy that goes back to Tsarist times.

We tend to neglect the lessons of history and I think we do so at our peril. For instance, while it is true that Russia left World War II as an ally, or at least a co-belligerent of the United States, we tend to forget that the Soviet Union began the war as the ally of Nazi Germany. In fact, the infamous Molotov-Von Ribbontrop Pact of August 1939 was the event that triggered the actual outbreak of hostilities and September of 1939 saw the rape of Poland jointly carried out by Hitler from the West and Stalin from the East. And the Russians devoured the Baltic States Latvia, Lithuania and Estonia in the same mouthful—and those once proud nations have never regained their independence or national status.

Throughout the Soviet empire since the end of World War II, Jews have been abused and intimidated—denied the right to profess their religion or express their culture or even study the Hebrew language. Rabbi Portugal can tell you much more graphically and more vividly than I can what it means to be a Jew behind the Iron Curtain and to what lengths the Soviets will go in their desperate and so far happily unsuccessful efforts to destroy religion in their empire.

The refusal of the Soviet Union to permit the departure of Soviet Jews who wish to leave is an outrage to world opinion. We hear more about it now. But it has been going on for fifty years.

The Soviets hypocritically proclaim adherence to the universal declaration of human rights—and that document specifically recites that all people shall have the right to expatriate themselves—to pass freely from state to state—to remove themselves from a jurisdiction which they find offensive or destructive of their rights. What is true of the Soviet Union is true also of its satellite states: Rabbi Portugal, I know is personally familiar with the Rumanian government's intransigence in this regard. I frankly do not understand Soviet attitudes. Soviet Jews are unwilling and unable to assimilate into the Soviet life style, into a society which is militantly atheistic, conformist and rigid. I would think the Soviets and their puppet states would be glad to see these citizens depart: they are not. They cruelly break up families, prevent the reunion of other families and harass and intimidate Jews who dare to even express a desire to leave—or apply for an exit permit. The "workers' paradise" builds walls to enclose its own citizens and cut them off from freedom. I sometimes think it is cruelty for cruelty's sake: sadism.

If Soviet internal policy is, from our point of view, blind and unreasoning, the same can be said of Soviet foreign policy particularly in the Middle East.

In the face of the Soviet threat in the Middle East, it seems to me that the United States must remain firm, and, we must realize that our National interests and the Israeli interests coincide. If Israel were overrun by her Arab neighbors, it would mean, in effect, Soviet hegemony in the Eastern Mediterranean. That is unthinkable from the point of view of American interests—indeed from the point of view of western civilization. The State of Israel the stumbling block in that grand scheme, and we as Americans, must see to it that Israel maintains her independence and integrity—first, because it is right, but also because it is in our own national interest to do so.

I welcome and applaud the peace initiatives that President Nixon has made in the last 18 months. While I would disagree with some of Secretary Roger's emphasis and his choice of words, I accept his efforts for what they are: genuine and thoughtful proposals on an extremely difficult problem. Our position is as it should be—that an imposed settlement is out of the question. The settlement must be hammered out by the parties to the controversy—the Israelis and the Arabs. Mark you, the Arabs—not the Russians. And I think that the Israeli position about the captured terriority is absolutely sound: to surrender the Golan Heights, the Sinai and the West Bank of the Jordan as a condition precedent—in other words, at the beginning of the negotiations, it would leave Israel nothing with which to negotiate. Mrs. Meir is quite correct in insisting that security be written into an agreement—secure and defensible boundaries are essential to Israel. It would be foolhardy for Israel to retreat to the pre-1967 boundaries—boundaries which invited attack and made war inevitable.

And now we might properly ask—what are the prospects for peace?

The Russians, as I have indicated, hold the key to peace, and, in my judgment, it will come when the Russians see it to be in their advantage to allow it to come.

I don't see any quick resolution of these enormous problems. For these problems are, after all, ages old. We must not allow our impatience to prod us in to any hasty action. We, both Israel and the United States, must remain firm and keep our resolve and our heads in these trying times. Although I do not see a solution immediately forthcoming, I am nevertheless confident that in the long run, Israel will endure and triumph.

There have been other times in the history of Israel when the despair was abroad in the land, when the future seemed hopeless, when her enemies seemingly triumphed. What sustained Israel then will sustain her now in these new troubles. And, in the end, we can sing with the psalmist a prayer of thanksgiving that is perhaps three millenai old:

Give thanks to the Lord for He is good; for His mercy endures forever.
Let the house of Israel say: His mercy endures forever.
In my distress, I shall call upon the Lord; Lord, hear me and set me free. I don't fear: what can man do to me?
The Lord is with me, my helper and I shall see my enemies confounded. It is better to take refuge in the Lord, than trust to man, than trust in princes.
All the nations surround me: in the name of the Lord, I destroyed them. On all sides they surrounded me, I destroyed them.
Being struck, I was pushed so that I might fall, but the Lord helped me. The Lord is my strength and my courage; and He has become my savior.
And the voice of rejoicing and salvation is in the tents of the just; the right hand of the Lord has done mightily. I shall not die, but live and I shall declare the works of the Lord.

I thank you for your kind attention.

[From the New York Times, Jan. 22, 1971]

THE RIGHT TO LEAVE—SOVIET UNION DEFIES BASIC HUMAN RIGHT ADOPTED BY THE U.N.

(By Morris B. Abram)

The recent vengeful trial of Jews attempting to leave Leningrad, the brutal beating and recapture of the Lithuanian seaman seeking asylum on an American Coast Guard vessel, the expressed fear of Solzhenitsyn that if he accepted a Nobel prize in Stockholm, he would be barred forever from his Russian homeland—all these events say something sad and significent about the Soviet Union fifty years after the revolution.

The Soviet Government is afraid to honor a basic and internationally recognized human right, the right of everyone to leave any country, and to return to his own country.

The principle is derived from natural law, was regarded by Socrates as an attribute to personal liberty, is upheld in Grotius's treatise on International Law and was guaranteed to Englishmen in the Magna Carta. Socrates, in his dialogue with Crito, stated the law of Athens and the reason: ". . . we further proclaim to any Athenian by the liberty which we allow him, that if he does not like us when he was become of age and has seen the ways of the city, and made our acquaintance, he may go where he pleases and take his goods with him."

During my five years of service in the United Nations, my Soviet colleagues were consistently hypersensitive to any discussion of the right to leave one's country. I knew, of course, that the Soviet Union had fought a last ditch fight against Article 13, finally proposing and losing an amendment to make the right conditional, "in accordance with the procedure laid down in the laws of that country."

Eventually, the Soviet Union abstained in the General Assembly vote. However, the force of the declaration was affirmed unanimously twenty years later in the Proclamation of Teheran that declared. "The Universal Declaration of Human Rights states the common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community."

In 1963, the United Nations Subcommission for the Prevention of Discrimination and Protection of Minorities considered a study of discrimination on the right of everyone to leave any country, including his own, and to return to his own, prepared by the Philippine jurist, Jose D. Ingles. Judge Ingles proposed very explicit draft principles based on Article 13. The Soviet bloc opposed its publication, demanded the deletion of material from authoritative sources giving instances of denials by Soviet-bloc nations of the right to leave the bloc countries, and voted against the draft principles. The Soviet representatives contended at the same that everyone was free to leave even the Soviet Union.

The Soviet Union is a great and powerful country, the bulk of whose citizens are as attached to that land as are citizens of other nations. Therefore, the Soviet unreasoning and unjustified fear of free exit perplexed me. One day at lunch with a man from one of the Soviet-bloc nations, I raised this question.

He acknowledged the Soviet fear and the shackles it had imposed on exits.

He explained: "The U.S.S.R. is a state of minorities, proclaimed by its leaders as the perfect society. If anyone chooses to leave, this is a blot on the claim and a bad example to Soviet minorities, many of whom have compatriots outside the borders."

I asked his opinion as to how many people would actually leave the Soviet Union if the doors were opened. "Not many," he replied, "and many who would leave would return if there were no stigma or impediments on leaving or reprisals on returning."

He drew from the recent history of his own country, which had opened its doors after World War II. "Many left—several hundreds of thousands, but soon, I myself processed the visas for a great flow of return." Then he said: "Where the gates swing freely both ways, the flow soon establishes an equilibrium."

The Soviet Union, however, has been totally obstinate while hypocritically contending that it has open doors. Only in the heat of debate when their guards are down do Soviet delegates tell the sad truth about the right to leave Russia and most Soviet-bloc countries today, for that matter.

The International Convention on the Elimination of all Forms of Racial Discrimination, ratified by 46 nations, including the U.S.S.R. and the Ukraine, is now in force. Included among the rights enumerated is "the right of everyone to leave any country, including his own, and to return to his own country."

The cruel fact, however, is that the Soviet Union, for all of its successes and achievements, is still in some ways a frightened, primitive nation, not anything like as advanced as the Athens of Socrates.

INDIAN HEALTH IN OKLAHOMA AND THE NATION

Mr. HARRIS. Mr. President, the health care being provided the American Indian, which is an obligation undertaken by the Federal Government in treaties with the Indians, continues to be a national shame.

Last week in Oklahoma City I held a statewide hearing on Indian health. More tha 300 Indians attended the hearing representing the major tribes of the Stace of Oklahoma, and I heard over 40 witnesses. I wish every Senator could have been there to listen to this testimony.

Witness after witness at the Oklahoma City hearing gave accounts of lack of proper care in Indian hospitals and at clinics because of a shortage of personnel, drugs, and supplies. In discussion with Indians from other States, I have heard accounts of outrageous shortages similar to these existing in Oklahoma.

I am firmly convinced that unless Congress and the Administration decide to do better this year in living up to a solemn promise of years ago to provide decent and adequate medical care for American Indians, there will be more needless and tragic deaths.

This week I testified before the Subcommittee on Department of the Interior Appropriations of the Committee on Appropriations, and I set forth certain requests for increases in the fiscal year 1972 budget for the Indian Health Service, based upon the testimony I received in Oklahoma City. When my office has transcribed the testimony, I will make it available to the entire Senate.

One major request that I made to the subcommittee was to increase the budget by $10,000,000 to provide sanitary facilities for existing Indian housing. This item is extremely important because we know that the high rates of gastroenteritis, amoebic, and bacillary dysentery along with a mortality rate for infants 1 to 11 months of age that is three times that of the rest of the population, are directly related to the poor sanitation conditions that most American Indians are forced to endure. Unfortunately the budget request does not provide funds for sanitation improvements in existing homes, but only in new construction.

The distinguished chairman of the subcommittee (Mr. BIBLE) questioned me concerning the number of existing dwellings that would be involved if we undertook to improve existing housing. In the period October 1966, to June 1970, Indian families living in standard housing increased from 18,653 to 32,209, but during the same period the number of Indian families living in substandard housing also increased from 57,447 to 62,998. Even though the Department of Housing and Urban Development is attempting to accelerate its Indian housing program, little hope exists for making headway concerning the 36,430 Indian homes that currently need new or improved sanitation facilities. This 36,430 figure represents 45 percent of total housing available to rural and reservation Indians.

As I stated in my testimony to the subcommittee, a study published by the Rural Housing Alliance last year indicates that it might take as long as 281 years to fulfill the current needs for decent housing of Indian families under the jurisdiction of the Bureau of Indian Affairs, if trends in new housing starts for Indian families continue at present rates. Facing this unacceptable length of time, we must give attention to the sanitation needs of existing homes. The $10,000,000 increase which I propose would provide new facilities in the coming year for only about 920 Alaska homes or about 3,333 homes in the rest of the United States, and is a very modest request.

Mr. President, the appropriations for the Indian Health Service will be one of the most important matters we will consider this year. I hope the administration budget figures for this purpose can be substantially increased as I stated to the Senate appropriation subcommittee.

Mr. President, I ask unanimous consent that my testimony before the subcommittee on Interior Department appropriations be printed in the RECORD.

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

STATEMENT OF HON. FRED R. HARRIS, U.S. SENATOR FROM OKLAHOMA

INDIAN HEALTH SERVICE BUDGET INCREASE

Senator BIBLE. Our next witness is Senator Harris.

Senator HARRIS. Mr. Chairman, Members of the Committee, I appreciate the opportunity to appear before you to testify on the appropriations for the Indian Health Service. I consider this to be an extremely important matter.

Senator BIBLE. I am delighted to see you here at the hearing instead of meeting you first on the Floor with your team mates lined up.

Senator HARRIS. I hope my cause will be served well by my appearance here.

Last Thursday in Oklahoma City I held a state-wide hearing on the health problems facing the Indians of my state. Over three hundred Indians attended the hearing representing almost every tribe in Oklahoma, and I heard over forty witnesses. My office is transcribing the hearing, and I hope the Committee can keep this hearing record open until it is transcribed, and I will submit it as an official part of my testimony. I hope every member of this Committee and the Senate will read the testimony I received in Oklahoma City.

No one could have sat and listened to that eloquent and tragic testimony without being greatly saddened and greatly outraged.

At the conclusion of the Oklahoma City hearing, Mr. Lee Motah, Chairman of the Comanche Business Committee, presented a resolution to the group calling for an increase in the appropriation for the Indian Health Service to at least $200 million, and that resolution was adopted by a unanimous vote.

I don't believe that anyone who heard that testimony in Oklahoma City would question for one moment the need to increase the appropriation for the Indian Health Service to at least $200 million.

As we all know, the statistical evidence concerning the present condition of Indian health is indeed tragic and appalling. On the other hand, it is an indisputable fact that the health care of Indians has improved dramatically since 1955. At a time in history of unprecedented national wealth, medical care for Indians still lags behind the rest of the country by at least one generation.

Thus, while the death rates from tuberculosis have declined 75 per cent for Indians and Alaska Natives, Indian and Alaska Native tuberculosis mortality rates are still over four times as high as for the U.S. population generally. Despite the fact that the infant death rate among Indians and Alaska Natives declined 51 per cent between 1955 and 1970, the Indian and Alaska Native rate is still 1.4 times as high as that of the U.S. population which, in contrast to many other industrialized nations of the world, itself compares very poorly. Although deaths attributed to gastritis, duodenitis, enteritis, and colitis, have declined over 50 per cent in the same period for Indians and Alaska Natives, the Indian and Alaska Native rate is still almost four times that of the rest of the population.

Mr. Chairman, I realize that you and every member of this Committee is familiar with these statistics. I only wish that each of you could have heard the Indian people themselves last Thursday as they set forth from actual experience some of the tragedies that make up the cold statistics.

I am convinced that Indian health services are at a cross road and unless Congress acts, the conditions of Indian health will gradually worsen despite increased annual appropriations. This is probably already taking place. The seemingly generous increases in

the fiscal year '71 budget for the Indian Health Service were probably more than eaten up by an incredible increase in the cost of medical services generally, pay raises and the rapid growth rate of the Native American population.

This year is no different. The Administration proposes to increase the IHS appropriation by more than $14 million. Anticipated inflation in health costs alone will cost more than $8 million (and I would like to remind you that we have been particularly inept in anticipating the unprecedented rise in health costs). The remainder of the proposed increase, approximately $6 million, will probably not be enough to meet the demands of normal population growth and unanticipated costs.

I am firmly convinced by what I have heard that Indian health is likely to get worse rather than better unless we act now. We cannot, as decent human beings, permit the deplorable conditions of Indian health to continue as they are—much less get worse. We cannot let this happen.

Senator BIBLE. Before you proceed, you made a request to incorporate the testimony that you took at your Oklahoma City hearing. How large a hearing record would that be?

Senator HARRIS. It will be rather large; there were about forty witnesses, and it will be rather lengthy testimony. I would imagine each witness spoke for a minimum of ten and a maximum of fifteen or twenty minutes, an average of around ten minutes each for forty witnesses. It took all day long. I started at 10 and wound up at 5:30.

Senator BIBLE. When do you think that will be ready?

Senator HARRIS. I can't tell you offhand, Mr. Chairman. What you could do is wait and see when you look at it and decide whether to receive it in the Committee's files or have it printed. I will in any case have it printed in the CONGRESSIONAL RECORD.

Senator BIBLE. If you are planning on doing that, we might very well avoid the duplication of the printing. We plan on keeping this record open until April 6 or 7. I don't know whether that gives you the time to submit it to us for our consideration. But in any event it certainly would be adopted by reference and it would be available to all of the members of the Committee, and in addition, if you are going to incorporate the results of those hearings into the CONGRESSIONAL RECORD, that would be another easily available source for anyone who wants to read them. We will see it's covered one way or the other.

Senator HARRIS. Sanitation: First let us consider the supplying of badly needed sanitation facilities to Indian homes. Since passage of Public Law 86–121 in 1959, over 50,000 Indian and Alaska Native homes have been provided with facilities for running water and waste disposal. Understandably, this program has been enthusiastically accepted by Native Americans. It cannot be disputed that the lack of safe water resources and adequate waste facilities is a major source of disease among America's Indian population.

The incredibly high rates for gastroenteritis, amoebic and bacillary dysentery along with a mortality rate for infants one to eleven months of age that is three times that of the rest of the population, are directly related to the poor sanitation conditions that most Native Americans are forced to endure. The abolition of these conditions should be a major priority in the area of preventive medicine.

Unfortunately, such is not the case. As a result of interagency agreements recent program funding has been directed exclusively into services for new or improved housing rather than for existing homes.

American Indians with whom I have talked and who testified in these hearings see that as particularly inconsistent that only those who get new homes or particularly improved homes can come under the program for running water and waste disposal, whereas many in existing homes do not.

Many of the existing homes for which there are no early plans for either replacement or repair still have not been serviced and are without safe water supplies or sanitary facilities. In addition many homes previously served with minimal facilities in the early years of the program need to have the service upgraded.

The argument has been made that limiting the installation of sanitary facilities to new housing is the most economical and efficient way to maximize dollar investments in eliminating unsanitary conditions in Indian housing. Such an argument is penny wise and pound foolish.

A study published by the Rural Housing Alliance last year indicates that it might take as long as 281 years to fulfill the current needs for decent housing of Indian families under the jurisdication of the BIA, if trends in new housing starts for Indian families continue at present rates.

This is the same as saying that we will never provide adequate housing for Native Americans. It also means that if improved sanitation facilities are tied exclusively to new housing, then America's Indian population is condemned to live forever in a dismal, squalid, disease-ridden existence.

It is obviously foolish economics to allow such a condition to continue. The tens of thousands of Indian houses that lack adequate sanitation facilities are a breeding ground for disease that will require hundreds of millions of dollars in IHS expenditures to alleviate in future years.

I propose that we make a modest start toward eliminating this situation once and for all by appropriating an additional $10 million to be used to provide sanitary facilities for existing Indian housing that will not be replaced in the foreseeable future. Such an expenditure will save lives, not to mention the millions of dollars that will not have to be spent in future years as a result of this preventive measure.

Senator BIBLE. On that subject we queried the Health Service people rather carefully, I believe. The thrust of their answer as to not putting the sanitation facilities in the older and the existing homes is primarily built around an argument that the old homes are in such a bad state of disrepair that this is in effect throwing good money after bad.

Do you have any statistics that refute that? I don't frankly, know because I don't know how many Indian homes there are in that condition today.

Senator HARRIS. You can go at it this way. It would be wise to find out to the degree you could what the Indian Public Health Service feels about sanitation. If the Chair and the Committee would simply consider the fact that it's going to take 281 years to replace present Indian housing at the rate we are going, that means that there are a great number of houses people are going to continue to live in because there is just no way they are going to be replaced.

Senator BIBLE. How many Indian homes are there of a class you are describing?

Senator HARRIS. I can't give you immediate figures, but I would be glad to check with the Indian Public Health Service or the BIA. This amount of money is actually based upon discussions with the people in the BIA and the Indian Health Service as to what numbers of houses they know for the foreseeable future are going to continue to be lived in. We are condemning a lot of kids in this country to continue to suffer the ravages of health problems that come from lack of sanitation facilities and water facilities.

That is a rather basic kind of public health service concept, and it seems to me that $10 million is an extremely low figure to try to prevent that kind of occurrence.

Senator BIBLE. I wish if you could that you would build up your argument with some actual statistical figures as to the number of houses that are in this condition. If they come to this conclusion within the Indian Health Service, they certainly must have a very good knowledge as to the classes of houses that Indians live in today; I mean nationwide, and that is what you are addressing yourself to.

Certainly there are many areas that do need upgrading in this respect.

Senator HARRIS. I shall do that, Mr. Chairman. The reason I didn't do it is because the number of substandard houses are so staggering that the $10 million is a drop in the bucket.

Senator BIBLE. I would just like to get an idea of the scope of the problem, that is all.

Senator HARRIS. I will do that.

(The figures not printed in the RECORD.)

Senator BIBLE. You may proceed.

Senator HARRIS. Back to my statement, as to medicines:

Second, we must make a renewed effort to correct the continuing lack of an adequate supply of drugs and medical supplies at IHS hospitals. We must put an end to the frightening situation where essential antibiotics, pain relievers, and even surgical dressings are unavailable when there is a critical need for them. In spite of the fact that chronic shortages in these essential items have been documented again and again.

This is an item I have spoken on the Floor about for the last several years, and the Senate has added some funds, but we can't seem to catch up.

The Administration does not propose to correct this continued alarming shortage in medicine and drugs.

I recommend an increase of $1,500,000 to bring the inventory of IHS drug and medical supplies up to minimum safety levels.

COMMUNITY PERSONNEL

Third, we need to address ourselves to a special problem involving the program for community health representatives. It is evident that the medical profession cannot meet its personnel needs without enlisting large numbers of paramedical people. This in itself is justification for extending the Indian community health aid program. Moreover, the community health representatives provide an essential link in understanding between the professional staff of IHS and many Indian communities.

Much needs to be done, however, on the part of IHS to provide additional training and career ladder opportunities for C.H.P.

Although the Administration budget provides for an additional 100 C.H.P., IHS has identified a need for nearly one thousand more CHR at the present time. I would hope that IHS in connection with the tribes would place an emphasis on employing returning Vietnam veterans with paramedical training in these CHR positions.

One lady testified that she has to serve four counties. Of course she can just barely scratch the surface as far as getting around and being of some assistance to the Indian people of those counties which happen to be in my home area.

While an increase of 100 CHP is slight in face of the overall need, it does represent a step in the right direction. This does not necessarily represent an increase in the total health aid program available to Indian communities. A similar program funded through OEO which supports 108 CHR in Arizona, Montana, North and South Dakota is about to be phased out by OEO effective June 30, 1971.

Unless this program is picked up by IHS, there will be an overall net decrease in CHR services available to Indian communities.

I recommend an additional $972,000 in order that the CHR program can be maintained at least at present levels in those four states.

DENTAL CARE

Fourth, dental care continues to be an area where the overall effort meets only a fraction of total need for services.

Some Indian people testified before my hearings about the sad state of the dental care for Indians in Oklahoma, which I know is typical of that around the country. They brought casts of the mouths of three little Indian children and described them as atypical cases of dental problems among Indian children in Oklahoma.

There were teeth which were badly rotted and misshapen causing very, very severe long-term problems of health and nutrition and self-confidence.

We continually receive reports which relate how Indian young people, many of whom are in their late teens, some to IHS Dental clinics for their first visit to a dentist in their lives. Moreover, the vast majority of Indian adults cannot now or in the foreseeable future expect to receive any measurable increase in dental health services.

You see so many older people who talk with their hands over their mouths, embarrassed by the way their teeth look and with no way to do anything about that.

The proposed Administration budget program increase of $400,000 is grossly inadequate to meet the overall need.

I recommend an increase of $1,500,000 as a first step toward making adequate dental care available for Native Americans.

TRANSPORTATION

Fifth, one of the most critical problems which I have become aware of and which is of constant concern to the people who depend upon IHS is their basic inability to use IHS because of lack of transportation. An Indian individual who lives as much as 100 miles from an IHS hospital or clinic and who cannot afford reliable transportation simply doesn't have the ability to use the health service when he most needs it.

It is not uncommon, then, for a minor illness to become a serious or even critical condition because of the delay involved in traveling long distances to IHS facilities. Instances where Indian families have been forced to pay exhorbitant sums for emergency transportation are not rare.

I recommend that a minimum of $1 million be appropriated for the purchase or lease of carry-all or van-type vehicles to be used exclusively by remote Indian communities for transporting Indian patients to health facilities on a regular and emergency basis. I believe that placing these vehicles in remote Indian communities that are willing to maintain them will greatly strengthen the relationship between IHS and these communities.

PERSONNEL

Sixth, additional personnel to staff IHS facilities continues to be a desperate need. Last year Congress provided an additional 300 positions in Indian hospitals and this has helped a great deal. However, IHS hospitals still have a need for an additional 750 staff positions. It would require an additional $9 million appropriation to meet this urgent and most life-and-death need for hospital staff.

At Fort Sill Indian hospital we lately have built a brand new hospital. As one witness said before my hearings, "it's a beautiful facility outside, I wish we could make it a beautiful facility inside."

It's a hospital built for 80 beds, but it only has 60 beds in it because we don't have the personnel to staff it. They have closed down the pediatrics ward.

I think that it is a scandal that we would build a new hospital like that and then not provide the staff to take care of it.

Mr. Lee Motah, who is the Chairman of the Comanche Business Council, lives in Oklahoma City a hundred miles away from that hospital, but, as is true of so many Indians in Oklahoma and around the country, he drives the long distance back there to get the benefit of those services.

He said the other day he and his wife drove to that hospital. He did not tell anybody that he was Chairman of the Comanche Business Council because he just wanted to see what regular service other people get. He needed medical attention. They waited from 9 o'clock in the morning until 4 o'clock in the afternoon without being waited on, as did a great many other people who were still in the waiting room all day long.

They drove back to Oklahoma City, a hundred miles, and the next morning drove back to Fort Sill Indian Hospital and started in line again at 9 o'clock and eventually were treated at 2 p.m.

There are actual cases of people dying in waiting lines because we do not have sufficient personnel. It just seems to me we must do much more about that.

The attitudes of a lot of these people are terrible toward the Indians whom they are supposed to serve, and then the very situation of having to sit there in the line for hours and hours is enough to degrade and dehumanize people and indicate to them that we don't really care much about them or put very much value upon their lives.

I think that we have got to do more in the personnel field, and we have got to do more for example with physicians' aides.

One of the bad things about the Indian Health Service is that doctors come in there and stay only two years and then go away somewhere else. As a result, Indians feel that they are not really very interested in them and that this is just a sort of two-year duty they have to do.

I believe we can do a better job of recruiting people who would be more concerned about Indian health.

More than that, I believe we could institute, as the Veterans Administration has begun to do, a program for training physicians' aides that could take a lot of these duties off of the doctors and work under the doctors' supervision and do a much better and more humane job.

Senator BIBLE. In this Fort Sill Hospital, how long ago has that been completed?

Senator HARRIS. I believe it has been three or four years now since the new facility was opened, it seems to me it's like three or four years.

Senator BIBLE. And over that period of time there is that many vacant beds in that hospital?

Senator HARRIS. That is right. It's built to be an 80-bed hospital; it's only being run at 60 beds. They don't have a pediatrics ward at all. It's a brand new, beautiful facility. The old building is still there that is vacant, and that is a shame.

There are plenty of things that ought to be done with the old building. For example, the old building could be used as a nursing home facility.

Another man, Taylor Noyabad, he is Vice Chairman of the Business Council, went down to Fort Sill Indian Hospital the other night with his grandchild and his daughter. When they brought the baby in there, the nurse put a towel on the baby in place of diapers, and he asked why that was so, and they said they didn't have a sufficient supply of diapers in that hospital.

Not only that, but I have heard witness after witness testify to what I think is the uncontroverted truth, that in a lot of places in Oklahoma, in these Indian hospitals, people have to bring sheets and blankets themselves because they don't have sufficient sheets and blankets in these hospitals.

It just seems to me that is, as I said a while ago, a scandal.

Senator BIBLE. What have you done within the Indian Health Service in the State of Oklahoma? Did you take this problem up about the Fort Sill Hospital with the authorities?

Senator HARRIS. Mr. Chairman, I just heard this very case this past Thursday, and I am taking it up with somebody who can do something about it, and that is you and this Committee. I talk with members of this Committee and the Indian Health Service every chance I get. Mostly the people in the Indian Health Service want to break into tears. It makes you so mad you can hardly talk, or it makes you so sad you want to cry.

It's primarily a matter of money, and we are talking about a drop in the bucket in the amount of money this government spends. It seems to me if we would get outraged enough, you and I would provide the funds to get this done. That is what it is; it's a matter of money.

Senator BIBLE. Do the authorities or the superintendent or director, whatever the title of the head man of Fort Sill Hospital, whatever his title is, does he request the additional funds to request these 20 beds?

Senator HARRIS. If he doesn't, he ought to be run off, Mr. Chairman.

You can go down there and take a look at it, as I have, or talk to the Indian Health Service here in Washington. How else would the Indian Public Health people here know what deficiencies there are? I have been talking about these kinds of deficiencies in drugs supplies and personnel for two or three years. I documented these shortages in the Record last year, and the same shortages exist this year.

They often don't have aspirins, because they are out of them. That is the fact of the matter, Mr. Chairman, and it's up to us to reach out and try to solve these problems by providing the funds which are so desperately needed.

Moreover, an additional 350 staff positions are desperately needed for IHS hospital outpatient department and field health centers. In the past few years there has been a substantial increase of ambulatory services provided at hospital and field clinics. This has resulted in a dramatic increase in outpatient visits. While this has been a real success story for IHS, it has resulted at the same time in critical staff shortages as Indian people more and more take advantage of outpatient treatment. We need to reinforce this encouraging trend in IHS, and I recommend that funds of $4,200,000 representing 350 positions be provided in 1972.

URBAN AREAS

Seventh, another terribly distressing factor in the entire field of Indian health is the fact that we are doing nothing for the health care of America's rapidly growing Indian population in urban areas. Perhaps as much as one-half of our entire Indian population live in urban areas and thus are outside the normal scope of IHS activities.

I understand that at one time IHS did provide some contract services for urban Indians, but as priorities were established elsewhere these were gradually dropped. I suspect this has been so largely because urban Indians have lacked organization and have not had effective advocates to express their needs. This is really an injustice. We tell Indian people, on the one hand, that they ought to have options open to them to live and work where they please and then penalize them if they choose to live in a city. We need to turn this situation around.

We know that there is an urgent need for health services for urban Indians. This is particularly true of those Indian people who have recently arrived from a reservation or rural area. People who have been dependent upon IHS and BIA services all their lives frequently find it extremely difficult to locate services in the urban maze.

The rapid growth of Indian centers which provide referral and other services to new

arrivals is indicative of the need that Indian people have in the urban situation.

I believe that IHS should move in the direction of providing referral and health consultation services in urban areas. All our urban areas contain a wide variety of health services, both public and private, which many Indian people would take advantage of if they knew of them or had some assistance in locating them.

I propose that IHS conduct a demonstration program in several urban areas to help Indians receive better medical and health services from existing facilities. This program would utilize para-professional personnel as community health representatives who would be specially trained in the utilization of urban health resources. At the same time these persons would serve as a means to document the true health situation of urban Indians. I propose that this program operating as a limited demonstration in a limited number of cities be funded at $2 million.

Senator BIBLE. Is there any type of that service in any of the urban areas of the country today, this educational service or this community health representative?

I think the community health representative does serve a real useful purpose, but doesn't he operate in the urban areas at all?

Senator HARRIS. Not under the Indian Public Health Service. We have some OEO-funded projects working in some areas, but they are pitifully small. I think a little investment here would really go a long way toward getting people hooked up with these programs. A lot of non-Indian people who run the regular health service programs have the idea that Indians have some other program available to them. That is why in my own state people continue to drive 100 miles or more to go to an Indian hospital because there is an attitude on the part of non-Indians often that Indians are served somewhere else.

Also the Indians themselves sometimes feel they are not entitled to the regular services.

I think if we could get the two together through referrals and such centers, that it would be a very wise and practical investment.

PRE-PAID HEALTH CARE

In addition to this limited measure to serve urban Indians, I propose that IHS move aggressively into the area of promoting a demonstration pre-paid comprehensive health care program similar to the Kaiser plan in one or two cities.

I believe that such a program will successfully demonstrate how vastly improved medical services can be supplied to Indian people at a cost which is substantially less per person than is presently possible in the Indian Health program. If this should prove to be true, it would constitute a major achievement in providing a solution to the continuing crisis, not only in Indian health but in health care for all Americans. I recommend that $3 million be appropriated for this purpose.

HOSPITAL IMPROVEMENT

A great need exists to do something about the enormous backlog of modernization and replacement needs of IHS facilities. At the present time, one-fifth of all IHS hospitals lack accommodation because they are obsolete and have serious fire and safety problems. Quite frankly, many of the Indian hospitals are dangerous fire traps.

At the present time, the total replacement and modernization needs for all of IHS is estimated at $265 million. $36,200,000 is immediately needed just for essential repairs and maintenance and to eliminate serious fire and safety hazards. Yet the Administration has proposed a mere $2,599,532 in the face of this enormous need. I believe this should be increased by at least $36,200,000. I desperately hope that it will not take a disastrous fire resulting in loss of life in one of the IHS hospitals to convince us of the urgency of this matter.

CONTRACT MEDICAL CARE

At the Oklahoma City hearing I was particularly disturbed by the number of witnesses that testified to the fact that contract services for doctors and for dentists were not being paid by the Indian Health Service because of a shortage of funds.

It is unfortunate enough that the long waiting lines are a barrier to receiving care for the Indian, but add to that the failure to have his bills paid, which brings on embarrassment, and you have an intolerable situation.

Several witnesses mentioned the inability to obtain eyeglasses. I understand that the IHS readily recognizes that there is a great unmet need in this regard, and that because of a lack of funds only children and adults that can relate the need to employment, and not all of them, are furnished eyeglasses.

It is rather obvious that having a prescription does little to cure the ailment unless one can somehow obtain the drugs. Several witnesses at the Oklahoma city hearing pointed out this shortcoming.

People testified they could not get additional contract services because former bills that were approved by the Indian Health Service had not yet been paid because of a shortage of funds.

My staff, after a preliminary investigation of this matter, informs me that to meet the known needs the appropriation for contract care must be increased from $25 million to $43 million. If we fail to do so, approximately forty per cent of the known needs will go unmet. When placed in its proper context of the total federal budget, we recognize that from a dollar standpoint wu are really just dealing with peanuts when we consider this appropriation.

When considered from the standpoint of the moral obligations of the federal government, no other appropriation has any more significance than this one. I request an additional appropriation of $18 million.

I know, better than ever before, that there is in fact a serious crisis in Indian health and that we are not doing enough to meet these most serious and basic needs. Since the time when the U.S. Government first began promising health services to American Indians in return for the cession of lands we were so determined to seize, an important and sovereign obligation has remained unmet.

So long as we fail to meet the legitimate health needs of Native Americans, there is a stain on our national honor.

I want to commend this Committee for all that it has done in the past to meet these needs. I realize that reconciling the many unmet needs of our society with the demands of the budget is the most difficult task. However, I do not believe there are any needs more urgent or more valid than those of American Indians and Alaska Natives.

Senator BIBLE. That is a very, very fine statement, Senator Harris.

I know of your great and continuing interest in this field. I do hope that in addition to the plea that you have made before this Committee that you would make arrangements to appear before the House Committee who will act first on this legislation. I don't know whether you have made arrangements to do that or not, but I would certainly urge that you do it.

They are hearing their Congressional witnesses on April 21, which might be a date you want to note. Mrs. Hansen, I am sure, has great sympathy for these problems, just as I do, as the members of the Subcommittee do.

We appreciate the additional contributions you have given us. This is a very fine statement you have given today, and we will do the best we can and work on it.

Senator HARRIS. I appreciate that suggestion; I will try to follow it up.

Senator BIBLE. Senator Byrd?

Senator BYRD. I would just like to say it's a very fine statement, a most comprehensive one. I think your suggestion for Senator Harris to appear before the House Committee is a good one. You could supply this Subcommittee with additional statistics substantiating the figures.

Senator BIBLE. Thank you, Senator Harris.

FUTURE HOMEMAKERS OF AMERICA OBSERVE NATIONAL FHA WEEK

Mr. GRIFFIN. Mr. President, March 28 to April 3 was observed as National Future Homemakers of America Week. Some 600,000 FHA members carried out special projects and activities during that period.

All Americans can take special pride in the young women of FHA. They are concerned not only with preparing for the responsibilities of later family life, but also with expanding their civic involvement to help less fortunate citizens, such as the sick, the poor, and the mentally retarded.

In Michigan more than 12,000 members from 163 chapters participated in National FHA Week.

Miss Lorri Jackson, a senior at Bad Axe High School and State president of the Michigan FHA Association, sent a press release to my office explaining the objectives of FHA during this week.

I ask unanimous consent, Mr. President, that the press release be printed in the RECORD.

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

FUTURE HOMEMAKERS OF AMERICA OBSERVE NATIONAL FHA WEEK

Future Homemakers of America in Michigan will join with the 600,000 FHA members across the country in observing National FHA Week, March 28 through April 3, 1971. The 263 local high school chapters in Michigan will carry out special projects and activities during the week focused on the theme of FHA CARES.

According to Lorri Jackson, high school senior at Bad Axe High School and State President of the Michigan FHA Association, members of Future Homemakers of America care about a lot of things:

"They care about the many problems in our world today so they plan meetings and discussions around such subjects as drug abuse, the generation gap, boy-girl and family relationships, and friendships with people in other countries.

They care about continuing education so they contribute to scholarship funds and encourage members to stay in school and to receive education beyond high school.

Most of all FHA'ers care about the individual member and helping him or her develop to the highest potential so that both the individual and society may benefit."

The seventy members of the FHA Chapter at Bad Axe have scheduled a number of activities for this week. Plans outlined by Lorri and her adviser, Mrs. Mary Jackson include:

Show everyone that you *care* by working to advance FHA in this our twenty-fifth year, won't you please?

Sunday.—Show we care about our church activities by attending church of our choice.

Monday.—Show we care about FHA by

wearing our colors of red and white and appearing on local radio stations.

Tuesday.—Show we care about our teachers by preparing special treats for the teacher's room or apples for their desks.

Wednesday.—Show we care about our school by preparing hall exhibits and bulletin boards for FHA Week.

Thursday.—Show we care about our today by scheduling our chapter meeting with an adult and youth panel on mutual problems.

Friday.—Show we care about our community by a visit to the local county home to entertain the patients.

Saturday.—Show we care about our families by planning to do something special for those at home.

Future Homemakers of America is a nonprofit, self-supporting organization officially sponsored by the U.S. Office of Education and the American Home Economics Association and is correlated with the home economics program in the secondary schools. High school home economics teachers serve as advisers to the 12,000 local FHA chapters throughout the country. National Headquarters are located in Washington, D.C. The Michigan Association of FHA is chartered by the National organization of Future Homemakers of America and is co-sponsored by the Michigan Home Economics Association and the Michigan Department of Education in Lansing where Mrs. Thelma L. Graper serves as State Adviser.

In addition to President Lorri Jackson, other officers of the Michigan Association of FHA are:

First Vice President, Virginia Cropsey, Marcellus High School.

Vice President of Degrees, Pamela Bush, Bentley High School, Flint.

Vice President of Projects, Cynthia Brown, Haslett High School.

Vice President of Public Relations, Jerri Ross, Ithaca High School.

Vice President of Recreation, Pamela Petzold, Millington High School.

Vice President of Evaluation, Nancy Anderson, Hesperia High School.

Secretary-Treasurer, Jo Ann Huyck, Pickford High School.

Parliamentarian, Phyllis Crandall, Vandercook Lake High School, Jackson.

Historian, Barbara Jagger, Belding High School.

Song Leader, Jerrilyn Thiebaut, Mesick High School.

Pianist, Linda Wright, Morrice High School.

COMMISSION ON INTERGOVERNMENTAL RELATIONS RECOMMENDS CONSTITUTIONAL CONVENTION PROCEDURES ACT, S. 215

Mr. ERVIN. Mr. President, since I first introduced the Constitutional Convention Procedures Act, I have received support for my bill from many sources. Another in the long line of endorsements of S. 215 has come from the Advisory Commission on Intergovernmental Relations. A memorandum dated December 29, 1970, from the Executive Director to the Members of the Commission described the provisions of the bill and concluded:

[T]he Commission recommends that Congress at the earliest opportunity enact the proposed Federal Constitutional Convention Amendment Act.

As Senators know, S. 215 provides procedures for the orderly conduct of a constitutional convention in the event one is called upon application of two-thirds of the States, as provided for by article V of the Constitution. On January 26, 1971, when I introduced S. 215, I described its provisions in some detail; therefore, at this time I shall mention only briefly its principal provisions: It provides procedures for the adoption of State applications and their transmittal to the Congress; for the receipt and the recording of applications, by the Congress; for the rescinding of applications; for limiting the effective period of applications to 7 years; for the adoption by the Congress of a concurrent resolution designating the place and time of the convention and the nature of the amendment or amendments; for the calling and convening of a convention; for the number and manner of electing delegates; for arrangements and facilities for holding a convention; for compensation of delegates and the payment of expenses; for the election of officers; for the proposing of amendments, with a limitation that no amendment may be proposed that was not named in the concurrent resolution; for voting and recordkeeping; for the termination of the convention; for the receipt by the Congress of the proposed amendment or amendments and transmittal to the States for ratification; for ratification by the States; for recision of ratifications; for proclamation of a constitution amendment; and the effective date of the amendment.

Mr. President, we are all aware that at the present time the States are intensely interested in the current revenue-sharing proposal, and at least eight States already have petitioned Congress to call a constitutional convention for the purpose of amending the Constitution to provide for revenue sharing.

I believe the passage of my bill is absolutely necessary to avoid the dangers that many legal scholars and other observers foresee in a constitutional convention called without rules to govern its conduct. I view with the gravest concern the intolerable situation that would exist if a convention were to be called without the safeguards of well-defined procedures, which do not exist today. I believe that Senators share my concern; and, once again, I urge that they support my measure.

OCEAN DUMPING

Mr. BEALL. Mr. President, on March 26, 1971, the Public Works Subcommittee on Air and Water Pollution, on which I serve, held hearings in Rehoboth Beach, Del., on the problem of ocean dumping. This is a serious problem in certain places today and has the potential of becoming even more serious as communities and industry look to the ocean as a possible source of their waste disposal. Congress has an opportunity to take preventive steps. That is why I am pleased to cosponsor the administration's measure, S. 1238, the Marine Protection Act of 1971, which would make certain that this does not happen. I ask unanimous consent that my testimony before the subcommittee be printed in the RECORD.

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

STATEMENT OF SENATOR J. GLENN BEALL, JR.

Mr. Chairman, it is a pleasure to be here today. One of the most valuable natural resources that we have in the State of Maryland is the beach at Ocean City. Certainly the clean water and the pure sand at Maryland's ocean resort provides one of the best recreational opportunities on the East Coast of the United States.

Because it is still clean, Ocean City provides an opportunity for us to protect an area from pollution so that its use is not lost to the great number of Marylanders and others who enjoy its benefits as has been the case for so many other recreational areas across the country.

For this reason, I joined Senator Boggs, of Delaware, and other members of the Subcommittee on Air and Water Pollution of the Senate Public Works Committee to hold hearings today in Rehoboth Beach on the subject of ocean dumping.

We have been alarmed recently to read and hear of sludge and garbage scows being towed out into the Atlantic Ocean and then dumping refuse which might eventually wash up on our shores. While this doesn't appear to present any immediate problem to Ocean City, it is something we want stopped.

The oceans comprise over 70% of the earth. The Statton Commission's Report, "Our Nation and the Sea," emphasized the importance of the sea when they said "the nation's stake in the use of the sea is synonymous with the promise and threat of tomorrow." The promise of the ocean is represented by:

The Ocean's potential as a source for food for a growing World population;

The Ocean's potential as a resource for new minerals;

The potential for the ocean's plant and animal life for the medicinal raw materials, and

The Ocean's importance in providing transportation, recreation, and a refuge from hectic pace of urban living for many Americans.

The dangers are represented by the National Security implications, such as submarine warfare, and the purpose of the hearings today—ocean pollution.

I for one want to take this opportunity to applaud the President's Council on Environmental Quality for its report "Ocean Dumping—a National Policy" which was issued to the country in October 1970. The report gave emphasis to the concern and prompted the legislative activity and the Committee's hearings today.

We know what can happen if dumping goes uncontrolled as illustrated by the so-called Dead Sea area, a contaminated ocean area off the New York Harbor. We are determined to prevent additional such areas, particularly off the Maryland-Delaware Beaches. That is why we are concerned over the 140 million gallons of sludge, 110 million by the city of Philadelphia dumped at the Cape May, Delaware Ocean sewage dump.

Although the amount of waste transported and dumped into the ocean is relatively small in terms of the total volume of pollutants reaching the ocean, indications are that the future impact of ocean dumping will show a marked increase relative to other sources, unless steps are taken and taken now.

About 48 million tons of waste were dumped into the oceans in 1968 at 250 disposal sites, 50% of which are located off the Atlantic coast. This waste includes dredge spoils, industrial waste, sewage sludge, which is a by-product of municipal waste and water treatment, construction and demolition debris, solid waste and radioactive waste. Projections indicate that the volume of waste dumped into the ocean is increasing rapidly and will likely increase even faster because of the decreasing capacity of present facili-

ties, the lack of suitable nearby land areas, and the higher costs and political problems in acquiring new sites.

Statistics compiled by the President's Council indicate a fourfold increase in Ocean dumping from 1949 to 1968. Both the 1959–63 and 1964–68 periods showed a 28% increase in waste disposals at sea, largely resulting from dramatic increases in industrial and sewage sludge disposals. A study of population projections also indicate that the problem is likely to become more acute because more people simply mean more waste. Between 1930 and 1960 the population of our coastal areas increased by 78% compared with a 48% increase for the Nation as a whole. In 1970 our coastal population was estimated at 68,397,000 and by the turn of the century our coastal population is estimated to reach 106,900,000, a figure as great as the total population of the Nation 50 years ago.

Using the projected population increases for coastal areas and assuming .119 lbs. of sludge generated per person each day, one can estimate the potential sludge disposal of our coastal areas. It is estimated that last year 1.4 million tons were disposed at sea. By the year 2000, the number of tons generated in coastal areas will increase 50% to 2.1 million tons. The President's Council cautioned that this may underestimate future amounts of sludge pointing out for example, that in the Baltimore-Washington area the sludge generated will increase 140% from 70,000 tons to 166,000 tons.

I might say that we are deeply indebted to the President's Council on Environmental Quality who recognized not only the importance of the problem but also the need for an early and thorough report on Ocean dumping. Only named in April of 1970, the Council completed its study and issued an excellent report in October of last year. At this time President Nixon endorsed the Council's recommendations, as do I, and indicated that he would send legislation to the Congress on this subject. Present legislation and regulatory authority is inadequate. Many states have no controls over the ocean dumping, state's jurisdiction extends only to the territorial sea, out three miles. Corps of Engineers' regulatory authority in general has the same limitations.

On Tuesday, March 16, I joined Senator Boggs and others in introducing the Administration bill S. 1238, the "Marine Protection Act of 1971" which would require a permit for discharging of waste into the Oceans. The bill declares and provides legislative authority for a national policy "to regulate the dumping of all types of material in the oceans, coastal and other waters and to prevent or vigorously limit the dumping into the oceans, coastal, and other waters of any material which could adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities." I am hopeful that the Public Works Subcommittee on Air and Water pollution will take early and favorable action on this legislation.

Mr. Chairman, I believe that the American people should take heart over the developments in the environmental area. Although we certainly have not won the battle, we are committed to winning it. This very hearing illustrates that the President and the Congress are beginning to take action in anticipation of emerging environmental problems rather than responding to them after the problem has reached a crisis or disaster state. As the Council states, "The Nation has an opportunity unique in history—the opportunity to act to prevent an environmental problem which otherwise will grow to a great magnitude."

In closing Mr. Chairman, I believe the waste disposal is one of the most complex and critical problems facing this country. Finding a solution to the problem is going to require the mustering of the best minds and talents available in America. The waste problem was summed up in a recent Committee Executive Meeting when one Senator remarked, "Everyone wants us to pick up the waste, but no one will let us put it down". We simply must find better means of handling our waste materials. That is why I am deeply interested in recycling of waste. I believe recycling will prove more important in the years ahead. Recycling simply must become a part of our general practice. It is my understanding the technology exists today to recycle many types of paper, glass, aluminum and various materials. Also, I understand that 19% of the material used in the paper manufacturing process is recycled.

Certainly, we need an accelerated solid waste research program to produce new and needed technology in this area. This is important not only in helping to solve the vast and growing waste disposal problem, but also because there is a real need to conserve and use wisely our resources. After all our resources are not inexhaustible.

I have been following with great interest the federal research project in Prince George's County which involves the recycling of household waste. It is my understanding that the labor, equipment and building to process the waste is running $3.25 a ton. The end products of commercial grade metal and glass are selling for $12.00 a ton. This indicates we may be able to turn the liability of waste disposal into a profitable national asset.

I ask unanimous consent that a Sunday Star article of January 17, 1971 on this effort be made part of the Record.

Only recently, the Maryland Tin Companies of America, Continental, National Can announced they would commence a joint effort in recycling metal cans. One of these collecting centers is to be located in Dorchester County, it will be the first recycling center on the Eastern Shore. Reportedly six recycling centers will be operating in Maryland, three in Baltimore, one in Sparrows Point and two in Dorchester County.

I cite these developments as indicative of some of the developments and activity in the waste disposal field. Industry, cities, government and yes private citizens are all part of the problem and therefore all must be a part of the answer. Since paper products make up approximately 50% of solid waste and paper can be recycled, there is a great potential here not only for conservation of our resources, but also for easing of the waste disposal problem.

I am convinced that a concerted effort by all, preventive actions such as those represented by today's hearings, and an acceleration of research on recycling, will produce the breakthroughs necessary for us to deal with the mountainous problem of waste disposal.

I am pleased to be here and pledge that I will do everything I can to make certain that the potential of the ocean as a food source, as the habitat of fish and wildlife, and as a source of transportation, recreation and fun will be preserved for millions of Americans today and for posterity.

TROY GORDON, OF THE TULSA DAILY WORLD

Mr. HARRIS. Mr. President, one of the really outstanding newspaper columnists in the Nation is Troy Gordon, of the Tulsa Daily World.

Recently, while in Tulsa, I had an opportunity to visit at some length with Mr. Gordon. I enjoy these sessions very much, because he is an unusual and gifted man, with remarkable insights and a keen sense of humor.

The son of a Methodist minister, Troy Gordon was a highly respected reporter for several newspapers and the International News Service before joining the Tulsa World and starting his "Round the Clock" column. He writes with understanding and compassion, as well as humor, and I believe this is the reason why he has such a large following.

Mr. President, I believe Senators who are not familiar with Troy Gordon's writings would enjoy reading a sampling of his columns. Included in this sampling is the column dated March 5, 1971, concerning a press conference he attended before our visit, and parts of other columns which I have clipped in recent months. I do not claim that these are "The Best of Troy Gordon," but only that they are items which appealed to me when I read them in the Tulsa World.

I ask unanimous consent that a number of articles written by Troy Gordon be printed in the RECORD.

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

ROUND THE CLOCK

(By Troy Gordon)

From time to time I like to check in on the working press to see what they're up to now. Thursday I chose Sen. Fred Harris' press conference.

The office space alloted to him in our federal building is much smaller than I had expected, and three television stations and their equipment forced me to huddle in a chair at the back of the room.

One news reporter, a tv on-camera newsman, a radio man or two, Mrs. Harris, and a couple of aides to the senator gave the place a lived-in look. I made it overflow.

Earlier when I tried to call to see if the press conference was to be held there, I learned that the phone is answered by a recording device, asking you to leave your message and your number and the senator will call later.

This was frustrating, so I told the recorder: I was trying to find out where the senator's press conference is to be, but I guess I've run up against a blank wall."

I got no answer, although later one of the aides said he had picked up the phone and listened to my plaint, but I hung up before he could reply.

Since I had been informed I was talking to a tape recorder, I'm glad.

The Senator sat at his desk and fielded the questions. He is voluble, interesting and witty.

Twice the phone rang during the conference, and he picked it up and hung it over the edge of a drawar. (Don't be offended, constituent, there was a press conference going on.)

Harris said he thinks Carl Albert "will be one of the great speakers," that "There is too much mealy-mouthed double-talking from some of the politicians, and the people are sick of that," and that "we (he) should do rather well with the new 18-20-year-old voters."

He said Sen. Edmund S. Muskie is "way out front for the Democratic presidential nomination."

Asked what he would discuss in a 10 a.m. Friday appearance at the University of Tulsa, Harris looked at his schedule and said:

"The topic written down here is 'Law and Order as a Political Factor,' but my real subject will be 'Why I should be reelected by acclamation'."

Did he think the Republicans would have more than one candidate for his seat in 1972? "I suspect they'll get their moneybags together and decide on one candidate."

After the tv men folded the cameras and noisily stole away, Harris conceded that his early stand against the Vietnam War had upset some people. He said one constituent told him:

"We sent you to Washington to save us, Fred, but we don't want to be saved that fast."

Harris said he is criticized for not spending enough time in Oklahoma, but he averages 24–25 trips back each year. People apparently don't notice, he said, adding:

"Bob Kerr used to spend almost all of his time in Washington, and everyone thought he was in Oklahoma, and Mike Monroney came back frequently and they thought he spent too much time in Washington."

I managed to talk to Mrs. Harris, LaDonna, without speaking with forked tongue. What did we discuss? Our respective children, of course.

Then I left the building with them. As we walked toward the elevator, the senator asked: "How's Jeanne?"

"Who?" I asked.

"Jeanne," he said.

"Do you mean Joanne?" I asked.

"Yes," he said.

What I had forgotten, you see, was that only a few months ago the senator had written me a note and closed it with the notation, "give my regards to Jeanne."

And I used an item on it chiding him, and asking him to pay my respects to LeDeana.

He was only striking back, as a senator should.

The federal building in Tulsa is huge. You can get lost in it, if you don't know the territory, and employees could get hungry walking back from lunch.

I'll match my "good old days" with those my kids will have when they grow up.

Overheard: "The speech was so long I thought my watch had stopped, but it turned out it was the speaker's brain."

The new telephone books are out, and right there in the front, on page 9, it says:

"Tulsa, the nation's 46th city in population, mixes oil, water, air and space to provide the principal economic base for this city of over 325,000 people."

I'm not quite sure what that mix would produce but it sounds a lot like we might be "the smog capital of the world."

* * * * *

The book, "The Will Rogers Book," has been on my desk for several days (why not quote the best?), and a cohort has said:

"I have no objection to your quoting him, but if I ever see you trying to twirl a rope, I'm calling for help."

Having said that, here's Will on education:

"All of our disgustingly rich men are at a loss to know what to do with their money. Funny none of them ever thought of giving it back to the people they got it from. Instead of these men giving money to found colleges to promote learning, why don't they pass a constitutional amendment prohibiting everybody from learning anything? And if it works as good as the Prohibition one did, in five years we would have the smartest race of people on earth."

* * * * *

John Hamill, Washington, D.C., writes:

"The quote of the week goes to one of the secretaries in our office (he works for a Minnesota congressman). During a lull in our conversation about families, she remarked:

"I've always wanted an older brother, but I guess it's too late now."

It's nice to know we have thinking like that in Washington.

* * * * *

The Cemetery Times, sub rosa newspaper at the Tulsa police department, reports:

Det. Rex Webb and his wife were at a party with friends the other night and old Rex pulled a little social error.

The hour was late and he was feeling a bit groggy when he said to his wife, "Well, come on, honey. It's getting late and we have to go."

Rex couldn't understand why everyone got quiet and gave him a hard look . . . until he remembered that he was the host.

* * * * *

Connie Condray, of the University of Tulsa, made a survey of desk tops in Kendall Hall at the local institution of higher education, and sent me these graffiti:

This school stinks.

John Hurdle sleeps with a nite-light and eats sparrow eggs.

Lassie kills and eats chickens.

John Wayne plays with dolls.

This desk is dirty.

Roses are red, violets are blue, Kinsey makes me sleepy, and Snuggs does too.

P.S.: I love you.

Yea, Fridays.

Good Lord can't you people refrain from writing on this desk?

God is alive and living in Argentina.

So is Pinky Lee.

Rules!!!

You keep running through the doorways of my mind.

Gentle Ben smokes grass.

Do away with plastic toilet seats.

* * * * *

"I don't understand why he does things like that," a guy will say of a friend, an enemy, a man of a different faith or color, a President.

And that's probably as near the truth as he can come. But rather than accept his own correct diagnosis, he then goes on to criticize the act. Not that this isn't all right in a free country.

But since he recognizes he does not understand, why not seek understanding, instead of turning to criticism which, despite opinions to the contrary, seldom is constructive.

Even walking a mile in his shoes won't do it. A thousand miles maybe.

Unfortunately even those who hurl accusations of instant analysis are issuing instant analyses.

To put it simply, a lot of people go around talking when they should be listening.

Please pass the collection plate. . . .

* * * * *

Mason Williams and some friends appeared with the Boston Pops orchestra on the educational channel Sunday night. What beautiful music they made together. (If you missed it, the show will be repeated at 7:30 p.m. Wednesday—Channel 11.)

Williams commented during the show:

"Tradition is a good thing, but sometimes it lasts too long."

To make the point, he said his mother always carefully removed the leg bone before cooking a certain type of roast. When he asked her why, she said she learned it from her mother.

When the chance came, Williams asked his grandmother why she removed the legbone?

"I don't know," she replied. "I learned it from my mother."

The next time he saw his great-grandmother, he asked her why, and she said, "My pan is too small."

* * * * *

That S. in Edmund S. Muskie stands for Sixtus, Newsweek says.

How does a potential presidential nominee go about explaining that?

Of course Adlai Stevenson 2nd managed to get most of the people to accept his unusual name and, generally, pronounce it right. That's something Averill Harriman never accomplished.

I can still hear Raymond Gary, then governor of Oklahoma, rising at the convention and saying into the microphone before the entire nation:

"Oklahoma casts (so-many) votes for Aravell Harriman."

* * * * *

Johnny Bench has launched a professional singing career, and is thinking of taking lessons.

Why would a baseball catcher think he needs lessons to sing professionally?

At least this sets up Phil Dessauer, who named Bench "the Binger swinger" (to mention his old home town), a chance to enlarge it to "the Binger singer swinger."

Although come to think of it, I just stole his opportunity.

There's no honor among anyone.

* * * * *

Over at the friendly neighborhood drive-in bank, teller Novella Carter has a sign in her window saying

"We give prompt service no matter how long it takes."

* * * * *

Don Johndrow says that with Congress working on legislation to take the pollutants out of gasoline, "Congress finally is doing what we've been after them to do for a long time—getting the lead out."

* * * * *

Don Harris reports his 5-year-old nephew told him this story:

"Do you know how to spell banana?" one boy asked another.

"Yes," said the other, "but I don't know when to stop."

* * * * *

Note to the Women's Liberation Movement:

You'll get your liberation, of course, and you'll find it's just what you deserve.

Then you'll want to give it back to man, and he (remembering an early incident involving an apple) won't take it.

Part of the problem, of course, is that woman has no equal.

Whether you regard that as a compliment or an insult will reflect your outlook on womanhood.

* * * * *

A news item out of Washington says that after 47 years the House has voted for a constitutional amendment to guarantee equal rights for women.

Mark my words—we'll rue this day. They're pushy.

* * * * *

Going to hell in a handbasket may be impossible today. First of all, it's hard to find a handbasket, and if you did it's a safe bet they don't make 'em like they used to.

* * * * *

The quote of the day is from Yvonne Litchfield, of the women's department, who looked around the newsroom and said:

"I'm going to quit wearing pants suits if every Tom, Dick and Harry is going to wear them."

* * * * *

A personalized licensed plate on the front of a car in Tulsa read PEW, and I had no way of knowing whether that was the driver's initials or an editorial opinion of things in general.

* * * * *

Here, once more, is the parody on "Oklahoma!" which I confess I wrote for a Tulsa gridiron about nine years ago. If you want to save it or burn it, clip it now, for I don't intend to repeat it soon—by popular demand.

Oklahoma! where the wind comes sweeping
down the plain
And the highway bumps are more like jumps
And the graft falls like a heavy rain.
Oklahoma! Every year my honey lamb and I
Sit alone and sweat until we're wet
From the humid heat up in the sky.
We know we belong to the land
And the land we belong to is sand

And when we say, Yow! I yip I oh ee ay!
We're only saying you're doing good,
Oklahoma, Oklahoma, OK!
Oklahoma! where the twisters sweep away
the plain,
Where the whirling cones can break your
bones
As they hurl you through the window pane.
Oklahoma! Every night my honey lamb and I
Stay alone and crouch behind the couch
Watching crazy cyclones in the sky.
We know we belong to the land
And the land we belong to has scrammed
And when we say, Yow I yip oh ee ay!
We're only saying you're doing good, Oklahoma!
Oklahoma, OK!

* * * * *

Frankly, I've always wondered why the state didn't adopt that phrase, Oklahoma OK! as its official slogan.

* * * * *

So you'd like to be an intellectual without knowin' nuthin'? It's not hard at all. Just follow the instructions of an old master:

Go to the public library, draw out a few books and always carry a few of them with you.

Stick a Time or Newsweek or U.S. News and World Report in occasionally, and every once in a while add a Saturday Review.

The first thing you know, the people in the office will be bringing you the tough questions, and asking your advice.

Go ahead and give it to them, even if you don't know what you're doing. They won't follow it. People who read too much are just a bunch of eggheads anyway.

But here's the secret. You don't ever have to look inside the books or magazines. Just carry them. This impresses the majority who never even pick one up.

* * * * *

It used to be that as you traveled the highways your first sight of the next town was the water tower.

Then as mankind developed further, it was either a grain elevator or the tallest building (be it only three or four stories).

But now—alas—it's the cloud of smog.

As a matter of fact, the gob of smog hovering over Tulsa at the moment came to us from New England, due to an inverted something or other the weather bureau says.

What makes those Yankees think we need any help fouling up our atmosphere?

It would serve them right if we sent them one of our dust storms.

* * * * *

Administration officials concede prices and unemployment are still going up, but at a lower rate. Thus, they say, inflation is coming under control. Be Patient.

Meanwhile, the President is going to move the White House to the West Coast for another couple of weeks.

If I were President, I'd name Lyndon B. Johnson business manager of the country, with instructions to run it as if it were his own business.

It's the only way I know of to get it on a profit-making basis.

Of course, I'd have to be careful that it didn't wind up in LBJ's name.

* * * * *

A Tulsan called to say he was reading a government pamphlet on what to do in the event of nuclear fall-out, and it said that as a last resort, you should get behind a tree.

"Which side of a tree is going to be behind in case of fallout?" he asked.

I don't know, but if it occurs and I'm ready for a last resort, I guarantee I'll sure try to find out.

* * * * *

An Oklahoma woman who shall remain nameless recently was stopped by a Highway Patrolman for going through a stop sign.

"I did go through it," she said, "but I just oozed through."

He looked at her a moment, and then said:

"OK, I'll let you go this time. But the next time you see a sign that says 'OOZE' you ooze, and if it says 'STOP' you stop."

* * * * *

Charles A. Lindbergh says he believes, in the perspective of history, the United States lost the war.—News item.

As one might expect, Will Rogers said it better and one war earlier:

"America never lost a war or won a peace."

* * * * *

If George C. Scott doesn't win an Oscar for his title role in Patton, he ought to slap somebody.

* * * * *

Bank robberies are on the decline, the AP reports.

No wonder, with interest that high.

* * * * *

My expert on practically nothing says the most devastating result of the recent interstate truck strike is that Tulsa is out of her brand of hair dye.

This gives you an opportunity to make a quick check to determine which of your friends are dyeing.

* * * * *

One of the editors commented the other day:

"Why is it that most of the best writing around here is on the bulletin board?"

* * * * *

The Homing News says: "The most important function of the brain is to tell the feet when it's time to run."

* * * * *

Johnny Walker, our chief photographer, interrupted his preparations to walk the sidelines during the game (part of which was played in the rain) to tell me a story.

It concerned a New York to Chicago flight, on which a man burst into the cockpit, pointed a gun at the pilot and said "Take me to Chicago."

"But that's where we're going," the pilot responded.

"That's what you said the last time and I wound up in Havana."

* * * * *

At a recent panel of news media representatives in north Tulsa, a great deal of time was spent in discussing with white members of the panel the lack of black reporters on their staffs.

Finally Jerry Parker, of the Community Relations Commission, turned to Bob Goodwin of the Oklahoma Eagle, the state's leading Negro paper.

"I assume the Eagle does hire black reporters," he said.

"Yes," he replied, "but I am glad to report the Eagle is making great strides in minority employment—one-fifth of our staff is white, namely, one reporter."

* * * * *

Meanwhile, a young black named Milton Thomas recently sought employment as a disk jockey at a radio station in the Tulsa area. He was given an audition, on tape, and was told later he had done great but he wouldn't be hired.

"Why not?" he asked.

"You don't sound black enough."

He spent some time considering taking diction lessons, but finally went to another station, where he was hired.

* * * * *

Good old Ed Brocksmith gave a news headline the other day: "An undesirable crime has occurred on the south side." Chuck Adams, disk jockey, heard that and commented, "Ed, I think you just gave Troy Gordon a column item."

The fact was at that moment I was scribbling down:

"Sometime on a day off, Ed, would you list the desirable south side crimes?"

* * * * *

A sword which once belonged to Robert E. Lee has been stolen from the Oklahoma Historical Museum.

Another tip that the south is getting ready to rise again.

* * * * *

Our loss of the $98.5 million space telescope Monday caused Riley Wilson to comment:

"Ninety-eight and a half million shot to heaven!"

* * * * *

Incidentally, my mother always told me to be kind to old ladies, and now I'm reaching the age where I enjoy it.

* * * * *

We're going into the bowl season in earnest. My favorite question on the subject came from Mrs. Fred Lankard several years ago. She read and listened and watched the bowls and the East-West and North-South games, and asked quite logically:

"Why not have a game between the Edges and the Middle?"

* * * * *

Some of the old military men in the office frown on the changes being made in rules by the U.S. Army.

They feel relaxation of the strict rules will result in a deterioration of the men's effectiveness on the battle field.

But since we're fighting no-win wars, isn't it reasonable to have a can't win army?

* * * * *

One of the three lawyers running for Oklahoma attorney general says if he's elected he'll hire one of his opponents to sue the third—the incumbent.

Had you noticed that about lawyers?

* * * * *

Will Rogers, on the Senate:

Distrust of the Senate by presidents started with Washington who wanted to have 'em court-martialed. Jefferson proposed life imprisonment for 'em. Old Andy Jackson said, "To Hell with 'em" and got his wish.

Lincoln said, "The Lord must have hated 'em for he made so few of 'em." Roosevelt whittled a big stick and beat on 'em for six years. Taft just laughed at 'em and grew fat.

They drove Wilson to an early grave. Coolidge never let 'em know what he wanted, so they never knew how to vote against him, and Mr. Hoover took 'em serious, thereby making his only political mistake.—The Will Rogers Book by Paula McSpadden Love.

* * * * *

A sign along the Broken Arrow Expressway advertising the Northside Christian Church claims it is rated G.

* * * * *

There's one minority group which has kept a discreet silence—so far: The left-handers.

I'm sure you've heard some of our complaints, and you regard them as picky-picky-picky. But you have no idea, friends, how right-handed this world is.

But the time isn't right. The last thing the world needs right now is another left-wing organization.

* * * * *

Signs intrique me. There's one on the door of a laboratory there reading "Parenteral Solutions." I finally asked what is meant, and the nurse said it referred to solutions administered into the veins.

I had thought, for a few brief wild moments, that it had something to do with parenthood.

But then there's no known solution to parents, is there?

* * * * *

I keep getting press releases from the Bourbon Institute. Two of each, in fact. I don't know whether their mailing list is at fault or if someone's been sampling the product.

They seldom contain anything usable but

I always open them. How do I know one of them isn't an envelope full of dehydrated bourbon?

They did have one this month. It's a new game, called bourbon roulette. Three men sit in a room and each drinks a bottle of bourbon.

Then one of them gets up and leaves, and the other two try to figure out which one it was.

* * * * *

Dale Hart, Tulsa, received a message from his daughter, who is a senior in college:

"I know that you believe you understand what you think I said, but I am not sure you realize that what you heard is not what I meant."

There's nothing like bridging the generation gap.

* * * * *

Not too long ago at one of the summer high school basketball games, a player who was fouled reacted by roughly shoving the arms of the man who fouled him.

The coach quickly told his captain to call time out, gathered the team around him and in about 50 firm words told the player and the team there would be none of that.

Then he sent in a substitute for the offending player and kept him on the bench for another short lecture, which I'm sure he'll remember.

I mention this for one reason; I see what is happening to our nation in one generation reflected in the sportsmanship, or lack thereof, in our athletic programs.

When I was a boy, courtesy was a way of life in athletics, as well as in real life.

If an opposing player stepped to the free throw line, there wasn't a sound from the crowd.

If you bumped into a player and knocked him down, you stuck out your hand, helped him up and said "I'm sorry," and the game continued among a group of young people who didn't really know each other, but their common interest in the sport—and in sportsmanship—made them friends.

There is another Tulsa Coach who is on his feet at almost every whistle, complaining against infractions called against his team, and for infractions he thinks should have been called against the opponent.

His players complain a lot too (and so do his fans), but most of the time when a whistle sounds they look at the coach to see what he will do. Usually, it's worth watching, of you like temper tantrums.

There are those who claim you have to do this or the referee will not treat your team fairly. But I've never seen unfair treatment of the first coach's teams, and he never says a word.

The crowds, of course, follow the example of the coach and team.

I'm not saying all of our troubles result from the gradual collapse of sportsmanship in athletics. It's the other way around.

Our troubles in athletics result from the collapse of sportsmanship—respect, love, call it what you will—in every day life.

We have strayed from the feeling of mutual respect for one another.

Bigness is part of it. We don't know everybody in town now. But we're part of it too, especially if we just stand there.

Each of us needs to begin to remember to do to others what we'd like for others to do to us, and there's nothing in that phrase saying it shouldn't apply to strangers.

It doesn't start with someone else. If it starts with anyone at all, it's got to be you.

The sermon is over. Will the ushers please pass the collection plate?

COMMERCIAL FISHERIES ASSISTANCE NEEDED

Mr. STEVENS. Mr. President, I am pleased to be a cosponsor of S. 221, a comprehensive measure to provide certain essential assistance to the U.S. commercial fishing industry.

The bill provides for the expenditure of $26 million in a variety of programs during the coming fiscal year. Specifically, the bill provides for:

First. The creation of a Fisheries Extension Service to coordinate programs designed to disseminate information pertaining to commercial fishing, processing, and marketing. Ten million dollars would be authorized during fiscal year 1972, $15 million during fiscal year 1973 and $20 million during fiscal year 1974.

Second. Technical assistance grants to fishery cooperatives, marketing associations, and private agencies to cover costs incurred in making technological improvements for demonstration purposes. Five million dollars is authorized in fiscal year 1972 for this purpose, $7.5 million in fiscal year 1973 and $10 million in fiscal year 1974.

Third. The expenditure of $5 million in each of the next 3 fiscal years to promote the expansion of "unexploited or underexploited" species of fish. Funds would be provided to finance the conversion of fishing vessels and the acquisition of new gear.

Fourth. A comprehensive study of the laws governing commercial and recreational fishing, and an assessment of the effectiveness of this legislation. This study would lead to the promulgation of a set of model codes designed to harmonize the interests of commercial and recreational fishermen. A total of $1 million is allocated for this purpose during fiscal year 1972.

Fifth. A semiannual report by the Secretary of Commerce concerning the importation of fisheries products. This report would contain a profile of the quality and value of such products, a projection of future imports, and an analysis of the effect of the present import structure.

Sixth. The promotion of fish protein concentrate production through the establishment of demonstration plants authorized by the Secretary of Commerce; $1.5 million a year is allocated for this purpose.

Seventh. A system of grants to fishermen's associations to finance the purchase of fish products and the cost of storage; to provide operating capital; and to finance the acquisition of land, buildings, and equipment used in connection with the storing, processing, and preparation for market of fish and shell fish products.

Eighth. An antitrust law exemption for voluntary associations of fishermen, processors, cooperatives, and certain other organizations. This exemption would permit marketing agreements in certain joint promotional and product development activities. The antitrust exemption would extend to agreements to limit the quantity of fish or fish products, to establish reserve pools, to provide for inspection, to determine surpluses, and to prohibit unfair competition. A total of $1.5 million per annum would be authorized to provide grants to associations established under this title.

As a member of the Senate Subcommittee on the Oceans and Atmosphere, which has jurisdiction over matters pertaining to commercial fishing, I intend to urge the passage of this bill and other legislation designed to resolve the complex problems confronting the American commercial fishing industry. This industry contributes a great deal to our society in both economic and nutritional terms. It would, indeed, be a national catastrophe if we in Congress were to neglect the needs of our fishermen at this critical juncture.

HOWARD MASCHMEIER

Mr. RIBICOFF. Mr. President, Howard Maschmeier, a great citizen of Connecticut and a good and longtime friend of mine, has been named the recipient of the New Haven Advertising Club's Gold Medal Award for Distinguished Community Service.

Mr. Maschmeier, the General Manager of WNHC Television in New Haven, will receive the award at the advertising club's banquet April 29 at the Park Plaza Hotel in New Haven. Astronaut Alan B. Shephard, Jr., will be the guest speaker and Connecticut Gov. Thomas J. Meskill will present the award to Mr. Machmeier.

The Advertising Club Gold Medal Award dates back to 1936.

While perhaps best known to the viewing public as both the voice and face of WNHC's five-man editorial board, Mr. Maschmeier is also well known to many local and statewide organizations because of his involvement in community activities.

Mr. Maschmeier is president of the New Haven Rotary Club and is on the board of directors of the Connecticut Business and Industry Association and the New Haven Chamber of Commerce. He also serves on the board of the University of New Haven and the Quinnipiac Council of the Boy Scouts of America.

In addition, Mr. Maschmeier served on the Milton Eisenhower Commission on Crime and Violence and has been active in the field of human rights and minority affairs.

The ABC–TV Affiliates Association selected Mr. Maschmeier as chairman of the Association's board of Governors in 1960. He also was president of the Connecticut Broadcasters Association in 1964–65.

A veteran of 29 years in radio and television work, Mr. Maschmeier has won several awards for public service journalism, among them recognition from the national journalism fraternity Sigma Delta Chi in 1950 for outstanding national service to radio journalism.

Mr. Maschmeier began his career in Warren, Ohio, in 1941. For the past 17 years, he has been an executive of the Radio and Television Division of Triangle Publications, Inc. For the past 12 years, his assignment has been general manager of WNHC–TV, channel 8, New Haven/Hartford, the 15th largest TV market in the Nation.

Mr. Maschmeier is a member of the broadcast Pioneer Club, International Radio and TV Executives—New York; Poor Richard Club, Philadelphia; Na-

tional Association of Broadcasters; New Haven Ad Club; New Haven Quinnipiack Club; and New Haven Country Club.

He attended Western Reserve University in Cleveland; and was program and station manager of the Armed Forces Radio Services in England, France, and Germany during World War Two.

Howard and his lovely wife Jane, the former Jane Southwick, of Cleveland, Ohio, live in Orange, Conn. Their daughter, Martha Louise, is a junior at the University of Pennsylvania and their son, William John, is a graduate of the University of Pennsylvania and is married to the former Lynn Murray of Milford.

The Gold Medal Award for Distinguished Community Service of the Greater New Haven Advertising Club is a most coveted recognition. For Howard Maschmeier, it is a much deserved award.

LAW ENFORCEMENT ASSISTANCE PROGRESS REPORT

Mr. HRUSKA. Mr. President, a most significant conference took place in historic Williamsburg, Va., a few weeks ago, which should chart the course for the judiciary for some time to come. It has become evident over the past few years that the third branch of Government—the courts—has been suffering from a severe case of overloaded dockets, creaky machinery, and a general inability to meet the demands of the 1970's. It was to seek solutions to these problems that the first National Conference on the Judiciary was convened.

Judicial personnel from both appellate and trial courts in our State and federal systems, prosecution and defense attorneys, crime commission planning officers, bar association representatives, court administrators and legislators met for 4 days in plenary sessions and discussion groups to examine and discuss ways to modernize our court systems and to better insure that justice will be available for all.

Those of us who were privileged to attend heard the President of the United States say:

Our courts are overloaded for the best of reasons: because our society found the courts willing—and partially able—to assume the burden of its gravest problems. Throughout a tumultuous generation, our system of justice has helped America improve herself; there is an urgent need now for America to help the courts improve our system of justice.

But 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.

Continuing where President Nixon left off in his remarks, the Chief Justice of the United States proposed one step that should be taken to enable the judiciary to "focus on ultimate goals":

The time has come, and I submit that it is here and now at this conference, to make the initial decision and bring into being some kind of national clearinghouse or center to serve all of the States and to improve justice at every level. The need is great, and the time is now, and I hope this conference will consider creating a working committee to this end.

I previously had printed in the RECORD the complete statements of the President and the Chief Justice. See the CONGRESSIONAL RECORD of March 12, 1971, pages 6364–6369.

As the final act of its session, the conference did adopt a resolution along the lines proposed by the Chief Justice. In it the Executive Council of the Conference of Chief Justices was asked to form a National Center for State Courts within the next 90 days. I ask unanimous consent to have the text of the resolution printed at this point in the RECORD.

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

RESOLUTION

Whereas, the President of the United States has stressed the need for the establishment of a national center for state courts to serve and assist such courts and to perform services for them similar to those performed by the Federal Judicial Center for the federal courts and has invited the conferees of the National Conference on the Judiciary to suggest ways and means of expediting the formation of such a center; and

Whereas, the Chief Justice of the United States has urged the state judiciary to establish such a national center for state courts and has requested this Conference to form a committee to implement the formation of such a center, and, to that end has offered his full support; and

Whereas, it is the consensus of this assemblage that such a center could serve and assist the state courts in improving the administration of justice nationally and could also assist the following agencies presently functioning in the field of judicial administration, to coordinate programs designed to achieve that purpose, such as:

American Bar Association.
American Judicature Society.
Institute of Judicial Administration.
Conference of Chief Justices.
National Council on Crime & Delinquency.
National College of State Trial Judges.
National Conference of Metropolitan Court Judges.
North American Judges Association.
American Academy for Judicial Education.
National Conference of State Trial Judges.
National Conference of Special Court Judges.
Appellate Judges' Conference.
Section of Judicial Administration, ABA.
Institute for Court Management.
The several conferences of court administrators.
National Conference of Juvenile Court Judges.

Now, therefore, be it hereby resolved that this National Conference on the Judiciary endorses the formation of a national center for state courts and requests the Executive Council of the Conference of Chief Justices to carry this resolution into effect within a period not to exceed 90 days.

Mr. HRUSKA. Mr. President, the creation of this center should go a long way toward enabling our State court systems, where the great bulk of litigation takes place, to meet the burdens that currently face them. After a careful look at the categories of conflicts which are being taken to courts, at the procedures used by the judiciary to resolve thee sconflicts, at the types and numbers of personnel which currently man our courts, this center should be able to suggest solutions which will result in a quicker, more responsive, more effective judiciary system. If so, this conference will have made a lasting contribution to this Nation.

One of the sponsors of this Conference on the Judiciary was the Law Enforcement Assistance Administration of the Department of Justice. This instrument of the Federal Government is charged with helping to improve the criminal justice system throughout this Nation. One very important aspect of this system is the courts. Some 10 percent of LEAA funds are now allocated by the States for court programs. In fiscal 1971 this means that approximately $34 million will be made available to assist the States in their improvement of State court systems.

One of the important speeches given in Williamsburg was made by Richard W. Velde, Associate Administrator of the Law Enforcement Assistance Administration. He spoke on the subject of the external relationships of our courts. These include contact by the courts with the other major components of the criminal justice system, and also, as an end result of the work of the courts, relationships with citizens and society as a whole. In his remarks, Mr. Velde gave this charge to the men now sitting on the bench:

Efforts to improve courts rest in large part on the extent of the role played by judges themselves in those efforts. For those judges who already are taking a vigorous part in criminal justice planning and improvement programs, I urge that the high level of activity be maintained. For other judges not yet fully involved, I urge them to expand their roles.

I ask unanimous consent to have the entire text of Mr. Velde's remarks printed at this point in the RECORD.

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

EXTERNAL RELATIONSHIPS OF THE COURTS

(By Richard W. Velde)

INTRODUCTION

I appreciate this opportunity to discuss the external relationships of the nation's courts. Those relationships include the contact by the courts with the other major components of the criminal justice system. But they also include, as an end result of the work of the courts, relationships with our citizens and society as a whole.

The role of the courts in the entire criminal justice system—police, corrections, probation and parole—is of critical importance today. Never before in our history has there been such widespread concern over the complex problems of crime and criminal justice. Never before has government moved in such massive ways to both reduce crime and enhance the quality of justice.

In these efforts, the courts occupy a central position.

As representatives of states or state court systems, this is a matter that concerns you directly.

It also concerns me directly, for the Law Enforcement Assistance Administration is charged with helping to improve the criminal justice system throughout the nation. LEAA does this, in large measure, by giving each state the means to improve its own system. One important area of concern is the courts.

Efforts to improve courts rest in large part

on the extent of the role played by judges themselves in those efforts. For those judges who already are taking a vigorous part in criminal justice planning and improvement programs, I urge that the high level of activity be maintained. For other judges not yet fully involved, I urge them to expand their roles. There are, of course, some obstacles.

There are the pressures of overcrowded dockets. Administrative burdens placed upon almost every judge are staggering. In addition, judicial independence is a vital element of a well-run court, and taking an active part in criminal justice planning may run directly counter to what many judges consider their proper role. But the other side of the coin is that the responsibility of judges to the law and to justice and to society is not limited to activities directly related to their own court. They may serve the cause of law and justice even more effectively by serving on a criminal justice planning board or council.

Judges can make a great contribution to efforts to improve the quality of all the courts in their state and the rest of the system—police, corrections, probation and parole—as well. Some may disagree, but the state of corrections institutions and services is the direct concern of the judges who sentence men to jail or prison.

If we agree that court reform is essential, than we must ask how it can best be achieved. A key vehicle for improvements exists in the program of the Law Enforcement Assistance Administration.

The LEAA program first of all takes a comprehensive approach—that is, all components of criminal justice must be improved if the entire system is to be improved. Second, it provides financial resources on a scale that can bring a real impact—not a decade from now, but right now. Third, it vests the basic responsibility for improvement and reform where it belongs—with the states and the localities. While the federal government can urge and suggest and coax, it does not dictate.

The Judiciary must be independent, but it should not be insulated. Its effectiveness depends in part on the effectiveness of the other parts of the criminal justice system, and a spirit of cooperation and understanding may be able to solve all sorts of problems that have long plagued us.

This is why LEAA places so much emphasis on comprehensiveness in the criminal justice improvement program of each state. Courts are affected in very real ways by the operations and levels of efficiency of police and prosecutors. In addition, courts are affected by corrections agencies and probation and parole programs.

If programs for probation and community treatment are weak or non-existent, a judge may have no recourse but to sentence an offender to an institution. If the correctional institutions are poorly run, judges face agonizing decisions—especially where juveniles or first offenders are involved. Finally, because there so often is so little contact between the components, the courts may not have reliable information on the effects of their sentencing, on what has worked and on what has failed.

To achieve a successful space flight, each stage of the rocket must perform as designed; too often today, one or another components of our criminal justice system malfunction. The results are all too apparent as crime inflicts a terrible toll of suffering and expense.

I would like to turn now to a discussion of the LEAA program—detailing some of the things it has done in the courts area and looking ahead to what is planned for the future.

THE LEAA PROGRAM—AN OVERVIEW

In 1968, Congress enacted the Omnibus Crime Control and Safe Streets Act and established a federal aid program to assist state and local governments to upgrade and improve all aspects of the criminal justice system. Although our enabling legislation speaks of law enforcement, that term is broadly defined to include all aspects of criminal justice: police, courts, corrections, prosecution and defense, probation and parole, organized crime, disorders, juvenile delinquency, and narcotics control.

In the intervening three fiscal years, Congress has appropriated more than three-quarters of a billion dollars for the LEAA program. If it responds to pending budget requests for the coming fiscal year, that figure will nearly double again. These and other federal funds are being added to a system expending about $6.5 billion annually.

In establishing a massive federal presence in aiding law enforcement, there was an overriding Congressional concern that state and local systems would be strengthened, not pre-empted, and that federal help would not bring with it federal domination or control or lead to the establishment of a national police force. An elaborate structure of checks and balances was devised whereby the large bulk of federal assistance would be allocated among the states according to population. Each state would be free to assess its own needs, set its own priorities, and allocate its funds to its political subdivisions pursuant to its own comprehensive plan objectives.

The LEAA program has been the cutting edge of a new concept of intergovernmental relationships—the New Federalism. The experience gained in the implementation of this program has been a significant factor in the development of the President's revenue sharing proposals, whereby even more power and authority would be transferred from Washington to the state house and city hall.

LEAA operates basically through a block grant concept, with most of the funds given to states to spend themselves according to their own priorities. Before funds are awarded, the states must submit comprehensive plans each year for review and approval by LEAA. Our enabling legislation has defined six major programs: planning, action, research, academic assistance, statistics and technical assistance. I shall briefly describe each of these activities and their relation to state judicial systems.

PLANNING

Congress designed the LEAA program to encourage comprehensive reform of the nation's criminal justice system, to reduce fragmentation and duplication, and to make lasting, measurable improvements. Thus, Congress declared that those states desiring federal financial assistance must first establish state criminal justice planning agencies and develop and implement comprehensive plans dealing with all aspects of the criminal justice system within their respective jurisdictions.

To encourage planning, the federal government underwrites 90 percent of the cost of establishing and operating the planning agencies. Planning funds are made available on a block grant basis, but 40 percent going into each state must be made available to units of local government so that they also can meaningfully participate in the planning activity.

All 50 states and the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands have taken advantage of this opportunity. Almost $75 million of federal and state funds have been invested to date in these planning activities and three sets of manual comprehensive plans developed and submitted to LEAA.

These plans have carefully assessed the condition of criminal justice in the several states, set ordered priorities and schedules related to existing state resources and federal assistance, and set long range goals for reform and improvement. Particular attention is being paid to the needs of high crime areas.

A new profession, that of criminal justice planner, has been established. My agency, with about 350 employees, supports the salaries of more than three times as many state employees. The states, in turn, are supporting more than 450 regional and local planning groups.

While much is yet to be learned about the nature and dynamics of criminal justice in America, the planning documents which the states have developed represent a unique resource and accomplishment.

BLOCK ACTION GRANTS

The bulk of the LEAA program funds are in the form of action grants. Of the total available, 85 percent are distributed among the states according to population. This automatic formula is simple and is perhaps the best means of distribution that could be devised, since, in general, the more people, the higher the incidence of crime. Thus, the populous urban states such as California, Illinois, and New York receive the bulk of the funds, whereas the rural, sparsely populated states like Alaska, Montana, and Maine receive proportionally smaller shares.

Block action grants in LEAA have grown from $25 million in fiscal 1969, to $183 million in fiscal 1970, to $340 million this year. We are asking Congress for block grants totaling $413 million in the year starting July 1. As I indicated earlier, the record of judicial involvement in action programs supported by LEAA funds shows a substantial need for improvement.

In LEAA's first year, fiscal 1969, courts received only $1.4 million, or 5.5 percent of the LEAA block grant money which went to the states.

In the second year, states allocated $12.5 million on court programs, but the percentage rose to only 6.7 percent. There was a great spread in how states responded to court needs:

American Samoa, Guam and the Virgin Islands had no court programs, probably because of the small size of their overall block grants.

Some 15 states allocated less than three percent of their block grant money on court programs. They included Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Kentucky, Louisiana, Massachusetts, Mississippi, Nebraska, New Jersey, Rhode Island, South Carolina, and Vermont.

Some 12 states allocated 10 percent or more of their state block grants to the court area. They included Idaho, Illinois, Kansas, Maryland, Minnesota, Nevada, New York, North Dakota, Utah, Washington, Wisconsin, and Puerto Rico. Idaho and Pennsylvania allocated 20 percent or more.

Of the $12.5 million allocated for courts, almost two-thirds was directed at upgrading specific components of the court system, such as courts, prosecutors offices or defenders offices. The breakdown was 37 percent for court management and organization programs, 15 percent for defender services, and 12 percent for prosecutor services.

Of the remainder, 11 percent was for training programs, eight percent for procedural reform six percent for bail reform, four percent for code revision, three percent for alternatives to prosecution and three percent for construction. The rest went for miscellaneous programs.

As for fiscal 1971, so far we have received and analyzed 47 of the 55 state plans. These involve about $286 million of the $340 million block grant total for fiscal 1971. Of that $286 million, some $29.8 million, a little more than 10 percent, is allocated for courts programs. While that is roughly twice the percentage of two years ago, and represents a percentage half again as much as last year, it is still less than we believe the courts need and can constructively use.

I am happy to note that of those 47 state plans examined, only one, Utah, allocates less than three percent of its block grant funds for the courts.

Correspondingly, some 22 of them allocate 10 percent or more of their block grant funds. These include Alabama, Alaska, Arkansas, Delaware, Indiana, Kansas, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Vermont, West Virginia, Wyoming, American Samoa, and Puerto Rico.

I wish I could say that the action plans drawn up by the states in the court area were impressive, but I think the best that can be said is that they are steadily improving. There are exceptions, of course. Illinois has several excellent programs in the court area, and Michigans court planning is will thought out and shows what a state can do by careful and effective application of resources.

General criticisms of state planning in court improvement are that individual programs are too often underfunded for their stated goals; the level of funding for courts compared to other areas is inadequate; there are too many studies and not enough action programs; and funds allocated for court programs are too often reprogrammed later to non-court uses. Finally, of course, there is the simple fact that in many states little can be done to improve the administration of justice without active participation and commitment on the part of the judiciary.

Those are general criticisms, however, and it is much more heartening to consider specific examples of real progress.

The Illinois 1971 Plan calls for a total court expenditure of $1,445,000 in LEAA funds, which is only 7.6 percent of the LEAA block grant, but it involves several significant programs.

One is an ambitious project to improve operation of the 102 state attorneys' offices, through a survey of all the offices of the state, and establishment of several model offices. It offers promise of increasing effectiveness and professionalism in prosecutorial services in the state, and may well provide useful information and possibly models for other states to follow. Efforts will be made to develop minimum standards and uniform procedures as well. The project, which will involve $300,000 in LEAA funds and $740,000 in state funds, calls for establishment of several model state attorneys' offices: a district office serving five counties, a circuit office serving 13 counties, and a metropolitan office, which would be the Cook County State's Attorney's office. Finally, a model support unit to serve rural prosecutors will be developed.

The Illinois plan for 1971 also calls for a continuation of a project begun last year—the development of a statewide appellate defender service which looks toward a total statewide defense system for indigents accused of crime or delinquency. Since Illinois had no statewide defender system before, establishing a new system offers a classic opportunity to write on a clean slate, rather than, as in prosecution, attempting to build on an already established structure. The idea of a State "defender general" is one which has been implemented in few other states. Unlike the prosecutorial system, it was possible to design the defender system on a purely rational basis, with the defender units having the same geographical jurisdiction as the intermediate appellate courts which they serve. The prosecution system is working in the same direction, but with obvious obstacles. The defender project involves $495,000 of LEAA funds and $330,000 in state funds, and the establishment of a staff headquarters, four district offices in each of the other four judicial districts, and a pilot project which will serve the Cairo area and adjacent counties. The Cairo project will be trial-oriented, with assistant defenders hired to handle misdemeanor and felony cases. The Illinois defender program has been identified by the National Legal Aid and Defender Association as a model for defender services in other states.

Illinois also has a major program for judicial management and facility improvement, which involves a statewide system analysis of the courts in the state and also plans to build new courtrooms in Chicago.

Michigan is another state which used its court funds well. In contrast, it had only one large program and more than a dozen smaller ones in its 1971 plan. It's total court funding of almost $1.7 million came to more than 11 percent of its total LEAA block grant. The largest project, involving $550,000 of LEAA funds, involves a study of the specialized courts in Detroit with the objective of absorbing them into the Wayne County Judicial system. Among the other programs:

To provide qualified management and system staff to at least 10 circuit and district courts over the next two years in order to cut time betwen arrest and trial to no more than 90 days.

To codify criminal procedures.

To expand or establish an office for prosecution of appeals statewide on behalf of the people and assist prosecutors.

To continue a central office to coordinate activities of prosecutors and develop training programs.

To provide legal advisors to five police agencies.

To continue a law school prosecutor intern program, and a similar defender intern program.

To continue an appellate defender program to handle all criminal appeals and post-conviction proceedings for indigents on a statewide basis.

To expand the district defenders' office to provide well trained, experienced trial lawyers for indigents charged with high misdemeanors and felonies, and to establish three additional defender offices.

To develop and implement alternatives to prosecution and sentencing of non-traffic, non-assault misdemeant first-offenders such as alcoholics and minor sexual offenders. Last year Michigan had similar projects for felony offenders.

To train more than 1,000 judges, prosecutors, defense counsel and court personnel in interdisciplinary projects, with emphasis on training support personnel in court management techniques.

To develop and publish workable local and regional plans for district courts, police and prosecutors to implement in emergency conditions.

To continue a pre-trial release program, by creating an organization to provide judges with information to assist in setting bond and other pre-trial release conditions.

For one more example of state progress, we should look at Mississippi, which last year devoted only $42,000—or two percent—of its block action grant to courts. This year, the amount has been raised to $343,000—or nearly 10 percent—and the quality of its programs is high. They include:

Seminar courses for all of the state's judges on such subjects as court organization, administration, reforms, sentencing, and corrections.

A prosecutor training program, with law school studies to be supplemented by work in a prosecutor's office.

Construction, renovation, and improvement of judicial facilities.

Hiring an assistant district attorney or investigator to assist full-time district attorneys.

In addition, the Mississippi plan indicated that future priorities will include creation of the office of administrator of courts and creation of a judicial qualification commission.

In the words of one of our court specialists, criminal justice planners in Mississippi have rolled up their sleeves and made an impressive beginning on programs designed to solve the state's court problems.

The state's Fiscal 1971 plan represents a good beginning not only in amounts of funds for courts but quality of programs as well. Projections of program spending beyond Fiscal 1971 also are impressive.

For instance, in discussing multi-year action, Mississippi noted that it hopes in 1972 to increase the percentage of resources for courts substantially. This fiscal year, Mississippi plans to use 9.5 percent of its block grant—or $343,449—for courts activities. In Fiscal 1972, that would climb to 17.5 percent—or $1,649,000. And court expenditures from block grants would continue to rise, with $2 million in Fiscal 1973, and $3.4 million in Fiscal 1974.

Among new programs planned in later years are a statewide project to provide defense services for indigents, a program to train court reporters, seminars for judges, an in-depth study of the state's judicial system, and the creation of 20 Youth Court judgeships.

The plan also noted that there must be future efforts to improve the justice of the peace system and to revise the Mississippi Code.

DISCRETIONARY ACTION GRANTS

Of the total action funds available, the law provides that 15 percent are set aside as discretionary funds to be awarded to state and local governments by the LEAA Administrators outside of the block grant formula. During the first two years of the program, over $85 million was available for this purpose. For the current fiscal year, more than $70 million is available. These funds are distributed pursuant to a discretionary grant guideline which this year has defined over 30 programs under which applications are encouraged from potential grantees. Last year, more than 450 grants were approved out of about 1,000 applications. It is anticipated that about 600 grants will be awarded this year.

The current guidelines include five areas of court programs for which discretionary grants may be awarded. They are: Court management projects, training courses for judges, training courses for prosecutors, technical assistance and coordination units for prosecutors, and law student interns in the offices of prosecutors and public defenders.

Some $4 million has been earmarked for grants in those areas—with $2 million of it scheduled to finance court management projects. The projects may include all phases of internal operations, such as procedures, scheduling, forms, staff utilization. In addition, funds may be awarded to meet areas of special need, as well as for projects which are designed to bring better coordination between the courts and other crinimal justice agencies.

Discretionary grants for court programs were nonexistent in our first year. In our second year, fiscal 1970, last year, court programs accounted for only four percent of the $30 million available for all discretionary grants.

Originally LEAA earmarked almost $2 million for discretionary grants for courts, but only $1.2 million was actually awarded. An additional grant in the special "large city" category of discretionary grants brought this up to $1.3 million. An additional $500,000 in discretionary grants for court programs was approved by LEAA's courts division, but approval came too late for awards last year and these were carried over into fiscal 1971.

As for discretionary grants for programs in the current year, fiscal 1971, a total of $70 million is available. It is impossible to estimate how much of this will eventually be actually awarded for court programs, but of the $19 million in discretionary grants

awarded so far, a total of $1 million has gone for court programs. This amounts to 5.5 percent, compared to the four percent of all of last year.

I would like to cite a few programs as examples of what we are trying to do.

Fiscal 1970 discretionary grants for court programs included:

$357,000 for the Institute of Court Management, at the Denver University Law School, and the National College of State Trial Judges, of Reno, Nevada, to conduct at least 10 court management studies of criminal courts and courts systems throughout the United States. One study will survey an entire state court system, the others will be in major metropolitan areas. The studies will be examined to devise standards and methodology applicable to all court management.

$150,000 for the improvement of court management and operation in Illinois, including a court management survey of felony and misdemeanor courts, development of a streamlined preliminary hearing procedure for felony cases in a circuit court, and a court ombudsman program for urban municipal cases, to assist and advise citizens on sources of legal counsel and to institute litigation for those otherwise without redress.

$143,000 to Missouri for the St. Louis Circuit Court to offer services to juveniles, including special treatment for the mildly disturbed or retarded.

$140,000 to Arizona for the Pima County Juvenile Court Center in Tucson, to develop a model management system for juvenile court operations.

$82,000 to support a management study in Ohio of Cuyahoga County's 15 courts by the Criminal Justice Coordinating Council of Cuyahoga County and the Cleveland Bar Association.

Fiscal 1971 discretionary grants for court programs so far approved include:

$250,000 to reduce delay in the recorders court of the City of Detroit, Michigan. This grant provides for the design, analysis, and implementation of a new management information system for processing of misdemeanor criminal prosecutions through the court.

$116,000 to provide the major source of funding for the judicial conference we are now attending.

$90,000 for a three-phase project in Ohio's Franklin County Municipal and Common Pleas Court. The goal is improvement of scheduling and calendaring procedures through the use of data processing techniques.

$75,000 for Georgia's Fulton County Juvenile Court, in Atlanta, to revise the intake forms in order to increase the information available to judges. The project will also allow projection of delinquency trends and formation of prevention programs.

$31,000 to provide technical assistance and coordination units for six prosecuting attorneys offices in Michigan. This is a very promising project, not merely because the information used will be made available to all the prosecuting attorneys offices in the State, but because it is serving as a model or pilot for a program we hope to establish in every state. Instead of surveys or seminars, it offers centralized expertise, on a daily basis, with technical assistance and the services of an outside management consultant. Instead of study, it offers action and real help.

GRANTS FOR CORRECTIONS

The recently enacted Amendments to the Omnibus Crime Control Act established a new program—called Part E—to accelerate correctional reform in addition to the regular funds that would be made available in the LEAA action programs. The guidelines for the new activity are just being issued and a supplemental budget for the balance of the fiscal year of some $50 million has been transmitted to Congress. For fiscal 1972, almost double that amount has been requested.

A separate comprehensive plan must be developed for those states wishing to participate in the special corrections program. Although the needs of corrections are great in all aspects, Congress has decreed that priority must be given to the development of community based programs, including probation and parole. Also, emphasis is to be given in the development of regional correctional facilities to replace the nation's crumbling and inhuman county jail system. While the needs are acute for the modernization or replacement of prisons, the costs, at least in the earliest years are almost prohibitive. So major state institutional construction programs will be deferred in most states until subsequent years, when funding levels may be substantially increased.

If Congress responds to our supplemental request, the combination of regular action funds plus the new Part E program could well approach $175 million since it appears that the regular Part C funds devoted to correction will be close to 35 percent of the total. If the same pattern holds true for the coming fiscal year, another quarter of a billion dollars of federal funds could be added to the total current expenditures of state and local government expenditures of about $1.5 billion. These new funds and the resulting new programs, personnel and facilities will mean the start of a major upgrading of corrections not seen in the two centuries of our national existence.

RESEARCH AND ITS IMPORTANCE

One of the greatest needs of the criminal justice system is the need to bring to bear the techniques and resources of modern science and technology on the chronic and severe problems that plague our criminal justice system. This is the mission of the National Institute of Law Enforcement and Criminal Justice, the research arm of LEAA. Although the funding level of the program has been very modest in relation to the needs—some $7.5 million for the current fiscal year—significant research efforts are underway. In response to congressional desires, primary emphasis has been given to the development of practical police hardware and equipment, but the Institute's Center for Law and Justice also has developed an impressive portfolio of research projects for court improvement.

LEAA's research efforts aimed at court problems has been well developed almost from the beginning of the agency. In fiscal 1969 LEAA gave more than 15 research grants and contracts related to courts. The principal one was a grant of $120,000 to the Committee on the Administration of Justice in the District of Columbia, to finance a management study of local trial courts.

In fiscal 1970, the National Institute devoted 20 percent of its $7.5 million budget, or $1.5 million, to court programs. Some examples:

$192,000 to the University of Notre Dame to finance a joint study by the law school and the engineering college on court delay. Systems engineering techniques will test the validity of mathematical models on court delays. Computers will be used to test the models under varying conditions to test the effectiveness which various improvements might have.

$105,000 to the Case Western Reserve University Law School to make a detailed examination of pre-trial procedures in felony cases, using the Cleveland courts. High priority will be given to determine whether the due process requirements could not be equally or better served by substitute procedures which would cut down the delay and increase the effectiveness of the system, with the aim of shortening the pre-trial process in a manner consistent with fairness.

So far in fiscal 1972 two new research projects have been approved. The first is for $146,000 to the Institute for Defense Analyses in Arlington, Virginia, to examine the rule of defense counsel in criminal cases, with an effort to see where defense counsel strategy and tactics delay the case, and to weigh the cost/benefit factors involved.

The second research project involves a grant of $165,000 to the Institute of Judicial Administration for the first phase of a multi-year effort aimed at developing a set of nationwide standards for juvenile justice, modeled on standards for criminal justice which IJA and the ABA have developed since 1969.

ACADEMIC ASSISTANCE

Another major program of LEAA is that of academic assistance. This year, more than $21 million in loan and grant funds are being utilized by almost 900 colleges and universities in assisting some 65,000 students to pursue college degree programs, either undergraduate or graduate, directly related to law enforcement careers.

Most of the students are in-service police officers who are taking evening or other part-time coursework.

Last year, more than 1,400 employees of courts were attending college with the assistance of LEAA funds. Since court personnel represent the smallest part of the criminal justice system, this seems to us a significant beginning, but we expect the number to grow in coming years.

With the new legislative amendments, our Office of Academic Assistance will have an expanded role in assisting in the development and support of college level training programs and short courses and also in the development of academic curricula.

We have made an important modification of our academic assistance program, although it is still too early to report on what extent it will be used. We have modified our flat prohibition on law school attendance to allow certain in-service personnel to attend law courses or study for a law degree. This was done because of the increasing demand for people with law enforcement experience and a legal education. This program is limited to police or correctional officers with at least five years of service with a state or local agency. Court personnel are presently excluded.

STATISTICS AND INFORMATION SYSTEMS

The development of reliable statistics and information systems programs is a key to improving and reforming the nation's criminal justice system. Reform must be premised on intelligent and comprehensive planning; planning must have an accurate, timely, and comprehensive data base or it will be nothing more than wishful thinking. This is the mission of our statistics program. The National Criminal Justice Information and Statistics Service (NCJISS), is about 18 months old and has been funded at a level of about $5 million. It has two major purposes: to support the development of statistical and information system programs in the several states; and to conceive, develop, and implement major criminal justice statistical series and studies of national scope. Among other things, we are engaged in an effort to build up the state statistical programs.

Here are sketches of five important national programs, plus greater detail on a sixth.

Last December the first full scale study on employment and expenditure of the nation's criminal justice agencies was published and distributed, including the first information on court agencies.

We have just released a National Jail Survey that represented a 100 percent census of the nation's 4,000 county jails. This is a comprehensive study of physical plants, programs, and inmate characteristics.

An advance report is being issued this month of a directory of the nation's 35,000 criminal justice agencies including names,

addresses, phone numbers, zip code and a new coding system of unique identifiers for each agency for computerization. It will be periodically updated.

Work on this project was done for LEAA by the Census Bureau and the result will be the first National Criminal Justice Directory ever compiled. The second part of the survey, due for completion by the end of 1971, will involve further surveys of court organization. Some results from the first phase of the survey include: of the 45,850 criminal justice agencies, 13,421 or 29 percent were found to be court agencies. (The survey did not cover towns of 1,000 or less population, or minor courts where the judge's compensation is on a fee basis); when prosecutor and defender services are added to the courts the proportion rises to 49 percent of all criminal justice agencies; of the courts identified in the survey, 13 percent were at the state level, 47 percent at the county level, and 40 percent at the city, township or special district level.

A fourth NCJISS program is the development of the computerized data base, the Criminal Justice Data Base. It will contain population data from the 1970 decennial census, uniform crime reports, employment and expenditure and other information.

A fifth effort, conducted jointly by LEAA and the Census Bureau this spring will be a comprehensive Survey of Court Organization. This program is a first step in our long-range goal to develop National Court Statistics. The initial phase will cover about 8,000 court systems, including trial courts of general jurisdiction, state appellate courts and courts of limited jurisdiction. It will focus on the substructure of the system—number, type, geographic and statutory jurisdiction, and organizational alignment of courts in the system, administrative support, record-keeping practices, and distribution of workload as between civil and criminal cases. A detailed organizational directory will be prepared of the various divisions, departments and sub-units in each court system, jurisdiction at each level, distribution of workload, and location of records of court activity. We urgently need and request your support in making this survey effort complete and successful.

Finally, a major program of NCJISS is Project SEARCH, or the Systems for Electronic Analysis and Retrieval of Criminal Histories. LEAA has funded development of this program at a level of more than $3 million in discretionary funds, with an additional $2 million from the participating states. The purposes of SEARCH is to develop an operational system for the computerization and interstate exchange of criminal history records by police, court and correctional agencies. The system will provide arrest and disposition data on certain categories of offenders on a real-time basis; that is, when an inquiry is addressed to the system a complete record will be reconstructed in a matter of seconds from whatever state criminal justice system that individual has been acquainted with.

Project SEARCH involves a consortium of 15 states lead by California as coordinator state. The Michigan State Police has operated the central index facility for the demonstration. The 15 states in SEARCH, incidentally, account for about 75 percent of the nation's criminal transactions. The Attorney General has decided that when the system becomes operational next fall, the Federal Bureau of Investigation will operate the central index. It is anticipated that 20 to 25 states will go on line at that time and at least a half million existing records will be converted to the computerized format.

The implications of this system, when it becomes operational nationwide, are truly staggering. For the first time, the complete record of an individual will be available immediately, and this will obviously have significant meaning for courts, as it will for the entire criminal justice system.

This quick access to complete information will help a judge determine bail, decide whether or not to hold a suspect pending trial, in sentencing, in considering probation, and setting conditions for release. Even in a trial setting a prosecutor could use the system to check on the background of a surprise witness and could discredit the testimony as a result.

The operational uses aside, in the long run the most significant implications of SEARCH lie in its potential use as a tool for planning, management and research of the criminal justice system. For the first time, it will be possible to obtain timely information on the individual offender as he progresses—or doesn't progress—through each milestone in the criminal process. This will create a new statistical series on the effectiveness and efficiency of every component of our criminal justice system which will make possible comprehensive understanding of its dynamics—including strengths and weaknesses. Already Project SEARCH has successfully developed and demonstrated the prototype of this new series.

It should be noted that when the SEARCH System becomes operational police agencies will be the primary participants in it. This is due in large part to the pioneering work of the Federal Bureau of Investigation in its National Crime Information Center, which is a nationwide computer system for the exchange of operational police information such as stolen vehicles and wanted persons. Also, the Highway Safety program of the Department of Transportation has provided $40 million in federal aid to help police automate driver's license and traffic safety records. No similar investment has been made for the automation of court or corrections record systems, but LEAA is dedicated to substantially assist the states in this regard.

TECHNICAL ASSISTANCE

The final major program of LEAA is that of technical assistance. Now entering its second year, our efforts are quite well structured in the corrections and organized crime fields, some specialized aspects of police activities such as police aviation and bomb disposal, but are generally now just getting off the ground in the police and courts area. Last year Congress appropriated about $1.2 million for technical assistance and for the current fiscal year the funding level is $4 million.

The corrections technical assistance program last year responded to over 300 requests from state and local governments. These requests were for a variety of assistance, ranging from survey teams that went into states like Mississippi and Arkansas for comprehensive field surveys of state correctional systems, to individual architects or management specialists who went to a city or county to help solve specific problems. Open-end contracts were effected with three groups—the American Corrections Association, the National Council on Crime and Delinquency and the Institute of Government at the University of Georgia—to make a wide range of specialists available on demand. In addition, the Federal Bureau of Prisons and LEAA's own staff made numerous field visits. It is expected that by June 30, 1971 more than 600 additional requests will have been met.

For Courts, LEAA is now soliciting proposals for contracts to provide technical assistance for the courts. Some $200,000 is tentatively reserved by LEAA for this purpose, and we expect to make two or more contract awards before the end of the fiscal year June 30.

RATIOS AND NEEDS

I would like to turn now to a brief discussion of the LEAA effort in relation to overall spending by the nation for court programs.

Last year some $12.5 million in LEAA block grant funds were allocated for courts, some $1.5 million in LEAA research funds, and some $1.3 million in LEAA discretionary funds. Our Law Enforcement Education Program, of course, also benefited court personnel, and our National Information and Statistics Service supported development of an automated computerized system on criminal records, which when it becomes nationwide may greatly assist judges in making probation, release or sentencing decisions.

That total of LEAA spending amounts to only about six percent of that year's overall LEAA budget. On the national level, courts, prosecution and defender services accounted for 18 percent of the spending for criminal justice at the state and local level. LEAA's budgets of $268 million in fiscal 1970, of almost half a billion this year, and a request of almost $700 million for the year ahead, are respectable compared to the $6.5 billion state and local annual cost of the criminal justice system. LEAA's contribution of $15.3 million in fiscal 1970 compared to the state and local cost of operating our courts, including prosecution and public defender services—$1.2 billion—was not as high as it might have been.

A principal goal is greater participation by judges and court administrators in the criminal justice planning process. A high level of participation can help assure a greater share of LEAA funds for the courts.

If you consult the tables at the end of this paper, you can see where your own state stands in this area of funds for courts. LEAA can only do so much—the real impetus for improvement rests at the state and local levels.

Our philosophy at LEAA is and has been the one expressed by the President in his State of the Union Address, the need to solve state and local problems at the state and local level, with state and local talent doing the job. The Federal government will provide resources, because they are needed for progress to be made, but we have no desire to tell you how to run the courts of your state.

DEVELOPING NATIONAL STANDARDS AND GOALS

Finally, I would like to discuss the new major effort to be undertaken by LEAA in partnership with the states to develop national standards and set long-range goals for the improvement and reform of criminal justice in America.

In a recent address, Attorney General John N. Mitchell directed LEAA to begin at once to assemble working groups to review the present status of the various disciplines of criminal justice with the objective of developing national standards and setting long-range goals for the major system components. The Attorney General described the program this way:

"We have already begun to move in the right direction with the LEAA program of grants to states and localities. What is needed now is a set of national goals and standards in the operation of police forces, in the administration of courts, and in the upgrading of correction systems."

"I therefore propose that Federal, State, and local governments join together in establishing such standards and goals. The Federal Government's role would be to provide financial support and technical expertise. The State and local governments would bring to such discussions their own professional experience. Working together, the three levels of government could agree upon a set of specific objectives to be achieved on a nationwide basis."

"To this end I am directing the Law Enforcement Assistance Administration to provide the financial support and to take the initiative in establishing a proper method

of holding these discussions and arriving at these goals. By pooling the talents of professionals at all levels of government, we can set yardsticks to measure our progress toward a 20th Century criminal justice system."

This new undertaking will not be just another study commission writing a scholarly tome. Rather, we will develop realistic blueprints for the rational allocation of resources. As I indicated earlier, the states have embarked on similar courses individually through the vehicle of their comprehensive state plans.

The time has arrived for this experience to be brought together collectively so that the best can be gleaned and then translated into standards and goals and priorities for the benefit of the entire nation.

It may be properly asked why the work of the President's Crime Commission of a few years ago would not suffice for this purpose. There are several reasons. First, that report was the result of studies conducted largely in 1965 and 1966; and much experience has been gained in the intervening years. Second, there have been significant advances in criminal justice planning, particularly the three sets of comprehensive plans through the LEAA program. Most important, however, the recommendations of the President's Crime Commission were more or less a random set of findings with no attempt to set priorities or define goals for improvement of the system. And those are the main tasks to be done.

How is all the work to be organized? It is our intention, at a very early date, to issue a call to the states to organize a consortium, much like that for Project SEARCH. It will be headed by a coordinator state and a central secretariat would be supported by LEAA discretionary funds. Other states would chair task forces in the various disciplines. Each task force would assemble representatives from the ranks of criminal justice agencies, the academic community, and the general public. These steering committees would be supported by the services of experts and consultants as may be necessary. LEAA will make available the services of its own staff to serve the task forces.

It is hoped that the work can progress rapidly enough so that at least interim results will be available to the states in time for preparation of their fiscal 1972 comprehensive plans. Final work should be completed so that LEAA may utilize them in reviewing the 1972 state plans prior to disbursement of block action grants. This means that final reports should be available nine months to a year from now.

Unlike the National Crime Commission, which went out of existence after completing its report, this new effort will be an ongoing one. To be relevant, standards and goals must keep pace with the times; they must be up-dated; they must be refined and improved as conditions change, old problems are solved, and new problems arise. A structure involving LEAA and the states will be retained for these continuing efforts. An important part of this work will be to evaluate not only the relevance of standards and goals as time goes by, but to evaluate the projects and programs which are being carried out to reach those goals.

A crucial role in this new national effort must be carried by the judiciary. I urge you, and your colleagues throughout the nation, to begin immediately to plan for creation of the national task force on the courts. And I urge you to take an active part in the work of that task force, as well as in the follow-up efforts.

The key to this, as in all of our other projects, is for the criminal justice system to work together. A new level of cooperation must be attained among police, courts and corrections, just as though the LEAA program a new level of partnership is being reached by state, local, and federal governments.

Working together, we can bring criminal justice fully into the 20th Century, and prepare for the next.

THE UNVERSITY IN A CHANGING SOCIETY

Mr. ERVIN. Mr. President, Chancellor D. W. Colvard, of the University of North Carolina at Charlotte, delivered an address entitled "The University in a Changing Society" at the sixth annual faculty convocation of that institution on September 14, 1970. This address merits the consideration of all who are concerned with the role of our higher institutions of learning in today's society.

For this reason, I ask unanimous consent that it be printed in the body of the RECORD.

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

THE UNIVERSITY IN A CHANGING SOCIETY

(Address by Chancellor D. W. Colvard at the Sixth Annual Faculty Convocation of the University of North Carolina, Sept. 14, 1970)

Those of us who have chosen to cast our lot with higher education need not be reminded that our enterprise is passing through a time of crisis. Enrollments are continuing to rise; funding sources are becoming scarce; unrest on some campuses has produced nightmarish, horrifying results; public outcries have become more general and in some instances have reached a crescendo.

There have been disastrous occurrences, especially during the spring, and even into the summer months. Many campuses have found themselves caught between a loss of academic freedom on the one hand and campus anarchy on the other.

This is a time when any individual who commits himself to a university career should consider seriously the role the university should play and the forces which interact and converge to aid or deter its effectiveness in performing its proper roles.

I tend to agree with R. E. Farson of the School of Design of California Institute of Arts when he said, "The problem is that modern man seems unable to redesign his institutions fast enough to accommodate the new demands, the new intelligence, the new abilities of segments of society. . . . Instead of trying to reduce the level of discontent felt," he said, we should, "try to raise the level of quality of discontent." Since the turn of the century the population of the United States has increased almost three-fold. On the other hand, the power available has multiplied 275 times. With this rate of change in the area of technology, no generation can expect to operate in tranquility nor can it postpone the task of attuning the institutions to the changing needs of the times.

The past decade has been marked with a growing sensitivity for the plight of the underprivileged and a more widely shared belief that it is possible to manage ourselves rationally with a higher degree of citizen participation in the management of their own fate.

The university today, in response to these dynamic changes in society, is itself undergoing extensive reappraisal and change: changes in governance and curriculum, in its community service, and in the thrusts of its academic research. There has even been a re-examination of some basic assumptions about teaching. Such rethinking is welcomed by most of us, I a sure. Yet in the midst of this restructuring and revitalizing of higher education, the fundamental commitment of the university must not be lost: the commitment to the pursuit of truth—to examine human life as it actually is and to respond to it with sensitivity and reason. Unless this basic tenet is accepted and the university is permitted to exist in a setting in which the pursuit of truth goes on unencumbered, it loses the essence of its existence no matter how contemporary the curriculum or modern the facilities.

As a marketplace of ideas, the university should not only welcome but seek opposing or unpopular ideas. As John Stuart Mill observed, "If our own views cannot withstand opposition, then they may not be worth holding; if they can, they have inevitably been strengthened by their exposure to criticism and counter-argument." We are justifiably accustomed, therefore, to thinking of the university as the place where truth, as an article of faith, is sought unconditionally in all its forms.

A basic corollary to the pursuit of truth, and vital to its attainment, is academic freedom. But while these are the best of times in terms of challenges and opportunities for the university, these are also the most precarious of times in terms of threats to the university's right to assert its academic freedom. Various segments of society, both outside and inside the university community, have created threats to this principle in one form or another.

There has obviously been a loss of confidence on the part of the general public in our universities. The public is alarmed over what it has seen take place on some campuses. It is alarmed, and rightly so, over the acts of violence that have convulsed certain institutions. It is alarmed also, and more than most would admit, in witnessing long-accepted life styles challenged by the college-age generation using the campus as a principal forum. While former generations may have attended the university to prepare for life, today's student views his experience at the university as life itself, and in this new context standing in loco parentis becomes increasingly unworkable.

Public discontent often becomes an outcry that carries to the ears of their delegated representatives, trustees, and legislators. Under the impact of public pressures it is not surprising that these bodies often feel impelled to act with urgency in regulating out of existence the turmoil within the universities. In the recent past, California has seen well over 200 bills affecting higher education introduced in its legislature. North Carolina experienced its share of such proposals. While new procedures have become necessary to deal with campus problems heretofore completely unknown, many legislative proposals have been presented in haste, are punitive in nature, and represent a peril to the delicate existence of academic freedom. These are the kinds pressures which tend to commit the university community to policies and actions without as much involvement of components of the university community as may be desired. Although frequently justified on the basis of a failure of the university to act to govern itself properly, extreme actions along these lines threaten to demolish the very cornerstone of the university—intellectual and academic freedom.

These threats to academic freedom come not only from outside pressures, they also have appeared within the campus community. There are those who, in response to the critical problems of the day, would like to politicize the university and have it assume a particular political position on contemporary issues. However, it must be recognized that it is perilous for a university to be involved as a university in such a manner. Involvement is a personal affair and members of a university community, as individuals, should be involved. But just as a university cannot speak for its members, its members cannot speak for and commit the university. Al-

though we defend the individual's right to speak as an individual, we know that frequently the public interprets any utterance from a person identified with an institution as a part of institutional posture. Should the university begin assuming a political posture, its public credibility would be jeopardized and, perhaps even more serious, its members would be discouraged from dissenting from the official university position. It is axiomatic in a university that each member speak for himself. To sacrifice this role for institutional fiat is to threaten academic freedom.

Another threat to the university's academic freedom has been one that is most reckless and conspicuous in nature. As a citadel of freedom of expression, the university has perhaps been the institution in society most vulnerable to the use of force by a particular group who would assert their views at the expense of others. Such an action is not just a threat, it is a betrayal; it is the deepest repudiation of the freedom of thought and expression upon which an academic institution is founded. No person has the right to parade under the banner of academic freedom while at the same time supressing by one means or another the freedom of others to express divergent views. There is no place on campus for those vandals who delight in blasting buildings and who also blast the hopes of fellow students and faculty members as was done in Wisconsin recently. Any researcher, scholar or student is entitled to the protection of records produced by years of study. The time has come when vandals must be identified and held accountable.

Therefore, the integrity of the university must not be compromised if it is to cultivate the processes and values that will keep our society responsive and adaptable over the long term. It will not assist society if it sacrifices this principle to remedy intense pressures or needs of the moment whether those pressures come from within or without. The University serves more than just the immediate and present society; it also serves all mankind and succeeding generations. If those entrusted with responsibilities for the university and the college—namely, the faculty and administration—fail to act responsibly in defending academic freedom they should not be surprised to see pressures break through any efforts toward insulation. We must remember that the university is not operated just for faculty, students, and administration. It is a most vital institution created to perform important tasks in behalf of society.

The individual student is to be commended for expressing his views in the political arena. His schedule permits, or can be arranged to permit, considerable time for political activity while he is in college. But he has no right to expect the schedules of others to be patterned solely for his convenience. Our student-faculty Committee to Study Campus Tensions has recommended that discussion of election issues be arranged through political science forums, the Student Activities Board, and through other means. I support such a recommendation. President Friday has stated clearly that policies of the University of North Carolina do not include closing or canceling of classes for political activities.

Let me conclude my remarks by emphasizing my continuing confidence that in this University rationality and reason rather than force and enforcement will prevail as they have in the past. We have had freedom of expression and we have had order. It seems to me that one of our strengths is that we have no long-standing traditions to break down. Regardless of the differences in points of view we may hold as individuals, we are or should be united in our quest for a contemporary university worthy of the support of the public and of our unqualified personal commitment.

Each year brings new talents and new challenges into this growing University community. May this be our best year in educational growth and service. Let us lay a foundation capable of undergirding a truly great University.

BABCOCK ELECTRONICS CORP. LOCATES NEW PLANT IN ARIZONA

Mr. FANNIN. Mr. President, I have spoken many times about the alarming export of American jobs and technology to foreign nations.

Bleak as the picture is, there are occasional rays of hope. Today, I should like to place in the RECORD a story from the March 22, 1971, edition of the Casa Grande Dispatch. It tells of the decision of Babcock Electronics Corp. to locate its new plant in Arizona rather than to go overseas.

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

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

TEN MILLION DOLLAR FIRM SET FOR MOVE TO COOLIDGE

COOLIDGE.—A $10 million Costa Mesa, Calif. industrial firm culminated a long search that stretched from Hong Kong to Mexico before selecting this area for a new production facility.

Babcock Electronics Corp., a subsidiary of the $42 million Esterline Corp. (NYSE), will open a new plant here for the manufacture of industrial relays and electronic subassemblies, according to Stephen N. Donahoe, Babcock president.

With plans to launch its program here in the former Levi Straus building about mid-April, Babcock will start with a work force of 40 employees, representing an annual payroll of approximately $200,000. Present plans call for a steady increase in personnel to a full production complement of 125, representing an estimated annual payroll of $625,000, said William Boydstun, Babcock's director of manufacturing.

Babcock officials also said the initial investment here in shifting equipment and constructing internal facilities will cost about $100,000.

"We decided not to pursue some rather attractive foreign propositions. Instead, we chose to locate this plant in this country and relatively close to our main California facility," Donahoe stated. "Our new Arizona plant will recruit virtually all of its work force from the Coolidge area, located midway between Phoenix and Tucson, including many from the Pima Indian Tribe living on the Gila River Indian Reservation. Babcock planned this facility in part with the assistance of the Bureau of Indian Affairs and its Regional Industrial Development Director, Mr. Ed Whelan."

Donahoe also expressed the company's deep appreciation to Sen. Fannin, Arizona's senior Senator, for his help and encouragement during the initial phase of this venture. Also singled out was Dwight Edwards, director of the Coolidge Industrial Development Corp., for his assistance in plant location.

The new plant will be managed by Leonard Ash, currently Chief Relay Design Engineer at Babcock's Costa Mesa facility. According to Boydstun, Ash brings many years of managerial capability to his new position, including direction of both U.S. and European operations of domestic relay firms, Babcock Electronics Corp. was founded in 1948 and in 1968 became a subsidiary of Esterline Corp., a multidivisional operating company of 22 separate divisions and-or subsidiaries. Esterline is involved in three broad fields of endeavor: measurement sciences, medical, and automation. Babcock, as a member of Esterline's Measurement Sciences Group, has as its principal activities the design and production of control products, including high-reliability and general-purpose relays for aerospace and industrial applications; plus electronic products comprising specialized remote aircraft control systems and electronic scoring systems for missile and personnel training programs.

MORE WELFARE MYTHS AND FACTS

Mr. RIBICOFF. Mr. President, the increasing welfare burden on State and local governments has forced many of them to cut back their programs. Last week, Governor Rockefeller turned to many of the old welfare myths to explain his proposals to limit New York's welfare program. The relationship of these myths to the actual facts is well documented by Martin Arnold's article entitled "Is the Governor Playing a Numbers Game?" published in the New York Times of April 4. I ask unanimous consent that the article be printed in the RECORD.

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

IS THE GOVERNOR PLAYING A NUMBERS GAME?

(By Martin Arnold)

At last someone has decided to "do something" about the state's welfare costs. At least, that's what Governor Rockefeller said he was about last week as he set forth a package of legislation aimed at meeting the the dilemma head on. His program had a broad popular appeal, and it helped break the legislation impasse over the new state budget.

For those taxpayers frustrated and outraged by what they view as the "welfare mess" and eager for easy solutions, the Governor's plan could be translated in these terms:

The loafers on welfare are going to be forced to go to work.

There's going to be a residency requirement, with funds available to ship back South the hordes of migrants who—everybody knows—come here for a free ride on the gravy train.

Welfare costs are going to be cut drastically by knocking down the so-generous cash payments to recipients by 10 percent, except those who are blind, aged or disabled. At present a welfare family of four in New York City receives $231 a month plus heat and rent. This will be cut to $208. The the savings: an estimated $18-million out of the Governor's original welfare budget proposal of $1.3-billion.

Further cuts would be made, but only if the Federal Congress enacts a proposed basic annual standard; the current proposal is $2,400 annually for a family of four. The Governor says he would implement such a figure for the metropolitan area on an "experimental" basis. As it now stands, the figure for a family of four, with city and state contributions, is a lordly $4,000 a year.

That's the theory, and that's the way many of the state's exasperated citizens like to describe it. But there is growing evidence that any resemblance between fact and theory is purely coincidental—not to say political.

One theory, for example, is that the welfare rolls are filled with people able but unwilling to work. But New York City's Department of Social Services says, that of the 1,174,632 people currently on the city's welfare rolls, only 2.4 per cent are employable. The Governor says the figure is higher, but gives no estimate of his own. Yet no one dis-

putes the fact that 59.2 per cent are children, that 19.5 per cent are adults caring for children and that 6.4 per cent are aged.

The Governor would have every employable welfare recipient report twice each month to the state employment office in his municipality for job placement interviews. In New York City there are 30 such offices. The fact is that last month 52,607 people walked through their doors in search of jobs, and only 11,578 found them. Clearly, unless the economy is pumped to create jobs, the Governor's get-tough policy on welfare "loafers" is not going to save the taxpayer much money.

The Governor talks of a residency requirement and suggests that funds will be available to send people back down South. But the Supreme Court has ruled that residency requirements are unconstitutional. The theory is that the Governor can get around that because the Court indicated it might accept a residency requirement if the state can demonstrate that its welfare crisis is so acute the state is virtually bankrupt. That fact remains to be proved.

Even assuming that the nonworking newcomers can legally be shipped back home, the proposed one-year residency requirement has its flaws. Every survey done of migration to New York City shows that those poor black and Puerto Rican migrants—who make up 90 per cent of the city's welfare rolls—came here in the expectation of finding a job. The surveys also show that a vast majority who do finally land on welfare here do so only after several years of working at menial jobs or of living in crowded apartments of friends and relatives who have jobs.

The state's own social service officials say that fewer than 1 per cent of the migrants go on welfare within the first year of their residency here. The bus ticket home has its headline appeal to a populace sick of ever-increasing welfare costs, but it's not likely to have much money-saving value.

Even the plan to cut the basic annual level of aid from the present $4,000 to $2,400 for a family of four has its drawbacks. Given the current cost of living, it will of course work a cruel hardship on those affected. But such humanitarian considerations aside, just how much money will the measure save? Just who will be affected?

Not the aged and the disabled—they are exempt. Not most members of Aid to Dependent Children families, either. They would be given an opportunity to raise their incomes beyond the $2,400 level "through supplemental incentive benefits for regular school attendance and participation in work and work-training programs, as well as other programs designed to promote social responsibility."

It happens that the great majority of the welfare recipients in the state fall within that category. In New York City, for instance, 824,621 of those on welfare are members of A.D.C. families. They are the broken home families, the families with children born out of wedlock, the families deprived of support because of death or illness or desertion of the father. They are the families for whom day care centers will have to be built if the mother is to work. At present, in the city, there are only enough day care facilities for 20,000 welfare children.

And how high will the supplemental benefits for these families be? Privately, state officials indicate they'll probably be high enough to bring most of them up to the $4,000 level.

The measure of reality in the Rockefeller proposals is perhaps best exemplified by the fact that the Governor gave no estimate of how many persons would be affected by the welfare proposals he submitted last week or of how much money would be saved if his program were to be enacted. All the spokesman would say was: "We will be determining the numbers and the savings as this program develops."

If, then, as seems to be the case, there is a substantial gap between the theory and fact of the Governor's program, why has it been proposed?

One Republican legislator answered the question this way: "Rocky is seeking the best of all possible worlds—as he always does. That's his political genius."

Back in February, when the Governor introduced his $8.45-billion budget (it was slashed by $760-million last week), there was no mention of cutting welfare costs. Indeed, the Governor spoke then of welfare costs that would rise by 40 per cent, including a 7.2 per cent upward adjustment to make allowance for the higher cost of living.

But the state and the municipalities are being sapped of their financial resources by welfare, and the taxpayers are enraged and their representatives in the Assembly and Senate know it. And so it came to pass that, when the budgets squeeze began to really pinch, the Governor had a dramatic new plan to offer. It seemed at first flush to meet the welfare dilemma head on. It semed to promise big savings.

The budget-cutters in the Legislature were happy. The conservative members of Mr. Rockefeller's constituency were happy. And if the impact of the program, which currently seems assured of passage, turns out to be less financially rewarding than it was billed, all will not be lost. For then, a cynic among the Democratic legislators suggests, the Governor will be able to tell the liberal and poor members of his constituency: "The Legislature really wanted to cut welfare to the bone, but I held the line. You can see, my program didn't hurt very much."

Welfare in New York City: The rolls go ever higher

[Average monthly number of persons on welfare in New York City]

1962	344,084
1963	377,884
1964	431,161
1965	487,908
1966	560,599
1967	707,409
1968	889,262
1969	1,016,467
1970	1,095,809
1971 to date	1,174,632

Source: HRA.

ACCOMPLISHMENTS OF SECRETARY VOLPE AND THE DEPARTMENT OF TRANSPORTATION

Mr. PROUTY. Mr. President, just a little over 4 years ago, the Department of Transportation came into being.

When Congress created the DOT in 1966, we outlined five objectives for the DOT to set its sights on:

To coordinate the Federal Government's transportation programs;

To stimulate technological advances in transportation;

To facilitate the development and improvement of coordinated transportation service by private enterprise;

To provide general leadership in the identification and solution of transportation problems; and

To develop and recommend national transportation policies and programs to accomplish these objectives.

At first, early difficulties in establishing organization took a disproportionate amount of the Department's time.

But since Secretary John A. Volpe took office in January 1969, the Department has made its greatest strides in coming to grips with the major transportation problems of our country.

As a member of the Committee on Commerce I speak from experience when I say that Secretary Volpe has worked long and hard with Congress to see that we have the safest and most efficient transportation network in the world.

During the 91st Congress, more significant transportation legislation was enacted into law than in any year since 1956 when we passed the Federal-Aid Highway Act.

Landmark measures were enacted to relieve airport and airways congestion, improve rail safety, and preserve rail passenger service. In addition, we enacted new programs to improve mass merchant marine.

Without Secretary Volpe's help, these measures never would have become law.

I invite the attention of Senators to an article entitled "The Department of Transportation Looks to the Future," written by Lawrence M. Lesser, and published in the January 1971, issue of Traffic Management.

The article examines the accomplishments of the DOT over the past year and outlines the Department's goals for 1971.

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

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

SPECIAL REPORT: THE DEPARTMENT OF TRANSPORTATION LOOKS TO THE FUTURE

This month, the federal government's fifth largest Cabinet department begins its fifth year of service. Bolstered by a new national transportation policy, the Department of Transportation is about to enter a new phase of its young but eventful life.

Last year, Secretary of Transportation John A. Volpe compared his position as head of the infant DOT to that of a new franchise baseball coach with a team of rookies with lots of potential but no record. "That is all right for the first season," said the former governor of Massachusetts, "but from then on, the record is going to have to speak for itself."

When Congress created DOT in 1966, it gave the Department five jobs to do:

Coordinate the federal government's transportation programs.

Stimulate technological advances in transportation.

Facilitate the development and improvement of coordinated transportation service by private enterprise.

Provide general leadership in the identification and solution of transportation problems.

Develop and recommend national transportation policies and programs to accomplish these objectives.

Today, Secretary Volpe is "pleased and proud" of the record of his department, particularly in terms of its legislative accomplishments. During 1970, he successfully persuaded Congress to approve new landmark programs to aid air traffic congestion, rail passenger service and urban mass transit. In addition, a new rail safety statute, which DOT had sought, gives the Department the tools it needs to upgrade railroad safety and begin a program of rail safety research.

A former Federal Highway Administrator, Volpe said: "The passage of these measures will enable us to really come to grips with

what I believe are the most pressing transportation problems in our country today."

The legislative achievements of Secretary Volpe are regarded by the President on down as unsurpassed among Cabinet members. President Nixon, who was highly critical of the record of the Democrat-controlled 91st Congress, said that when the record of the Cabinet is written for this session, "my guess is that the highest batting average will be that of Secretary Volpe."

Now that these measures have been enacted into law, to what new areas will DOT, which employs nearly 60,000 civilians and 36,000 Coast Guard personnel, devote its energies in 1971? To find the answers, Traffic Management asked the men who run the Department what they see ahead during this coming year.

Deputy Undersecretary John Olson forecasts a partial shift in DOT activity away from the legislative area toward the planning and management of new programs. Even though the demand or transportation capacity will double in 20 years, he feels it would be a mistake just to double the capacity of existing modes without developing fresh alternatives.

Thus, DOT currently is reviewing old priorities and establishing new ones so it will be able to point the direction in which transportation planning and investment should go in the future.

One area that is receiving high DOT priority this year is rail transportation. "I believe that the entire railroad field for years has been what you might call a stepchild insofar as federal programs are concerned," says Secretary Volpe. "This situation should and will change dramatically this year."

DOT's new authority in the rail safety, safety research and passenger fields, plus planned activities relating to freight car shortages, adequacy and condition of equipment and roadbeds, as well as the overall financial condition of the industry, are sure to elevate railroad-related activities in importance within the Department.

Many rail-related activities have been assigned to the Federal Railroad Administration, a bureau of DOT, which has embarked on an ambitious promotion, development and research course for 1971. Programs include promoting rail-truck intermodal line-haul and terminal systems; developing methods and hardware to reduce loading and unloading times for containers, and stimulating design of compatible rail car information systems.

For example, FRA would like to see an increase in the use of piggyback transportation in order to relieve highway congestion.

"Our objective is to reduce car delay and increase the car-days available for shippers, thereby reducing freight car shortages," says James H. MacAnanny, director of FRA's Office of Policy and Program Analysis. He points out that the railroads generally are time-competitive with motor carriers for line-hauls over 300 miles. But for shorter mileages, the ability of motor carriers to load and unload freight more quickly than the railroads transfers the advantage to the highway operators. Mr. MacAnanny feels that because railroads have a cost advantage down to about 300 miles, if service can be improved, long-haul traffic can and should be diverted from truck to rail.

FRA also is developing new tank car designs for the transportation of hazardous materials. In cooperation with the railroad industry tank car committee, FRA has initiated studies in pressure venting and shielding to prevent punctures and improve the structure of the tank car itself. Next, it will look into the placement of hazardous materials in trains in order to reduce possible dangers from a segment of transportation that has been growing at a rate of 18% per year for the past five years.

Several months ago, John H. Reed, chairman of the National Transportation Safety Board, called on the nation's railroads to separate tank cars containing flammable gases with cars containing noncombustible substances.

Another area of concern to DOT officials is maintenance of rail rights-of-way. "Upgrading roadbeds is one of the most serious problems in rail transportation today," says FRA Acting Administrator Carl Lyon.

While the railroads have spent an average of $1 billion a year over the past 10 years on roadbed maintenance, Mr. Lyon says this is not enough. And although he does not see the federal government providing any financial assistance to the railroads for this purpose, higher ranking DOT officials indicate there will have to be some federal initiative in this area. In fact, the new rail passenger statute clearly authorizes the Secretary to guarantee loans for roadbed improvements.

Undersecretary of Transportation James M. Beggs says there also will be "increased activity in the area of transportation regulation" in 1971. While DOT spent 1970 developing the means to increase federal resources in transportation, "we are now focusing on the problems of competition and the workings of the regulatory system," says Beggs.

He believes the increasing participation of the federal government in transportation "is largely related . . . to the fact that many of our modes of transportation are in trouble now."

This state of affairs means DOT not only will participate in regulatory proceedings on a "pick a case basis," as it has done heretofore, but will *initiate* proposals to the regulatory agencies, regarding national transportation policies, based on positions and concepts developed in the Department.

Charles D. Baker, Assistant Secretary for Policy and International Affairs, believes DOT "has an explicit responsibility" to intervene and present its case on behalf of the shipper, consumer and traveler users of the transportation system. And he adds, "I think there is an increasing feeling on the part of many interested parties, shipper groups, traveler groups, Congress and so forth, that the regulatory process in general is due for some analysis."

DOT regulatory-related activities for 1971 can be broken down along the lines of two broad objectives. First, to what extent should transportation be regulated? Second, how best can that regulation be carried out?

Department officials generally favor a policy of less regulation. And their plans are geared toward repeal of a wide range of economic activities dealing with carrier practices and procedures (loss and damage claims), carrier concentration (mergers) and carrier pricing (rate structure).

With concern mounting throughout industry and government over the institutional capacity of the regulatory agencies to improve the financial condition of rail, truck and air carriers, DOT in 1971 will begin to provide the "general leadership" in the regulatory area that Congress envisioned when it created the Department.

On the question of consolidating the Interstate Commerce Commission, Civil Aeronautics Board and Federal Maritime Commission into a single regulatory agency, Mr. Baker says, "I think this is something we will be prepared to discuss and take a position on at some length as part and parcel of our national transportation policy." The policy statement, which will be released shortly, urges a modernization of transport regulation.

With bills introduced in the last session of Congress to abolish the ICC and study the feasibility of merging the three regulatory agencies, DOT is certain to be called upon this year to take the initiative in restructuring transport regulation.

With respect to the concept of common ownership of modes of transportation, Undersecretary Beggs feels the idea has "a lot of merit," but needs "a lot more study." He believes the federal government must review the entire issue of common ownership in the new light of containerization and then "develop policy guidelines which reflect the more modern systems and procedures which are now available."

DOT also will increase its long-range planning and research efforts in 1971. "Most of our attention . . . this coming fiscal year focuses on an attempt to formulate a highly specific assessment of the nation's future transportation requirements and to specify the best ways those requirements can be met," says Richard J. Barber, Deputy Assistant Secretary for Policy and International Affairs.

To gauge the temper of the country, DOT has sent questionnaires to leaders of the transportation industry, all governors and mayors of cities of 50,000 population and over, and after assessing their responses, DOT will define and develop alternative areas in which public and private funds are needed through 1990 to finance railroads, highways, waterways, public transit systems, pipelines, airports and other terminals. DOT also will develop additional alternatives based on economic efficiency in transportation, safety and protection of the environment.

To carry out this objective, DOT has generated a quantitative, computer-backed capability to analyze alternative transportation systems, needs and their related costs. Much of the research will be carried out at a newly acquired Transportation Systems Center in Cambridge, Mass. Established July 1, 1970 in the facilities of the former Electronics and Research Center of the National Aeronautics and Space Administration, the center will provide a focal point for DOT planning.

The new center operates on a $22 million budget and will assist DOT to:

Obtain freight origin and destination data.

Analyze intermodal route structures, including freight terminal location and congestion.

Establish a statistical information base for transportation planning.

Analyze new transport technology, such as the supersonic transport, short takeoff-and-landing aircraft, tracked air cushion vehicles and rail tank cars.

Pointing out the significance for long-term planning of this development, Deputy Assistant Secretary Barber said: "We have attempted to put together what the United States is going to need in the future in the way of transportation for both passenger movement and goods movement and to match this up with the kind of transportation modes we have available."

Two other important areas that DOT will be involved in this year include a crime prevention program for cargo thefts and the provision of financial and technical aid in the development and implementation of standard documents and commodity codes for the transportation industry.

Looking ahead to 1972, DOT plans at that time to take its completed transportation needs study, evaluate it within the framework of its national transportation policy document and present to Congress a comprehensive program for the development of "a truly intermodal transportation program."

"Hopefully, by 1972", says a ranking DOT official, "people will know why DOT was created."

WHO SPEAKS FOR THE SHIPPER?

Who in the Department of Transportation speaks for the shipper? This is a question traffic people frequently ask.

While railroads, airlines, highway and mass transit interests have the modal administrators of the Federal Railroad Administration, Federal Aviation Administration, Federal Highway Administration and Urban Mass

Transportation Administration speak for them, to whom can shippers turn for consideration of their problems?

Some DOT officials say the secretary is the shipper's voice; that the secretary speaks for all users of transportation, both freight and passenger. They say: "What better spokesman could shippers want?"

Another DOT spokesman says: 'We represent ideas, as set out in our enabling legislation, not groups of people. If shippers have something worth pushing, we'll consider it, but we're not a public counsel."

Nearly all DOT activities and programs impact on shippers in some way. For example, the FRA seeks to improve rail freight car utilization and supply so shippers can move their products; the FHA expands the capacity of highways so freight can be distributed more efficiently; the St. Lawrence Seaway Development Corporation and the Coast Guard promote a longer shipping season on the Great Lakes; the FAA expands airports and airways, and the UMTA seeks to relieve traffic congestion by improving mass transit—all for the benefit of users of transportation.

Just last October, Secretary Volpe created an Office of Safety and Consumer Affairs, headed by an assistant secretary (Admiral Willard J. Smith), just to represent the interest of consumers of transportation.

When DOT intervenes in a proceeding before one of the regulatory agencies, its position generally reflects the shipper's point of view. However, responsibility in this area is splintered.

First, a decision must be made on whether to participate. This is the direct responsibility of the Office of Policy Review and Coordination, which comes under the Assistant Secretary for Policy and International Affairs, Charles Baker.

Next, a position is developed jointly by the Office of Policy Review and Coordination, headed by Robert Calhoun, and the Office of the General Counsel. Then the General Counsel's office presents the Department's case to the Interstate Commerce Commission, Civil Aeronautics Board or Federal Maritime Commission.

Some have suggested that DOT create a shipper administration or an office of shippers and consumers. Such an office would have as its sole obligation to look after the interests of the shipper.

So far, DOT officials have not given serious thought to the idea. Instead, they point to the fact that certain carrier groups also feel they are not being adequately represented.

DOT strategists rhetorically ask: "What would such an administration do? How would it operate in conjunction with other offices?" They say the purpose of an administration is to carry out a legislative program; yet, there are no programs per se for shippers.

"My office is explicity concerned with the shipper," says Mr. Baker, who has set up an industry analysis group within his office to analyze shipper problems. While there are no specific shipper statutes on the books, he points out that DOT does have a secretary and assistant secretaries to see that transportation does meet the needs of all its users.

The fragmented system DOT employs to represent the shipper interest appears to work fairly well from the Department's vantage point. But it makes it extremely difficult for the shipper who is located in "Podunk" to make his views heard and acted upon.

ARMS CONTROL PROPOSAL BY SENATOR JACKSON

Mr. INOUYE. Mr. President, on March 30, the Washington Evening Star published an editorial in support of a most interesting arms control proposal put forward by the Senator from Washington (Mr. JACKSON) in a speech on Monday, March 29, on the Senate floor.

In his speech, Senator JACKSON proposed an interim freeze on offensive land-based weapons as a means of saving the SALT talks from becoming outpaced by the developing Soviet ICBM deployments.

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

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

THE JACKSON FREEZE

As usual, Senator Henry M. Jackson has got it about right. His proposal for an immediate freeze on further deployment of American and Russian land-based offensive missiles is the first we have seen that makes any real sense.

The Washington Democrat's proposal is based on the very real possibility that the Strategic Arms Limitation Talks (SALT) in progress in Vienna may be overtaken by events. Progress at the talks is understandably slow. And while they continue, the relative stability of the nuclear balance, on which the success of the talks ultimately will depend, is being seriously threatened by a continuing buildup of Soviet offensive weaponry.

What Jackson suggests is an interim arrangement to stabilize the situation while the effort to reach a comprehensive agreement goes forward. For a period of a year, both Russia and the United States would undertake to halt the further deployment of land-based intercontinental missiles, including those now under construction.

Both countries would be free to take measures to assure the survivability of their existing strategic land-based forces as long as these measures did not add to their offensive potential. Neither side would deploy antiballistic missiles designed to protect population centers—as opposed to missile sites—from nuclear attack.

The proposal, unlike others that have been heard, faces up to the central reality of the nuclear balance. Deterrence of nuclear war depends entirely on assuring on both sides the capability for a retaliatory nuclear second-strike. Stability is threatened whenever one side—in this case the Russians—begins to achieve a capability of destroying retaliatory forces with an opening attack. It is also threatened by deployment of an ABM system designed to protect cities against a retaliatory blow.

The Jackson plan, if accepted, would have the effect of stabilizing the present balance. It would give no advantage to either side in terms of first-strike potential. It would permit further protection of retaliatory forces, through greater hardening of missile silos and through the deployment of ABM defenses, designed exclusively for the protection of missiles.

The great question, of course, is whether the Russians would even consider such a proposal. What they are urging—incomprehensibly supported by some American politicians—is a ban limited entirely to defensive missiles, which would have the effect of destabilizing the balance at an even faster pace. They might well reject the Jackson proposals out of hand. But were they to do so, the Soviet intentions at the SALT negotiations will be clearer than they are today.

REUSE AND RECYCLING OF RESOURCES

Mr. FANNIN. Mr. President, the public awakening to environmental problems has put strong pressure on Government and industry to work out solutions. This pressure is good so long as it does not stampede us into an unwise course of action.

If we are to maintain anywhere near the high standard of living we have enjoyed in the past several decades in the United States, it will be industry that solves the pollution problem—not the Government. Government may provide the incentives, but not the pollution-free products that are desired.

Some communities have sought to cure their litter problem by banning the so-called throwaway soft drink and beer containers. It seems to me that this may be a shortsighted approach. Once deposits are required on all containers, then the incentive to perfect new containers is gone. We will have the same old bulky, heavy bottle that has been around for ever so long.

I also would like to raise the question as to where the line is to be drawn for requiring returnable containers for food items—or for any items. If everything on the grocer's shelf were put in returnable, deposit-required containers, then the trash disposal problem would be solved overnight. Of course, it would take a half-ton pickup truck to carry 2 weeks supply of groceries home from the store.

The point is that we must provide realistic incentives and regulations that promote the reuse and recycling of our resources. Given the chance and the encouragement, I believe that industry will solve many of these problems.

As an example, I would like to cite a telegram that Mr. George W. Taylor of Phoenix, sent March 31 to Mrs. Virginia H. Knauer, Assistant to the President for Consumer Affairs. Mr. Taylor is cochairman of the beverage industry recycling program—appropriately known as BIRP. I ask unanimous consent that the telegram be printed in the RECORD so that Senators will know what is being done to recycle beverage containers in Arizona.

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

APRIL 2, 1971.

Senator PAUL FANNIN,
Washington, D.C.:

Copy sent Virginia H. Knauer, special assistant to the President on Consumer Affairs, the White House, Washington, D.C.:

"Am certain you would like to know of the Arizona reclamation center for glass, steel cans and aluminum cans opened today in Phoenix. The Beverage Industry Recycling Program (BIRP) is sponsored by Arizona Soft Drink Bottlers and Arizona Wholesale Beer Distributors in conjunction with the city of Phoenix who has supplied the 1½ acre site on $1 per year lease. We hope BIRP, non-profit partnership of our two industries, will help reduce litter and solid waste in the Phoenix area by offer of a monetary incentive to the public for glass steel and aluminum. Other centers are planned to be opened in Arizona by BIRP before summer, and we'll take items of glass, steel, cans and aluminum that are not containers for our products."

We believe BIRP is the first cooperative effort of its kind using the talents of all competitors in our two industries, working with a municipality, to attack some of the twin problems of litter and solid waste.

Publicity and advertising campaigns are about to start or, under way to acquaint the public with the reclamation center.

Cullet will be trucked to Los Angeles glass plants to be melted and reformed into glass containers. Steel cans will be processed here and used to extract copper from mine trailings dumps that would otherwise be a lost natural resource. Aluminum will be shredded and shipped by rail to be melted and reformed into secondary aluminum ingots for reuse.

We stand determined to continue to sell returnable packages and at the same time make one-ways available with a monetary incentive to the public to recycle them.

GEORGE W. TAYLOR,
Vice President and General Manager, Phoenix Coca-Cola Bottling Co., Chairman, BIRP.

THE GENOCIDE CONVENTION AND THE TREATYMAKING POWER

Mr. PROXMIRE. Mr. President, in my view, nothing in the U.S. Constitution prevents the United States from ratifying the Genocide Convention. Solicitor General Philip Perlman testified before the Foreign Relations Committee over 20 years ago in support of the Genocide Convention. His testimony is a brilliant rebuttal of the argument that U.S. action on the Convention is beyond the scope of the treatymaking power.

The treaty power of the United States extends to all subjects of negotiation between our government and the governments of other nations is clear (*Geofroy* v. *Riggs*, 133 U.S. 258, 266 (1890); *Asakura* v. *Seattle*, 265 U.S. 332, 341 (1924). The treaty-making power is broad enough to cover all subjects that properly pertain to our foreign relations * * * (*Santovincenzo* v. *Egan*, 284 U.S. 30, 40 (1931)).

The contention advanced by some of the critics of the convention that these subjects must be completely or exclusively "foreign" or "international" or "external" overlooks the whole history of treaty-making which has, from the first, dealt with matters having direct impact on subjects intimately of domestic and local concern.

That genocide is . . . a subject appropriate for action under the treaty-making power seems to us an inescapable conclusion. The historical background of the Genocide Convention indicates the view of the representatives in international affairs of practically all the governments of the world on the appropriateness and desirability of an international agreement to "outlaw the world-shocking crime of genocide." This Government has shared in this view; in fact, has taken a leading part in shaping the convention (p. 25–26, Hearings).

THE QUESTION OF CONSTITUTIONAL LIMITATIONS ON THE TREATY POWER

It is accurate to say that the treaty power extends to all proper subjects of negotiation with other governments, and that genocide or the Genocide Convention appears to be such a proper subject of negotiation. However, it has been suggested by critics of the convention that the treaty power is not without limitations, and that the convention or parts of it may conflict with these. The arguments are grounded principally in a statement contained in the case of *Geofroy* v. *Riggs* (133 U.S. 258, 267 (1890)):

The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the Government or of its departments, and those arising from the nature of the Government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the Government or in that of one of the States, or a cession of any portion of the territory of the latter without its consent. * * * But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiations with a foreign country.

The constitutional restraints or limitations suggested by this statement appear to be of two kinds—express prohibitions, and those implied from the nature of the Government and the States. As a matter of fact the Supreme Court may have whittled down the breadth of the suggestion, in its later opinion in *Asakura* v. *Seattle* (265 U.S. 332, 341 (1924)) when it said:

"The treaty-making power of the United States is not limited by any express provision of the Constitution, and, though it does not extend 'so far as to authorize what the Constitution forbids,' it does extend to all proper subjects of negotiations between our Government and other nations."

In *Missouri* v. *Holland* (252 U.S. 416 (1920), the Supreme Court specifically eliminated the tenth amendment to the Constitution as a possible limitation on the treaty power. What Mr. Justice Holmes had to say for the Court on the existence of limitations on the treaty power generally is also of importance:

"Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States. It is open to question whether the authority of the United States means more than the formal acts prescribed to make the convention. We do not mean to imply that there are no qualifications to the treaty-making power; but they must be ascertained in a different way. It is obvious that there may be matters of the sharpest exigency for the national well-being that an act of Congress could not deal with but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found. * * * The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago (252 U.S. at 433)."

It is significant that no treaty of the United States has been held unconstitutional.

The express power of Congress to define and punish offenses against the law of nations is not a limitation on the treaty power

An argument is made by those who oppose the Genocide Convention as a whole that Article I, section 8, clause 10, of the Constitution confers on Congress the power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; and that for the President and Senate to bind this country to a treaty obligating the United States to punish an offense under international law (per art. I of the convention) is a usurpation of the legislative power, particularly if the treaty is self-executing.

In order not to obscure the real argument with assumptions that are not factual, it should be observed at once that article V of the convention specifically contemplates domestic legislative action, in particular to prescribe penalties since none is provided. This part of the convention, requiring as it does legislative action, is not self-executing under the principles laid down by the Supreme Court, *Foster* v. *Neilsen* (2 Pet. 253 (U.S. 1829)); and for the United States to enact the necessary legislation to give effect to the provisions of the convention "in accordance with * * * [its] Constitution[s]" (convention art. V), and to try guilty persons "by a competent tribunal of the State in the territory of which the act was committed" (convention art. VI), requires action by Congress prescribing the offenses punishable and conferring criminal jurisdiction on the courts of the United States.

This is not to say that Congress may not, in its discretion, use the definitions of the offenses under international law, in this case as contained in the convention, just as it has validly provided punishment for the crime of piracy "as defined by the law of nations" (*United States* v. *Smith*, 5 Wheat. 157 (U.S. 1820)).

"Thus, as the result of the situation created by the very terms of the convention itself, there is removed from consideration any notion that the treaty, if accepted, will bypass the Congress, or will in itself legislate Federal criminal law" (p. 30–31, Hearings).

The testimony of Solicitor Perlman is ample evidence that the Genocide Convention is properly a matter of international concern and within the treaty making power of the United States. Mr. Perlman also demonstrates that the treaty is not self-executing, and that it will not in itself legislate Federal criminal law.

I urge the Senate to follow the action of the Foreign Relations Committee, which on Tuesday of last week approved the Convention by a vote of 10 to 4.

It is time to act on the Genocide Convention.

RELATION OF SCIENCE TO NEEDS OF WHOLE SOCIETY

Mr. STEVENS. Mr. President, earlier this month I heard Dr. W. D. McElroy, director of the National Science Foundation, address the 30th annual science talent search award banquet. Dr. McElroy's address related the role of science to the needs of our whole society, particularly the needs and desires of our young Americans. I ask unanimous consent that the address be printed in the RECORD.

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

REMARKS OF DR. W. D. MCELROY, DIRECTOR, NATIONAL SCIENCE FOUNDATION, 30TH ANNUAL SCIENCE TALENT SEARCH AWARDS BANQUET, SHOREHAM HOTEL, WASHINGTON, D.C., MARCH 1, 1971

YOUTH AND SCIENCE

Dr. Seaborg, Dr. Herwald, Mr. Sherburne, Distinguished Guests, Ladies and Gentlemen:

What makes the Talent Search Winners so special? Is it that 12 out of 40 of you are first in your class? Is it that half of you are members of the National Honor Society? Is it that more than half of you were picked for National Science Foundation summer programs at universities throughout the country? Certainly all these honors make any group special. They show that you are intelligent, energetic, and compete well. That's fine, but it's not the whole story. I think you, as a group, are special for three other reasons:

First, you have narrowed the generation gap. In the long journey which led to this evening, many people of all ages joined to help you. Business, schools, and parents worked together to make the framework in which the competition could take place. But without the zest of young people, without the congruence of interest they created, the gap which has widened elsewhere would not have narrowed here.

Second, you have shown that schooling for some young people is an opportunity, not a source of frustration. Through you, every-

one can see that growth, freedom, discovery, the chance to do something you are proud of, can be part of the learning experience.

Third, you have demonstrated by many of your projects that science can serve the society of which it is part.

If these qualities make you special, they also mean that you have a special responsibility. We all know how much science and technology affects the kind of country we are and will be. We also know that many of the questions we face cannot be answered without the knowledge that scientists are and will be developing. Because of your talents for science, most of you will probably devote your careers to that effort. At the same time, you and the future scientists you represent, will face challenges which are not strictly scientific but yet involve all science and every scientist.

What, specifically, are these challenges which concern all scientists—especially young ones? Basically, they deal with the future role of science and scientists and how they relate to society.

Our society cannot survive without science—let alone advance. To prove the point it shouldn't be necessary, to this audience, to list the varied achievements of science and science-based technology. Instead, let me turn to the pragmatic field of trade where people, other than scientists, make hard choices for which they are willing to pay.

Over most of the past decade, only one category of exports has produced a favorable balance of American trade. That category is high technology manufactured items. During this time, agriculture, fuels and minerals, and low technology manufactured items had a negative balance of trade. Here is convincing evidence that science and technology are the basis for our economic success in competition with other nations. In other words, what we have that other people prize most depends, to a large extent, on the results of our research and development.

In my view, the key issue is not whether we should be a science-based, technological society, but what its future direction, methods, and pace should be. But today a counter view is proposed which would relegate science to a minor role. The most influential statement of this view appears in *The Greening of America* by Charles Reich, which has been first on the best seller list for more than 3 months. According to Mr. Reich, "a new consciousness will arise which seeks restoration of the non-material or spiritual elements of man's existence . . . (and) seeks to transcend science and technology."

This is a noble concept, one I can generally subscribe to. The impersonal machine, I believe, has often been too dominant in our lives and it's high time we reasserted the primacy of man's humanism. But we dare not lose our sense of balance; we dare not overreact to the point where science is damaged. Unfortunately, the anti-science attitudes of the "counter culture" have some currency with the young. But such attitudes ignore or deny the technical complexities and economic realities of our society. Where, for example, is the energy to come from to recycle waste, and to restore our lakes and rivers? How is that energy to be prevented from itself fouling the environment which is one of the "nonmaterial . . . elements of man's existence"? Like it or not, our future to a large extent depends upon science and the wise use of the resulting technology.

The future, then, lies not in de-emphasizing science and all rational processes. In large measure, it does lie in the enlightened use of science serving society, responding to man's individual and collective concerns for a better, more meaningful life. In my view, all science is relevant to man sooner or later, but today the severity of our problems is such that we must accelerate and concentrate scientific resources on such things as our ecological system, the behavior of individuals or social groups and institutions, and the effects of the resulting technology.

I have mentioned two contrasting views as to the relative importance of science in the future. Yet, despite the obvious differences, a closer examination reveals certain similarities of attitudes between many scientists and those of our more thoughtful young people—even those who are hostile to science. Youth is identified with change. Those who know science are well aware that science is also dedicated to change; it is probably the most profound generator of change on the current scene. And in the matter of style, there are similarities between the scientific community and members of the younger generation. Curiosity, imagination, individuality, and creativity are characteristic of both. Each tries to go beyond appearance to find reality. Each asks questions and questions answers. Where facts and theory conflict, theory bows.

I mention these likenesses because I think what unites youth and science is greater than what divides them. This is true even for those who are not science oriented. Perhaps most important of all, science is an indicator of society's commitment to the future—the inheritance of the young. We may disagree as to science priorities of one kind or another, but there need not be, nor should there be any clash of basic values.

There is another side to the role of science and scientists in society. If science is to have an expanding, active role in service to society, what are its limitations, what can we expect it to do?

Science has done so much so well that we often act as if it has no limits. But there are bounds to science which the scientists of the future must be increasingly aware of.

We often hear it said that we have the knowledge but lack the will to solve most of our critical problems. I believe there is much truth in this, but I suspect that in many cases we have the will but are not sensitive enough to how little we know and how careful we must be in the search for new knowledge. Too often we apply or search for scientific and technical knowledge and only later, when ill effects appear, become aware that our knowledge was incomplete or the investigation damaging. By that time, it may be very costly and even too late.

But even if we conduct research carefully and it results in useful knowledge, we should not lose sight of other factors which limit the usefulness of science. Political factors and social attitudes are often the most critical of these. As a matter of fact, the serious problems facing society seem to have one common feature: they will be settled principally by political division, by economic choice, and by the education of people. Granted that we must underpin such solutions by sound knowledge and understanding which comes from research, we must also accept the point—as Reich reminds us—that values and emotions have at least as much to do with some decisions as scientific knowledge.

For this reason we must distinguish what science can do, ought to do, and cannot do. Knowing there are limitations should keep us from promising more than we can deliver. But to speak of the limitations of science is not to say that there is some fixed line beyond which science has nothing to offer. Of course, it is the privilege and obligation of all scientists to probe and push the line back continually so that society has more options for its decision-making.

Another serious problem facing scientists, both young and old, is the danger of isolation from their larger community and from other fields of knowledge. Rachel Carson's *Silent Spring* dramatically emphasized that everything we do in nature affects something else. And anything affecting nature eventually affects everyone. It is for this reason that scientists must work jointly with humanists and other nonscientists to explore fully the social and human impact of what they are doing and plan to do. The walls which separate scientists from other fields of knowledge must be scaled by efforts involving many disciplines, diversification, and a clear understanding about what's important.

Using the privilege of this forum, I have talked to you about certain problems that all scientists face in the future regardless of age or their particular discipline. I do this to emphasize that science and technology are not autonomous or neutral—the process requires vast resources and the results affect humanity deeply. For this reason we have no choice but to relate science and technology to the needs and activities of society. Recognizing these needs and fulfilling them successfully requires that we harmonize and reconcile any tensions between the scientific community and the larger community which supports it. Our ability to harness science for sound and effective answers to national problems may depend on how well we succeed in bringing together the two viewpoints.

Recently, President Nixon, speaking at the University of Nebraska, pointed out that "young people need something positive to respond to, some high enterprise in which they can test themselves, fulfill themselves." He pointed out that "the destiny of this nation is not divided into yours and ours. It is one destiny. We share it together. We are responsible for it together. And in the way we respond, history will judge us together." I endorse that view without reservation and hope that my remarks tonight will stimulate you to achieve the creative unity we need.

EXPECTED PROTEST DEMONSTRATIONS AGAINST THE WAR THIS SPRING

Mr. MUSKIE. Mr. President, on April 24 this city will again be the site for a demonstration against our military involvement in Indochina. Its planners intend that it be a peaceful and constructive expression of concern.

The right of citizens to gather and petition their Government is one which derives from the earliest year's of our Nation's history.

It is a right which we, as Members of the Senate, must afford the greatest respect.

It is also a right which carries with it concurrent obligations:

For the demonstrators, to dissent peacefully and responsibly;

For us, as members of the Government to listen without prejudice to the voices of dissent.

These are minimal ground rules for democratic decisionmaking, and within the framework they provide, I endorse the efforts of those who are coming to Washington on April 24.

There is, this spring, much to cry out against:

The invasion of Laos;

The renewed and strengthened bombing of North Viet Nam;

Neglect of the talks in Paris;

A confusing and shifting rationale for developments in Indochina.

The result is a frustration that has now cut across divisions of age and occupation, region and party. Emotions run high, at times erupting in ways that are uncomfortable or dangerous.

But while such emotion can be deeply unsettling, it also has the potential for productive activity, for challenging the

best that is within our people to find solutions to such problems as the spreading war in Indochina.

This is what I hope for in the coming weeks:

That the demonstrators commit themselves to ending this war not just with words but with responsible political activism;

That they recognize the opportunity they have for influencing the course of our Nation, with reason as well as emotion;

And that they not be satisfied with a single day of dissent, but rather return to their communities and campuses to mobilize the political support for ending American involvement in the war, political support waiting there to be expressed.

We must work for effective legislation requiring total withdrawal of our troops by the end of this year.

And this can be done, not in a day of protest, but in making constant and persistent efforts, all over the country, to change our Indochina policies.

Mr. President, I welcome these expressions of concern for the opportunities they offer for citizen participation in the decisions of our Government.

I endorse and support this meeting on April 24 for it represents a commitment to an effective, impassioned, and yet peaceful protest against the war.

And I urge those who participate to carry their arguments on, beyond the days of demonstrations, into the political processes and institutions of our Government. For the success of their cause lies there.

OREGON LEGISLATURE URGES REFUGES FOR WILD HORSES

Mr. HATFIELD. Mr. President, public concern is steadily increasing for the remaining free-roaming horses and burros in this country, and alarmed citizens in Oregon have taken their cause to the State legislature. In turn, a joint memorial has been introduced in the Oregon legislature, memorializing Congress and the Secretary of the Interior to place wild horses under the protection of the U.S. Government by the creation of refuges. It is this very concept which is embodied in S. 1116 sponsored by the Senator from Washington (Mr. JACKSON) and myself. Hence, it can be seen that support for this type of legislation is broad-based, and I again urge Congress to pass S. 1116 quickly.

I ask unanimous consent that Oregon Senate Joint Memorial 6 be printed in the RECORD.

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

SENATE JOINT MEMORIAL 6

(To the Honorable Senate and House of Representatives of the United States of America, in Congress assembled, and the Honorable Secretary of the Interior:)

We, your memorialists, the Fifty-sixth Legislative Assembly of the State of Oregon, in legislative session assembled, most respectfully represent as follows:

Whereas the wild horse is an animal symbolic of a colorful and historic chapter in the story of the West; and

Whereas the number of wild horses in this country has declined from nearly two million in 1900 to approximately 17,000 at the present time, and

Whereas the esthetic value of wild horses on public lands is a public asset that requires governmental protection; now, therefore,

Be it resolved by the people of the State of Oregon

(1) The Congress of the United States and the Secretary of the Interior are urged to place wild horses under the protection of the United States Government by the creation of refuges or other appropriate means.

(2) A copy of this memorial shall be transmitted to the Secretary of the Interior and to each member of the Oregon Congressional Delegation.

PREVENTION OF COMMUNICATION BY MEMBERS OF EXECUTIVE BRANCH WITH MEMBERS OF CONGRESS

Mr. FULBRIGHT. Mr. President, on March 20 the Washington Post published an article by Mike Causey concerning a new policy in the executive branch, intended to prevent members of the principal bureaus of the Government from communicating with Members of Congress. I have on many other occasions noted the difficulties which the Committee on Foreign Relations has had in obtaining information from our Government to which it is entitled, and which is essential for the discharge of our legislative responsibilities. I regard it as a most serious departure from our democratic constitutional system to find the agencies directing their employees not to communicate with Members of the Congress. If this is correct, it is essential that this policy be abandoned, and I hope that all Senators will give their attention to the matter. I ask unanimous consent that the article be printed in the RECORD.

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

CLAM-UP ORDER AFFECTS SOME 800,000

(By Mike Causey)

Nearly 800,000 federal workers and military men are now under orders—some vague, some very blunt—not to talk with congressmen or reporters if they want to keep a job or avoid a court-martial.

Agencies that have slapped so-called gag rules on employees include the giant U.S. Postal Service, the academic-oriented National Science Foundation, and the Public Health Service, where it is considered unhealthy to coffee up with newsmen. PHS, incidentally, is in the process of some verbal back-pedaling on that score.

PHS has been in the midst of a political and emotional crisis since word leaked out that the administration is planning to close some, or all, of its hospitals and facilities around the country.

Earlier this week, United Press International reported that top hospital brass had been called into town, and had gotten orders to spread the keep-mum word among their civil service and commissioned officer corps.

PHS denied the wire service report, but without much feeling. It said that the decision to close was now before the Secretary of Health, Education and Welfare, and that individual personal comments or speculations by staffers would be "inappropriate," especially if made to members of Congress, the press or community leaders who want the hospitals kept open.

As the keep-quiet directive trickled down the line, some supervisors and administrators apparently "got carried away," according to top officials. One of them was the medical chief of a Baltimore PHS unit. His directive, which seems rather to the point, read:

"There are to be no press contacts by any individual in the hospital for other than simple questions as to records such as census, admission, etc.

"There are to be no contacts with members of Congress other than responding to simple questions of fact such as the above.

"Casual social contacts with press, members of Congress and other political organizations are to be avoided.

"Should any of the above conditions arise, you should refer them immediately to the directors office."

The memo finished off with this cheery warning: "You are reminded that failure to obey this directive can lead to court-martial for commissioned officers and discharge for Civil Service employees."

Despite the congressional contact ban, Rep. Gilbert Gude (R-Md.) got wind of the memo. It did not make him happy.

Gude fired off a short letter to HEW boss Elliot Richardson, blasting the firing, court-martial threat as "a serious infringement of rights." He called upon Richardson to repudiate the memo. PHS sources here yesterday said the thing would be "cleared up."

Late yesterday, PHS's parent unit, the Health Services and Mental Health Administration, said the Baltimore memo had been issued "in error" and will be withdrawn. Now the problem will be convincing employees that the disavowal outranks the edict.

But Postmaster General Winton M. Blount has not backed off from his no-contact-with-Congress order. His employees have been told not to discuss postal problems with Capitol Hill and to refer all such queries, such as a late arriving social security check in Missoula, Mont, to Washington.

Along that line, workers at the Air Force Data Systems Design Center here, are wondering about the effectiveness of the secrecy blanket.

Weeks ago, rumor had it that the Forrestal Building group, with about 800 civilian and military people, was to be transferred to Montgomery, Ala. But all those in-the-know were told the shift was classified as top secret until March 10. A complete story on the transfer appeared in a Montgomery newspaper two days before the secret deadline was to expire. That ought to say something about the value of top secret classifications where people's jobs are concerned.

ECONOMIC CHALLENGE

Mr. MATHIAS. Mr. President, last Thursday it was the privilege of a bipartisan group of Senators to meet with a distinguished assembly of citizens from all parts of the Nation to discuss the potential and the problems of economic conversion. The principal address at lunch was delivered by the senior Senator from Massachusetts (Mr. KENNEDY). I ask unanimous consent that the text of his remarks be printed in the RECORD.

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

ECONOMIC CONVERSION—A NATIONAL CHALLENGE AND A NATIONAL OPPORTUNITY

Senator Clark, Professor Udis, and other distinguished guests and participants. In the course of the past two days, hundreds of concerned Americans from many different disciplines and many different walks of life have assembled here in the nation's capital to wrestle with the difficult problem of economic conversion. I am delighted to have the

opportunity to appear before you in this concluding session, and I commend all of those who have devoted so much effort to make this conference a success.

We have come together here to meet a challenge, to seek a greater understanding, to shape a new national strategy that can transform our economy in ways that will make it responsive to our unmet needs.

The distinguished speakers, panelists, and participants in the conference have probed the need for such a strategy, the purposes at which it should be aimed, and the methods by which it may be attained. If one truth is self evident from the proceedings here this week, it is that economic conversion is one of our greatest national challenges, and one of our greatest national opportunities.

Time and again in these conference proceedings, we have heard depressing and dramatic demonstrations of the overriding need for a national program of economic conversion. Out of these proceedings have come a deeper perspective and understanding of the challenge we face, and a clearer realization of the opportunity we have.

For the America of the 70's, conversion is not just an economic and technical challenge. It is also a human and social opportunity. It is a chance—perhaps our last best chance in this generation—to recapture the meaning of the American dream.

In the decade of the Sixties, America had its rendezvous with reality. We began to lose our way in our historic quest for individual liberty, human dignity, and social compassion. We sacrifice our highest goals and aspirations on the false altar of military power and prestige.

Perhaps we shall never know the full costs of the Vietnam war. But they lie all around us. They begin with the hundred billions of dollars we have spent in Indochina, and the tens of thousands of lives we have lost there.

But that is not the end. The enormous costs of Vietnam are all measured by all the problems we have not faced because our priorities were wrong. Our cities are in decay, we face a crisis in health care, our schools are on the brink of bankruptcy, crime is rising, drugs are rampant and, worst of all, our national spirit is in eclipse.

More than thirty years ago, on the eve of the most popular war America has ever waged, President Franklin Roosevelt proclaimed to the nation that we had a "rendezvous with destiny." Confronted with a threat to our very survival as free Americans, we rose to the challenge and created a mighty war machine that overwhelmed our adversaries.

Following our victory, we had no sooner demobilized, when the "Cold War" was upon us. Later, in response to the Korean aggression, we re-armed once more, and vowed never to let our strength slip behind again.

Accordingly, we set about building a massive military-industrial-scientific machine, which the noted historian of civilization, Lewis Mumford, has eloquently called the "Pentagon of Power". The enormous dangers of this new direction in our society were soon perceived.

President Eisenhower was one of the first to see the threat. In his farewell address in 1961, he warned against the "unwarranted influence" of the military-industrial complex. By the end of the decade, the prophecy implicit in his warning had been fulfilled.

By 1970, our priorities were clearly out of joint. For every man, woman, and child in the United States, we were spending sums like these: $410 on national defense, $125 on the war in Vietnam, $19 on the space program, $19 on foreign aid, and only 89¢ to conquer cancer.

The Federal Government spends $1400 to train each South Vietnamese soldier, but only $54 to educate each American child.

By 1970, the military was receiving half of every tax dollar, and more than half of the Federal funds for research and development.

The Defense Department sends hundreds of lobbyists to Capitol Hill to sell its message to Congress. It employs thousands of public relations men around the world, to sell the message everywhere. From the end of World War II to 1969, America spent the staggering total of a trillion dollars for military defense.

Along with this massive allocation of manpower and resources to military purposes, there also went an insidious sapping of our moral strength, from which we have only now begun to recover. In our pursuit of the phantom of military victory in Vietnam, we have turned aside from the values for which America stands.

Mylai and the Calley trial are but the latest episodes in the fundamental immorality of the war. This is where the military myths have led us. Lieutenant Calley is a tragic figure, and the only hopeful sign I see is that the national indignation over the outcome of the trial is a cry from the heart of millions of Americans who suddenly now see the awful immorality of the war. If we view Calley and Mylai as a symptom of a system gone astray, if we dedicate ourselves to setting it straight again, if it helps us end the war, then this tragic moment in our history may someday, somehow, be requited, and the innocent victims—the men, women, and children of Mylai—will not have died in vain.

The fundamental immorality of Vietnam has also permeated our domestic society. Recent revelations show widespread military surveillance of civilian behavior, including even the surveillance of elected political officials. We know that wire-tapping and other forms of snooping in our society are on the rise. We know that electronic computer memories never forget. They never expunge the record of anything they learn, regardless of how invalid or unverified it may be. Too often, the beleagured individual has nowhere to turn as he seeks protection for the basic rights that belong to all Americans.

Indeed, it is not too much to say that as we approach the Bicentennial Anniversary of the Declaration of Independence, the nation is beset with difficulties and torn asunder as it has not been since the Civil War.

Suspicion, distrust, and fear run rampant—race confronts race; consumer interests contend with industry; environmentalists oppose polluters; the working man resents the welfare man; the white collar worker distrusts his union brother, suburbanites oppose the needs of the inner city; governors compete with mayors for limited Federal funds; and almost everyone views the Federal Government with distrust and disappointment.

Our catalogue of ills is not an attack on any Administration. The roots of our discontent go back many decades, and leaders of both parties have participated in the decisions that have led us to our present impasse. The question is not who is to blame for past decisions, but how to cope with present problems.

Everywhere we look, we find clearcut targets for constructive action. When we have the will to see our problems clearly, we can begin to build the will we need to solve them.

As President Kennedy told the students at American University in his Commencement Address in 1963: "Our problems are man made—therefore they can be solved by man. And man can be as big as he wants. No problem of human destiny is beyond human beings. Man's reason and spirit have often solved the seemingly insolvable—and I believe they can do it again."

Indeed, the very turmoil which characterizes our time can be turned to our advantage. For I believe that we stand at one of those fluid moments in history when old systems have lost their power, and new truths are in the process of being born. The military-industrial-scientific complex which we built up so laboriously in the past has been shaken to its foundation by the moral bankruptcy of the Vietnam war and our unmet needs at home.

The mounting pressure of unattended problems and priorities can no longer be denied. We have it in our power to reshape society to meet our needs. We cannot let this moment slip from our grasp.

Perhaps our greatest potential for reform—our key to future action—lies in changing the orientation of our society from defense to civilian activities. For a generation, defense has been the cornerstone of our economy. Still today, upwards of ten million citizens are employed in areas directly related to national defense—the Armed Forces, the Department of Defense, and defense-related industries. Many millions more are indirectly dependent on defense programs for their livelihood.

Now, however, the tide has begun to turn. According to the Economic Report of the President, between 1968 and 1971, defense-related employment in the United States will decrease by nearly 1.8 million workers from its peak within that period. We know that scientists and technical personnel have been hard hit by these cutbacks, since they are especially dependent on federally financed programs for employment.

We also know that reductions in Federal spending for research and development in recent years have had an enormous impact on scientists, engineers and technicians. In a little over a year, aerospace and related employment levels have declined 15%—from 2.7 million to 2.3 million, involving the layoff of almost 450,000 employees. New reductions during the current fiscal year will affect an additional 400,000. More than 60,000 scientists and engineers have lost their jobs. More than 10,000 men have been laid off in the single specialty of electrical engineering alone.

Overall, the estimated unemployment rate for engineers increased from 0.5% in the third quarter of 1968 to a record high of 3% in January, 1971—a sixfold increase in little more than two years. The rate is expected to climb even higher over the coming year. Tragically, we are now witnessing the highest unemployment levels for professional personnel since the Federal Government began keeping such statistics in 1958.

These lost jobs represent a serious hardship to the individuals and families concerned. They have a multiplier effect on the communities in which they occur. They endanger the entire scientific and technical enterprise of the nation.

But quite apart from the human hardships involved, these idle technical personnel represent a vast waste of one of the nation's most precious assets—its skilled manpower and resources. An enormous national investment went into the formal education and on-the-job training of this technical workforce. As long as they are unemployed, that investment is being wasted, and the nation is the loser. The rapidity with which new scientific knowledge and techniques are being generated means that many of their professional skills may be obsolete before they find new jobs.

Through the process of conversion, however, the current generation of scientists and engineers can direct their talents to solving our pressing social problems, restoring the integrity of our environment, and enhancing the quality of our lives. Economic conversion is not a welfare program for unemployed technicians, or a stimulus to the proliferation of unnecessary consumer products. Instead, it emphasizes the application of technical skills to our most urgent social problems—problems in areas like unemployment, poverty, crime, race, pollution, nutri-

tion, housing, health care, transportation, education, and virtually every other aspect of our domestic life.

Take the field of poverty, for example. The Office of Economic Opportunity has officially estimated that the number of poor people in America increased by 1.1 million persons in 1970, to a total of 25.7 million. This is the first time in a decade that the number of Americans living in poverty has increased. The seriousness of the situation is heightened when we realize that poverty "officially" ends at an income level of only $3,700 a year for a family of four. This is an intolerable situation, a situation that can be greatly improved if we turn our technical talent to the creation of jobs in the civilian sector of the economy.

Or take the field of health. The United States ranks first in the world in Gross National Product and Military Spending, but we are 13th from the top in infant mortality and 11th in the number of physicians per inhabitant. Health care is the fastest-growing failing business in the nation—a $70 billion industry that fails to meet the urgent needs of our people. Today, more than ever before, we are spending more on health care and enjoying it less. In spite of our vaunted research and technology, unequalled by any other nation in the history of the world, America is an also-ran in the delivery of health care to our people.

The same disparity between potential and performance applies across the board to virtually every domestic problem—in transportation, mass transit, housing, education, pollution, law enforcement and crime control, and a multitude of other areas of major importance to our people. The needs we face cut across all political, economic, and geographic lines. They affect rich and poor, old and young, black and white, urban and rural, business and labor alike. Surely, a nation whose technology could have produced an SST can also produce the sort of clean, low-cost, non-polluting transportation systems we really need. Surely our scientific genius can help to answer the great questions of modern society, if only we have the courage to ask the proper questions.

Between now and the year 2000, the population of America will increase by nearly 100 million people. Unless we begin to solve our problems now, they will only be compounded in the future. The increased population is the equivalent of building 200 new cities with populations of 500,000 or 100 new cities with populations of 1 million. The development of such new cities, using advanced new technologies and systems analysis, may be the most important challenge we face, because it dramatizes the need for new research and development, in much the same way the challenge of Sputnik spurred the space program.

Our economy and social system abounds with technical challenges to which our vast reservoir of aerospace talent can respond. The transition will be difficult, but the effort will pay rich rewards for our people and the future of the nation.

To be specific, I think we need a national program of economic conversion, capable of accomplishing two goals: it must create a real civilian market for scientific talent, through substantially increased Federal funds. And, it must provide a comprehensive range of Federal financial assistance to ease the transition of professional personnel, including emergency assistance until conversion programs begin to function.

To meet these objectives, I have introduced two conversion bills in this Congress and I actively support additional measures to develop the strategy we need.

The first bill, the "Conversion, Research, Education, and Assistance Act," was introduced in January. It authorizes the appropriation of $500 million over a three year period to facilitate the shift of scientific and technical manpower from defense to social programs. The bulk of the legislation would be administered by the National Science Foundation, with the Small Business Administration administering programs to help small firms convert to civilian tasks.

In essence the bill asks Congress to establish three national policies in the area of economic conversion:

First, scientists must have continuing opportunities for employment, in positions commensurate with their professional and technical skill.

Second, Federal spending for civilian research and development must be raised to parity with defense-related research and development, and kept at or above that level in the future.

Third, the total federal investment in science and technology must continue to grow annually in proportion to increases in the gross national product.

The specific programs authorized by the bill will enable scientists and engineers to redirect their talents from defense-related activities to civilian-related activities, especially in areas like polluton, transportation, crime control, housing, education, and health care. The programs are designed so that thousands of unemployed scientists and engineers can participate directly, with the expectation that the resulting research and development activity will have a multiplier effect throughout the scientific and technical community and the economy at large.

Of the $449 million authorized for the National Science Foundation, $225 million would be distributed directly in Conversion Fellowships to individual scientists, engineers, and technicians, to enable them to participate in conversion retraining projects.

Another $63 million would enable the NSF to fund the establishment of Community Conversion Corporations in areas severely affected by defense and space cutbacks. The Community Conversion Corporations would be non-profit organizations designed to channel civilian research and development funds into the affected communities, and to provide immediate on-the-job retraining for unemployed scientists and engineers.

Another $45 million would be authorized for grants by the NSF to encourage State and local governments to hire scientists, engineers, and technicians to work on urban problems and other issues at the State and local level.

In addition, the Small Business Administration would be authorized to spend $45 million for grants to small scientific and technical firms to enable their personnel to participate in training programs. SBA would also have a revolving fund for guaranteed loans and interest assistance payments, in order to encourage small business firms to carry out conversion projects, including necessary changes in facilities and equipment.

The second bill, the Economic Conversion Loan Authorization Act was introduced in March. Its purpose is to provide emergency financial assistance to the thousands of scientists, engineers, and technicians throughout the nation who have already lost their jobs. The bill would enable banks to make low-interest, long-term Conversion Loans to unemployed technical personnel, in amounts up to 60% of their former salary, or $12,000 a year, whichever is lower. With these funds added to their unemployment compensation and other sources of income, unemployed scientists and other technical personnel will be able to maintain their family responsibilities, while making the difficult transition from defense to civilian work.

The bill authorizes $200 million over a three-year period for the purposes of the loan program, which will be administered by the National Science Foundation. The bulk of these funds will be used to provide interest subsidies and repayments of loans in default to banks and other lending institutions. In turn, these institutions will be able to make Conversion Loans of hundreds of millions of dollars to individual scientists and engineers. At a relatively small cost to the Federal Government, therefore, the impact of the program can be multiplied many fold.

Because their potential earning power is high, once their skills are successfully converted to civilian activities, the loan program is financially sound. More important, because their efforts can pay rich dividends in terms of progress against our urgent social problems, the nation's scientists and engineers constitute a unique group among the unemployed. At a time when, even now, we are producing only half the scientists and engineers required each year to meet the basic needs of our economy, it would be tragic to generate a climate that would discourage today's college generation from embarking on such careers.

At the same time, however, we cannot allow our emphasis on unemployed professional personnel to obscure the plight of millions of other unemployed persons in these times of economic crisis. The personal and family hardships they endure are often even more acute than the hardships suffered by unemployed professional personnel and they need assistance even more.

For this reason, I have strongly supported the imaginative manpower efforts by Senator Nelson in his pending legislation to provide public service jobs for unemployed workers in cities and counties across the nation. I also commend Senator McGovern for his forthcoming legislation to provide direct income support payments for unemployed defense workers, including incentives for enrollment in civilian retraining programs. In ways like these, we can insure that all the victims of unemployment are given emergency assistance in making the transition to new jobs.

Beyond the immediate crisis, however, we must begin now to build a long-run strategy for the effective use of our scientific and technological resources. In essence, the problem of economic conversion is a problem of national policy and priorities. With progressive legislation in Congress, and with imaginative action by the Executive Branch, we can press the attack on our urgent social problems, and reorient the nation to the unmet needs of our people.

But to enact that legislation and to elicit that effective Executive action will require strong national leadership, capable of focusing the talents of the country on the basic tasks we face.

The leadership we are seeking lies within ourselves. You who have joined this conference have already made a beginning. Through your personal commitment to these problems, you have already begun to constitute the leadership we are seeking. As you return to your communities, your jobs, and your own individual projects, I am confident we can continue to work together to achieve our common goals.

Through your efforts, we can make the spirit of America soar again as it began to soar in the early Sixties. No task is too great for men of conscience and concern. The challenges we face are larger, but we are equal to the jobs.

THE NEXT STEPS ON SOCIAL SECURITY

Mr. WILLIAMS. Mr. President both Houses of Congress have wisely and compassionately taken effective action to increase social security benefits by 10 percent, with retroactive payments dating back to January 1.

This action certainly was needed; and

it was needed without delay. But Congress would make a major mistake if it were to stop here on social security reform for this year. Additional actions, along the line recommended by the Senate committee report in its recent report "The Economics of Aging: Toward a Full Share in Abundance." As former chairman of that committee, I have introduced legislation which would implement many of the recommendations made in that report. I urge all members of Congress to give careful heed to those recommendations and to the mood of urgency which prompted them.

Mr. President, two recent editorials give forceful arguments for the committee recommendations and for early action. I ask unanimous consent that the editorials, one published in the Elizabeth N.J., Daily Journal, of February 5, the other published in the Sacramento, Calif., Bee of February 10, be printed in the RECORD.

There being no objection, the articles were order to be printed in the RECORD, as follows:

[From the Elizabeth (N.J.) Daily Journal Feb. 5, 1971]

THE DISCARDED AMERICANS—THE OLD ARE LIVING LONGER WITH LESS; A NATIONAL POLICY IS NEEDED

Few groups in America have as much to complain about as the elderly.

They have been robbed of their savings by the worst inflation in history, yet they are often too proud to ask for help.

Loyal and able workers, they are denied jobs because of age barriers in insurance, pension and health benefits.

They are kept alive longer by modern medicine and then they are shunted off to die in depressing nursing homes.

Even their self-respect is being destroyed by a youth-oriented culture that is busy wrecking old values and traditions as things not relevant to modern society. The old, we are told, too often are conservative and stand in the way of change. Yet they are too weak to resist even if they wanted to stop the hurricane of social transition. They are, by and large, the silent, suffering victims.

A grim picture of the income problems of older Americans has been pieced together by the U.S. Senate's special committee on aging. It is worthy of examination.

Older Americans are twice as likely as younger persons to be poor. Some 4.8 million people 65 and older were living in poverty on 1969.

A new group of aged poor may be in the making among those now 55 to 59, because one out of every six men in that age group will be out of the work force by the time he reaches his 65th birthday if the present trend continues. And workers 45 and older are hardest hit by unemployment, which usually lasts longer than that of younger workers.

Inflationary pressures are especially severe on elderly homeowners because of the direct relationship between the local property tax and high cost of local government.

Social Security, despite increases, still is not automatically tied to the cost of living. By the time Social Security boosts have been approved by Congress and passed on to the aged, inflation has already wiped out most of the new benefits.

A task force of professional consultants in the field of aging posed these questions to the Senate committee:

"Every American, whether poor or rich, black or white, uneducated or college trained, faces a common aging problem: How can he provide and plan for a retirement period of intermediate length and uncertain needs? How can he allocate earnings during his working lifetime so that he not only meets current obligations for raising children and contributions to the support of aged parents, but has something left over for his own old age?"

Sen. Harrison A. Williams Jr., chairman of the special committee on aging, has put forward a bold set of proposals for dealing with the economics of aging. It promises to revolutionize the treatment of the elderly in America in matters ranging from Social Security, housing, Medicaid and job rights.

An important feature is that federal and state agencies would be required to make use of the employment potential of older workers through job counseling, retraining, public service employment, and prompt enforcement of the age discrimination law.

The economic situation of the aged today speaks ill of the solutions tried in the past. The elderly were hampered in their efforts to prepare for old age by two world wars, a major depression and lifetime earnings which were generally low. The important question persists: What are the prospects for the aged of the future?

Beverly Diamond, national consultant on the aging, testified before the Williams committee and struck a responsive chord when she noted: "The compelling fact is that we lack an overall, consistent approach, a comprehensive plan, a national commitment to implement it. We have no established priorities to tackle the most critical needs, no realistic appropriations, no orderly steps to assure effectiveness and continuity."

Instead, the government has offered a number of piecemeal approaches that reach too few. They are tokenism and wasteful.

Some of the solutions, but by no means all, are among the recommendations of the Williams committee. Its report, supported by evidence of experts and the aged from all over the nation, should form the basis for congressional action this year and for a comprehensive policy that is expected to emerge from a White House Conference on Aging later this year.

[From the Sacramento Bee, Feb. 10, 1971]

DIRE NEED FOR SOCIAL SECURITY HIKE

In view of the fact one in four Americans aged 65 or older lives on a bleak poverty-level income, one of the most urgent tasks facing the 92nd Congress is an increase in Social Security payments.

Last year the Senate voted a 10 per cent boost and the House approved a 5 per cent increase but the two branches never got together and the bills died.

It is shocking and unconscionable that at a time of oppressive inflation and unemployment this aged segment of the wealthiest nation on earth should have to live at a bare subsistence level. The high cost of rent, food and medicines results in a condition of squalor for some 4.8 million persons 65 and over.

These appalling facts have been documented by the Senate Special Committee on Aging. Its chairman, Sen. Harrison A. Williams Jr., D-N.J., says the problem is at a crisis level and urges a 10 per cent Social Security increase for 1971 and a 20 per cent increase for 1972.

His committee's study showed the aged have been hit not only by inflation, the major scourge, but also by rising unemployment. Those lucky enough to have had some kind of work have been the first to be laid off. Soaring property taxes jeopardize their efforts to hold onto their homes. Prospective medicare and medicaid cutbacks contribute to their woes.

The committee's report says general revenues should be used if needed to finance part of the Social Security increases. It also would expand medicare to cover prescription drugs for the chronically ill.

Congress should find it intolerable that the aged poor live in such abject circumstances and should enact the proposed measures of Williams' committee in the name of simple humanity.

PUBLIC CONCERN ABOUT NEWS MEDIA PERFORMANCE

Mr. ALLOTT. Mr. President, the properly thorough and lively national debate about the performance of the news media continues. This is as it should be.

Eternal citizen vigilance may be the price of media accuracy, and all true friends of the media should welcome any condition which will conduce to the accuracy of—and public confidence in—the media. And the media themselves should be gratified that in this country the Constitution assures them that they will suffer nothing more hazardous than a spirited debate.

The fact that this debate has continued now for nearly a decade indicates the depth of public concern about media performance. And the fact that the debate is carried on in numerous and diverse forums indicates the breadth of concern in our society.

Mr. President, this debate has now emerged in the pages of Sports Illustrated. The April 5 issue of that highly regarded magazine contains a most interesting and alarming article on some recent television reports on hunting. I am not concerned here with the subject of the controversial television reports. I am not concerned here to defend the particular hunting practices in question. But I am concerned with elementary fairplay. If the author of this article is correct, then we have evidence of still other instances of media inaccuracy. So that all Senators may consider the author's argument, I ask unanimous consent to have printed in the RECORD the article entitled "Everybody Is Up in Arms."

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

EVERYBODY IS UP IN ARMS

(By Dolly Connelly)

In a few days a documentary film that includes a particularly savage scene of an Alaskan polar bear hunt may be awarded an Oscar. The episode is a hoax. Yet with every showing, this supposedly factual film infuriates audiences and vilifies hunters.

A few months ago another editorially slanted documentary, one intimating that the hunting of exotic game on an island northwest of Seattle was a brutal slaughter, was shown on Walter Cronkite's CBS evening news program. The swell of public indignation that film generated is only now subsiding.

The trend—if it is one—toward picturing hunters and their sport as blood-thirsty and unprincipled is disquieting and unfair. Consider, specifically, the case of Safari Island, the focus of Cronkite's attention.

Safari Island lies in the San Juan archipelago, 31 miles off the northwest coast of Washington. It rises steeply from the tideline, with grassy open meadows on the south side and a forest of cedar and scrub fir to the north. Two years ago it was purchased by the Spieden Development Corporation for $675,000. The men behind the Safari Island project are Bert, Chris and Gene Klineburger, proprietors of Jonas Brothers of Seattle, the

world's largest taxidermist, international safari travel agents, outfitters and top trophy hunters.

The idea was to turn the place into a combined game farm, resort and shooting preserve. The Klineburger brothers began stocking their new property with 2,100 game birds (quail, ringneck pheasants, guinea fowl, chukar partridge, jungle fowl and wild turkeys). Hundreds of rare animals—African Barbary sheep, Indian black buck, Corsican mouflons, Spanish goats, Indian spotted deer, Japanese sika deer, hybrid four-horned sheep and European fallow deer—were brought to the island. Some came from Chris Klineburger's ranch in Redmond, Wash. Others were purchased in Texas, where game raising is a sizable business.

The Klineburgers believed that animal conservation could be practiced on the island. The plan was to allow trophy hunters, for a price, to shoot the surplus game each year, and thus pay for the shareholders' investment, which now totals around $800,000. In April 1970 commercial hunters began arriving.

The first reaction, locally, to the venture was wry amusement. Then some distress. Native San Juan Islanders are well known for being opposed to change, any change, especially one that might bring accelerated tourism to the islands. They try to suppress the fact that there are state and county parks and even national historical monuments among their farms and fishing villages. It was not long before they were spreading stories of exotics that swarm to neighboring islands to escape the fusillade and arrived with price tags hanging around their necks, only to be shot by the natives for free.

Newcomers who have eased onto the island with vacation homes are no less opposed to fee hunting, considering it morally reprehensible and a stigma upon the fair name of the state. Mount Everest climber Jim Whittaker, whose summer home is on Johns Island directly across Spieden Channel from Safari, deplores the sound of rifle shots. "Suddenly the quiet is shattered," he says. "You know something is dying and the whole aura of heavenly peace out there is destroyed." One day when Whittaker and his sons were out fishing for cod, they watched a panicky deer swim toward their boat. They hauled it aboard, took the animal to Johns Island, where no hunting is allowed, and released it.

Though the Safari Island enterprise is private, and brochures advertising the preserve are sent out discreetly, only to friends and clients, angry letters began appearing in Puget Sound newspapers, Safari soon was being referred to as Slaughter Island—and various members of the anti-gun faction plumped for an open season on the Klineburgers.

The outrage was localized, however, until last November when CBS included a five-minute documentary on Safari Island on the Cronkite show. The program apparently gave to many of the 12 million viewers the nightmare impression of animals released from cages while hunters waited; rich and aging shooters ministered to by guides while they crippled animals in the hindquarters; hundreds of terrified animals trapped on a tiny island; a bloody, money-making business decimating animals. The film caused such anger that more than 2,500 people across the country wrote blistering letters to the Klineburgers.

Hunting is always a provocative and emotional subject. But there is little doubt that the CBS film was slanted. The sound track crackled with rifle shots and the way the film was spliced suggested that the animals were shot while confused, exhausted and wobbly-legged as they emerged from a stock truck barged to the island. A sampling of dialogue from the show:

"How a man can claim to operate a humane—be involved in the humane treatment of animals and operating a shooting preserve, I can't imagine. The two things are mutually exclusive. You're raising animals to be shot like targets, literally. You're using flesh and blood for target practice. There's no question about them being involved in animal humanity. Quite the opposite, it's animal cruelty in extreme form. . . .

"There are more than 3,000 private hunting preserves in this country, Safari Island being perhaps the most exclusive, places where animals are not meant to be seen, or touched or smelled, but to be hunted and stuffed and mounted and preserved—preserved for all time on the pine-paneled walls of somebody's den. . . .

"Want an African Barbary sheep? $650. $200 for a Spanish goat. $375 for a European fallow deer. No hunting season and no limit except a man's bank balance. . . ."

The Klineburgers are contemplating legal action against CBS and Cronkite. Meanwhile, a $1 million suit has been filed against David Wolper, the producer of the allegedly doctored Oscar nominee, *Say Goodbye*. In that movie, shown on NBC–TV, a female polar bear with two cubs appears to be killed by hunters who have stalked the animals by helicopter. The controversial footage was taken from an Alaska Fish and Game Department film on tagging bears, and spliced into a film of an actual hunt. The mother bear was downed by a dart gun, not a rifle, by anesthetic, not bullets. Not long after, she was up and roaring off with her cubs, but the viewers of *Say Goodbye* never witness that happy ending; instead they see the sequence as a chilling kill.

When the Klineburgers agreed to the Safari Island filming, they expected an objective report on national game farming. It has become increasingly popular, a new distribution of the world's game animals as wildlife habitat shrinks. There are 425 commercial big-game preserves in the U.S. alone. In the Southwest some ranchers feel they do better with rare deer, antelope and wild sheep than with cattle. Safari isn't even unique as an island preserve. Hunting wild Spanish goats on privately owned Santa Catalina Island dates back to the early 19th century, and the shooting of its Russian boars to the mid-1930s.

"The Cronkite crew came on October 1st to do the full story, all of it, or so we thought," says Chris Klineburger. "Joseph Lippincott, an elderly hunter of great skill and experience, agreed to allow the photographing of his hunt. The cameramen filmed him taking a black buck and a mouflon ram. The crew returned on October 28th to film the arrival of a truckload of animals that was barged to the island. After the long trip from Texas, naturally they were wobbly. They are not hunted until they are thoroughly acclimated and know the hiding places. Lippincott had long since gone home to Philadelphia, but the way the TV people fixed that film, you'd have thought he was standing there at the unloading chute ready to pot the animals."

The mail poured into Safari Island, hundreds of letters each day. Klineburger wives were harassed by anonymous phone calls. Humane societies, government officials and Washington Governor Dan Evans were swamped with letters and telegrams. Politicians began proposing legislation in the state capital. One lawmaker demanded action "to put Safari out of the sick business of killing for big money, coming and going, from fee shooting to taxidermy, an appallingly insensitive grab for the buck."

State Senator Lowell Peterson, Democrat of Concrete, a town located in the hunting country of the Cascade Mountains, took the trouble to tour the island. He came away disturbed that the film had done "a gross injustice and gives hunting in general a black eye."

The Klineburgers appear to be going about game farming wisely. Yes, surplus animals are sold to hunters as trophies, to zoos and other breeders, but this thinning of the herd, most conservationists believe, is beneficial to the propagation of many species, such as the Indian black buck, an animal that had become almost extinct in its native land but has been reintroduced there with stock from American game farms.

Safari has become more than a shooting preserve. It is now a resort, an island with a large lodge and cabins, swimming pool, skeet shooting, horseback riding, sport fishing, clam and oyster beaches, water skiing and trails for hiking. The animals are the gimmick. There is, in fact, more bird shooting, a more accepted sport, than game hunting. Many people come to vacation and photograph the animals, their blood sport restricted to salmon and bottom fishing. Prime customers are business concerns that use the facilities for executive "Think" sessions.

Normally, it takes about five years to grow a trophy animal. Terrain and natural browse limit the number of grazing animals on the island to a maximum of 300. The most extravagant guess is that in five years it may be possible to cull 50 to 100 trophy males per year. The 30 shot by hunters in the first year of operation were old males that came with the purchase of entire herds. All Safari hunts are guided and controlled, all trophies carefully selected and the guns used are not of magnum caliber. Most hunters want every bit of the dressed meat. If not, it goes to the lodge table. The island is a hobby—a lot of Klineburger enterprises are—but it is expected to pay its way.

Stocking exotics is expensive business. Purchase prices of the animals range from $100 for a Corsican sheep up to $400 for a black buck. When one considers care for the animal for five years, feed supplements in cold winters, constant surveillance and vet care, then Safari's hunting fees—target of much of the venom—do not seem excessive.

Many natives who wish the brothers had never come to the San Juan Islands must realize that during deer season hundreds of hunters—more than will visit Safari Island in a decade—appear on the big islands of the chain and the majority of these gunners pay farmers for the privilege of hunting their lands.

San Juan Island is, as well, the scene of annual carnage accepted as "sport"—the netting and bludgeoning or shooting of Belgian hares paralyzed in the spotlights of jalopy "bunny buggies." Not all kills, deer or hare or bird, are clean. Any islander can tell terrible stories of wounded animals hiding among sheep. For decades fishermen on Puget Sound have potted unprotected seals, sea lions and killer whales. Recently some hunters were apprehended shooting bald eagles.

Safari Island isn't all good, but it is not all bad, either. A legitimate criticism is that the island, which is 3½ miles long and a mile wide, is not large enough; the hunts lack challenge that the mystic respect that develops between man and hard-sought prey. It is disconcerting that at Safari the wild turkeys, normally the wariest of game birds, insist on assembling on the lodge porch for handouts of grain, and that little-hunted fallow deer show unmistakable signs of domestication. Yet they do not entirely forget their heritage. They can get lost in the blink of an eye. Carl N. Crouse, director of the Washington State Department of Game, remarks, "I have faith in animals' ability to care for themselves, even on an island fairly restricted in size. Once we fenced in a square mile as a test and planted the area with a known number of deer. Hunters were let in and fully expected to take the deer within hours. Their score was amazingly low over a period of many days. The deer escaped not by panicky

rushing around but by moving silently into shade and cover, always out of sight of hunters only a few feet away." Crouse adds, "There is a place for shooting preserves which give hunters opportunity under the fair-chase concept. This practice is not detrimental to species, for rare animals are preserved in the basic breeding stock. This is a proper use for animals, as many people have neither time nor money to hunt exotics in their native lands."

Crouse's department is not supporting legislation against Safari, because exotics are private property outside its jurisdiction. Besides, restrictive legislation could throw a monkey wrench into the state's own highly successful farming program with its game birds, fish, California bighorns and Roosevelt elk. Game departments everywhere are in the business, and their operations are deemed successful when sportsmen take all but breeding stock.

Most conservative efforts are financed by hunters, who contribute because they do not want to see an end to their sport. The money comes from licenses, game tags, duck stamps, taxes on guns and ammunition, and from clubs such as Ducks Unlimited.

But with all this, the Klineburgers remain a target of violent threats. Chris protects himself, to some extent, by refusing to read the mail. Gene will not discuss the matter. Bert is the prime victim because he appeared in the Cronkite film with a plea for the preservation of scarce game. He has taken out a handgun permit.

In Seattle, bumper stickers have appeared reading "Death Row, Safari Island." Occasionally the Klineburgers find one pasted on the door of Jonas Brothers. Meanwhile the big auto ferries that ply Washington's inland sea between Anacortes and Vancouver Island, taking tourists on the scenic run, have altered course so that passengers can photograph the fascinating animals grazing.

To date, Safari Island has had just 140 guests, of whom 22% were big-game hunters, 29% bird hunters and the remainder fishermen, photographers and guests at business seminars and conferences. Thirty-five animals have been born this winter. There are no natural predators to attack them. All animals have withstood an unusually hard, snowy winter well with the exception of black bucks, which, like the birds, require feeding when snow is on the ground.

In contrast to death in nature, a clean kill by man with an appropriate weapon may be the most humane. As Chris Klineburger points out, "Animals don't die of old age. There are many ways to die, and none is pleasant, but worst of all is starvation of the old when they lose the ability to kill lesser species for food, or even chew forage. Once in Africa I saw wild dogs corner a wildebeest in the throes of giving birth. As her calf emerged they tore it from her body and consumed it, then ripped into her hindquarters and literally ate her alive. Elephant deaths, supposedly a romantic fading away in the legendary Valhalla where elephants go to die, are the cruelest. When their molars are gone, worn down so they can't get enough nourishment, they gradually weaken with starvation. When they no longer can stand, they lean against anthills, waiting sometimes for weeks for release from suffering. Vultures and hyenas find them and eat them alive.

"How can you make people understand that life on a game farm isn't a cruel fate? The whole idea is not to see how many animals can be killed, but how many raised. We tried to explain this in a form letter about Safari Island. It was mailed to all those who signed names and gave addresses. There have been few answers—perhaps because people don't want the truth.

"News media that approach a subject with preconceived opinions, and then seek out only those aspects that can be made to sustain a mistaken thesis, do a grave injustice in their manipulation of people and emotion."

Documentaries, if one accepts Webster's definition, must be completely factual and objective. But David Wolper, defending his craft and the accepted industry code, insists that producers are permitted cinematic license. That kind of license is hardly proper authorization in the hunting field.

AMERICA AS LIBERATOR OF MAN

Mr. FULBRIGHT. Mr. President, in a column published in the Washington Post on April 2, Mr. Nicholas von Hoffman, one of the most stimulating and controversial observers of the American scene, discusses one of the most sensitive subjects with which we are confronted today. I believe Mr. von Hoffman's observations are worthy of the attention of the Senate, and I ask unanimous consent that his column be printed in the RECORD.

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

[From the Washington Post, Apr. 2, 1971]

AMERICA AS LIBERATOR OF MAN: WHOM DO YOU CHOOSE?

(A commentary by Nicholas von Hoffman)

Here in Washington there are more and larger demonstrations protesting the Russian treatment of their Jewish citizens. The demand for the Soviet government to let Russian Jews emigrate swells.

This agitation reminds you of the underground joke they're supposed to tell in Moscow . . . that if the Jews are given exist visas every man in Russia would soon be circumcised. Not a very good joke but it's the sour bread that people who live under tyranny must nourish their humor with.

It should also give us, here in America, pause before our sympathy for the demonstrators' aims is converted into pressure on the administration to do what they want and invoke sanctions against the Russians until they let the Jews leave. Before we do that, we ought to ask about the other people in Russia. The Ukranians, the Latvians, the Tartars, the writers, the scientists, the dozens of other groups who may not want to leave but who certainly want liberation.

Who is more oppressed? Who suffers the most? Who can make such a lugubrious calculation? If being the victims of the brute, bureaucratic state gives a person a claim to American protection, we'd have to demand that the Soviets expatriate maybe a third, maybe a half of the people living in their territories.

And what should we do about the other victimized people of the earth? Are the Jews of Russian more miserable than the blacks of South Africa? If we cut off trade to free the one, shouldn't we do the same for the other? Whose tears are worth more?

If you close your eyes and put your head back, you can hear the planet itself cry out from the pain of so many of the people who live on it. Rhodesia, Angola, Greece, Hungary, Spain, East Pakistan, Northern Ireland, Haiti, Taiwan, Brazil, Czechoslovakia and on and on.

Do we liberate them all? Or every other one? And in what order? By seniority in suffering or alphabetically? And what's our response if another country puts our name on the list of oppressor nations? What do we say when they point to the Indians, the blacks or the Chicanos? Vietnam is excluded because we did say, didn't we, that the reason we came there was to defend the weak from the oppressor.

We're in much too soiled a condition to reappear right now in the lists of history as emancipators. Nobody would believe us. We've squandered too much of the goodwill we once had, of the hope we once represented. How are we of the tiger cages and the electric shock torture of women prisoners going to shame the Russians for what they do?

Yet for 30 years there have been a succession of American groups that have clamored for our intervention in other countries' internal affairs. Nothing is sadder than Captive Nation's Day, and nothing has been more despicable than politicians who've exploited the anguish behind it, by suggesting we could "free" Poland or Estonia if we really wanted to. No single issue has given more impetus to the idea that there are secret Russian collaborationists in our government than this one.

The same kind of thing can happen with the Jewish Defense League pulling off mass arrest demonstrations. Embitterment will augment and even many politicians who're above enflaming emotions this way will be forced to strut more stiffly in front of the Russians to give the appearance of doing something.

This is bound to make coming to agreements with Russians in the areas where that may be possible all the harder. Yet while aggressive posturing may injure negotiations like the SALT talks, it's not going to get us to use any real power to intervene in the Soviet's private business, even if they are committing monstrous wickedness.

Great powers only intervene in the internal affairs of little powers. They don't mess with each other. We like to tell ourselves that we went to war with Germany because of the Nazi persecution of the Jews and the millions of the Third Reich's other victims, but it isn't so. Human decency was a small, unintended by-product of the Second World War.

Our indifference to Jewish suffering through the Nazi era should have taught us that a foreign policy which only serves a narrow and selfish definition of our national interest can be catastrophic. Yet more recent years teach us just the reverse, that we are capable of terrible things when we arrogate to ourselves the duty to judge the moral conduct of nations.

What's needed is an idealism that's tenacious but humble, blended with the understanding of our own national self interest that instructs us in our weaknesses and trains us in the moderation of practical men. Then, both by example and the judicious application of a little pressure, we can help in the work of the liberation of man.

BROADCAST STATIONS VERSUS COLUMBIA BROADCASTING SYSTEM

Mr. HANSEN. Mr. President, we have watched with considerable interest the controversy surrounding the question regarding the credibility, or lack of credibility, of certain major television network news presentations.

It appears inevitable that most of the people of the United States will express their concern about the national television credibility gap. Many Americans have been expressing their concern for many months.

A column by Mr. Rowland Evans and Mr. Robert Novak in the Washington Post of April 5, reported in a section entitled "Stations Versus CBS" that at least one network is starting to hear from the people. The article states that the affiliate stations of CBS have let the CBS executives know that they feel the net-

work in some cases failed to report both sides of certain issues. I ask unanimous consent that this brief report be printed at this point in the RECORD:

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

STATIONS VERSUS CBS

In the midst of the public pasting it has been getting from Republican politicians over "The Selling of the Pentagon," the Columbia Broadcasting System got more of the same from its own affiliated stations behind closed doors in Chicago last week.

CBS executives headed by president Frank Stanton were given an earful by the 12-member advisory board of television network affiliated station managers—representing stations not owned by CBS. The consensus was unhappiness over "The Selling of the Pentagon," the documentary exposé of Defense Department press agentry.

The program had some defenders among the station managers, but they were outweighed by the critics. The basic complaint: The program showed only CBS investigative reporting, with Pentagon officials given no chance to present their side of the question.

Mr. HANSEN. Mr. President, the Washington Post, a publication with which the junior Senator from Wyoming is sometimes in disagreement, has continued to make some observations on this subject in its own editorials. On April 2, the Post printed an editorial which found fault with the position of infallibility, some network executives apparently attempt to portray. I have commented previously upon this facade assumed by some of the network executives.

The Post commented:

For somewhat longer than the Vice President has been on the scene, it has been our feeling that this is a genuinely dangerous surrender; that we can no longer afford to hold ourselves beyond reproach and above scrutiny and immune from criticism by ourselves—even while directing scrutiny and reproach and criticism at everything else.

Mr. President, I believe that is an important statement. I ask unanimous consent that the editorial entitled "F.Y.I.," and letters printed in the Post from Mr. Reuven Frank and Mr. Fred Friendly, on the same date, be printed in the RECORD.

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

[From the Washington Post, Apr. 2, 1971]

F.Y.I.

Something approaching a state of hostilities seems to be developing between us and the network news people over some comments we made last week about the CBS documentary, "The Selling of the Pentagon." In essence, we said that certain editing techniques employed in a particular taped interview in one segment of the show were of the sort which could result in "a material distortion of the record" and that it was a pity to jeopardize, in this fashion, the credibility of what was on the whole a "highly valuable and informative exposition of a subject about which the American people should know more—not less."

Not exactly fighting words, we would have thought. But Mr. Richard Salant, president of CBS News, thought otherwise and last Monday in a letter from him and in an editorial in this space we exchanged views. That might have seemed enough to end the matter, except that Mr. Reuven Frank, president of NBC News, who was nowhere mentioned in our editorial, apparently thought he had been attacked, presumably because his editing techniques are the same as Mr. Salant's. So today we are publishing a singularly strident communication from him in the Letters space on the opposite page. Meanwhile, copies of their letters to us had apparently been distributed by both men to various other people, including Mr. Fred Friendly, the Edward R. Murrow Professor of Broadcast Journalism at Columbia University, and Time magazine, which obligingly praised Mr. Salant and Mr. Frank for having "effectively refuted" us before we had even received their letters, let alone put them into print. Mr. Friendly subsequently weighed in with a letter which also appears today.

Well, we seek no wider war. On the other hand, we do seek to be understood. And so, For Your Information, we would like to try to straighten out the tangle that has been made of the rather narrow issue at hand—by way of leading up to a broader and far more fundamental issue which these rebuttals raise.

As with Mr. Salant, Mr. Frank and Mr. Friendly both seem to think that we are proposing to surrender up some sacred journalistic right; that we are disinterested in the "protection of editorial independence," as Mr. Friendly puts it; or that we are proposing to "deny any reporter or editor not only the right but the responsibility of choosing which sentences in any public statement are interesting or important," as Mr. Frank puts it. Just to begin with, we were not even talking about public statements or speeches, and still less were we talking about newscasts or news stories—the run of the mill news fare. Both media of course reserve the right to exercise their own judgments about what to use and what to ignore, what to play up or down, how to paraphrase. And both are equally subject to errors of judgment in compressing material into limited time or space. But that, as any careful reading of the editorial in question would show, was not what we were talking about. There is no issue of "delegating the choosing process" here.

What we *were* talking about was what is called a question-and-answer interview (or "Q-and-A"), a technique common to both media whether it is reproduced in print or on film. Either way the "Q" is supposed to give rise to the "A." The reader or viewer is not only entitled, but positively encouraged, to believe that this is the case by the juxtaposition of the two. And what we were questioning was simply the practice of rearranging "Q's" and the "A's" arbitrarily so as to destroy or to distort their orginal relationship—to present as the "A" something that didn't in fact arise from the original "Q." This, as we demonstrated in our reply to Mr. Salant on Monday, is precisely what happened in an interview with a Pentagon official in "The Selling of the Pentagon" and we think the official was quite right to protest.

Of course, the print media edit transcripts of "Q's and A's" to shorten them, to enhance continuity, or simply to make them more comprehensible. But it does seem to us that when this happens the reader deserves to be forewarned that what he is getting has been excerpted; in print this is done by dots or asterisks. Surely television, which can instantly tell us when we are getting "simulated" space maneuvers or "instant replays," and when we are getting it "live," could figure out an easy way to identify disjointed excerpts as such. Nor does it seem to us to be too large a surrender or rights, when there has been serious rearranging of the original material, to allow the subject to at least look at the product before it is printed or aired and to argue about it; we offered this as an option, and "and/or" proposition in special cases, on the theory that if the subject doesn't recognize or accept the validity of what he is represented as having said, it has no validity.

Obviously the network news people don't agree, which is fair enough. What is disturbing to us, however, is the notion implicit in Mr. Frank's letter that for those in our business to raise any questions about our performance is to "Agnewize" (his phrase). If this means anything at all, it means that he would have us surrender all discussion of the news business to others—to people like Mr. Agnew. For somewhat longer than the Vice President has been on the scene, it has been our feeling that this is a genuinely dangerous surrender; that we can no longer afford to hold ourselves beyond reproach and above scrutiny and immune from criticism by ourselves—even while directing scrutiny and reproach and criticism at everything else. That is why we were examining our own performance and practices, in this space, under the rubric F.Y.I., long before Mr. Agnew launched his quixotic assault against the media a little more than a year ago. That is why we regularly print commentary on the news business by Richard Harwood on this page.

We do it because we believe there has been a long-developing deterioration of public trust in the news media—as in other institutions—and that the way to deal with this is not to stand aloof but to talk about it; to deal with our business as we treat everybody else's business; to be a little less arrogant about conceding the bare possibility of a mistake every once in a while. Mr. Frank calls this "introspection." We think of it as a matter of simple equity. How can we not treat our own business the way we treat the government, or the courts, or the church—or, for that matter, the Pentagon? Mr. Frank finds this "boring," and that may be. But if it is all that borning, you have to wonder what the gentlemen of the network news business are so wrought up about.

[From the Washington Post, Apr. 2, 1971]

LETTERS TO THE EDITOR: NBC NEWS CHIEF REUVEN FRANK AND FRED FRIENDLY ON TELEVISION

Your editorial of March 26 suggests that when television news uses excerpts of a speech or statement, it explain how such excerpting was done. If further suggests we ask the speaker to approve this use of some of his remarks, since we are not using all of them. This is admirable arrogance at a time of boring introspection, but I might wish you were more cavalier about your own practices and less about mine.

One can try so hard to appear to do one's job right as to be unable to do it right, and this is a good example. In television news film as in print, such remarks are excerpted for importance from material of less importance, for interest from material of varying interest, and for time because unlimited time, like unlimited space, is not available. To use up the time saved by explaining how and why is a little like allowing one's secretary, as Sam Goldwyn is reputed to have done, to throw away outdated files only if copies are made.

To deny any reporter or editor not only the right but the responsibility of choosing which sentences in any public statement are interesting or important is to deny that reporters or editors are needed. Both political parties have their own publications wherein only the interested parties decide what should be used. It is frightening to think that the lead editorial in an important American newspaper should suggest that widely circulated news reports in another medium should delegate this choosing process to the most narrowly interested party, the man who made the speech.

All this suggesting is in your last paragraph, in which you elect to prescribe for our ills. Your penultimate paragraph, in

which you say in effect that all news reporting is distorted but television news reporting is more distorted than most, I consider one more example of the standard lament of the editorial writer that his colleagues reporting for the news pages are too interesting.

But I had thought we were at least a decade past those days when newspapermen considered freedom to gather and transmit information freely according to the tradition of their craft was somehow a chemical component of ink. But when The Washington Post can Agnewize in this fashion I hear a bell tolling. I hope that on reflection you do too.

REUVEN FRANK,
President, NBC News.

NEW YORK.

LETTER TO THE EDITOR

No newspaper has done more than The Washington Post to stimulate serious broadcast journalism. But your "pox on both houses" editorial, "Mr. Agnew versus CBS versus DOD," struck me as an unfortunate shotgun indictment of all who have tried to build a mature and responsible broadcast profession. It also seemed curious that you should choose to overlook the common bond between good broadcasting and what my colleague, Norman Isaac, calls good newspapering—fair and honorable editing.

That there is editing, "foreshortening and rearranging," in journalism is as evident to viewers of "The Selling of the Pentagon" as it is to readers of The Washington Post. Indeed, there may be even more editing and distillation in a single issue of The Post as in half a dozen documentaries or a month of Walter Cronkite news shows.

We can agree that responsible editing is essential both to intelligent broadcast and print journalism. Documentaries such as the Murrow-McCarthy broadcast in 1954, or "Harvest of Shame" or "Biography of a Bookie Joint," all praised by The Post, were the result of responsible editing as much as solid investigative reporting. The Annie Lee Moss broadcast which Mr. Murrow and I always considered a high point of our partnership, was the distillation of 20 minutes out of 90 minutes of hearings. The editing was painfully and carefully done with transcript in hand to preserve the meaning and tone of the original event.

Your editorial concedes the dangers of bad editing. But your remedy, that there be some indication "that something has been dropped and/or give the subject of the interview an opportunity to see and approve his revised or altered remarks," seems to imply that a double standard should exist—one for newspapers and one for broadcast. It has always been my understanding that one of the major points of newspaper independence has been never to permit a news source to review and/or edit what is to appear in the newspaper. Perhaps The Washington Post now operates under different rules, but I know that this protection of editorial independence is still a benchmark of broadcast news.

I can testify that the strongest motivation of a news producer or editor is to preserve original meaning. Producers often permit verbose politicians to continue endlessly in an effort to preserve the original, if redundant meaning, only to be victims of newspaper reviewers critical of "talking heads." Indeed, this too, is a price of integrity. Implicitly, in a question and answer sequence, the original context must be preserved.

I do not mean to imply the "The Selling of the Pentagon" was without its imperfections. I have spent some time and had considerable correspondence with its producers and its detractors. In every discussion and in every letter, it has become clear that the imperfections do not mar the central thrust of the broadcast, i.e., that ". . . this gigantic and colossal propaganda machine on the banks of the Potomac . . . is still turned on," as Congressman F. Edward Hébert once put it.

We need more such documentaries, not fewer. We need more interpretive reporting, more new anlysis, and this is precisely what the Vice President, the Federal Communications Commission and the Washington Post should be urging.

By equating film and tape editing with staging, I fear that your editorial tends to cloud the fundamental issue. It is akin to the Vice President charging that your reporters' copy is being distorted by your editors. I wonder what your response would be if one of your critices elected to focus on the "built-in problems" of those who deal in the permanence of the printed word.

FRED W. FRIENDLY,
Edward R. Murrow, Professor of Broadcast Journalism, Columbia University.

NEW YORK.

SCOTT HUNTER, MOST ILLUSTRIOUS SON OF PRICHARD, ALA.

Mr. ALLEN. Mr. President, on this coming Saturday, the city of Prichard, Ala., in conjunction with many local civic organizations, will pay tribute to its most illustrious athletic son, Scott Hunter.

Scott is a senior at the University of Alabama and for the past 3 years has been the starting quarterback for Coach Paul "Bear" Bryant's Crimson Tide eleven.

During his football career at Alabama, Scott led the Crimson Tide to three different postseason bowl games and set many individual records along the way.

In his three seasons at the University of Alabama, Scott gained 4,785 yards in total offense. He completed 382 of 672 passes for 4,899 yards and 27 touchdowns.

The records he holds are:

Career: Most passes attempted, 672. Most passes completed, 382. Most yards gained passing, 4,899.

Season: Most yards total offense, 2,157. Most yards averaged per game, 215.7. Most passes attempted, 262. Most passes completed, 157. Most yards gained passing, 2,188.

Game: Most passes attempted, 55 against Auburn, 1969. Most passes completed, 30 against Auburn, 1969. Most yards gained passing, 484 against Auburn, 1969. Most plays, 59 against Auburn, 1969. Most total offense yardage, 457 against Auburn, 1969.

In addition, he holds the Southeastern Conference record for yards gained by passing in one game, 484 against Auburn University in 1969.

Scott was also a standout in the classroom, where he maintained a B average in business and was twice named to the Academic All-SEC teams.

Mr. President, Scott is the latest in the line of great quarterbacks produced by Bear Bryant. Other great Bryant quarterbacks at the University of Alabama have been the late Dr. Pat Trammell, Steve Sloan, Ken Stabler, and of course, the fabulous Joe Willie Namath.

In the recent professional football draft, Scott was selected by the Green Bay Packers. He will understudy and be developed for his professional football career by another Alabama and NFL great, Bart Starr.

Let me also point out that in the summer of 1970, Scott went to Vietnam for 17 days on a special good will tour promoted by the NCAA and the Defense Department. He represented the Southeastern Conference on the trip and did an outstanding job of presenting a well-organized tour for our fighting men.

Scott is certainly well deserving of the day being given him by the people of the Prichard area and I am sure that in the years to come, Scott Hunter will rewrite many of the professional football records just as he did collegiate records while a member of the Alabama Crimson Tide.

When I speak of young men with the dedication and the athletic and academic prowess such as that possessed by Prichard's Scott Hunter, I am especially proud to be an Alabamian.

THE CALLEY TRIAL

Mr. BROOKE. Mr. President, some of the most careful and thoughtful coverage of the court-martial of Lt. William Calley has been provided by Willam Greider, of the Washington Post.

Out of his careful attention to the details of this tragic case, Mr. Greider has distilled a commentary which outlines many of the crucial issues and conclusions concerning this matter. Mr. Greider's column in today's Washington Post cuts through the understandable emotion and confusion which have erupted in the aftermath of the court-martial.

His observations are, I believe, essential reading for all Americans who value the standards of justice which we as a people have established for ourselves. Beyond the moral and legal considerations which require American soldiers to exercise a high degree of self-discipline, even in combat, there is the simple pragmatic and humanitarian concern which Mr. Greider underscores: the United States can scarcely insist on humane treatment for our own men held prisoners of war unless American forces provide humane treatment for prisoners and noncombatants under their control.

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

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

CALLEY'S TRIAL: THE MORAL QUESTION AND BATTLEFIELD LAWS

(By William Greider)

FT. BENNING, GA.—Americans have chosen some strange popular heroes in the last decade, but none of them was a convicted mass murderer.

This is the guy, remember, who was held responsible by a jury of his peers for "wasting" 22 lives. He picked up a baby, threw him into a ditch and shot him. He is the soldier who butt-stroked and old man in the face, then shot him at point-blank range and blew away the side of his head. Some hero.

But the public clamored for Lt. William L. Calley's release and, after thousands of telegrams, President Nixon responded. The President "personally felt" that Calley should not be confined in the stockade with the common criminals.

Lt. Calley spent three nights in jail and don't bet any big money that he will ever

return to prison again. The pressure against that will be enormous.

The President's personal intervention puts the military judicial system on notice that, if any reviewing officer upholds Calley's conviction and sentence, he risks re-igniting the public anger—and directing more heat at their commander-in-chief.

For comparison's sake, an enlisted man here at Fort Benning was sentenced to five years in prison last year for pushing a warrant officer. The Air Force recently sent a colonel away for three years for smoking marijuana. Howard Levy, the doctor who refused to train soldiers bound for Vietnam served two years for disobeying an order.

The point is not that Calley ought to spend the rest of his life in prison. On the contrary, his lawyers can make a strong argument that, in terms of criminal attitudes, Calley has already been rehabilitated by the ordeal of his long trial.

The question is: if the President and the nation reject the verdict of guilty, rendered by six combat veterans, what is left of the law which the Army attempted to uphold—the international covenant that, even in combat, soldiers do not shoot defenseless people who are captured and unarmed?

If that principle is undone by the public uproar over Calley's conviction, the Army is stuck with a different kind of problem: should it give up the battlefield discipline required by U.S. law and the Geneva Conventions? Should it open the doors at Ft. Leavenworth, Kan., and release all the other soldiers convicted of the same offense as Calley?

Contrary to popular belief, Calley is not the first American soldier prosecuted for killing people in the middle of this war. There have been scores of men—soldiers and Marines—tried for the murder of Vietnamese captives in the midst of combat situations. Many of them are still in prison. The only difference is that, instead of 22 people, most of them killed only one or two.

Right now, there are 75 to 80 men serving time in Ft. Leavenworth on murder charges which originated in Vietnam. Some of their victims were fellow Americans, but most were Vietnamese. Some of them, just like Calley, still have their appeals pending. Still more are imprisoned at the Naval Prison in Portsmouth, N.H., where convicted Marines are sent.

They're sitting in prison unknown, while Lt. Calley is famous and confined to his quarters on post.

On the left, Senator George McGovern, certified anti-war spokesman, declares that Calley should not be held responsible because his crimes were part of a larger sickness, the strategic war crimes of U.S. involvement in Vietnam.

On the right, the legionnaires chant "war is hell" and, likewise, protest the verdict.

If you follow the logic of either position, Lt. Calley is, as his defense attorneys kept saying, "a typical American youth who was fighting for his country." Or, the brutality of Mylai is not distinguishable from the general brutality of war, especially this war.

Millions of Americans apparently believe that, but six Army officers did not. They appreciated, after listening to the evidence for four months, that something different and obviously wrong happened at Mylai and Lt. Calley was to blame for part of it.

None of these questions—which need answers and which have undoubtedly influenced public opinion—were before this jury. They decided a much narrower point—that lumping Lt. Calley's actions together indiscriminately with other GI's is slanderous to thousands of men who did not shoot babies, who did not herd their prisoners into an irrigation ditch and execute them.

That is not to say that Calley is the only soldier who ever did that (the Army and Marines, by the cases they have prosecuted, admit that the battlefield crime is unusually linked to this war). That does not settle the accusations of greater war crimes committed by military or civilian leaders who designed U.S. strategy.

Convicting Calley does not absolve any generals for the devastation of village after village by aerial bombardment or poisoning the wells or burning huts and shooting livestock "just for sport," as one Charlie Company veteran put it. But letting Calley go does not bring any generals closer to prosecution either.

The lieutenant, after all, was not judged by a bunch of left-wing peaceniks or by elitist West Pointers looking down their noses at an OCS graduate who never finished college. Most of the jurors never finished college either. They too have been shot at in battle, wounded, decorated for bravery. Five of them served longer in Vietnam than Calley.

They were not asked to determine if other Mylai's ever happened elsewhere in the war, though perhaps they have on a smaller scale. They were not supposed to decide whether Calley's superiors—the company commander or the division commander—should also stand trial. They did not attempt to analyze the grand strategy of U.S. military involvement in Vietnam and decide whether war crimes are involved in the pattern bombing, the defoliation, the napalm, the use of "free fire zones" and "body counts."

The idea of assuming collective national guilt for Mylai—a notion which may be satisfying to people who opposed the war anyway—does not settle anything. When you say we are all guilty for Mylai, that has truth in it, but it is also another way of saying no one is guilty.

The six jurors, again, operating in the narrower context, said simply that infantry officers, who have some discretion in whom they kill, cannot kill their prisoners.

A TV interviewer asked Maj. Harvey G. Brown if the verdict wasn't a little harsh, considering all of the circumstances at Mylai, the fear of combat, the threat of booby traps, the Viet Cong's guerrilla tricks with women and children. Brown agreed that it was, but reminded him of what Lt. Calley did with the people in the ditch. "That was pretty harsh, too," the major said.

The cynics thought the Army was staging a charade all along and would be happy with an acquittal so it could be done forever with the Mylai scandal. Nearly everyone was surprised by the severity of the jury's finding—premeditated murder. Contrary to initial reports, it is now understood that one and possibly two of the jurors voted for a lesser offense, such as unpremeditated murder, though there was no dissent among them on the question of Calley's guilt.

What the critics cannot explain very well is why these men who were in the war themselves seem, in the end, less compassionate than the fireside war critics who cry "scapegoat." The answer may be that these men—while well aware that war is hell—know also that there is killing and then there is killing.

The issue of legal and illegal killing gets terribly confused. Vietnam veterans, who feel great sympathy for the lieutenant, like to point out that they killed people too so they can see themselves in Calley's shoes. The next time you hear that from an ex-G.I., ask him if he herded people together, unarmed and unresisting, put them in a ditch, then stood over them and fired. If he says no, he is typical. Most infantry men in Vietnam barely saw who they were shooting at, much less who they killed. If he says yes, you're talking to a murderer.

"People are saying that Mylai's happen in every war," Brown said. "Maybe so. That wasn't the issue in the Calley case. The issue is whether Mylai's are right or wrong."

Well, why is it wrong? Why is it wrong for infantrymen to kill all those people, suspected Viet Cong collaborators, when B-52's might just as well wipe them out with blanket bombing?

One answer is that human life is precious, that soldiers are meant to be merciful to the helpless if they can be. Even a soldier is not supposed to kill without provocation.

An infantryman, admittedly, has more discretion over that than a bombardier but the excesses of aerial bombardment should not be made into an excuse for cold-blooded murder on the ground.

That level of morality is too sentimentalized, apparently, for many Americans. They were, after all, Oriental babies, perhaps even communist babies (though they were not wired with booby traps as one witness suggested imaginatively).

If you put aside the moral issue, soldiers still have a practical reason for observing the laws of the battlefield. A senior Army officer at Ft. Benning stated it succinctly: "You can have any standard you want for the conduct of warfare, but you better be prepared to get what you give."

If America adopts as a customary standard—barbaric as it is—the rule that it's permissible to shoot prisoners, then America should be prepared to accept the results of that standard. The link between the Mylai victims and the American POW's held in Hanoi is real and important—they are protected by the same rules. It is a great national hypocrisy to rally outrage on the POW issue, then pat Calley on the back for what he did to the prisoners at Mylai.

Actually, there were a few genuine heroes involved in that operation. One of them was Lt. Hugh Thompson, the helicopter pilot who couldn't understand why the troops were lining up people and shooting them. He intervened and saved some lives and that took courage.

Jim Dursi, just a rifleman, was a hero too. Lt. Calley, his platoon leader, offered him a turn at the irrigation ditch shooting people, but Dursi refused. That took some courage for him and the others who wouldn't kill.

In a different way, there were men like the brilliant young prosecutor, Capt. Aubrey M. Daniel III, people in uniform who helped the Army, in its own clumsy way, to try as an institution to make a point of honor. Despite all of the imperfections, despite all of the other culprits who got away, the Army did make its point, when it easily might have ducked it. Though the President blurred it, the lesson still is tormenting the nation's conscience, stirring new painful questions about war and national responsibility.

If Lt. Calley had been acquitted or given a light sentence, any uproar would have been mild and temporary. No one knew that better than the six jurors, the men who are now suffering from the anger which grows out of the national disgrace.

Maj. Brown, the most outspoken of the jurors, got a death threat. Col. Clifford H. Ford, the court-martial president, took the nameplate off his front door to avoid further harassment. So did the prosecutor.

The sick and sorrowful joke circulating around Ft. Benning is that the people sprung Calley—now they're going to lock up the jury.

NAPOLEON'S RETREAT FROM MOSCOW UPDATED

Mr. FULBRIGHT. Mr. President, Mr. Arthur Hoppe, who has such a talent for satire, has updated Napoleon's retreat from Moscow, which I find most interesting. I ask unanimous consent that Mr. Hoppe's piece be printed in the RECORD.

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

NOT A RETREAT, NAPOLEON EXPLAINS

(By Arthur Hoppe)

PARIS.—Reports that France's Grand Army had retreated from Moscow in disarray were vigorously denied today by government spokesmen.

A War Ministry official said the army had merely engaged in "mobile maneuvers" and that everything was "going according to plan." He said French troops were "moving swiftly westward in an orderly fashion" and the enemy was "following in great confusion."

Meanwhile, Emperor Napoleon, who returned to Paris yesterday well ahead of his soldiers, remained cheerful and optimistic. He said he could now see "the end of the tunnel."

The emperor modestly declined to describe the Russian operation as a victory, saying it could not be assessed in "traditional terms." Its purpose, he told an interviewer, "was not to conquer territory, nor destroy an army, but simply to disrupt enemy supply lines and thus insure the safety of our French boys in Central Europe."

He said that "considerable progress" had been made "toward achieving those goals," pointing out that Moscow itself had been captured and burned and "vast quantities" of Russian arms seized—"arms that will no longer kill French soldiers."

Moreover, he said, Russian losses were five times French losses "by conservative estimates."

The emperor refused to set a firm date for the total withdrawal of all French troops from Central Europe "even though it would be very popular for me to do so."

He said such a move would sabotage peace talks with the Russians and the Prussians. Nor, he said, would he unilaterally withdraw the remaining French troops, "even though, politically, there is a great temptation to do it.

"After all of this sacrifice and all of the effort, if France, right at the time we are winding down this war and bringing our men home, were to throw in the towel, then we would suffer a blow all over the world," he said.

Peace, too, would suffer a blow, he added, for France "is the greatest peace-keeping nation in the world today."

At the same time, Napoleon urged Frenchmen to remain confident. He said the "limited Russian incursion" had delayed the enemy "at least six weeks."

The emperor decried eyewitness reports that the Grand Army had panicked during the mobile maneuvering. He said he had been assured by Marshal Ney that 18 out of every 22 battalions had maneuvered well. The eyewitnesses, he said, just happened to see the other four.

"I know what's going on," he said firmly. "We have a plan. It is being implemented." Moreover, he said proudly, the withdrawal of French troops from Russia "is proceeding well ahead of schedule."

Napoleon's candid assessment of the Russian incursion did much to ease growing French disquietude over the seemingly endless war.

Indeed, several of his ministers urged him to begin construction of a second Arc de Triomphe over the Champs Elysees to commemorate "the glorious success" of his Russian campaign.

With unexpected humility, the emperor declined.

OBSERVATIONS ON CALLEY TRIAL

Mr. ALLEN. Mr. President, Alabama, is blessed with many competent daily and weekly newspaper editors who delight in hard-hitting editorial commentary but few, if any, daily or weekly editorial writers in Alabama wield a more trenchant pen than Tom Johnson, editor of the Montgomery Independent, Montgomery, Ala.

Mr. President, in an editorial of April 1, 1971, Tom Johnson unloads a few choice observations and conclusions with respect to the Calley trial including a penetrating observation concerning "premeditated murder." The term "premeditated murder" when used in the context of a battlefield and under conditions of extraordinary tensions, fears, physical strain, and emotional fatigue, may strike lawyers as well as editors as an incongruous anomaly.

Mr. President, the editorial is captioned "Lt. Goat Calley" and ends as follows:

End of sermon. The President of the United States will lead us in prayer.

There is much wisdom between the caption and this trenchant conclusion which I recommend to the thoughtful consideration of Senators and the public in general.

Mr. President, I request unanimous consent that the Tom Johnson editorial be printed in the RECORD.

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

LT. GOAT CALLEY

The conviction of a previously obscure lieutenant named Calley can only excite the utmost confusion in any reasonably sensible man. Here is a young officer—perhaps he is a swine (it doesn't matter)—who has been charged, convicted and, by the time this appears, perhaps sentenced for the premeditated murder of Vietnamese civilians.

Almost everything presented against Calley was abhorrent. He supposedly shot women, children and old people, all of whom allegedly were defenseless and non-belligerent. But trying to thrash your way out of the confusion, it is pertinent to remember that bomber pilots routinely destroy innocent lives, as do artillerymen, mortarmen and others who kill the unseen enemy and innocents alike. Is this the controlling factor—that the dumb, young, vacuous lieutenant who takes a life is more culpable because the victim is physically close and within his gunsights?

There are many things about this case which should cause Americans to examine themselves. For example, Calley stands convicted of "premeditated murder." Without being sophomoric about it, what is war in any case but premeditated murder? Also, if Calley, a bottom-of-the-line lieutenant, is answerable for his acts, so is the person above him, and the man above him, and him and him and him. Finally, under the Nuremberg principle, it would seem necessary to convict Gen. Westmoreland and impeach and remove from office and imprison the President in power at the time of the alleged crimes.

Wars were never fought to teach men the proper method of holding a tea cup and serving sherry. Wars condition men to destroy life without making nice distinctions. Even most of the combatants are there against their will, and many of them—as innocent as the most innocent civilians—go down in flames.

All of which is simply to say, with no intention of defending Calley, that the hell of war is that it is hell. Nice people get hurt and their lives are ruptured. Men, women and children suffer and die.

If an aberrant personality such as Calley comes along—assuming he is one—who bears the responsibility? Is it those who sit at home in ease or those who are sent forward as proxy warriors? Americans have much to search themselves about in the Calley episode, either for sending him where he was, for encouraging the atmosphere in which he acted or for condemning him when he committed warlike acts.

End of sermon. The President of the United States will lead us in prayer.

BANK OF AMERICA MOVES TOWARD SOCIAL ACCOUNTING

Mr. MONDALE. Mr. President, an unfortunate number of businessmen are not providing the leadership the country needs to identify and eliminate pressing social problems. For that reason it is especially gratifying to read the comments of Mr. A. W. Clausen, president of the Bank of America.

In a recent address, Mr. Clausen called for a more rational approach to the social aspects of American life. He suggested a social report that would help us to decide where we want to go, how we might get there, and what sort of progress we are making. He said we have not yet done this, but it is possible, and with some effort, it is possible in the near future.

It was because of views similar to Mr. Clausen's that I reintroduced, in January of this year, S. 5, The Full Opportunity and National Goals and Priorities Act. I think Mr. Clausen's comments, an American Banker editorial explaining them, and a March 8, 1971, Christian Science Monitor, article discussing them, are all very significant and would be helpful in the consideration of S. 5. Therefore, I ask unanimous consent that the three items be printed in the RECORD.

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

BOFA MOVES TO SET QUALITY STANDARD TO GAUGE SOCIAL GAINS

Development of a national "arithmetic of quality" is urged by A. W. Clausen, president of the Bank of America NT&SA, San Francisco, so that progress and failure in coping with social and economic problems can be quantitatively measured. Mr. Clausen told the sixth annual financial conference of the Conference Board in New York that his bank has taken the first step by "asking our accountants to attempt to place detailed cost estimates on what management considers its major social responsibilities."

These annual financial conferences have always served a valuable purpose. They are a time for learning from the past, a time for evaluating the present, and, most importantly, a time for looking to the future and for charting a prudent and wise course for ourselves, our companies and our nation.

Despite some recent pressures, a look at the past shows that in the quarter century since World War II, American business, large and small, has produced an economy of imaginative enterprise and real strength. This economy's outpouring of goods and services has changed the aspirations and living standards of more people than any revolution in history.

Yet this success—this remarkable change in aspirations and living standards—has, in an ironic way, brought forth a growing questioning of our socio-economic system. Today, more and more people look out at the world and find it less and less satisfactory. There is no question in my mind—and I trust none

in yours—that what we have come to call the quality of life is now, and will continue to be, the burning issue of the 1970s.

The quality of life issue is a cluster of inter-related problems: ecology, hypertechnology, pollution, over-population, urban blight, transit congestion, crime, minority and campus unrest—plus our continuing garden-variety socio-economic aspirations which have motivated American policy-making for virtually the past century: satisfying jobs, adequate housing, adequate care for the aged, adequate medical care, and so forth.

The important thing is that environment and the quality of life as a composite issue has captured our attention. William James once observed that, "What holds attention determines action." But he did not say what kind of action. And that is the difficulty now.

Our government has made tentative probes at tackling these issues. Many of the corporations represented in this room have embarked on imaginative programs to clean up the environment and improve the lot of the underprivileged. Yet when we add up all corporate and government effort we come to the conclusion that our national attack on the quality of life issue has been puny when compared to the magnitude of the problem.

I submit to you that a major reason for our inadequate response is that we find the quality of life issue confusing and that the prime cause of that confusion is a lack of even the crudest forms of measurement of quality.

I realize there are some who quite literally do not give a damn about the quality of our environment. In a memorable speech before Bank of America managers last month, Louis Banks, editorial director of Time, Inc., mentioned a vivid recollection of lunching in an elegant Manhattan apartment, surrounded by priceless impressionist paintings and hearing one of Wall Street's venerable geniuses remark: "I think this city is past saving, and I think my responsibility is to sit back and figure out how I can profit from its decline and fall." Mr. Banks went on to say he regretted to report that particular Nero is still fiddling—and still prospering.

More disturbing, however, is the prospect that this financier's particular Vision of Truth might yet become a reality for all of us. The problems of living here in New York are merely amplifications in one degree or another, of the problems that stalk the length and breadth of our land. Crime and congestion, pollution and poverty, urban decay and unrest . . . you know the list as well as I. And you, too, have heard the note of despair that all too often creeps into the conversation when these problems are discussed, even among reasonable, well-intentioned men.

Our ills are simply too enormous, they say, too grave, too far advanced to be susceptible to solution. Perhaps, they say, if we just go about the business of minding our own business in the same old way all will be well in the end. Which sounds a good deal more innocent than what Mr. Bank's Neroic friend had to offer, but ultimately amounts to about the same thing.

Today, I would like to suggest that there is a viable alternative to this philosophy. Without in any way trying to understate the magnitude of the problems, I would like to suggest that we need not let their enormity shock us into paralysis, nor their gravity stampede us into foolish and ineffective action. Yet at the same time, I must repeat a caveat that an associate of mine is fond of citing: that if you would eat an elephant you must do so one bite at a time.

Certainly one of the first bites that must be taken in coming to grips with contemporary social and economic problems is the development of what I choose to call an arithmetic of quality . . . and along with that, the evolution of something called a social report.

Development of an arithmetic of quality will not be easy—nor am I here to claim I know precisely how the job should be done. Accomplishment of the task will require the best efforts of many disciplines and institutions. But there will be no effective policy making without such an arithmetic of quality.

Much of the arithmetic must be refined—and in many cases innovated and developed from scratch—because we depend upon some mathematical form to assess any set of alternatives. And policymaking is nothing more than the act of trying to choose the right alternative.

At present, our economic arithmetic focuses on cyclical changes in total activity. It focuses on the flow of inputs and outputs, not on the total stock of assets in the nation. Somehow, changes in stocks in a much wider range of assets must be taken into account if we are ever to talk meaningfully and with precision about the quality of life.

We need a system where net output is increased or decreased by the amount that total assets—capital, knowledge, skills, physical environment and sociopolitical environment—are augmented or reduced as a consequence of our activities.

For example, deterioration of the physical environment because of pollution means that the flow of benefits from this asset is reduced. Thus, where economic growth deteriorates the physical environment, a set of accounts should register not only the usual increase in net output resulting from growth in the market sector, but also record any offset to the degree the physical environment assets depreciate, lessening the future flow of benefits.

If you do not feel the walls shaking or the floor rumbling, it is because there is nothing particularly new or dramatic about this idea. The idea of a social report has been around for some time. Our engineer-President, Herbert Hoover, set aside funds for work on such a project in 1929. It was dropped and all but forgotten, ironically, in the distress of the Great Depression.

More recently, a few experimental steps have been taken toward developing a social report. Daniel Bell has written extensively about the idea, and in 1968, a government-commissioned panel produced a study called "Toward a Social Report."

This study was not intended, as some critics mistakenly believed, as a definitive statement on the present condition of American society. It was, rather, an attempt to suggest a possible model for future social reporting—an attempt to ask some of the questions that must be answered to perfect the techniques of meaningful social measurement.

Ideally, a social report should identify, assess and measure those elements of our national life that are essential to our well-being—and which are not, and cannot be, measured by present economic indices.

While these goals must ultimately be decided through our normal political channels, I think Bell gives us an idea of the direction and scope of social goals when he suggests they should deal with the "ability of an individual citizen to establish a career commensurate with his abilities and live a full and healthy life equal to his biological potential, and include a definition of the levels on an adequate standard of living and the elements of a decent physical and social environment."

The exact outline of a workable social report, however, is not important for this discussion. Even in rather crude form, a social report of some sort would enable us to do at least five things better than we can now:

First, I believe it would help rationalize public support behind the solutions needed in our social problem areas.

Second, it would expedite actual formulation of rational private and public, corporate and legislative goals by furnishing a regular and systematic assessment of our social problems, and the costs as well as benefits of various proposed solutions.

Third, it would help us develop logical priorities by pointing out which problems are most critical, and the cost in economic assets and human terms—let me stress human terms.

Fourth, it would allow us to develop policy alternatives and select from them the most promising solutions to specific problems by pinpointing the precise nature, components, and scope of such problems.

And, finally, it would allow us to determine whether the programs we select to deal with such problems are actually working. It would provide a benchmark—even though possibly at first a crude one—of the effect of our efforts over time.

If you are with me this far—if you agree that some system for quantifying and reporting social problems would produce the benefits I have indicated—it seems pertinent to ask why progress has been so slow in developing such an arithmetic of quality.

Detractors from the idea seem to fall into three broad categories: those who say it cannot be done, those who say it already has been done, and those who say it should not be done. Let us look at these arguments one by one and see how well they hold up under scrutiny.

Those who say it cannot be done, at least for a period of decades, include even some of the most ardent champions of the social report concept.

I think they are wrong. Despite the complexity and magnitude of the task, I believe it can be done more quickly than is commonly thought. And I cite history as my proof.

Go back with me to the year 1945. Our economy was coming off a wartime binge. There was great concern that in the process of shifting factors of production from war to peace goods our economy might be thrown into utter chaos. The concern was different in kind but similar in degree to the comments we hear today about our ability to cope with social and environmental problems.

It was this depth and consensus of concern that led, I believe to the remarkably swift development of several measuring and reporting tools we have used to manage our economy in post-war years.

The gross national product immediately comes to mind. Many of its components had been developed over the years, but its consolidation as a comprehensive measuring device did not occur until 1945. The GNP has become so much a part of our day-to-day lives we sometimes forget it is a member of the under-thirty generation—it is only 25 years old!

While our record has not been perfect, we can take pride in our economic performance since 1945. On the whole, we have done a creditable job, and in so doing the tools that were refined and developed for measuring our progress have served us exceedingly well.

Aside from historical precedent, there is yet another reason to be confident that an arithmetic of quality can be developed.

Not too long ago, the analysis of statistical information of any significant diversity was physically inconceivable. But now with the aid of a new servant, the computer, a compilation that would have taken 500 scientists working 500 years to accomplish, can be done in the instant it takes to blink an eye. Literally.

The challenge is to set the computer to work on the right problems—to ask answers to the right and relevant questions.

A second category of detractors are those who say the job has already been done.

I simply cannot agree. It must be clear

to any observer of contemporary America that the tools at hand are no longer sufficient, in and of themselves, to enable us to accomplish the tasks we have set for ourselves. As we move away from strictly economic objectives, these tools fall short because they don't tell us how well we live.

Let me give one set of examples. The gross national product is one of those economic tools with which we measure our accomplishments regularly, from quarter to quarter, from year to year. It is widely used. It is a familiar and accepted standard. If GNP goes up, the widespread and popular assumption is that we are better off than if it were at some lower level. But in fact the GNP statistics can and do produce misleading information—or no information at all—about many of the things which make life worth living.

They have distorted some economic events to the point where an episode of social deterioration shows up as a gain rather than a loss, or even a success rather than a failure of deliberate policy.

A textbook situation involves almost any natural calamity—an earthquake, flood, fire or tornado. An earthquake like the one in Los Angeles 10 days ago can wipe out millions of dollars of physical assets. Yet, because labor is paid and materials purchased to rebuild the community, the result is a GNP rise even though the renovation may never be able to match the assets destroyed.

Another example is that of the company manager who fails to install an anti-pollution device on a factory smokestack. Over time, walls of nearby houses are blackened. The factory's saving—in not buying an anti-pollution device—becomes an added cost to homeowners, who must pay for labor and paint more frequently than normal to overcome smoke damage.

The irony here is that the gross national product is increased indifferently by both the manager's action—which adds to his company's profit—and the homeowner's costs for repair work. Clearly, here the GNP is an inadequate indicator of societal costs and benefits as well as economic ones.

The GNP is not the only economic statistical concept that can distort the true picture of life in the nation. The Consumer Price Index, which we have used for years to reckon what we claim is the "cost of living" regularly indicates that the cost of medical services has risen, adding to the inflationary bias of our view of the economy. Yet the index neglects to account for the fact that solid advances in the quality of medical care per dollar unit of expense have been achieved during the same period. And, of course, similar flaws can be identified in other components of the index.

Finally, and perhaps of all the economic indicators the one closest to the hearts of those in this room, is profit. By arguing for a new arithmetic of quality, I do not mean to suggest that businessmen should abandon their wholesome respect for the ruthless realism of the profit-and-loss statement.

In the market system that so far has served us so well, it is essential to understand the profit mechanism—which I contend is not incompatible with efforts to fullfill diverse socially beneficial goals. The businessman is a conciliator among the interests and claims of shareowners, creditors, customers and employees. As a fellow banker, Gabriel Hauge has noted with typical lucidity. "What we all share is an interest in efficiency, which means dividends for owner, security and interest for creditors, a good bargain for the customer and better rewards for the employee."

In the end, Mr. Hauge notes, the diverse interests in decisions converge. The role of profit is as much that of a balance wheel as a measuring stick: Profits that are too low suggest neglect of the consumer or lack of innovation, or a sacrifice of stockholders for the short-run interests of other groups, or just poor management.

"Profits that are too high suggest a lack of competitive vigor, and offer obvious targets for new entries, higher wage demands or governmental surveillance."

But as important as profits are, they are no longer sufficient as a sole determinant of corporate performance, from either the investor's or the corporate manager's point of view. Investment managers are coming to the conclusion that there will be precious little profit emanating from cities racked with disorder, choked on their own mass and polluted beyond human endurance.

Those investment analysts who are truly concerned with a company's social as well as profit performance—and they constitute a small but growing band—are hard put to evaluate the former. The traditional measures simply do not tell much. And the press releases and annual reports, which may be perfectly straightforward, are always slightly suspect as thoroughly objective measures.

The corporate manager is in an even more difficult position.

Pressured from all sides to improve his company's social contribution—by customers, by shareholders, by politicians, by young people—he has only the crudest sort of tools for analyzing alternative actions and measuring trade-offs among them. The very human tendency is to oil the wheel that squeaks the loudest and let it go at that.

Despite some of the heroic and bold efforts made by individual corporations here and there, we will not see any really substantial and intelligently directed commitment of private resources to public problems until we have developed an analytical framework by which such a commitment can be justified and monitored.

Which brings me to the last group of detractors—those who say a new arithmetic of quality should not be developed. They say this for two reasons. The reasons are subtle and difficult to answer in any absolute sense. But let me at least try to give you my perspective on them.

The first is often heard from young people. One of their principal grievances against the Establishment is that the so-called Technocracy—our present business, government and even academic system—has appeared to be overly preoccupied with statistics and numerical averages. And I do not think we can dismiss this criticism out of hand.

In a way, we have been tending toward a kind of intellectual indolence because of which we content ourselves with aggregates alone, regardless of the extraordinary exception. We have forgotten or chosen to ignore the statistical truth that a man can drown in a river with an average depth of three feet of water.

I cannot accept, however, the conclusion reached by some of our young people that the discipline of mathematics must be cast from our lives. Rather we need to learn how to use this discipline correctly . . . to temper it with human judgment and see that it remains a tool rather than a tyrant.

There is one other objection to the development of an arithmetic of quality. Many fear it will become an excuse for inaction. Their fears are based on the motion that it will take an impossibly long period to develop such a system of measurement and during the interim we will simply sit on our hands awaiting the evolution of rational guidelines.

I made it clear earlier that I think the proper measuring system can be developed a lot quicker than most predict. Of course, no comprehensive system is developed overnight. The seeds of our current system of economic statistical measures were planted decades ago in piecemeal efforts to measure change and report progress. We have come a long way from relying on pig iron and coal production, freight carloadings and bank debits to tell us about our economic health.

These early measures were useful and they offer some valuable insights as to the practical way to get started on our current problems. We must weave available bits and pieces of information into a total measurement system, filling in important data gaps as the need becomes evident.

But I do not mean to suggest that meanwhile we should sit on our hands. I think all of us as individual companies must move ahead as best we can to develop programs and practices designed to accommodate social and environmental as well as economic needs.

Each business management today must somehow decide what its own social priorites are—and then set out a program to accomplish them. And this implies some tangible means of measuring progress.

I am encouraged by some as-yet-experimental efforts at Bank of America—efforts which we hope will enlarge the practical dimensions of what we can afford to devote by way of manpower, management time and other resources in meeting social responsibilities.

We know we need a social cost budget as well as the conventional economic cost budget. We have taken the beginning step in asking our accountants to attempt to place detailed cost estimates on what management considers its major social responsibilities. We don't know how successful we will be, but we're certain some estimates are better than none. We are certain they will enable us to make better business judgments and thereby avoid abrupt changes in significant programs.

I commend the concept of a social cost budget to you—and call upon the accounting profession to help all of us work out this new arithmetic tool.

Since I have used the word "arithmetic" so extensively in my remarks this afternoon, perhaps it is appropriate to close with a story on that subject.

It is about the mathematics professor who is trying to explain the Theory of Limits to one of his students.

"Now look son," he says, "suppose you have a date and when you go by the dorm to pick her up she is sitting on the sofa waiting for you. You approach half the distance to the sofa and stop. Then you go half the remaining distance and stop. Then you go half of that distance, and so on. Do you ever reach her?"

"Well, sir," says the student, "mathematically speaking, I guess not. But if I keep going those half distances I'll sure as hell get close enough for all practical purposes."

I do not pretend that the arithmetic of quality I am calling for will, in and of itself, move us to the perfectly ideal society. But it is an essential first step. And maybe it can help us get close enough to the ideal, as the student said, "for all practical purposes."

[From the American Banker]

TOWARDS AN ARITHMETIC OF QUALITY

The quest for techniques whereby human events can be distilled into statistical measurements is one of the compulsions of the age, and carried to excess, as it often is, one of its minor curses. At worst, statistics can stupefy, overhelm, distort, mislead, and serve the rationale for false propositions.

But while the excess is distressing, the absence can lead to total frustration. Consider, for example, all moralizing aside, the immensely complicated mechanics of translating into sensible action the will of profit-making organizations to respond to the new demands being put upon them by new assertions of social concern. To formulate these

equations requires a kind of corporate equivalent of the new math.

And so it is important that last week the head of the world's largest bank proclaimed his commitment to the development of what he called "an arithmetic of quality," as the basis for evolution toward "something called a social report."

"Development of an arithmetic of equality will not be easy, nor am I here to claim I know precisely how the job should be done," stated A. W. Clausen, president, Bank of America NT&SA, in a speech before the Conference Board (the full text of which is reprinted on the opposite page as Required Reading). "Accomplishment of the task will require the best efforts of many disciplines and institutions. But there will be no effective policy making without such an arithmetic of quality."

The economy's present statistical framework, he observed is simply not big enough. "Somehow, changes in stocks in a much wider range of assets must be taken into account if we are ever to talk meaningfully and with precision about the quality of life," Mr. Clausen maintained. "We need a system where net output is increased or decreased by the amount that total assets—capital, knowledge, skills, physical environment, and socio-political environment—are augmented or reduced as a consequence of our activities."

And he expressed confidence that "the proper measuring system can be developed a lot quicker than most predict.

"Of course, no comprehensive system is developed overnight," Mr. Clausen conceded. "The seeds of our current system of economic statistical measures were planted decades ago in piecemeal efforts to measure change and report progress. We've come a long way from relying on pig iron and coal production, freight carloadings, and bank debits to tell us about our economic health."

And as piecemeal was the beginning, Mr. Clausen suggested, so piecemeal may be the way to advance. "These early measures were to get started on our current problems," he said. 'We must weave available bits and pieces of information into a total measurement system, filling in important data gaps as the need becomes evident."

Bank of America has already gotten started, he reported. "I am encouraged by some as-yet-experimental efforts" there, he said, "efforts which we hope will enlarge the practical dimensions of what we can afford to devote by way of manpower, management time, and other resources in meeting social responsibilities.

"We know we need a social cost budget as well as the conventional economic cost budget," Mr. Clausen declared. "We've taken the beginning step in asking our accountants to attempt to place detailed cost estimates on what management considers its major social responsibilities. We don't know how successful we will be, but we're certain some estimates are better than none. We're certain they will enable us to make better business judgments and thereby avoid abrupt changes in significant programs."

Despite Mr. Clausen's disclaimers, these experimental efforts appear all but certain to pay off, and in many ways: as a practical means for the bank to find out answers to complicated problems; as a pilot project for a new system for articulating corporate consciousness; as an example for others to explore the same unmapped terrain.

For even worse than a surfeit of statistics is an insufficiency; the very quest for a social arithmetic is in itself a boon.

[From the Christian Science Monitor, Mar. 8, 1971]

TAKING QUALITY INTO ACCOUNT

Amid the current clamor for pollution control, environmental protection, and zero population growth, one phrase seems to stand out as central: the quality of life.

What does it mean? Probably most people visualize it in terms of pure air, sparkling rivers, and clean streets. Or safe streets. Comfortable, convenient transportation. Good schools and health facilities. Et cetera, on down the line.

Beautiful. But what, ask the practical ones, does it cost? Can we afford it?

Many committed environmentalists are ready to make an ecological leap of faith and say flatly that we cannot afford *not* to improve the quality of life.

There it is again, that old twin streak of idealism and pragnatism that run deep through the tissue of American life, usually in competition.

We would like to make a leap of faith of our own, on this premise: that the qualitative and quantitative aspects of life in a technological age are not necessarily and hopelessly at odds.

We watch with mixed feelings proposals that all economic and population growth be brought to a halt; that our economy move into an era of status quo; that we readjust our national priorities toward more humane ends.

The pragmatic side of us wants to quantify these assessments, to put a tangible handle on them.

Can it be done? For some years now, serious students of the "soft" sciences have been working at a social accounting system that would measure such intangibles as the relative value of, say, hiring an experienced schoolteacher for $10,000 a year against a greenhorn for $7,000. Which, in the end, costs the community more?

Social accounting has hit an uphill road. Economists tend to be leary of measuring intangibles. Some are openly hostile.

For this reason it is heartening to have A. W. Clausen, president of the Bank of America, call for "an arithmetic of quality."

Mr. Clausen's yardstick would ring a bell when any factor of "economic growth"—say an increase in the output of automobiles—would deteriorate the physical environment. His set of accounts would register not only the expected "growth" in the market sector, but would subtract from that the depreciation which the added cars would work on the environment.

We are a long way from realizing such a mathematical yardstick, But the fact that a leading banker calls for its development is itself a leading indicator that idealism and pragmatism continue to work together for the public good in the minds of enlightened thinkers and doers.

PROBLEMS OF THE AGED

Mr. BOGGS. Mr. President, the able and distinguished senior Senator from Illinois (Mr. PERCY) delivered a perceptive analysis of the problems of the aged last Wednesday, March 31, at the annual membership meeting of the National Council on the Aging.

In his address to this group, the Senator commented on problems which are—or which should be—of major concern to all of us. Because solutions to these problems will require our serious attention and best efforts during the 92d Congress, I invite the attention of the Senate to the Senator's remarks, and ask unanimous consent that they be printed in the RECORD.

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

ADDRESS BY SENATOR CHARLES H. PERCY

It is a great privilege to appear before you today. I have long regarded the elderly as this nation's most shamefully neglected minority group. Considering the size of this minority—20 million Americans—and the obvious fact that providing for the elderly is synonymous with planning for our own futures, our collective callousness is particularly difficult to understand.

Older Americans—the one in every 10 who is over 65—constitute an invaluable reservoir of talent and experience. Yet this country does not draw upon this precious resource; an individual over 65 who wishes to continue to contribute to our society is actively discouraged by our Social Security laws from doing so. And, because of the inadequacy of our social programs for the elderly—in areas such as health, housing, nutrition, and transportation—many Americans over 65 are physically unable to contribute, even if they are willing to make the financial sacrifice that is required.

We simply cannot afford to squander our manpower. We must develop a coherent national policy for the elderly not only because it is morally right, but because it is in the national interest to do so. To tell Americans who have helped to build this country for four decades or more that they are no longer needed is so shortsighted, so obviously wrong, that one wonders how we could have perpetuated such an attitude for so long.

Americans do not send their elderly parents and grandparents out to sea to die, as some primitive societies have done. Rather, we cruelly ignore them, and hope they will disappear quietly, without a fuss. If they do assert themselves—if there is a fuss—we frequently shunt them off to nursing homes, many of which are squalid, cheerless waiting rooms for the grave, staffed by underpaid incompetents.

Anyone who watches television or reads a newspaper knows that this is a youth-oriented society. Maturity, stability, accumulated wisdom—these simply do not sell. We are conditioned to blot, color, tint, firm, smooth out or cover up any sign of approaching age. When the physical evidence can no longer be camouflaged, when illusions of immortality are shattered by the inevitable realities of the aging process, the aged individual suddenly feels lonely and abandoned, a member of a stigmatized subculture.

His physical deterioration ordinarily coincides with an abrupt loss of income and mobility, perhaps with a loss of a spouse or a relative and very frequently with a chronic illness. Having been categorized as one of the aged, he is separated from the mainstream of society. Our social and cultural attitudes deprive him of psychological support and he withdraws from society, facing a future so bleak that it is barely imaginable to most of us.

As Ann W. Simon, author of *The New Years: A New Middle Age*, has pointed out, our veneration of youth has distorted our understanding of the totality of life. She says: "Making youth the pivot of existence devalues the rest of life and prevents a view of the whole. Older people have nothing to live for, younger people nothing to grow up for."

Our discrimination against the old has grown so widespread that it has earned itself an ugly name—"age-ism." With its implications of segregation and alienation, it is as malignant a phenomenon as racism, and, I submit, equally commonplace. To remove this flaw in our national character will require a commitment as vast—in terms of governmental action and public education—as that which we have devoted to our race problems.

In this, the year of the White House Conference on Aging, we will doubtless hear many expressions of concern about the problems of the elderly. Hopefully, the conference itself will result in the formulation of a national philosophy on aging—something which we lack as a people, as John B. Martin, U.S. Commissioner of Aging, has noted. I would also hope that the conference will provide a forum for the presentation, analysis, discussion and synthesis of specific pro-

grams and proposals by all interested groups, public and private.

But those of us in Congress must take the lead now in proposing legislation that will alleviate the crisis that envelops the elderly. We cannot afford to wait until the results of the White House Conference in November have been assimilated and translated into concrete proposals, a process that can take years. Information is available now to document the plight of older Americans and I fully intend to go to work immediately to help restore to them the dignity and independence they deserve.

Next week, I will introduce in the Senate a package of seven bills dealing with the problems of old age. The legislation, which is described in detail in the press release which each of you has received, attempts to provide answers for some of the disturbing questions that we must ask ourselves about our treatment of the aged.

Why is it that one out of every four Americans over 65 is forced to live on a poverty level income? And why is the post-65 generation the only age group in which poverty is actually increasing?

Why is it, in this age of tremendous strides in medical research, that only 14 percent of all elderly Americans are free of chronic conditions, diseases or impairments?

Why do fewer than half of this country's 25,000 nursing homes—where five percent of our elderly reside—actually offer skilled nursing? Why have we permitted some of the nursing homes to continue operating when they are little more than "warehouses for the dying," as the *Chicago Tribune* so aptly termed them?

Why is it financially impossible for many older Americans to remain in their own homes during their retirement?

Why is their mobility so restricted that only one percent move from one state to another annually?

Why do we provide facilities for the elderly that only exacerbate their isolation and loneliness?

I do not suggest that the seven bills I will introduce next week are a panacea for the problems of the elderly. Years of indifference or scorn cannot be erased with one legislative package, no matter how comprehensive it may be. But I do believe that my bills represent an important first step in such areas of obvious need as income maintenance, health, transportation and housing.

Moreover, I pledge to you and to every tenth American who is over 65 that my commitment to the elderly will not terminate with the introduction of these bills. So frequently in this country a cause becomes fashionable for a time, then fades into obscurity; we seem quite capable of short bursts of energy, but as a nation we often appear to lack staying power.

I mean to insure that concern for the elderly does not become another ephemeral crusade. For as long as I am privileged to represent Illinois in the Senate, I will continue to seek to find ways to provide this generation, which has given so much to America, with a fair measure of repayment. The retirement years must become a period of relaxation, reflection and continued participation in our national life, not a time marked by a radical and degrading change in life style.

Since 1850, the percentage of Americans over 65 has quadrupled—from 2.5 percent to 10 percent of our total population. It is estimated that in the next 40 or 50 years, the number of elderly Americans will double, from 20 million to 40 million. If we do not begin now to reverse our attitudes toward older Americans, their problems may grow so overwhelming as to defy solution.

As I suggested at the outset, honor and respect for older Americans need not spring entirely from altruistic motives. We can help the elderly, but we also have much to learn from them, if we will only listen. As their own historians, they can be prophets to others. They can assess our culture with the perspective provided by years of experience, and they can prepare us for the day when we shall be the elderly generation. If we dismiss the ideas of those who have preceded us, we invite failure. As Henry Ford once observed: "You take all the experience and judgment of men over fifty out of the world and there wouldn't be enough left to run it."

The modern-day alchemists have transformed the words, "The Golden Years," into a base, cruel joke. This country can give these words substance, but only through the infusion of a massive dose of familial concern. If we show the elderly that they are not—in *Time* magazine's phrase—an "unwanted generation," our harvest will be a stronger nation and increased self-esteem. The question is not whether we *can* make tolerable the lot of older Americans, but whether we *will*. For a nation which has used its scientific and technical genius to stretch the life expectancy of its citizens from 47 to 70 since the turn of the century, it certainly should be possible to make these additional years bearable.

I invite you, the professionals in the field, to join me in the effort to secure congressional passage of the legislation I will introduce next week and the other bills that will follow. And I ask you to consider with me a passage I discovered recently in an article in the *Vista Volunteer*. I believe it poignantly captures the essential loneliness of the elderly of the United States. Yet it is a reminder to us that old age can mean more than despair and death. The passage reads:

"In the country of the young, old people move like shadows, stepping with minuet pace across our consciousness. They have preceded us as travelers in the land of youth, but we rarely stop to ask them the way. To remember that they were young is to remember that we will be old. We fear aging and avoid things that remind us of it. But old age need not be a space cubicled off at the end of life; for many people it is a continuation of life, a new experience."

IF THE COST OF DAIRY PRODUCTS IS INCREASED, THE FARMER IS NOT TO BLAME

Mr. NELSON. Mr. President, on March 16, I introduced S. 1277, which provided that the minimum support level for manufacturing milk be established at 85 percent of parity for the current milk marketing year. The purpose of the legislation was to override the ill-considered decision by the Secretary of Agriculture not to raise the support level from the $4.66 support price, something that would have cost dairy farmers $500 million nationally and $90 million in Wisconsin.

On March 25, the Secretary reversed his decision, and announced an increase in the support level to $4.93 of parity. The action accomplished by administrative order what the legislation would have accomplished.

The decision obviously was the result of S. 1277, which was cosponsored by 27 Senators, and a companion measure in the House which likewise had substantial support. It was the result also of thousands upon thousands of letters from farmers throughout the country who protested the earlier action by the Secretary as being another indicator of the administration's insensitivities toward the economic plight of rural Americans.

But now there are reports that consumer prices for dairy products will rise because of the increased support level. It should be made clear that if consumer prices for these commodities are raised, it will be the result of something other than support of producer prices.

The support-level increase is on manufacturing-grade milk, milk that is used for production of cheese, dry milk, and other products. In this category, the prices paid to producers were above the support level at the end of the marketing year that concluded March 31. Had the Secretary's decision of March 12 not been reversed, producers would have lost money because the market price would have been adjusted downward to reflect the support level.

The effect of increasing the support level to 85 percent of parity was to stabilize market prices and protect the producer from further losses due to inflation that can only harm him because he has no way of passing extra costs on to the consumer.

To those concerned about prices of grade A, bottled milk, it should be noted that those prices are adjusted according to the Wisconsin-Minnesota order area. This is quite apart from the support level for manufacturing grade milk. There will be no increase in cost to the consumer for grade A milk unless the Wisconsin-Minnesota formula is adjusted upward. And it has not been so far in the marketing year.

Even if the cost of bottled milk reflected the support level for manufacturing milk—which it does not—the 27-cent increase in the support level would mean less than a penny increase for a half-gallon of milk. The 27-cent increase is for hundredweight.

The facts in this case are clear. If the cost of dairy products increase, it will not be due to the support for prices paid to farmers. And farmers should not be made the scapegoat for price increases that are made by processors.

Mr. President, the Secretary of Agriculture responded to the outpouring of congressional and farmer concern over the initial decision on price supports by adjusting the support level upward before I added the 27 cosponsors to S. 1277. I ask unanimous consent that the cosponsors be listed at this time and that the full text of S. 1277 be printed in the RECORD.

The cosponsors are: The Senator from Minnesota (Mr. MONDALE), the Senator from Wyoming (Mr. MCGEE), the Senator from Iowa (Mr. HUGHES), the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from Kentucky (Mr. COOK), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Illinois (Mr. STEVENSON), the Senator from Missouri (Mr. EAGLETON), the Senator from California (Mr. TUNNEY), the Senator from Indiana (Mr. HARTKE), the Senator from Missouri (Mr. SYMINGTON), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. (GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Oklahoma (Mr. HARRIS), the Senator from Maine

(Mr. MUSKIE), the Senator from Utah (Mr. Moss), the Senator from Wisconsin (Mr. PROXMIRE), the Senator from Alabama (Mr. ALLEN), the Senator from Louisiana (Mr. LONG), the Senator from Hawaii (Mr. INOUYE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alabama (Mr. SPARKMAN), the Senator from Mississippi (Mr. EASTLAND), and the Senator from Texas (Mr. BENTSEN).

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

S. 1277

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 201(c) of the Agricultural Act of 1949, as amended by the Agricultural Act of 1970, is amended by striking out the period at the end of the first sentence and inserting in lieu thereof the following: ": *Provided,* That, notwithstanding the foregoing sentence, the price of milk for the marketing year beginning April 1, 1971, and ending March 31, 1972, shall be supported at such level not in excess of 90 per centum nor less than 85 per centum of the parity price therefor as the Secretary determines necessary in order to assure an adequate supply.".

NEW DOMESTIC SPENDING BILLS

Mr. CURTIS. Mr. President, I have been concerned for a long time—and my concern grows with every passing year—about the propensity of some Members of Congress to continually introduce sweeping new domestic legislative proposals involving gigantic expenditures of Federal moneys.

I am concerned because these bills are introduced with little apparent regard for the ability of the Nation's taxpayers to pay for such "panaceas" or the impact that adoption of these programs would have on the carrying out of such vital and legitimate Federal responsibilities as national defense and security and adequate funding of domestic programs already adopted by the Congress which need support on a continuing basis.

A study dealing with the cost of legislation introduced thus far in the 92d Congress has been prepared at my request, Mr. President. It is highly revealing, and I have taken this time today to share with you some of the more significant data, as well as the several conclusions which must be drawn from it.

First, I should like to explain some of the difficulties one encounters in attaining meaningful comparability of cost figures for pending legislation.

There is, for one thing, a singular lack of consistency in the format of proposed legislation, as regards the drafting of the spending authority.

Some bills include a specific dollar authorization for a specific fiscal year or years. Others authorize specific appropriations but with no fiscal year limitations. Still others contain only an authorization for "such sums as may be necessary to carry out the purposes of the act." This early in the Congress, estimates have not yet been made for many of the bills in the latter category. And there is the further complicating factor that some authorizations are for 2 or 3 fiscal years, while others provide authorizations for 8 or 9 years and still others authorize a specific annual appropriation to continue year after year, ad infinitum.

Obviously, then, it becomes very difficult to obtain a single cost total. If a total is tabulated for fiscal year 1972, the real magnitude of expenditures anticipated in pending legislation is vastly diminished. If, on the other hand, a total is arrived at without regard to fiscal year limitations, it is less useful because expenditures are meaningful primarily in terms of the span of time in which they will occur. In addition, no such total can be developed with any precision since, as noted, some bills authorize specific annual appropriations without specifying a cutoff date.

Hence, certain guidelines were adopted to provide a meaningful framework in which to view the data. Two cost totals have been developed—a fiscal year 1972 total—which includes any authorizations for the remainder of fiscal year 1971, as well—and an overall total which assumes a 4-year span for programs where no termination date is specified.

The study includes a complete review of all Senate bills introduced through March 15 and all major House bills which had no Senate counterparts. Where the same or similar bills have been introduced in both bodies—or more than once in the same body—the figures were included only one time, using the highest funding level where variations in cost occurred.

Most importantly, the study covers only new programs or legislation vastly expanding or modifying the direction of existing programs. It thus excludes such important categories of legislation as the following:

First. Bills authorizing appropriations for the simple extension of existing programs.

Second. Bills relating to defense and military spending.

Third. Bills authorizing appropriations for public works.

Fourth. Bills establishing repayable loan operations such as the Rural Telephone Bank, National Student Loan Association, and so forth.

Fifth. Bills providing income tax deductions, exclusions, credits or incentives.

Sixth. Bills increasing benefits or modifying coverage under social security, veterans, civil service, and railroad retirement pension programs, except H.R. 1.

Seventh. Bills where no specific dollar figures were included in the authorizing language and no cost estimates are yet available. This includes most of the new public works bills and is the reason that entire category of bills was excluded, even though a few include specific appropriation authorizations.

Against that framework, let me analyze a few of the study's results and implications.

Eighty-five separate legislative proposals are included in the study and probably two-thirds that many additional measures should have been, had cost estimates been available.

These 85 measures represent proposed expenditures for fiscal year 1972 of $130,556,170,000. Thus, in slightly less than 60 days, Senators and Representatives have introduced legislation proposing new programs at a measurable cost of nearly 60 percent of the Federal budget estimate for that same fiscal year, which is $229,200,000,000.

Yet by far the greater part of the budget estimate covers fixed costs of existing programs. For instance, the defense budget at $77,512,000,000 accounts for 33.8 percent of the total budget and is the smallest allocation for defense, percentagewise, since 1950.

Viewed in this light it can easily be seen that the impact of proposed new legislation on the Federal budget would be staggering.

Even if only two-thirds of these bills were enacted, the cost would nearly equal 40 percent of the Federal budget, leaving virtually nothing, after meeting our defense needs, social security payments, and other fixed charges, for the funding of current programs of education, manpower, health, crime control, housing, environment, and the myriad other activities of the Federal Government.

Let us look at the matter in another way. The Federal revenue from personal income taxes for 1972 is estimated at $93,700,000,000, and it is anticipated that corporate taxes for the same period will amount to $36,700,000,000. When added together these produce a revenue figure of $130,400,000,000, almost precisely the same as the fiscal year 1972 figure for the measurable cost of proposed new legislation.

Another approach to the data is in terms of the total expenditures anticipated, without regard to fiscal year limitations. Here the figure leaps to $245,972,887,755, an amount substantially greater than the entire fiscal year 1972 budget. Such a figure is more than staggering—it is virtually incomprehensible.

Here are some of the proposals for spending very large sums which are included in this $245-billion-plus figure:

The most expensive single measure is S. 3, the so-called Health Security Act which the Secretary of Health, Education, and Welfare has conservatively estimated would cost $77 billion when fully implemented.

Another major item is H.R. 1, the Social Security Act amendments and family assistance plan legislation introduced in the House. Of course, a sizable part of the cost of that bill, the 10-percent social security benefit increase has already been added by the Senate on an amendment to H.R. 4690, a bill increasing the public debt limit, and enacted into law as Public Law 92–5.

The cost of H.R. 1 was estimated at $9.988 billion for fiscal year 1971 for both social security, and FAP with an additional $3.8 estimated for fiscal year 1972 for FAP only. No fiscal year 1972 estimate of the social security cost was available.

Another one of the more expensive items included in the study was S. 31, the Emergency Employment Act of 1971, which the Senate adopted by a vote of

62 to 10 on Thursday, April 1. I view this as a rather beneficent date for adoption of the measure, particularly from the point of view of the American taxpayer. This is a 2-year bill which authorizes appropriations of $750 million for fiscal year 1972 and $1 billion for fiscal year 1973.

Among the other larger items are S. 523, the National Water Quality Standards Act which totals $12.6 billion for fiscal years 1972 to 1976; S. 530, the Universal Child Care and Child Development Act, providing $12 billion for fiscal years 1972 to 1974; S. 1283, the Urban Education Improvement Act, pegged at $20.05 billion for fiscal years 1971 to 1982; H.R. 128, the School Children Assistance Act, costing $10.556 billion for fiscal years 1972 to 1973; H.R. 246, the Comprehensive Community College Act, at a cost of $6.01 billion for fiscal years 1971 to 1973; S. 1143, the Clean Water Commitment Act, providing for $16.04 billion for fiscal years 1971 to 1976, and H.R. 40, the Economic Opportunity Act extension authorizing appropriations of $15,415,682,755 for fiscal years 1972 to 1976 and S. 241, the State and Local Government Modernization Act at a cost of $24 billion.

These 11 bills account for a total cost of $211.22 billion out of the $245.48 billion cited earlier as the price tag on the entire package of 85 bills.

Many of these new proposals relate to health, so we might look at our present programs.

In 1945 we were spending 0.2 percent of the total Federal budget expenditures on programs relating to health. In 1950 that figure rose to 0.6 percent, in 1960 to 0.8 percent, in 1970 to 6.6 percent and the budget request for fiscal year 1972 allocated 7 percent of Federal spending to health. However, when one looks at the expenditures authorized by pending measures relating to health, that figure soars to 59.2 percent of the 1972 budget figure.

Looking at the matter in another way, in terms of total dollar figures, we spent in 1970 $13 billion on health programs. The estimated outlay for 1971 was $14.9 billion and the 1972 budget anticipates expenditures of $16 billion. When we look at the cost of pending legislation in this field, however, we find a figure of $77.3 billion.

I can give a comparable analysis for education and manpower programs. The budget analysis of the history of Federal spending combines these two categories and that analysis shows that we spent approximately 0.2 percent of the Federal budget outlays on programs of this type in 1945. By 1955 that figure had risen to 0.8 percent, to 1.9 percent in 1965, and to 3.7 percent by 1970. The budget estimate for fiscal year 1972 proposes spending in this category at a level of 3.8 percent. Pending legislation, however, involves proposed expenditures which would boost this total to 13.9 percent of the 1972 budget.

In terms of dollar figures we spent $7.3 billion on education and manpower programs in 1970. The estimated outlay for 1971 was $8.3 billion and the 1972 budget sets a figure of $8.8 billion. Pending legislation, on the other hand, would authorize spending at a level of $18.3 billion for new or expanded programs in these fields.

What is "a billion dollars?" How many people really grasp the significance of such a sum?

A cursory glance at the Federal budget, the Federal debt, or the cost of pending legislation might easily lead one to believe it is a relatively insignificant amount since each of those figures represents a large multiple of 1 billion.

For emphasis, let me repeat those figures: The Federal budget for fiscal year 1972 is $229.2 billion. The national debt, as of December 31, 1970, was $389.2 billion. The cost of legislation introduced in the 92d Congress if it could be fully measured would total far in excess of $245.9 billion.

Now let me reflect for a moment on what can be done with a billion dollars in terms the average citizen can comprehend.

According to the most recent estimate available to me, $1 billion would have paid for all the food produced and consumed on U.S. farms in 1961. It would have paid the grocery bill of every single American family for a week in 1955. In that same year such a sum would have paid the expenses of every student enrolled in an institution for higher education for the entire year, or the full year's dentist bill for every American family. And, of course, the buying power of a dollar has declined by 30 percent since 1955.

Perhaps a more dramatic way of expressing the magnitude of this vast sum is to note that it would take almost 2,000 years—all the time since the birth of Christ—to spend $1 billion at the rate of $1 per minute.

One billion dollars would have paid the costs of operation of our Federal Government for the first 60 years of its existence—from 1789 to 1848. Or, for the benefit of the rapidly increasing segment of our population who have come to believe that Uncle Sam owes them a living, I might point out that if 1 billion dollar bills were placed end to end, they would extend about four times around the world, and if one walked along picking that up at the rate of one per second, 40 hours a week, he would have to work 134 years to become a billionaire.

I believe that it is well that we consider just what it is that makes up the present budget. What are the items for the coming fiscal year, that is fiscal 1972, which call for over $229 billion in expenditures.

Our defense program will call for expenditures of $97.5 billion or 33.8 percent of the budget. Incidentally, this is the smallest allocation for defense percentagewise since 1950.

The interest on the national debt will take $19.7 billion or 8.6 percent of the budget.

We hear a lot about agricultural expenses. The total expenditures for agriculture are $9.5 billion or only 4.1 percent of the total budget. However, $5.8 billion of that amount is for the benefit of the consumers and the general public. I refer to such items as meat inspection, school lunch programs, and the like. That part of those expenditures which is intended to benefit the farmers is only $3.7 billion or roughly 1½ percent of the total budget.

Public works amount to $11.8 billion—but less than 5 percent of the budget—4.8 percent to be exact.

We hear a lot about space expenditures. The facts are that our expenditures in space have been reduced to almost one-half of what they were at their peak. These expenditures amount to $3.4 billion or only 1.4 percent of the total budget.

Under what we call income maintenance—this means social security, veterans, benefits, unempoyment and like compensation—there is allocated $57.66 billion, amounting to 25.1 percent of the budget.

For welfare and other domestic programs there is allocated $50.3 billion or 21.5 percent of the total budget.

It is evident that the high cost of Government results in a large measure from our existing programs of social legislation. Under these two headings we account for $108 billion or expenditures of more than 46 percent.

To return to my major thesis, it seems to me that the American people are not really aware of the profligacy with which some of their elected representatives propose to divest them of their hard-earned tax dollars or the extent to which such programs, if enacted, would heap new tax burdens upon them. I have taken the floor today in the hope of drawing to their attention the enormity of the situation that looms when we lift our focus from individual proposals and fix it, instead, upon the sum total of this many-tentacled octapus of proposed new Federal programs which threatens to strangle our free enterprise economy and, with it, the liberty we long have cherished.

Perhaps the direction of these proposals can better be seen when broken down into categories of spending. About 37 percent of the overall proposed spending—some $91,240,600,000—would go for health and welfare programs and another 35 percent for education—$52,016,500,000—and environment—$33,948,775,000.

In terms of spending for the remainder of fiscal year 1971 and fiscal year 1972, nearly 70 percent of the total proposed spending would go for health and welfare—$90,990,600,000—and another 15 percent for education—$13,035,500,000—and environment—$6,605,775,334.

No one will deny that these are matters of concern, but the current budget already reflects billions of dollars for existing programs in these areas.

For instance, the Federal investment in health and public assistance for fiscal year 1972 is budgeted at $28,457 million or approximately 12.5 percent of the total. The Federal input into education amounts to $13,500 million or 5.9 percent of the budget and for environmental programs we are budgeted to spend $3,127 million, which is 7.1 percent above the level of the preceding fiscal year, though only about 1.5 percent of the total Federal expenditures.

Pending legislation would, then, triple the level of spending for health and wel-

fare, more than double the level for environmental programs, and nearly double that for education. To be sure, some small budgeted items are included in both totals, but the impact on percentages is minimal.

Perhaps more revealing than the categories into which the proposed new programs fall are the chief sponsors of many of the more expensive bills.

Two Members of the Senate alone have, individually or jointly, introduced bills totaling $79,768,700,000, or nearly one-third of the total measurable cost of pending legislation. Six Senators who are currently being described in the press as "presidential timber" are the authors or chief sponsors of bills totaling $143,731,425,000, or well over half the measurable cost of pending legislation.

Mr. President, these spending proposals should alarm both the Congress and the country. I do not exaggerate when I state that I believe that unbridled spending by our Federal Government carries the seeds of destruction for our Republic.

The United States will never be conquered by a foreign foe. Our citizens are too patriotic to permit the subversive elements within to take over our Government. Our danger lies in excessive spending, and the resulting depreciation of the value of our money and ruinous inflation. This could well be followed by chaos and a turn to socialism.

Mr. President, the time is at hand for the real friends of the people to expose and oppose these destructive trends.

ADDRESS BY SENATOR SAXBE BEFORE CLEVELAND JEWISH WELFARE FUND

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD the text of the address delivered by the distinguished Senator from Ohio (Mr. SAXBE) before the Cleveland Jewish Welfare Fund on April 1.

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

ADDRESS BY SENATOR WILLIAM B. SAXBE

Ladies and gentlemen. It is with great pleasure that I accepted your invitation to speak to the Cleveland Jewish Welfare Fund Appeal Dinner tonight. One week from tomorrow night a young child will rise at each of your dinner tables and ask his father this question, "Why is this night of the year different from all other nights?"

And his father will answer, "Once we were slaves unto Pharaoh in Egypt, and the Lord, in His goodness and mercy, brought us forth from that land, with a mighty hand and an outstretched arm. Had he not rescued us from the hand of the despot, surely we and our children would still be enslaved, deprived of liberty and human dignity. We, therefore gather year after year, to retell this ancient story. For, in reality, it is not ancient, but eternal in its message, and its spirit. It proclaims man's burning desire to preserve liberty and justice for all."

In fact, the message of Passover and the Jewish Exodus from the land of Egypt is more meaningful today than ever before. We are all grateful for living in an extraordinary country such as ours, a country with few impediments to hinder the upward mobility of those who seek it. Today the proportion of Jews in college is twice that of the general U.S. population. And the proportion of Jews enrolled in graduate and professional schools is triple that of other students. Although Jews account for only 3% of the U.S. population, they provide more than 10% of all American college teachers. At prestigious universities such as Harvard, Jews represent as much as one third of the faculty. In the elite Ivy League, Jews have recently been appointed presidents of Dartmouth, and the University of Pennsylvania, and as the deans of Yale, Columbia and Pennsylvania Law Schools.

Jews in other countries are not as fortunate. Witness the trial of the Leningrad Eleven in the Soviet Union. The Soviet Union's outrageous and contemptuous conduct in sentencing two of its citizens for allegedly trying to hijack an airplane has since been rescinded. Yet, the shabby treatment of three and a half million Jews in the Soviet Union who persist in pressing their right for religious self expression and right to leave the Soviet Union is shocking. A detailed court room account of the secret Leningrad trial has reached the West and was recently brought to my attention. Going far beyond the garbled fragments that filtered out at the time, and since, this Russian language account makes explicit that the fundamental accusation against the defendants was not hijacking, as commonly believed, but attempting to leave the Soviet Union without official permission. The trial culminated in dramatic vows that "some day we shall still live in Israel." It is a tragic indictment of a society that must imprison its citizens and persecute its minorities in an effort to divert attention from the stark failures of its leaders.

This cultural and religious persecution by the Soviet Union of its Jewish citizens has been dramatically called to world attention by the Brussels Conference on Soviet Jewry. The Soviet Union embarrassed by this world outcry prior to the meeting of its 24th Party Congress has permitted the exodus of three hundred of its Jewish citizens to Israel this March. The Israeli Embassy confirmed to me that this is the highest monthly emigration of Soviet Jews to Israel ever permitted.

Recently you celebrated the holiday of Purim. As you remember, I am sure, the scroll of Esther relates how the Jews of Persia were threatened with genocide. Faced with this threat, Mordecai said to Esther:

"Think not that you will escape in the king's house, more than any other Jew. For if you keep silent at this time, then relief and deliverance will arrive for the Jews from another place, but you and your father's house will perish."

These words are appropriate today—"If you keep silent at this time . . ."

Thirty years ago, too many were silent. And those that spoke out were not heard. Because of it six million people died! The words of Mordecai cannot be ignored!

Five years ago, Elf Wiesel, author of the recent best seller "A beggar in Jerusalem," went to Russia. In his book, "The Jews of Silence" he discusses a religious observance in the great synagogue in Moscow. Let me read his words—"Soviet Jewish youth has remained Jewish to a degree beyond anything we could have possibly expected. I do not know where all these young people came from. They did not tell me, although I asked. Perhaps there is no one answer. But tens of thousands came."

"Who sent them? Who persuaded them to come running to spend a Jewish holiday in a Jewish atmosphere and in accordance with traditional Jewish custom? Who told them when and where and why? I was unable to discover. Perhaps they knew but prefered not to say in public. Fine. Let them preserve their secret. All that matters is that they came."

"They came in droves from near and far, from downtown and the suburbs, from the university and from the factories, from the school dormitories. They came in groups, they came alone. But once here they became a single body voicing songs of praise to the Jewish people and its will to live."

He concluded, "I believe with all my soul that despite the suffering, despite the hardship and the fear, the Jews of Russia will withstand the pressure and emerge victorious. But whether or not we shall ever be worthy of their trust, whether or not we shall overcome the pressures we have ourselves created, I cannot say. I returned from the Soviet Union disheartened and depressed. But what torments me most is not the Jews of silence I met in Russia but the silence of the Jews I live among today."

Therefore we all must speak out loud and clear so that our voices may be heard. Recently a Jewish girl by the name of Alla Rusinek yearned to leave the Soviet Union and go to Israel. "They don't want me" she said about the Soviet Union. "I am a stranger, this is not my country. But where is a place for me?" She left the Soviet Union in November for Israel.

"You ask me what I think about Israel now that I live there? It is difficult to answer this question. It's the same as if you asked me what I thought about myself. I can't praise myself. Israel is me and I am Israel."

I have just returned from Israel. I attended a conference dealing with the legal problems of strengthening trade ties between the United States and Israel. I observed first hand its people and their spirit. Only by visiting Israel can one comprehend the magnificent achievements of World Jewry in 23 short years.

For the past twenty years, Israel has been one of the fastest growing, most dynamic societies in the world. We, who are primarily concerned with Israel's viability and development, recognize that Israel's achievements in maintaining a real gross national product growth rate, while fighting a war for survival, is a record matched by few.

Israel is a leader among nations in its progress and national development. It serves as a model for other less well advanced countries. Israel has much human talent and technical expertise and a body of developmental experience available to aid other countries and help speed the process of their development.

I saw the pride of a people which date back fifty-seven hundred years. This is a nation built from the ashes of six million dead in the Nazi holocaust and threatened for its very survival by three wars in the last twenty two years. Israel represents much more than a home for the Jewish people. It stands for the breaking of the chains of human bondage for all mankind and the freedom to think, to learn, to laugh, and to live.

This has incurred the wrath of the Soviet Union. Russia has sought to crush Israel as much as to break its spirit as it has to seek warm water ports on the Mediterranean and a strangle hold on the world's greatest known supply of oil. We are all familiar with the history of the past twenty-two years. Russia voted for the partition of Palestine and the creation of Israel and was among the first countries to recognize Israel's independence. At that time its central motive was to dislodge British influence from the area. A desire that has now been supplanted by its attempts to drive American influence from the Middle East—to drive out Western influence and increase its own.

As the Soviet Union has approached parity with the United States in strategic arms, it has sought to become more influential in the international arena. Russia's historic ambitions in the Middle East are well known. It was largely due to Russian encouragement

that Nasser massed his armies in the Sinai, demanded expulsion of the U.N. Peace Keeping force, and blockaded the Straits of Tiran. These steps led directly to the Six-Day War. Israel won the war in 1967 and promptly became the victims of a myth. The myth held that once the Arabs had been truly defeated, not just thrown back as in 1948, not just penetrated briefly with foreign help as in 1956, but once they had their cultural and technological vulnerabilities thrust upon them in an utterly painful and total way, then, and finally then, would the Arabs abandon their dreams of undoing the existence of Israel and instead make peace. Yet, peace has been sought in vain. On June 23, 1968 President Nasser said "The following principles of Egyptian policy are immutable: 1. No negotiation with Israel, 2. No peace with Israel, 3. No recognition of Israel. These were the elements of policy originally pronounced at the Khartoum Arab Summit in September of 1967. The Khartoum formula in no way squared with the principles of the United Nations Resolution of November 22, 1967.

In the Spring of 1969, the Arabs launched the so-called war of attrition. The attrition policy was a joint Egyptian-Soviet strategy. Its purpose was to subject Israel to mounting military pressure and compel it and the United States to surrender to the Arab-Soviet political terms being pressed in the four power forum. Israel countered with penetration raids deep inside Egypt. Egypt with the help of the Soviet Union began installing SAM II missiles to make itself invulnerable while continuing its war of attrition on Israel. The purpose of the SAM II missiles was to protect the Egyptian heavy artillery which continued to pround away at the Israel positions on the Eastern side of the Suez Canal.

It was at this juncture in June 1970 that the United States proposed its political initiative for a cease fire standstill agreement to freeze the military situation along the Suez Canal and the Jordan River. In spite of its fears, Israel agreed. What happened subsequentially is a matter of Public record. On September 3, 1970 the United States confirmed Israel's charges that Egypt and the Soviet Union were massively violating the cease fire standstill agreement. The dense missile system of SAM II and SAM III missiles which Egypt had deployed in the standstill zone under the cease fire screen created a change in the strategic balance and produced a threat to Israel which had not existed before.

Because the Soviet Union and Egypt refused to roll back their illegally placed missiles, the United States Congress passed Section 501 of the Defense Procurement Act with the provision of some five-hundred million dollars in military credit for Israel.

President Sadat's decision on Sunday March 7th, not to extend the present cease first is an effort to increase international pressure on Israel for a full withdrawal from all Arab lands occupied during the 1967 war. Sadat's decision came after a secret trip to Moscow for consultations. The Jaring formula seeking from Israel a clear cut commitment to withdraw to the international boundry of the United Arab Republic is unsatisfactory, and I reject it.

There are two and a half million people living in Israel surrounded by a hundred million Arabs. The Israeli survival is at stake, the Arab survival is not. The United Nations resolution of 1967 calls for secured and recognized boundaries, and withdrawal. One cannot be negotiated without the other. The Soviet Union and the Arab States would have us believe that withdrawal was an absolute commitment with no reference to secured and recognized boundaries. On the other hand Israel says that there can be no withdrawal if the parties to the conflict cannot guarantee secured and recognized boundaries. It is impossible to achieve results if each side demands its own preconditions.

Even though the Arab states have promised a peace agreement with Israel on the precondition of a total Israeli withdrawal from their territories, there has never been an expression of peaceful intent by the Arab states. There are glaring differences in the statements Egyptian President Sadat issues for foreign consumption and those pronouncements he makes to his own people. I have yet to find an instance where Sadat has told his own people that at some point they would have to live in peace with Israel.

Recently the Egyptian representative at the United Nations Muhammed el-Zayyat acting on behalf of his government refused to accept Israeli proposals of February 26th from Ambassador Jarring because the document was headed as a communication "from the Government of Israel to the Government of the United Arab Republic." If Egypt is really prepared to recognize Israel's right to exist as it proclaims, why will its representative not accept even an indirect communication described as coming from the Government of Israel? What is needed now are intense negotiations governing all differences between the countries: Questions of absolute assurance of transit through the Suez Canal, command of Sharm el Sheik and passage through the Straights of Tiran, the de-militarization of the Sinai, border adjustments, and peaceful cooperation between the parties. Nothing must be imposed by the super powers. This is the perfect example of "the Nixon Doctrine" that the United States will aid a country that helps itself. Israel is a democratic country exercising self determination that has never asked for American troops to defend its boundaries.

Next Friday night you will read God's promise to Abraham to rescue and redeem Israel and you will recount:

"In every age oppressors rose against us, to crush our spirits and bring us low. From the hands of all these tyrants and conquerors the Lord did rescue and restore his people. Not in Egypt alone did Israel face the threat of total annihilation. In many lands and many ages, the flame of Jewish life faced the fierce winds of tyranny. In all these battles and desperate struggles. God's help and guidance assured our survival. Our hope is strong and our faith unshakable, that no enemy shall ever triumph over Israel."

Your efforts here tonight are in keeping with that promise. That promise will be kept.

APPARENT FAILURE OF PUBLIC SCHOOL DESEGREGATION IN BOSTON

Mr. ALLEN. Mr. President, the Washington Post of Sunday, April 4, 1971, printed an article by Peter Milius entitled "Apartheid in Urban Schools." The article describes in some detail the reasons why public school desegregation appears to have failed in Boston, Mass., despite the fact that the State had enacted in 1965 what was described as a tough Racial Imbalance Act. At the time of enactment the Boston public school system was about 25 percent black in enrollment and contained 46 of the State's 55 racially imbalanced schools. Today, it is admitted that the Racial Imbalance Act has not reduced racial imbalance in Boston. To the contrary, the Boston public school system is no longer 25 percent black in enrollment but 32 percent. It no longer contains 46 racially imbalanced schools; it contains 63.

Nevertheless, the racial balance dogma continues to be enforced in the South by the weapons of Federal suppression and deprivation of school children who are innocent victims of this irrational Socialist dogma.

Mr. President, when will we have a uniform Federal policy for desegregation of public schools? Is it unfair to ask that the South be given the right to have the "Boston policy" or that Boston be given the policy applied in the South?

Mr. President, the article mentioned is instructive and should be of interest to all Senators. I ask unanimous consent that it be printed in the RECORD.

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

APARTHEID IN URBAN SCHOOLS—BOSTON TYPIFIES BATTLE OVER INTEGRATION

(By Peter Milius)

BOSTON.—If Boston, Mass., were Little Rock, Ark., Sen John L. McClellan (D-Ark.) gruffly told the witness at a hearing in Washington last August, "you would be down there tomorrow."

The witness was Attorney General John N. Mitchell. He had just testified that, in his opinion, Boston's "open enrollment policy," a shaky exercise in the simultaneous appeasement of both whites and blacks on school integration, was unconstitutional.

The policy is a system under which black children are allowed to transfer out of black schools into white ones; it is a citywide invitation to integration. Yet it is also, as the senator had pointed out, a system under which white children, too, are allowed to escape into white schools if they are somehow assigned to black ones; it can and often does also lead toward segregation.

The South, as everyone in the room knew, had also had an "open enrollment policy." Its kind had been known as "freedom-of-choice," and it, too, had allowed black and white children to attend integrated schools, but only as they chose to.

Freedom-of-choice had been attacked by the Justice Department and struck down by the federal courts. What was Mitchell going to do now about open enrollment, McClellan asked.

There was nothing he could do, Mitchell said, because no Boston parent had complained.

The 75-year-old Arkansas senator exploded. "Now that," he said "is a double standard in America today."

The Department of Health, Education and Welfare has, since McClellan's outburst, quietly dispatched a small team of civil rights investigators to this Northern city. It says today that Boston is one—the largest—of about 50 Northern school districts in which it has looked or is looking intensively for violations of the federal civil rights laws.

It is one of the ironies of today's politics that a senior Southern senator should have helped spur on these investigations. Yet the whole episode—McClellan's scathing remarks, the government's halting response—is a telling summary of some powerful new truths about school integration in this country.

The first of these truths, and the most basic, is that the integration background has shifted. Today it is in the big cities. More than 50 per cent of the nation's 6.7 million black school children now attend its 50 largest school districts according to federal figures. Technically at least, and though problems still abound, the rural and small-town school districts of the South, the scenes of the big battles of the 1960's, have desegregated. The South's classic dual school system is no more.

And in some cities, the issue is rapidly becoming moot in any case. Washington, D.C.

is an example. Its school system is 95 per cent black, and there is no way to integrate.

The second truth is that, however they got that way, the cities of the North and South are today the same. Little Rock is where President Eisenhowever had to send armed troops in 1957 to safeguard the right of black school children to attend formerly white schools. Boston, as McClellan wryly noted at that hearing in August, "is the city often represented as the cradle of American liberty."

Yet in both today, there is something approaching educational apartheid. Blacks go primarily to black schools in black neighborhoods, white the reverse. The only apparent, immediate way to break up the pattern is to bus. But in both today, Boston and Little Rock, North and South, whites and increasingly, blacks as well, are resisting busing. For many blacks, integration is no longer the pathway to better education. Black control is.

The third truth is that integration thus is at a crossroads. Lawyers, judges, and the government used to make a distinction between "de jure" segregation—the deliberate, official kind, which is illegal—and "de facto" segregation—the kind that reflects residential patterns, and which is not illegal. The South was de jure, the North, for the most part, de facto. Yet today, in the cities at least, there is no difference between them. There is a widely recognized need for a new set of standards, one that would be both urban and national.

The Supreme Court is now trying to write such standards. It soon will decide two key urban cases, both from the South, one from Charlotte, N.C., the other from Mobile, Ala. Charlotte is busing, and has no more distinctly black schools. Mobile is not busing, and does. The President and the Justice Department are supporting the Mobile alternative. The Supreme Court must choose.

Congress also is writing a new law. It has before it President Nixon's $1.5 billion school desegregation bill. The questions are how the money should be used and to whom it should go, whether there should be pressure or a command in favor of full integration or something less. Congress, too, has to choose.

McClellan's hope, the hope of the Southerners, is that these emerging new standards will be weak ones. Their reasoning is that pressure now in the North will produce resistance now—and that, if the Bostons of the country can ultimately ward off integration, so can the Little Rocks.

In many ways, this city of historic landmarks and major universities seems an odd testing-place for school integration. It was, as every schoolboy knows, a home to the first American Revolution. It also was a breeding ground for the second. Leading abolitionists, men who sought to strike down slavery, wrote their tracts here. In 1855, the state legislature passed a law prohibiting discrimination in the public schools. In school admissions, the legislature said, "no distinctions shall be made on account of . . . race."

In 1965, 110 years later, the state seemed at the forefront of still a third revolution. The state legislature passed another law, the Racially Imbalance Act. It was then, and remains today, the strongest school integration law in the country.

Its key provision was a simple, powerful declaration that no public school in Massachusetts could any longer be "racially imbalanced" which it defined as more than 50 per cent nonwhite in enrollment. A school committee (local school board) that had such schools had to balance them or forfeit its state funds.

The primary target of the Act was the spreading "de facto" segregation—the kind that flows from housing patterns—here in Boston. The Boston public school system was then about 25 per cent black in enrollment. It had about 60 per cent of the state's nonwhite school children—and contained 46 of its 55 "racially imbalanced" schools.

The Racial Imbalance Act was, on paper at least, a high-water mark in the history of school integration. Time magazine printed a picture of the governor, John A. Volpe, as he "proudly" signed the bill. Standing behind him were the lieutenant governor, Elliot L. Richardson, the attorney general, Edward W. Brooke, and various others, black and white, who had supported the measure. "Another First for Massachusetts," Time proclaimed it.

Yet today that mild euphoria seems to have been misplaced. The Racial Imbalance Act has not reduced racial imbalance in Boston. The Boston public school system is no longer 25 per cent black in enrollment, but 32 per cent. It no longer contains 46 "racially imbalanced" schools. It contains 63.

The approaching racial harmony suggested by that six-year-old picture in Time also seems a thing of the past. For the last two months, a daily minimum of 1,000 black students has been boycotting the Boston schools. Their protest is not that their schools are too black, but that they are not black enough. They want more black teachers—Boston now has only 5 percent—more black principals and additional "black studies." Ultimately, their leaders say, they want black self-determination, some form of what is commonly known as community control. Their elders, many of them committed integrationists in 1965, are for the most part quietly supporting them.

The public officials in the Time photograph also have moved on. Volpe is now President Nixon's Secretary of Transportation; Brooke, the only black U.S. senator and a first for Massachusetts. Richardson is Secretary of Health, Education and Welfare. It is another of the ironies of this case that his department is now investigating Boston. "It is," as McClellan noted with considerable satisfaction at the hearing last August, "his home."

Richardson's team began its study of Boston last November. It is not expected to submit even its preliminary report for at least another month. In a sense, the study is itself a measure of the current confusion over what the Constitution requires, and what the federal government should require. The only question before the HEW team is how much of Boston's school segregation is the result of official policies, the kind that the lawyers call "de jure." Under the law now, that is the only kind of segregation HEW can attack.

In the South, the presumption has been that all segregation is de jure, the result of the old Southern laws. Yet in cities like Little Rock, with their ghettoes, that presumption becomes increasingly hard to sustain.

In the North, the presumption has been that most segregation is de facto, inadvertent and not illegal. That presumption, too, tends to fray on close study.

This city's 63 "racially imbalanced" schools are indeed a mirror of its social geography. Most of them lie well within its sprawling and spreading black neighborhoods, the heart of which is the area called Roxbury.

The school committee is able to point out that it has only 14 all-white schools, and only three all-black, out of a total of 193. Yet many others are tilted heavily in one direction or the other. Of all the black, pupils 31, 324—52 per cent, 16,280, are in schools 80 per cent or more black by enrollment. Seventy-six per cent, 23,893, are in the 63 schools more than 50 per cent black in makeup, those "imbalanced" under the state law.

As early as 1966, a team of social scientists from the Joint Center for Urban Studies here told both the city and state, which had solicited its views, that there was only one way to get white children into Roxbury schools, and black children out, and that was to bus.

"There is no foreseeable program," the team said, "which can eliminate more than a fraction of the racial imbalance which now exists in Boston without transporting children to schools outside their residential districts, presumably on buses."

Yet the Boston School Committee, all five of whose elected members are white, will not hear of busing, at least not on a large and compulsory scale. Nor, so far, has the state Board of Education, the agency responsible for enforcing the state law, been willing to insist upon it.

One argument against it is legal; the Racial Imbalance Act contains a partial ban on busing, nailed into it by the Boston delegation when the legislature passed it. Yet the ban, according to some civil rights lawyers, could be circumvented. The more compelling argument against busing is political. The former School Committee chairman, Louise Day Hicks, was elected last year to Congress, in large measure on the strength of her long record as an adamant supporter of "neighborhood schools." Her political success has not been lost on either her successors or her antagonists.

What the school committee has put forward as a substitute for busing—and the state board had so far approved—is an anti-imbalance plan based on two lesser alternatives, one long-range, the other short.

The long-range plan is to build about 20 new and, it is hoped, racially balanced schools of two distinct kinds. The first is what the school committee describes as "magnet schools," inside the black part of town. The second is a ring of peripheral schools on the city's black-white borders.

Both of these longer-range strategies have had their problems. The first of the magnet schools, Trotter Elementary, opened in the heart of Roxbury in 1968. It was and remains a high-expenditure, experimental and fully integrated (though not quite "racially balanced") school. The blacks enrolled are drawn from the neighborhood; the whites are bused in. A measure of the school's widely acknowledged success is that it has a waiting list of both whites and blacks.

Ironically, the whites already enrolled and on the waiting list represent the problem at Trotter. Trotter was the first new school built in a black neighborhood in Boston in what some blacks say was 30 years. It opened amid protest. Roxbury blacks were uphappy that half of its seats were reserved for whites. Is it better to have 350 Roxbury children in a racially balanced school, or 700 in a new school that happens to be all-black? The question is still being asked.

The problem with the peripheral schools is also one of race and residence, but far simpler. About 18 are planned; only one has been built. The black-white borders on which some of the others were planned are moving beyond them; the ghetto is growing out faster than the schools are going up. Some of them, if they are built where planned, will be as imbalanced as those they replace.

The school committee's shorter-range plan is also in trouble; its plan for the short run is simply to persist in its open enrollment policy. The committee says it adopted the policy in the early 1960's basically as a concession to blacks. It has the effect, as in the Exodus program, of allowing black children to move out of black schools into white ones. Yet it allows white children to do the same.

The Lewenberg Junior High School south of Roxbury was 25 per cent black in 1965. It is 96 per cent black today. The School Committee says the school was transformed only when the neighborhood was. Neil V. Sullivan, the state's commissioner of education, says the school was transformed first.

The open enrollment policy, Sullivan testified before a Senate committee last May in Washington, "permitted these middle-class children to escape from that school, continue to live in their community but go to all-white schools in Boston on the periphery."

It was Sullivan's testimony in May that led to McClellan's outburst last August, and that may be the ultimate irony of school integration in Boston. For Sullivan is perhaps the nation's leading practicing apostle of school integration. He is also, by his simple presence, the one good reason for thinking that school integration may yet come to pass here.

The commissioner came to Massachusetts in 1967 from Berkeley, Calif., which he had built into one of the most integrated major school systems in the country today. The Racial Imbalance Act helped to attract him; he is now in the process of cracking down, and trying to make its terms come true.

There are two other school systems in the state that have, in proportion to their size, major problems of racial imbalance. They are Springfield and New Pedford. The state board is insisting that both eliminate all their imbalance by next September. The tactic is ancient: Smaller fish first, the largest last.

Late last year, at Sullivan's urging, and at HEW's, too, the state board also ordered Boston to rewrite its open enrollment policy. Transfers would only be allowed if they reduced imbalance. Whites in black schools would have to stay, or not stay in the system.

The School Committee has threatened to take the state board into court. So far it has not.

Boston's only black city councilman, Thomas Atkins, who plans to run for mayor this fall, thinks Sullivan may have come too late. "At time when the problem was solvable," he says of the state Board of Education, "they were unwilling. Now they're willing, and it's unsolvable."

Whites here have their suburban schools, Catholics a huge parochial system, which in the city of Boston alone has an enrollment of about 30,000. Blacks, too, have now begun to develop "alternative schools;" there are three now, privately run, hard pressed for funds, predominantly black, in the Roxbury area.

Atkins' solution, much like that of the boycotting black students, is to carry these black alternatives one step further, toward a form of "community control."

Six years ago, Atkins, like other blacks, was calling for integration of the Boston public school system. Today, again like other blacks, he is calling instead for its dissolution.

"There is no reason why, if a (suburban) town is capable of running its own school system," Atkins says, "a big-city neighborhood is not. It's a fiction. We have to break down the concept of centrally administered systems."

Sullivan's answer is to generally recall something Robert F. Kennedy once said:

"If we don't have people of different colors and religious going to school together, we will have local school boards that are all black power or all middle-class Negro or all Irish or all Italian. They will put themselves in concrete, and we will never have any possibility of achieving a relationship among various ethnic groups."

In Sullivan's view, it is all quite stark. "The base of this whole thing," he says, "is the survival of the democracy."

EQUAL RIGHTS AMENDMENT

Mr. TOWER. Mr. President, I am pleased to cosponsor a measure that I cosponsored during the last Congress; a measure which passed the House of Representatives, but which unfortunately died in this body during the closing days of the 91st Congress: the equal rights amendment. This amendment would assure to women their full civil rights, as their political rights were assured to them under the 19th amendment to our Constitution. During the ensuing time period between the adoption of the political rights amendment and today, women have made great strides in all phases of American life. Rather than being somewhat revolutionary, as the 19th amendment was sometimes considered, this civil rights amendment would be more nearly a realization by us that women have accepted a larger role in charting the everyday course of the Republic. It is altogether fitting that we should adopt in the opening year of the decade of the seventies this amendment normalizing the role of women in exercising their full civil rights.

Mr. President, I am sponsoring this amendment today in basically the same form in which it passed the House last year and in which it has been introduced in every Congress since 1943. This differs from the form in which it has previously been supported in this Congress by some of my colleagues in that my amendment would preserve the language, "Congress and the several States," in the enforcement clause. There has been some consternation among the groups which most ardently support such an amendment because this phrase, "and the several States," had been omitted. According to Senator Austin, of Vermont, who devised the current language in 1943, the deletion of that phrase "surrenders to the Federal Government the power to enforce the article within the several States." I can basically see no reason why the proponents of women's rights in this Congress now see a need to remove the States from the enforcement clause of the amendment. Indeed, to do so could well endanger the prospects of the amendment in receiving the necessary ratification by three-fourths of the State legislatures that we must have for the amendment to become operative. I hope that the Judiciary Committee, when considering this amendment, will approve the version with the phrase, "and the several States." It would help to clear up an impeding confusion on this matter.

Mr. President, this recognition of the equal civil rights of women, coming as it is over 50 years after the adoption of the women's political rights amendment, is long overdue. While this amendment will not preclude all distinctions on the basis of sex—it will still be possible to specify the drafting of males only into the Armed Services—it will make certain that women will have full contractual rights with their male counterparts. In our free society, as in any truly free society, contractual rights are the most basic ingredient in the freedom syndrome. Clearly, if one is not free to contract as he sees fit, within broadly based public policy limits, then freedom is illusory. I hope that, at this hour in time, we here in the Congress will remove the last vestiges of restrictions on women's civil rights and give this amendment the approval that should have been forthcoming from this great body during the last Congress.

DECLINE OF AIR CARRIER OPERATIONS AT DULLES AIRPORT

Mr. SPONG. Mr. President, the economic slowdown which has affected airport business around the country makes it difficult to identify with certainty trends in any given area. Still, the most recent Federal Aviation Administration report showing a wide disparity in the loss of business at National and Dulles Airports seems to me quite significant and indicative of factors other than the general economic situation at work.

That report indicates that in February, the number of air carrier operations at Dulles declined by 9.1 percent over a year ago, while at the same time such operations at National were increasing by 1.6 percent. For the year to date, airline traffic is down by 10.3 percent at Dulles compared to a decline of only 3.7 percent at National.

That trend is reflected in passenger figures at the two facilities. Dulles showed an 11.3-percent decline in February which is more than 5 times the 2-percent decline at National. Since the beginning of the year, passengers have dropped at Dulles by 9.4 percent and at National by only 2.8 percent.

Mr. President, what makes these figures so interesting is that they correspond almost exactly to what experts said would happen if the large stretch jets were permitted to operate at National Airport. I repeat that it is difficult to state with certainty that that is the case, but it is certainly a factor which must be considered before any more of these jets are allowed to use National. Accordingly, Secretary Volpe has taken steps to freeze those flights at present levels until a further study can be made.

Mr. President, the taxpayers of this country put up $110 million to finance the construction of Dulles Airport to relieve congestion at National and to provide the Nation's Capital with a first-class jet port. Yet, today more than two-thirds of the business at Dulles is made up of military aircraft and small private planes. I believe the Congress owes the taxpayer a better accountability than that.

Mr. President, I ask unanimous consent to have printed in the RECORD the FAA's February airport report.

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

FEDERAL AVIATION ADMINISTRATION, NATIONAL CAPITAL AIRPORTS, DULLES INTERNATIONAL AIRPORT ACTIVITY[1]

	January 1971	January 1970	Percent change from 1970, month
Operations:			
Air carrier	4,862	5,491	−11.5
General aviation	5,178	7,346	−29.5
Military	3,863	2,945	+31.2
Total operations	13,903	15,782	−11.9

Footnotes at end of table.

FEDERAL AVIATION ADMINISTRATION, NATIONAL CAPITAL AIRPORTS, DULLES INTERNATIONAL AIRPORT ACTIVITY [1]—Continued

	January 1971	January 1970	Percent change from 1970, month
Passengers:			
Domestic airlines	123,377	137,183	−10.1
International airlines	19,074	21,586	−11.6
Total airlines	142,451	158,769	−10.3
All others [2]	15,877	12,948	+22.6
Total passengers	158,328	171,717	−7.8
Cargo (thousand pounds): [3]			
Air mail:			
Domestic	986	1,062	−7.2
International	711	159	+347.2
Total air mail	1,697	1,221	+39.0
First-class mail	1,033	1,396	−26.0
Freight:			
Domestic	1,537	1,720	−10.6
International	1,213	1,060	+14.4
Total freight	2,750	2,780	−1.1
Express	120	141	−14.9
Total cargo	5,600	5,538	+1.1

[1] Totals of inbound and outbound traffic.
[2] General aviation and military.
[3] Partially estimated.

FEDERAL AVIATION ADMINISTRATION, NATIONAL CAPITAL AIRPORTS, WASHINGTON NATIONAL AIRPORT ACTIVITY [1]

	January 1971	January 1970	Percent change from 1970, month
Operations:			
Air carrier:			
Scheduled airlines	17,438	18,989	−8.2
Other carriers	4	10	−60.0
Total	17,442	18,999	−8.2
General:			
General aviation	6,798	8,792	−22.7
Government civil	187	335	−44.2
Air/carrier, non-rev	49	75	−34.7
Total	7,034	9,202	−23.6
Military	293	327	−10.4
Total operations	24,769	28,528	−13.2
Passengers:			
Domestic airlines	721,005	753,712	−4.3
International airlines			
Total airlines	721,005	753,712	−4.3
All others [2]	31,247	25,897	+20.7
Total passengers	752,252	779,609	−3.5
Cargo (thousand pounds): [3]			
Air mail:			
Domestic	3,066	2,662	+15.2
International			
Total air mail	3,066	2,662	+15.2
First-class mail	2,604	3,655	−28.8
Freight:			
Domestic	5,928	6,244	−5.1
International			
Total freight	5,928	6,244	−5.1
Express	2,790	1,727	+61.6
Total cargo	14,388	14,288	+0.7

[1] Totals of inbound and outbound traffic.
[2] General aviation and military.
[3] Partially estimated.

FEDERAL AVIATION ADMINISTRATION, NATIONAL CAPITAL AIRPORTS, TOTAL, WASHINGTON AIRPORTS ACTIVITY [1]

	January 1971	January 1970	Percent change from 1970, month
Operations:			
Air carrier	22,304	24,490	−8.9
General aviation	12,212	16,548	−26.2
Military	4,156	3,272	+27.0
Total operations	38,672	44,310	−12.7
Passengers:			
Domestic Airlines	844,382	890,895	−5.2
International airlines	19,074	21,586	−11.6
Total airlines	863,456	912,481	−5.4
All others [2]	47,124	38,845	+21.3
Total passengers	910,580	951,326	−4.3
Cargo (thousand pounds): [3]			
Air mail:			
Domestic	4,052	3,724	+8.8
International	711	159	+347.2
Total air mail	4,763	3,883	+22.7
First-class mail	3,637	5,051	−28.0
Freight:			
Domestic	7,465	7,964	−6.3
International	1,213	1,060	+14.4
Total freight	8,678	9,024	−3.8
Express	2,910	1,868	+55.8
Total cargo	19,988	19,826	+.8

[1] Totals of inbound and outbound traffic.
[2] General aviation and military.
[3] Partially estimated.

GROWTH OF ALABAMA BEEF CATTLE INDUSTRY

Mr. ALLEN. Mr. President, as a member of the Committee on Agriculture and Forestry, I am vitally concerned with problems of rural America and our agricultural economy in particular. In an area perplexed by so many problems, it is indeed encouraging to take note of bright spots in an otherwise rather bleak picture. One such bright spot is the growth of the beef cattle industry in Alabama which today adds $1 billion annually to the Alabama economy.

Today more than 12,137 Alabamians are members of the Alabama Cattlemen's Association which makes it the largest State cattlemen's association in America.

The growth of membership in the association and the tremendous growth in numbers of beef cattle in Alabama has taken place in the past 10 years under the exceptionally fine leadership of E. H. "Ham" Wilson, executive vice president of the association.

Mr. President, a decade of progress in the production of beef cattle in Alabama is described in a promotional brochure prepared by the Alabama Cattlemen's Association. Among other things the brochure indicates that Alabama, with 915,000 head of beef cows, ranks 16th in the Nation, whereas with a total of 1,973,000 head of all cattle, Alabama ranks 20th from the top in the Nation. The tables attached to the brochure indicate that every county in Alabama has a substantial number of beef cattle and that production is marketed in 60 licensed cattle auction markets scattered throughout the State. Mr. President, I salute the members of the Alabama Cattlemen's Association—I commend its leadership—and ask unanimous consent that the text of the brochure be printed in the RECORD.

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

ONE OF THE STATE'S LARGEST AND MOST IMPORTANT INDUSTRIES: BEEF CATTLE—BILLION-DOLLAR INDUSTRY IN ALABAMA

During the past 10 years, the production of Beef cattle has boomed to become a billion dollar industry—making it one of Alabama's largest and most important.

As of Jan. 1, 1971, all cattle and calves on state farms and ranches totaled 1,973,000. This represented a one per cent increase over Jan. 1, 1970.

Beef cows that have calved totaled 915,000—a two per cent increase in the one-year span. Alabama now ranks 16th in the nation in the number of beef cows and 20th in the number of all cattle and calves.

The total value of cattle and calves in Alabama at the beginning of 1971 was almost $300 million—a whopping 12 per cent increase over the total the year before.

The total value was the highest on record and almost double the figure a decade ago. Average value per head was $150—$15 above the Jan. 1, 1970 figure.

Last year Alabama cattlemen sold more than a million head of cattle and calves for more than $150 million.

Alabama is primarily a cattle producing state, concentrating on growing good brood cows and selling weaning calves at an average weight of approximately 400 pounds.

Stocker and feeder cattle from Alabama enjoy a nationwide reputation for quality. Almost 500,000 head of stocker and feeder cattle are shipped annually to more than 30 states.

The driving force behind the beef cattle boom in Alabama has been the Alabama Cattlemen's Association. The Association, which has one of the top Beef promotion programs in the nation, now has 12,137 members, making it the largest such association in the world.

Stocker cattle can be purchased in Alabama every day of the year.

There continues to be a growing interest in feeding cattle to heavier weights and many state cattlemen are establishing small farm feedlots. Several commercial custom feedlots are now in operation.

Also, many Alabama cattlemen are beginning to carry their light weight cattle to yearling weights. These extra pounds can be put on cheaply by the use of the state's forage program.

Records show the production of beef cattle continues to use more land and more feed than any other agricultural commodity in Alabama. More than five million acres of land are now devoted to beef production in the state. This includes pasture and land for the production of hay, silage and grain crops.

During the past 10 years, many acres of once eroded hills and gullies have been transformed into rolling green pasture land as beef cattle have become firmly entrenched as one of the state's most important products.

One of Alabama's big drawing cards in the beef industry is its outstanding marketing system. The state has 60 licensed cattle auction markets located in every area of the state. These markets sell more than a million head of cattle each year. Cattle can be bought and sold at some markets in the state every day of the work week.

To go with this network of marketing facilities, Alabama has all the natural advantages for growing beef cattle. The state is endowed with large acreage, favorable climate, plenty of rainfall, ability to grow grass cheaply and nearness to eastern markets.

While the past has been productive, the future looks even brighter for the Alabama Beef cattle industry. The next 10 years should see Alabama recognized as one of the top beef cattle states in the nation.

1971 STATE RANKINGS FOR ALL CATTLE

Rank, State	1,000 head
1 Texas	12,578
2 Iowa	7,403
3 Kansas	6,618
4 Nebraska	6,457
5 Oklahoma	5,085
6 Missouri	4,989
7 California	4,771
8 South Dakota	4,498
9 Wisconsin	4,158
10 Minnesota	3,998
11 Colorado	3,516
12 Illinois	3,245
13 Montana	3,104
14 Kentucky	2,859
15 Mississippi	2,537
16 Tennessee	2,354
17 Ohio	2,200
18 North Dakota	2,190
19 Georgia	2,002
20 Alabama	1,973
21 Indiana	1,937
22 Florida	1,864
23 New York	1,848
24 Arkansas	1,787
25 Pennsylvania	1,763
26 Idaho	1,735
27 Louisiana	1,705
28 Oregon	1,609
29 Michigan	1,527
30 Virginia	1,489
31 Wyoming	1,461
32 New Mexico	1,372
33 Arizona	1,289
34 Washington	1,285
35 North Carolina	1,081
36 Utah	840
37 South Carolina	661
38 Nevada	657
39 West Virginia	470
40 Maryland	430
41 Vermont	351
42 Hawaii	249
43 Maine	141
44 New Jersey	125
45 Connecticut	119
46 Massachusetts	114
47 New Hampshire	71
48 Delaware	32
49 Rhode Island	12
50 Alaska	9
U.S.	114,568

1971 STATE RANKINGS FOR BEEF COWS

Rank State	1,000 head
1 Texas	5,791
2 Oklahoma	2,188
3 Nebraska	1,913
4 Missouri	1,909
5 Kansas	1,899
6 South Dakota	1,731
7 Montona	1,570
8 Iowa	1,517
9 Mississippi	1,285
10 Colorado	1,110
11 Kentucky	1,087
12 North Dakota	964
13 Tennessee	948
14 Arkansas	920
15 Florida	917
16 Alabama	915
17 California	906
18 Louisiana	887
19 Georgia	856
20 Illinois	750
21 Wyoming	696
22 New Mexico	681
23 Oregon	676
24 Idaho	596
25 Minnesota	536
26 Virginia	511
27 Indiana	444
28 Ohio	375
29 North Carolina	367
30 Washington	361
31 Utah	347
32 Arizona	344
33 Nevada	343
34 South Carolina	274
35 Wisconsin	257
36 West Virginia	202
37 Michigan	137
38 Pennsylvania	97
39 Hawaii	89
40 New York	61
41 Maryland	56
42 Maine	9
43 New Jersey	9
44 Vermont	8
45 Connecticut	5
46 Massachusetts	4
47 Delaware	4
48 Alaska	2.5
49 New Hampshire	2
50 Rhode Island	1
United States	37,557.5

1971 COUNTY RANKINGS FOR ALL CATTLE

County	Number Head
1. M'gomery	98,000
2. Lowndes	69,500
3. Dallas	62,500
4. Marengo	61,500
5. Wilcox	49,400
6. Madison	48,900
7. Sumter	48,300
8. Baldwin	47,700
9. Hale	44,500
10. Bullock	39,800
11. Pike	39,100
12. Covington	38,500
13. Greene	38,100
14. Perry	37,600
15. Limestone	37,100
16. Morgan	37,000
17. Houston	36,300
18. Elmore	35,100
19. Lawrence	34,900
20. Barbour	34,100
21. Macon	33,500
22. Monroe	33,500
23. Jackson	32,800
24. Geneva	32,500
25. Laud'dale	32,500
26. Cullman	31,900
27. DeKalb	31,700
28. Talladega	30,200
29. Blount	30,000
30. Mobile	30,000
31. Butler	29,600
32. Coffee	28,500
33. Franklin	28,500
34. Pickens	27,600
35. Shelby	26,600
36. Colbert	26,500
37. Chambers	26,100
38. Conecuh	25,300
39. Crenshaw	24,100
40. T'caloosa	23,500
41. Russell	23,400
42. Escambia	22,700
43. Autauga	22,400
44. Chilton	21,400
45. Clarke	20,600
46. Marshall	20,600
47. Lee	19,900
48. Etowah	19,900
49. Henry	18,500
50. Jefferson	17,800
51. Clay	17,500
52. Wash'ton	17,400
53. Randolph	16,700
54. Tallapoosa	16,600
55. Choctaw	16,300
56. St. Clair	16,200
57. Dale	16,100
58. Marion	16,100
59. Calhoun	15,200
60. Bibb	15,000
61. Cherokee	13,100
62. Fayette	12,700
63. Lamar	12,200
64. Walker	12,100
65. Winston	12,000
66. Coosa	9,500
67. Cleburne	8,300

Source: Ala. Crop & Livestock Reporting Service

ARTICLE WARNS OF EXPANDING THE IMPEACHMENT POWER

Mr. ERVIN. Mr. President, it is my deep conviction that our Federal judges should be independent of Congress, the executive branch, and one another.

My belief reflects one of the most important aspects of the doctrine of separation of powers between the three branches of our Government—that our Federal judges should serve during good behavior, subject only to impeachment by the House of Representatives and conviction by the Senate as provided for in the Constitution.

Unfortunately, there have been suggestions during the past several years that impeachment might be by-passed, and that Federal judges can be removed from office by a variety of methods, such as a commission of judges or other bodies not ordained by the Constitution.

As Chairman of the Judiciary Subcommittee on Separation of Powers, I have maintained a close watch on these proposals, especially those which were introduced in the form of legislation in the 91st Congress. S. 1506, which died in the last Congress, was an example. I am pleased to say that none of these proposals affecting Federal judges have become law.

During April and May of 1970, the Subcommittee on Separation of Powers conducted extensive hearings on "The Independence of Federal Judges," and the record of those hearings has recently been published by the subcommittee.

Testimony and other materials developed at those hearings indicate that impeachment is the only method of removing Federal judges from office, and there were many warnings of the dangers in a system of removal that would be less demanding than impeachment.

An article published in the October 1970 issue of the Fordham Law Review, "Impeaching Federal Judges: A Study of the Constitutional Provisions," written by John D. Ferrick, has provided a new and thorough study of the impeachment process.

Mr. Ferrick, a member of the New York Bar, pays particular attention in his article to how the impeachment procedure has been used in the past.

He studies closely the 12 impeachments that have been instituted during the history of our country and examines the origins of the impeachment provisions of the Constitution.

Mr. Ferrick concludes his article by saying:

> Impeachment should be resorted to only for cases of the gravest kind. The process of removing should be made as difficult as possible, though not to the extent of leaving the nation powerless to remove an official who betrays his public trust. If there be any doubt as to the gravity of an offense or as to an official's conduct or motives, the doubt should be resolved in his favor. In the author's opinion, this is the necessary price for having an Independent Judiciary and Executive. Tampering with that price by seeking to broaden the impeachment power invites the use of power "as a means of crushing political adversaries or ejecting them from office." Nothing could be more destructive of our system of government.

Mr. President, Mr. Ferrick has performed an excellent service in researching and presenting a very persuasive argument against broadening the impeachment power.

Mr. President, I should like to suggest that Senators read the article, and I ask

unanimous consent that it be printed in the RECORD.

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

IMPEACHING FEDERAL JUDGES: A STUDY OF THE CONSTITUTIONAL PROVISIONS

(By John D. Ferrick*)

I. INTRODUCTION

On April 15, 1970, Republican Leader Gerald R. Ford of Michigan reported to the House of Representatives on a study he had made concerning the law of impeachment and the behavior of Associate Justice William O. Douglas of the United States Supreme Court.[1] His report contained, in substance, five charges against Justice Douglas which, he said, would justify his removal from office. In the first charge, he stated that Justice Douglas voted in favor of Ralph Ginzburg, the editor and publisher of *Fact* magazine, in a libel suit brought against him and the publication by Senator Barry Goldwater.[2] While the case was pending in the lower federal courts, Justice Douglas wrote an article in *Avant Garde*, a Ginzburg publication and the alleged successor to *Fact*, entitled "Appeal of Folk Singing: A Landmark Opinion," for which he was paid three hundred and fifty dollars. The second specification was that Justice Douglas wrote an inflammatory book, *Points of Rebellion*, setting forth the thesis that "violence may be justified and perhaps only revolutionary overthrow of 'the establishment' can save the country." [3] The third allegation was that Justice Douglas allowed excerpts from *Points of Rebellion* to appear in *Evergreen* magazine near nude photographs and a caricature of President Nixon as King George III. As the fourth charge, he cited Justice Douglas' association with Albert Parvin and the Albert Parvin Foundation, in connection with which he allegedly assisted in organizing the Foundation in violation of federal law,[4] gave legal advice to the Foundation on dealing with the Internal Revenue Service, accepted from it an annual salary of twelve thousand dollars, and came in contact with alleged international gamblers. The fifth charge involved Justice Douglas' allegedly close association "with the leftish Center for the Study of Democratic Institutions," a "focal point for organization of militant student unrest."

Concerning the law of impeachment, Representative Ford expressed his conclusion that "an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the [Senate] considers to be sufficiently serious to require removal of the accused from office." [5]

On the same day that this report was delivered, Representative Andrew Jacobs, Jr. of Indiana introduced an impeachment resolution which incorporated all of the foregoing charges.[6] This resolution was referred to the Committee on the Judiciary, which appointed a Special Subcommittee to investigate the charges.[7] At this writing, the Subcommittee's investigation is in progress.[8]

The initiation of impeachment proceedings against Justice Douglas has once again brought into sharp focus the constitutional provisions relating to impeachment, reviving controversies of long standing regarding the meaning of those provisions.[9] Article I of the Constitution provides that the House of Representatives shall have the "sole Power of Impeachment" and that the Senate shall have the "sole Power to try all Impeachments." [10] Article I further provides that "no Person shall be convicted without the concurrence of two-thirds of the members present" and that the judgment "shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law." [11] Article II, Section 2 excludes cases of impeachment from the President's power to grant reprieves and pardons "for offenses against the United States." Article II, Section 4 provides that "[t]he President, Vice President and all civil officers of the United States, shall be removed from Office on Impeachment for, and conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." [12] Article III states that "[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by jury," and also provides that "Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour. . . ."

These provisions give rise to a number of questions: What is an impeachable offense? Is it limited to something which is indictable, or does it embrace acts of a non-indictable nature? If the latter, does it extend to non-official as well as official conduct? Does the "good Behaviour" judicial tenure provision of Article III furnish an independent ground for impeachment in the case of judges?

The purpose of this article is to examine the impeachment provisions of the Constitution: [13] in particular, to trace their common law and colonial antecedents, to explore their development at the Constitutional Convention of 1787, to examine the twelve cases of impeachment in United States history, and to offer an interpretation of the constitutional provisions.[14]

II. DEVELOPMENT OF IMPEACHMENT PROVISIONS

A. Common law antecedents

While the origin of impeachment remains unsettled,[15] the first English impeachments are believed to have occurred during the reign of Edward III (1327–1377).[16] During the early part of this reign, Parliament formally separated into the two houses of Lords and Commons and acquired some of the legislative powers which it has today.[17] In 1376, the House of Commons instituted impeachment proceedings against Richard Lyons and, later that year, against Lords Latimer and Neville.[18] Upon conviction by the House of Lords, Lyons was forbidden to ever hold office, while Latimer was ousted from all his offices.[20] Both public officials and private individuals were subject to impeachment.[21] Conviction in the House of Lords was by majority vote,[22] and there generally was no limitation on the punishment that could be imposed.[23]

From 1376 to 1450, there were a number of cases in which ministers and judges were impeached.[24] Beginning in 1460 and continuing until 1620, impeachment fell into disuse because of the decline in the influence of Parliament. During that interval, bills of attainder were frequently utilized and the great state trials took place in the Star Chamber.[25] Between 1621 and 1787, more than fifty impeachment trials were held.[26] Many of these involved private individuals.

As early as 1388, Parliament employed the impeachment process against the judiciary. In that year Robert Belknap and five other judges were jointly impeached by the Commons for treason in answering "certain questions submitted to them as judges, wrongfully." [27] In convicting them, the Lords apparently thought themselves not bound by the common or civil law as used in the inferior courts, but only by the discussions and precedents of Parliament.[28] Similarly, in 1641 Sir Robert Berkley and others were impeached for high treason and misdemeanors.[29] Berkley, a judge of the King's Bench, was charged with attempting to subvert the laws of the kingdom by traitorous words, opinions, judgments and practices. The articles all concerned on-the-bench conduct.[30] Despite the charges against him, Berkley was tried only for his opinion in the ship money cases,[31] and was convicted by the Lords two years after his impeachment.[32] Twenty-six years later the Commons sought to impeach Lord Chief Justice John Keeling for improperly confining juries which had decided cases against his wishes.[33] After hearing his defense, the House of Commons dismissed the proceedings.[34]

In 1680 there were two instances of futile attempts to remove judges from office. In the first instance Sir Francis North, Chief Justice of the Court of Common Pleas, was charged with assisting in the drafting and passage of "A Proclamation Against Tumultuous Petitions." Although he was impeached, nothing further came of the proceedings.[35] In the second instance, Lord Chief Justice Scroggs and others were impeached by the Commons for discharging a grand jury before it had made its presentments, legislating from the bench, setting improper fines, and other on-the-bench conduct.[36] An answer was filed by Scroggs but the case was never tried, since Parliament was soon afterwards dissolved.

An examination of the principal articles of impeachment in approximately one hundred English impeachment cases, involving both judicial and non-judicial officials, reveals that either "treason" or "high crimes and misdemeanors" was the charge in more than seventy-five percent of such cases.[37] Those cases charging "high crimes and misdemeanors" which resulted in convictions involved acts of a criminal nature, grave misuse of one's official position, or treasonous-like conduct.[38]

The most famous English impeachment proceeding was initiated three days before the Constitutional Convention convened in Philadelphia. On May 11, 1787, the House of Commons impeached Warren Hastings at the bar of the House of Lords for "high crimes and misdemeanors." Hastings had served as Governor-General of India for a period of thirteen years. He "had ruled an extensive and populous country, and made laws and treaties, had sent forth armies, had set up and pulled down princes" [39]—all in his official capacity. The articles of impeachment charged him with mismanagement and misgovernment in India, including acts of extortion, bribery, corruption, confiscation of property, and mistreatment of various provinces.[40] Some of the articles were poorly drafted and were critized for not charging criminal conduct.[41] Notwithstanding this defect, the House of Commons instructed Edmund Burke, who had vowed in 1783 to bring Hastings "to justice," [42] to impeach him "at the bar of the House of Lords." [43] The trial began in 1788 [44] and resulted in an acquittal on all charges in 1795.[45]

Impeachment, however, was only one of several procedures which were available at the common law for removing judges.[46] From the earliest days, judges were appointed by the Crown and given "patents" which fixed their terms.[47] The usual term was *durante bene placito, i.e.*, at the pleasure of the Crown.[48] This term expired on the death of the king.[49] Because of their method of appointment and uncertain tenure, their loyalty was to the Crown. Henry VII (1485–1509) is said to have boasted to the effect that he ruled England with his laws, and his laws with his judges.[50]

Since a judge's tenure was dependent upon the pleasure of the Crown, his removal was quite simple: [51] The king had merely to revoke his patent.[52] This was done on a number of occasions when a judge's actions displeased the Crown. Thus, for example, in 1616 Sir Edward Coke was dismissed by James I because of his stand in favor of the independence of the judiciary and the rule of law.[53] In 1628, Charles I sought to remove Sir John Walter, Chief Judge of the Exchequer, for his opinion that no criminal proceeding could be brought against a member of Parliament for an act done in either House.

Footnotes at end of article.

Claiming that his patent was for good behavior and not at the pleasure of the Crown, Judge Walter resisted the king's efforts to remove him and demanded a *scire facias* in court to determine his right to continue in office.[54] Charles chose instead to prohibit the judge from sitting in court.[55]

Removal by the Crown continued until the eighteenth century. Finally, in 1701, Parliament passed the Act of Settlement which provided that "judges' commissions be made *quamdiu se bene gesserint* [during good behavior], and their salaries ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them." [56]

After their tenure was changed to "good behavior," judges no longer were removable at the king's will or fancy.[57] "Address" by both Houses of Parliament was established as a means of removal.[58] It could be employed for practically any reason whatsoever, which meant that its use depended on the conscience of Parliament.[59] However, unlike impeachment, address was not used in the period between 1701 and 1787.[60]

B. Colonial Antecedents

1. Pre-1776

During colonial America, executive and judicial officials usually served for an uncertain term. In the royal colonies governors were appointed by the Crown, and in the proprietary colonies by the proprietor (subject to ratification by the Crown after the seventeenth century). Both royal and proprietary governors served at the pleasure of the appointing authority. They received a commission, which was a formal but brief statement of their authority, from the Crown or proprietor. The manner in which they executed that authority was delineated in another document known as the "instructions." [61] There are a number of instances during colonial America of governors being recalled for disobedience or inefficiency, or because of politics or patronage in England.[62]

Judges, on the other hand, were in some cases commissioned in England, and in other instances appointed by the governors under authority contained in the instructions.[63] During most of the colonial period these instructions were ambiguous as to the tenure which judges were to enjoy. They directed the governors not to express "any limitation of time" in any judicial commissions, apparently to protect the judges from arbitrary removal by the governors.[64] It was not clear, however, whether the expression "no limitation of time" meant during good behavior or during the pleasure of the Crown. Up until the first third of the eighteenth century governors construed the expression, and so issued judicial commissions, as meaning during the Crown's pleasure.[65] A number of cases then occurred in which governors issued commissions to judges during good behavior.[66] As a result, in 1752 the authorities in England revised the instructions to the governors, making it clear that judicial commissions were to be issued during the pleasure of the Crown.[67] What followed was a period of strife in some of the colonies, involving the authorities in England, governors, and the colonial legislative bodies. Some legislatures refused to appropriate funds for the payment of judges' salaries unless they were issued commissions during good behavior. This put governors in a difficult position, because to issue such commissions they had to violate the terms of their instructions.[68] The British position on tenure, however, ultimately prevailed until the American Revolution.

That judges were rendered insecure in their positions was listed in the Declaration of Independence as one of the ways by which the king sought to establish an absolute tyranny over the states: "He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."

2. 1776–1787

The first state constitutions which were adopted drew on the common law traditions and the experience of a century and a half of colonial government. Provision was made in each state for a chief executive, a legislature and a judiciary.[69] A bicameral legislature existed in all but two of the states.[70] In eight states the executive was chosen by the legislature,[71] and in most states his term of office was limited to one year. Regarding the judiciary, a number of constitutions contained provisions providing that certain judges held office during good behavior.[72]

Almost all of the early state constitutions contained provisions for impeachment of officials, although the grounds for impeachment varied. Some state constitutions authorized impeachment where the safety of the state was "endangered" by "mal-administration, corruption or other means." [73] Other constitutions authorized impeachment for "misconduct and mal-administration" in office,[74] "mal and corrupt conduct" in office,[75] "misbehavior," [76] "mal-administration," [77] and "misdemeanor or default." [78] In most states the lower house of the legislature was empowered to institute impeachment proceedings.[79]

The forum for trying impeachment proceedings varied. In some states the trial was by the upper house of the legislature; [80] in others, by the judiciary; [81] and in still others, by a combination of these forums.[82] Some state constitutions specified the punishment on impeachment to be removal from office and disqualification from holding office in the future, with the provision that the officer was also subject to indictment and other penalties imposed by law.[83] Additionally, some constitutions provided that the chief executive could not grant a pardon in cases of impeachment.[84] Aside from impeachment, a number of state constitutions also provided, in the case of judges, for the British system of removal by the address of the legislature.[85]

At the national level, the Articles of Confederation, which had become effective in 1781, constituted the basic charter of government. It provided for a Congress in which each state had one vote, with the assent of nine being required for important decisions. The Articles severely limited the powers of Congress and completely failed to provide for a national judiciary or chief executive.[86] Nowhere did it contain any impeachment provisions.

C. Constitutional Convention of 1787

The debates at the Constitutional Convention of 1787 clearly reveal that the delegates were familiar with the colonial charters, early state constitutions, and common law traditions and precedents, and were knowledgeable in the various forms of government. This background particularly influenced them in formulating the impeachment provisions of the Constitution.

On May 29, 1787, four days after the Convention opened, Edmund Randolph of Virginia presented the fifteen resolutions of his state's plan, commonly known as the Virginia Plan. This plan, largely the handiwork of James Madison, called for the creation of a strong national government consisting of an executive, a two-house legislature, and a judiciary. The executive, whose term was not specified, was to be elected by the national legislature and was not to be eligible for re-election. The judiciary was to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the national legislature, to hold their offices during "good behavior." [87] It was to have jurisdiction of, *inter alia*, "impeachments of any national officers. . . ." [88] The Virginia Plan, however, did not specify any grounds for impeachment.

On the same day that the Virginia Plan was introduced, Charles Pinckney of South Carolina proposed his plan of government. Although the original of his plan has never been located, it is believed to have provided for a tripartite system of government. The power of impeachment was lodged in the lower house of the legislature and the trial was assigned to the federal judiciary.[89]

On May 30, the Convention resolved itself into a Committee of the Whole to discuss the Virginia Plan point by point. On the following day a discussion ensued as to the executive article of the Virginia Plan. During this discussion Gunning Bedford, Jr., of Delaware, opposed a long term, stating that a chief executive might prove to be incapable of discharging his duties. "An impeachment . . . would be no cure for this evil, as an impeachment would reach misfeasance only, not incapacity." [90] Randolph felt a plural executive was desirable in part because one "can not [*sic*] be impeached until the expiration of his Office, or he will be dependent on the Legislature. . . ." [91]

On June 2, John Dickinson of Delaware proposed that the executive be made removable by the national legislature on the request of a majority of the legislatures of the individual states.[92] He said that "he did not like the plan of impeaching the Great Officers of State." George Mason of Virginia observed that "[s]ome mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corruptibility of the man chosen." [93] Wilson and Madison objected to Dickinson's proposal, declaring that "it would enable a minority of the people to prevent [the] removal of an officer who had rendered himself justly criminal in the eyes of a majority. . . ." [94] Hugh Williamson of North Carolina then moved to add to the executive article the words "to be removeable [*sic*] on impeachment and conviction of mal-practice or neglect of duty. . . ." [95] This motion, seconded by William R. Davie of North Carolina, carried.

During the next week, the delegates devoted some time to the judicial article. James Wilson of Pennsylvania suggested that judges be appointed by the President. Madison, however, felt that appointment should be by the Senate. On June 13, Randolph and Madison successfully moved the adoption of a resolution which placed "impeachments of any national officers" within the jurisdiction of the judiciary.[96] That same day the Committee reported out the Virginia Plan, as amended. Among other things, it provided that the chief executive was to be elected by the national legislature for a seven year term, and that judges were to be appointed by the upper house and to hold their term during good behavior. The impeachment provisions consisted of those agreed to on June 2, and earlier on June 13.

On June 14, discussion of the Virginia Plan was postponed at the request of William Patterson of New Jersey. On the following day Patterson presented nine resolutions (the New Jersey Plan), under which there was to be a unicameral legislature (in which each state was to have one vote), a supreme court, and a plural executive elected by Congress. The executive was to be removable by Congress on application by a majority of the state executives and was not to be eligible for another term. The Supreme Court was to be appointed by the President, to hold their offices during good behavior, and "to hear & determine in the first instance on all impeachments of federal officers. . . ." [97]

Three days later Alexander Hamilton presented a sketch of his plan of government, which was patterned after the British Government. "[H]e had no scruple in declaring . . . that the British Govt. was the best in the world: and that he doubted much whether any thing short of it would do in America." [98] Under Hamilton's Plan, the chief executive, senators, and judges were to serve

Footnotes at end of article.

during good behavior. The chief executive, senators and "all officers of the United States [were] to be liable to impeachment for mal- and corrupt conduct; and upon conviction to be removed from office, & disqualified for holding any place of trust or profit . . . ." [99] Impeachments were to be tried by a court the composition of which is not clear.[100]

On June 19, after considering the Patterson resolutions, the Committee of the Whole reaffirmed its action on the Virginia Plan. The subject of impeachment did not come up again at the Convention until July 18, during a discussion on the method of appointing judges. During the debate, Mason observed that the method might depend on the mode of trying impeachments of the executive, since if the judges try impeachment, they ought not be appointed by the executive.[101] Gouverneur Morris of Pennsylvania suggested that a trial of a President's impeachment by the judiciary would likely involve intrigue between the legislative branch and the judges, thereby frustrating an impartial trial. At some point during the debate it was unanimously agreed to strike out of the judicial resolution the words "impeachments of national Officers." [102]

On July 20, the delegates engaged in an extensive debate as to whether the President should be subject to impeachment. Pinckney and Morris moved to eliminate from the amended Virginia Plan the clause providing for the President's removal. In opposition, Mason argued that impeachment was necessary. "When great crimes were committed he was for punishing the principal as well as the Coadjutors." [103] Davie, Franklin, Madison, Gerry, Randolph and Wilson were also of the view that impeachment was necessary. Davie considered it "an essential security for the good behaviour of the Executive." [104] In Franklin's opinion, history showed that where there has been no means of removal of an executive, there has been recourse to assassinations.[105] Madison stated that it was "indispensable that some provision should be made for defending the Community [against] the incapacity, negligence or perfidy of the chief Magistrate." [106] Madison remarked that the President "might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers." [107] "In the case of the Executive Magistracy," said Madison, "loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic." [108] Said Randolph: "Guilt wherever found ought to be punished. The Executive will have great opportunitys of abusing his power; particularly in time of war when the military force, and in some respects the public money, will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections." [109] King expressed the opinion that impeachment was not appropriate in the case of an officer who served for a fixed term. It was appropriate, he said, in the case of the judiciary, since they hold their offices during good behavior. He stated that "[i]t is necessary therefore that a forum should be established for trying misbehaviour." [110] King added that since the President was to serve for a limited term, he would periodically be tried for his behavior by his electors" and "he ought to be subject to no intermediate trial, by impeachment." [111] Near the end of the debate Morris changed his view and argued for impeachment, asserting that it was necessary for cases of bribery, treachery, corruption and incapacity.[112] Following the debate the Convention, by a vote of eight to two, agreed to the clause providing for the President's removal for "malpractice or neglect of duty." [113]

On July 23, a Committee of Detail was organized to prepare and report a Constitution in conformance with the proceedings held up until that time.[114] On July 24, the Committee of the Whole was discharged and the various plans of government were referred to the Committee of Detail; on July 26, the Convention reaffirmed the provision that the President shall be "removable on impeachment and conviction of malpractice or neglect of duty;" [115] and on July 27, the Convention adjourned so that the Committee of Detail could draft its report.

The Committee presented its report on August 6. Article IV of its report provided that the House of Representatives "shall have the sole power of impeachment." [116] Article X, the executive article, provided that the President "shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption." [117] Article XI, the judicial article, gave the Supreme Court original jurisdiction of "the trial of impeachments of Officers of the United States . . ." [118]

The Committee's report was the subject of discussion for the next five weeks. On August 9, the Convention agreed to the clause giving the House the sole power of impeachment.[119] On August 20, a number of resolutions concerning the organization of the executive branch were proposed by Gouverneur Morris and Charles Pinckney, and referred to the Committee of Detail. These resolutions called for the appointment of various executive officers who were to "be liable to impeachment and removal from office for neglect of duty malversation, [*sic*] or corruption." [120] Gerry then moved that the Committee devise a method for trying judges in cases of impeachment. Two days later the Committee returned with the following addition to the good behavior provision of Article XI, Section 2: "The Judges of the Supreme Court shall be triable by the Senate, on impeachment by the House of Representatives . . ." [121]

On August 25, the Convention adopted a provision excluding cases of impeachment from the President's power to grant reprieves and pardons.[122] On August 27, the Convention postponed consideration of the impeachment provision at the request of Gouverneur Morris, who thought that the Supreme Court was an improper tribunal "particularly, if the first judge was to be of the [P]rivy Council." [123] Dickinson then moved to add, after the good behavior provision in the judicial article, the following qualification: "[P]rovided that they may be removed by the Executive on the application [of] the Senate and House of Representatives." [124] Gerry seconded the motion. Morris argued against it, on the theory that it was contradictory to "say that the Judges should hold their offices during good behavior and yet be [removable] without a trial." In his opinion, "It was fundamentally wrong to subject Judges to so arbitrary an authority." Sherman disagreed, noting that a similar provision was contained in the British statutes. He felt that there was no impropriety if the provisions "were made part of the Constitutional regulation of the Judiciary establishment." [125] Wilson remarked that such a provision was less dangerous in the British statutes because it was unlikely that the House of Lords and House of Commons would concur on the same occasions. "The Judges would be in a bad situation," in Wilson's view, "if made to depend on every gust of faction which might prevail in the two branches of our [Government]." [126] Rutledge and Randolph also noted their objections to the provision. Randolph felt that it weakens "too much the independence of the Judges." [127] On the motion, only the state of Connecticut voted for it. It was opposed by seven states.

On the following day the Convention adopted the provision that the judgment in cases of impeachment would not extend further than to removal from office and disqualification to hold office in the future.[128] On August 31, a number of matters were referred to a Committee of Eleven which was commissioned to report on those parts of the Constitution that had been postponed or not acted upon. On September 4, David Brearley of New Hampshire, the chairman of the Committee, presented a partial report.[129] Among other things, this report called for the creation of an office of Vice President and proposed an electoral college method of electing the President. In the area of impeachment, it provided that the Senate would have the power to try all impeachments, with a two-thirds vote required for conviction. The Vice-President was to be *ex offico* President of the Senate, except when the President was tried, in which event the Chief Justice was to preside. The grounds for conviction of the President were limited to "treason or bribery."

In presenting his own and the Committee's reasons for the creation of the electoral college, Morris stated that it was difficult to find a body other than the Senate to try impeachment cases. [130] He thought that "[a] conclusive reason for making the Senate instead of the Supreme Court the Judge of impeachments, was that the latter was to try the President after the trial of the impeachment." [131]

On September 8, the impeachment provisions were taken up by the Convention. Mason opened the discussion by questioning the limitation of impeachment to cases of treason and bribery. He felt that "[t]reason as defined in the Constitution [would] not reach many great and dangerous offenses." He further was of the opinion that "[a]ttempts to subvert the Constitution [might] not be Treason as . . . defined" and that, since "bills of attainder . . . are forbidden," the power of impeachment should be extended.[132] Mason then moved to add "maladministration" as a ground for impeachment. Gerry seconded the motion. Madison objected that "[s]o vague a term will be equivalent to a tenure during pleasure of the Senate." Mason thereupon withdrew the expression and substituted "other high Crimes & Misdemeanors against the State." [133] The motion carried without any discussion of the new phrase The expression "against the State" was immediately changed to "against the United States."

Madison then directed his attention to the Senate as the forum for trying impeachments. He objected to this forum because the President "was to be impeached by the other branch of the Legislature, and for any act which might be called a misdemeasnor [sic]." [134] Under these circumstances, he said, the President was made "improperly dependent." Madison suggested the Supreme Court as either the forum or part of a forum. Gouverneur Morris argued for the Senate, believing that "there could be no danger that the Senate would say untruly on their oaths that the President was guilty of crimes. . . ." The Supreme Court, he thought, "might be warped or corrupted." [135] Pinckney also spoke out against the Senate, stating that its use would make the President too dependent upon the legislature. Williamson, on the other hand, felt the Senate would be too lenient because of its sharing of various powers with the President, while Roger Sherman of Connecticut asserted that the Supreme Court was improper because the President appointed its members.[136] Madison's motion to eliminate the Senate was decisively rejected. The Convention then added to the impeachment provision that "'[t]he vice-President and other Civil officers of the U.S. shall be removed from office on impeachment and conviction as aforesaid.'" [137] Another addition was that the Senate would take an oath in an impeachment case.

A committee was then formed to revise the style of and arrange the articles, but without power to effect substantive changes. On September 12, the Committee returned a draft

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which, except for a few changes, was to become the Constitution.[138] One change made was the elimination of the words "against the United States" from the "high Crimes and Misdemeanors" expression. On September 14, Rutledge and Morris moved to amend the impeachment provisions to require that "persons impeached be suspended from their office until they be tried and acquitted."[139] Madison objected on the grounds that this would make the President even more dependent upon the legislature, since one branch would be able to effect his temporary removal. The motion was defeated by a vote of eight to three.[140] Three days later the Constitution was signed with the impeachment provisions as they stand today.

D. Ratifying Conventions

Post-Convention discussion of the impeachment provisions was not extensive. One of the principal references in *The Federalist* occurs in number seventy-nine where, in commenting on the provision dealing with the compensation for judges, Hamilton stated:

"The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for malconduct by the House of Representatives, and tried by the Senate; and, if convicted, may be dismissed from office, and disqualified for holding any other. This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find in our Constitution in respect to our own judges.

"The want of a provision for removing the judges on account of inability has been a subject of complaint. But all considerate men will be sensible that such a provision would either not be practiced upon or would be more liable to abuse than calculated to answer any good purpose. The mensuration of the faculties of the mind has, I believe, no place in the catalogue of known arts. An attempt to fix the boundary between the regions of ability and inability, would much oftener give scope to personal and party attachments and enmities than advance the interests of justice or the public good. The result, except in the case of insanity, must for the most part be arbitrary; and insanity, without any formal or express provision, may be safely pronounced to be a virtual disqualification.[141] "

In *The Federalist* number sixty-five, where Hamilton gave the reasons for the Senate being chosen as the forum for trying impeachments, he stated:

"The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.[142] "

Hamilton went on to say that in England and in several states, the practice of impeachments was regarded "as a bridle in the hands of the legislative body upon the executive servants of the government."[143]

The impeachment provisions received some attention in the state ratifying conventions. Much of it centered on whether the Senate would convict persons to whose appointment it had consented, whether members of Congress were impeachable, whether the states could impeach state officers, and on the desirability of lodging the power of impeachment in the Congress. Some statements were made, however, which give a clue as to the understanding of the farmers. In the Virginia ratifying convention, Edmund Randolph declared that "[i]n England, those subjects which produce impeachments are not opinions. . . . It would be impossible to discover whether the error in opinion resulted from a willful mistake of the heart, or an involuntary fault of the head."[144] In North Carolina, Governor Samuel Johnston, who was to become the state's first Senator, asserted that "[i]mpeachment only extends to high crimes and misdemeanors in a *public office*. It is a mode of trial pointed out for great misdemeanors against the public."[145] William MacLaine observed that members of Congress, while not impeachable, were "amenable to the law for crimes and misdemeanors committed as individuals."[146] James Iredell, the principal advocate of ratification in his state, stated that the power of impeachment was designed "to bring great offenders to punishment." "It is calculated," he said, "to bring them to punishment for crime which it is not easy to describe, but which everyone must be convinced is a high crime and misdemeanor against the government. . . . [T]he occasion for its exercise will arise from acts of great injury to the community, and the objects of it may be such as cannot be easily reached by an ordinary tribunal."[147] He also noted that an official who is impeached might be liable for common law punishment if the offense "be punishable by that law."[148]

In the First Congress, during a debate regarding the advisability of empowering the President to remove public officers, Madison stated:

"The danger, then, consists in this: The President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power and the restraints that operate to prevent it? In the first place, he will be impeachable by this House before the Senate for such an act of maladministration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust."[149]

III. History of American Impeachment

In the 181-year history of the United States, there have been only twelve cases of impeachment at the federal level.[150] Eleven of these resulted in Senate trials, but only four ultimately resulted in conviction and removal. Among those impeached have been a President, a Senator, a Supreme Court Justice, a Cabinet member, a federal circuit court of appeals judge, and seven federal district court judges. An account of these impeachments follows. Since a proper understanding of the precedents, particularly the significance of the votes, is not possible without reference to the precise nature of the articles of impeachment themselves, the articles are summarized in detail in this section.

A. William Blount

On July 3, 1797, the United States House of Representatives received a confidential message from President John Adams regarding the conduct of William Blount, then a Senator from Tennessee and a former delegate to the Continental Congress and the Constitutional Convention. On July 7, the House resolved to bring impeachment proceedings against him, and on the following day he was expelled from the Senate.[151]

The articles of impeachment were presented to the Senate on February 7, 1798. They alleged "high crimes and misdemeanors," specifically charging that, while Spain and England were at war, he conspired to transfer to Great Britain property belonging to Spain in Florida and Louisiana, thereby violating America's neutrality and the laws of the United States; that he caused tribes of Indians in the United States to commence hostilities against the subjects of Spain; that he conspired in violation of law to undermine the confidence of Indian tribes in an official agent of the United States appointed to reside among them; that he attempted to seduce another official from his duty; and that he attempted to foment certain tribes to disaffection toward the United States.[152]

In December, 1798, Blount attacked the jurisdiction of the Senate to try him. He contended that a Senator was not a civil officer within the meaning of the Constitution, and that even if he had been a civil officer, he lost that status when he was expelled from the Senate.[153] An extensive debate on the point followed. Finally, the Senate rejected, by a vote of fourteen to eleven, a proposed resolution overruling Blount's plea. The Senate then decided, by the same vote, to dismiss, finding that Blount's plea to its jurisdiction was sufficient.[154] Its decision has established the precedent that Senators are not impeachable.[155]

B. John Pickering

In February, 1803, the House of Representatives received from President Thomas Jefferson a message, together with certain evidence, regarding the conduct of John Pickering, a United States district court judge in New Hampshire. This launched, it is generally believed, an attempt by Jefferson to remove Federalist judges from the bench and replace them with Democratic-Republican judges.[156]

On March 2, following a committee's recommendation, the House voted, forty-five to eight, to impeach Pickering for "high Crimes and misdemeanors."[157] Four articles of impeachment were presented in the Senate on January 4, 1804. The first three referred to conduct committed in violation of law during a suit by the government to condemn a ship and its cargo. Specifically, it was alleged that, with intent to evade an Act of Congress, he returned a lawfully seized vessel to its owner without obtaining a bond for the value of the ship and a certificate from its owner showing that all duties had been paid as required by the Act; that he wrongfully refused to hear government testimony; and that "wickedly" intending to violate the law, he refused the United States Attorney's claim for an appeal from his decision. Article four charged that he was intoxicated and used profanity on the beach.[158]

Pickering did not answer the charges. His son, however, petitioned the Senate to accept evidence of his father's insanity.[159] This request was strongly opposed by some Senators, who apparently felt that if he were found insane the Senate would not be able to find him guilty of "high Crimes and misdemeanors."[160] After some debate, evidence was finally admitted as to the judge's possible insanity.[161] At the trial, the Managers appointed by the House of Representatives produced evidence consisting mainly of depositions of witnesses, transcripts of proceedings in Judge Pickering's court, and recitals of the laws he was said to have violated.[162] Testimony was received as to his habitual intoxication[163] but, since Pickering did not appear either in person or by counsel, there was no cross-examination of witnesses. One of the more heated discussions involved the form of the question to be voted upon by the Senate. The first form proposed was: "Is John Pickering, district judge of the district of New Hampshire, guilty of high crimes and misdemeanors upon the charges contained in the—article of impeachment, or not guilty?"[164] This form, it was said, was similar to that used in the Hastings trial and would best "collect the sense of the Court."[165] A second proposal amounted to striking out the words "high Crimes and misdemeanors." After a closed-session debate, the second proposal was adopted.

Senator Alexander White of Virginia strongly objected to this form.

He argued that to remove a judge without a judgment that the acts constituted high crimes and misdemeanors would destroy the

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"good Behaviour" provision and place judges at the mercy of a majority of Congress.[166] When it became clear that the form would not be changed, some Senators walked out "because they did not choose to be compelled to give so solemn a vote upon a form of question which they considered an unfair one . . . ."[167]

The vote was taken on the form adopted and, on each article, Pickering was found guilty by a vote of nineteen to seven. A final question was put as to whether he should be removed from office. This question was answered affirmatively by a vote of twenty to six.[168]

C. Samuel Chase

Two months prior to Pickering's conviction, Representative John Randolph of Virginia offered a resolution calling for an investigation of the official conduct of Associate Justice Samuel Chase, a Federalist appointee to the Supreme Court whose views were anathema to the Democratic-Republicans.[169] Randolph made a statement of charges against Chase, to which strong objection was made on the grounds that, even if true, they amounted only to errors in judgment. It was contended that the charges did not justify such an investigation. The House decided to investigate[170] and, on March 12, 1804, it agreed to a resolution impeaching Chase. Interestingly, this was the same day that the Senate convicted Pickering.

Eight articles of impeachment were brought against Chase. The first six concerned his actions at the treason and sedition trials of John Fries and James T. Callender,[171] while the last two involved addresses he delivered to grand juries.[172] Article one charged that he violated his obligations of office, conducting himself during the Fries trial in an oppressive and unjust manner by depriving Fries of certain constitutional rights. Article two charged that in order to assure the convictions of Callender, who was accused of libeling President Adams, he allowed a juror to serve knowing that the juror had made up his mind prior to the trial. The third charged that, with intent to insure Callender's conviction, he refused to admit certain evidence offered by the defense. Article four charged him with a number of unjust trial practices, allegedly designed to prejudice the rights of Callender. Article five charged that, contrary to law, he ordered the arrest of Callender, who had been indicted for a non-capital offense, when only a summons should have been issued. The sixth article charged that Callender came before him and was ordered to trial during the same term, contrary to a law which provided that in non-capital cases the accused need not answer until the next term of court. The seventh article charged Justice Chase with improper suggestions to a grand jury concerning the conduct of a certain Delaware printer whom he had characterized as "seditious." The final article charged that he delivered an intemperate harangue to a grand jury with intent to excite resentment against the government.

Chase was defended at the trial by Luther Martin, a former delegate to the Constitutional Convention. At the trial the House Managers argued that mere misbehavior, if proven, would suffice to remove a judge. Martin strongly disagreed, stating that under the Constitution an officer could be impeached only for indictable offenses, and that no such offenses were involved in the case at bar.[173]

In voting on the articles of impeachment, the form of question put to each Senator was as follows: "Mr. —, how say you; is the respondent, Samuel Chase, guilty or not guilty of a high crime or misdemeanor, as charged in the — article of impeachment?"[174] On March 1, 1805, Justice Chase was found not guilty on each charge.[175] His acquittal has been viewed as a precedent that judges cannot be removed for political reasons or mere misbehavior, but only for the "gravest cause."[176]

D. James H. Peck

On April 22, 1830, James H. Peck, a federal district court judge in Missouri, was impeached by the House. He was charged in a single article with "high misdemeanors in office."[177] It was alleged that, under the color of law and his office, he wrongfully convicted and punished an attorney for contempt. The attorney's only offense was publication of a mildly critical reply to an article recently written by the judge, which attempted to justify the judge's decision in a case that was presently on appeal. The House noted in the charges that the acts alleged were willful, unjust, and committed in an official capacity.[178]

In January, 1831, the Managers appointed by the House commenced their arguments. Their primary contention was that impeachment should not be limited to indictable offenses. Propounding his views on the nature of impeachable offenses. Representative Ambrose Spencer of New York argued:

"A judicial misdemeanor consists, in my opinion, in doing an illegal act, colore officii, with bad motives, or in doing an act within the competency of the court or judge in some cases, but unwarranted in a particular case from the facts existing in that case, with bad motives.[179]

James Buchanan, who later was to become the fourteenth President, argued that misbehavior was a ground for impeachment—apparently conceding during his argument that to be impeachable the offenses must be committed in one's official capacity.[180] In contrast, counsel for Peck argued that mere mistake of law, without wrongful intent, does not constitute a high crime or misdemeanor, and that it would be absurd to hold a judge answerable for an error in judgment. He asserted that intent was a necessary element in any finding of impeachable conduct, and that such intent was lacking in Peck's case because his acts were within the purview of his official power.[181]

On January 31, 1831, the following question was put to each of the Senators in alphabetical order: "Mr. Senator ———: What say you: Is James H. Peck, judge of the district court of the United States for the district of Missouri, guilty or not guilty of the high misdemeanor charged in the article of impeachment exhibited against him by the House of Representatives?"[182]

The vote on the question thus phrased was twenty-one in favor of conviction and twenty-two opposed.[183] Peck was therefore acquitted.

E. West H. Humphreys

Early in 1861, West H. Humphreys, United States district court judge in Tennessee, ceased holding court and commenced acting as a judge for the Confederacy. On January 8, 1862, a resolution was introduced and agreed to in the House of Representatives authorizing a committee to inquire into his conduct.[184] Two months later the committee submitted its report, in which it recommended impeachment proceedings. Subsequently, seven articles of impeachment alleging "high crimes and misdemeanors"[185] were presented against him.

The first article charged that, in violation of his oath and duties, he endeavored to incite revolt and rebellion against the government by publicly declaring that it was the right of the people, by an ordinance of secession, to absolve themselves from all allegiance to the United States government, the Constitution, and the laws thereof. Article two alleged that, with "intent to abuse" the trust reposed in him and to "subvert the lawful authority and Government of the United States," he unlawfully agreed to an ordinance of secession "with other evil-minded persons." The third article charged that, in conjunction with other persons, he "unlawfully" organized armed rebellion and levied war against the United States. In the fourth article, he was accused of conspiring with Jefferson Davis and others to oppose the United States government by force. The fifth charged that, in disregard of his duties and with intent to aid and abet the overthrow of the government, he refused to hold court as required. Article six claimed that, with "intent to subvert the authority of the Government," he unlawfully acted as a Confederate court judge.[186] Article seven alleged that, while assuming to act as a Confederate judge and "without lawful authority, and with intent to injure," he caused the unlawful arrest of a United States citizen, one William G. Brownlow.

After hearing the articles, the Senate decided that a summons should issue directing Humphreys to answer the charges. The summons was issued and, on the return day, the Senate convened as a high court for the trial. Humphreys did not appear on that day or on the adjourned day. Consequently, the trial proceeded ex parte. Witnesses were called and examined but since Humphreys was not represented, there was no cross-examination.[187] At the conclusion of the Managers' presentation, the following question was put to the Senate: "Is the accused, West H. Humphreys, guilty or not guilty of the high crimes and misdemeanors as charged in this article of impeachment?"[188]

Humphreys was found guilty by the requisite two-thirds vote on all the charges, except those in specification two of article six.[189] A resolution was then passed removing him from office and disqualifying him from holding any office of trust, honor or profit under the United States.

F. Andrew Johnson

Following his succession to the Presidency on April 15, 1865, Andrew Johnson became the protagonist in a bitter struggle between the executive and legislative branches of government over Reconstruction.[190] While the specifics leading to his eventual impeachment are numerous,[191] the Tenure of Office Act seems to have served as the catalyst. The ostensible purpose of the Act was to prohibit presidential appointments after the Senate had adjourned, while the intent of its sponsors was to strip the President of the power to remove Republicans from their appointed offices.[192] The Act forbade presidential removal of officials named by the President without his first obtaining the Senate's consent.[193] Johnson and his Cabinet felt the Act was unconstitutional,[194] and he therefore vetoed it. Despite his veto, the Act secured the two-thirds vote necessary for passage, thereby setting the stage for the drama that followed.[195] With a hostile Congress anxious to impeach Johnson, Stanton was informed of his dismissal in a letter from the President.[196]

On February 21, 1868, Stanton informed the House of Representatives of his removal and the appointment of Lorenzo Thomas, Adjutant-General of the Army, as Secretary of War *ad interim*.[197] That same day John Covode offered a resolution in the House that Johnson be impeached.[198] The Senate, after a seven hour deliberation, adopted a resolution finding that the removal was without authority,[199] and Stanton barricaded himself in his office. On February 22, Representative Thaddeus Stevens of Pennsylvania introduced in the House a resolution that "Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors."[200] After some discussion the vote was taken and the President was impeached by a vote of one hundred and twenty-six to forty-seven.[201] A House committee then drafted nine articles against Johnson. The first article charged that the removal of Stanton was unlawful as an intentional vio-

Footnotes at end of article.

lation of the Constitution and Tenure Act. The second charged that the letter appointing Thomas was an intentional violation of the Constitution and of the Tenure Act. Article three alleged Thomas' appointment was a violation of the Constitution. Articles four through eight, referred to as the "Conspiracy Articles," also pertained to Stanton's removal. The fourth charged a conspiracy with Thomas and others to prevent Stanton from holding office, in violation of the Constitution. Article five accused the same persons of conspiracy to prevent the execution of the Tenure Act by attempting to remove Stanton. The sixth alleged conspiracy to forcibly take the property of the United States at the War Department. Article seven charged conspiracy to prevent Stanton from holding office, in violation of the Tenure Act. Article eight charged conspiracy to seize United States property, also in violation of the Tenure Act. Finally, article nine concerned a statute requiring all orders to pass through a General of the Army. Johnson had stated that the statute was unconstitutional and, accordingly, generals of lesser rank should take orders directly from him.[202]

Unsatisfied with these articles, Representative Benjamin Butler offered a tenth "to clothe that bone and sinew with flesh and blood and to show him [Johnson] . . . as the quivering sinner that he is . . . ." [203] Butler's article charged that Johnson intending to bring the United States Congress into "disgrace, ridicule, hatred, contempt and reproach," did openly and publicly declare "with a loud voice, certain intemperate, inflammatory and scandalous harangues" against Congress and its laws, "amid the cries, jeers and laughter of the multitudes then assembled in hearing." [204]

Stevens conceived an eleventh article as a catch-all, explaining: "If my article is inserted, what chance has Andrew Johnson to escape?" [205] Representative John A. Bingham of Ohio introduced that article, which dealt with a speech of August 18, 1866, in which Johnson was alleged to have declared that the thirty-ninth Congress was not a Congress of the United States authorized to exercise legislative powers, but only a congress of part of the states, and that its legislation was not binding upon him. The article stated that in pursuance of this declaration and in violation of his oath of office, Johnson attempted to prevent the execution of the Tenure Act and two other statutes, such being a high misdemeanor in office.[206]

Johnson's trial opened on March 5, 1868, with Chief Justice Salmon P. Chase administering to each senator an oath that he would do "impartial justice, according to the Constitution and laws." [207] At the outset of the trial, the Managers defined an impeachable crime or misdemeanor as:

"[O]ne in its nature or consequences subsersive [sic] of some fundamental or essential principle of government, or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives, or for any improper purpose." [208]

Butler, admitting this definition exceeded the common law definition, cited the 1388 English impeachment of Belknap and the other judges for the proposition that the Senate was bound by no law, being a law unto itself and "bound only by the natural principles of equity and justice." [209]

President Johnson never once appeared at the trial, but left the defense to an able team of attorneys.[210] Benjamin Curtis, a former Justice of the Supreme Court, opened his defense by seeking to demonstrate that Stanton's removal was not within the sweep of the Tenure Act.[211] In answer to the Managers' claim that the Senate was a law unto itself in convicting for a high crime or misdemeanor, Curtis paraphrased the constitutional provisions on impeachment and concluded:

"[I]t is impossible to come to the conclusion that the Constitution of the United States has not designated impeachment offenses as offenses against the United States. It has provided for the trial . . . established a tribunal for . . . trying them . . . directed the tribunal . . . to pronounce a judgment and to inflict a punishment, and yet the honorable manager tells us that this is not a court, and that it is bound by no law.[212]"

Curtis argued that if every senator was a law unto himself, able to declare an act criminal after its commission, the constitutional prohibition against *ex post facto* laws would be violated. Comparing the Managers' argument to a bill of attainder, he asked: "Of what use would be [the] prohibition in the Constitution against passing bills of attainder if it is only necessary for the House of Representatives, by a majority, to vote articles of impeachment, and for two-thirds of the Senate to sustain the articles?" [213] Curtis declared that it was the duty of the Senate, having taken an oath to apply the law according to the Constitution, to find that a law existed, construe and apply it to the case, and find criminal intention to break it before it could convict on any article.[214]

On Saturday, May 16, 1868, the Senate met to vote on the articles. The eleventh article was to be voted upon first, after which the first ten articles were to be considered.[215] After the clerk had read the eleventh article, the Chief Justice inquired of each senator as he responded to the calling of the roll: "Mr. Senator—how say you? Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor, as charged in this article?" [216]

The result of this historic vote was thirty-five to nineteen, one vote short of conviction After a ten day adjournment, the Senate reassembled to vote on the remaining articles The Managers withdrew article one and permitted a vote on articles two and three. Again the vote was thirty-five to nineteen, one less than the number necessary for conviction. The Managers did not call for a vote on the remaining articles, but adjourned, leaving judgment on articles one, and four through ten, to posterity.[217]

G. William W. Belknap

Early in 1876, the House Ways and Means Committee proposed a resolution authorizing general investigations into the operations of various governmental departments. The resolution passed and less than two months later, on March 2, one of the investigating committees reported that it had uncovered "unquestioned evidence of . . . malfeasance in office" by William W. Belknap, then Secretary of War.[218] The report stated also that President Grant had that morning accepted Belknap's resignation. The report recommended the adoption of three resolutions: one impeaching Belknap; one calling for the preparation of articles against him; and the third instructing a committee to go immediately to the bar of the Senate and impeach Belknap. The resolutions passed.

On April 4, 1876, the House Managers appeared at the bar of the Senate and presented five articles of impeachment against Belknap.[219] The first article charged that, while serving as Secertary of War, Belknap appointed as post trader at Fort Sill one Caleb P. Marsh, who had an agreement with a John S. Evans under which Marsh would have Belknap appoint Evans as the post trader in his place. When this agreement was executed, it was charged, Belknap "unlawfully and corruptly" received certain sums of money from Marsh for appointing Evans, thereby being guilty of "high Crimes and Misdemeanors in office." Articles two, three, four and five also charged Belknap with knowingly receiving money in consummation of this scheme. Article three charged that Belknap "criminally" disregarded his duty in allowing Evans to remain post trader, causing great injury to personnel at that post and to the country.[220]

On April 17, 1876, Belknap attacked the jurisdiction of the Senate to try him, asserting that due to his resignation he was no longer a civil officer when the charges were made against him. The House Managers argued that the limitation of impeachment to "Officers" in Article II, Section 4, dealt with the position and not necessarily with the time when it was occupied.[221] Belknap's counsel argued that if he were convicted, Congress would be setting a precedent that every citizen could be impeached.[222] On May 29, after a lengthy debate, the Senate decided, by a vote of thirty-seven to twenty-nine, that it had jurisdiction.[223] The Senate then gave Belknap until June 16 to answer. When that date arrived, counsel for Belknap appeared but refused to put in a plea. Instead, he filed a document objecting to the previous vote because two-thirds of the Senate had not overruled Belknap's plea. It therefore was contended that the proceeding should be dismissed.[224] The case nevertheless proceeded to trial, and Belknap was acquitted. Although the required two-thirds vote for removal failed, a majority voted guilty on each of the five articles.[225]

H. Charles Swayne

Acting upon a joint resolution of the Florida legislature, Representative William B. Lamar rose in the House on December 10, 1903, and recommended that Charles Swayne be impeached.[226] At the time, Swayne was a United States district court judge in Florida. Lamar's resolution called for the House Committee on the Judiciary to investigate Swayne's conduct. A committee was appointed and in March, 1904, it reported that Judge Swayne had "continuously and persistently violated the plain words of a statute of the United States, and subjected himself to punishment for the commission of a high misdemeanor." [227] The report cited many examples of judicial misconduct, and the Committee recommended impeaching him on the ground "of high misdemeanor." A strong minority report opposed these conclusions, as a result of which a further investigation was conducted. In December, 1904, almost eight months later, a resolution of impeachment was finally agreed upon, with an amendment accusing him "of high crimes and misdemeanors." [228]

On January 24, 1905, the select committee of the House which had been appointed to formulate the articles against Swayne presented twelve articles of impeachment, charging as follows: [229] That Swayne, while a United States District Court Judge, made false claims against the government, and in support of these claims, prepared and signed false certificates of his expenses as a judge; that on another occasion he made false claims against the government and committed the crime of obtaining money under false pretenses; that he committed similar high crimes and misdemeanors on another occasion; that "while in the exercise of his office," he appropriated for his personal use a railroad car in the possession of a receiver appointed by him, making use of the railroad and its personnel without making compensation to the owner and allowing the receiver a credit for these expenses, thereby being guilty of "abuse of judicial power and of a high misdemeanor in office;" that he lived outside the district in which he was assigned, violating a statute which made it a "high misdemeanor" to do so; and that while in "the exercise of his office," he maliciously and unlawfully found an attorney guilty of contempt and fined and jailed him, thereby constituting

Footnotes at end of article.

an "abuse of judicial power and . . . a high misdemeanor in office." [230]

At the Senate trial, Judge Swayne submitted a brief in which he contended that neither indictability nor mere misbehavior was intended to be the standard for impeachment. After examining the common law precedents, the early state constitutions, the debates at the Constitutional Convention, and the American precedents, the brief concluded that impeachment lies for either treason or bribery committed anywhere and for other high crimes and misdemeanors, which "must consist of judicial acts, performed with an evil or wicked intent, by a judge while administering justice in a court. . . ." [231] Therefore, it was argued, since the first seven articles charged personal misconduct, the Senate did not have jurisdiction and should dismiss the proceeding. The House Managers argued that impeachment covered non-judicial acts and, in the alternative, that Swayne's conduct was official in nature.[232] In their closing arguments, Swayne's counsel urged that the impeachment provisions were embodied in the Constitution "with a meaning that can never be changed by the Congress of the United States." [233]

On February 27, 1905, a vote was taken and Swayne was acquitted on each article.[234]

I. Robert W. Archbald

In February 1912, the Interstate Commerce Commission brought to President Taft's attention charges of improper conduct against Robert Archbald, a United States circuit court judge, who was a member of the Commerce Court. The President ordered the Attorney General to conduct a full investigation, following which it was concluded that the information discovered should be transmitted to the House Judiciary Committee.[235]

A period of investigation followed, including appearances by Archbald and his counsel at committee hearings.

On July 11, 1912, the committee's report, including a memorandum of law and thirteen articles of impeachment,[236] was adopted by the House. Article one charged that Judge Archbald, while a judge on the commerce court, formed a partnership for the purpose of purchasing certain properties for future sale, using his office to induce a certain corporation which was then a party litigant before the commerce court to contract to sell the properties to the partnership. This, it alleged, constituted a "high crime and misdemeanor in office."

The second article asserted that Archbald, for consideration, interceded in a case before the Interstate Commerce Commission, using the influence of his office to effectuate a settlement and to induce agreement to a stock sale proposed by the party whom the judge was assisting. This charge further specified that the judge did so knowing that the case was subject to review in the Commerce Court, and that the party he sought to influence already had a case pending in that court. The article concluded that the judge therefore was guilty of misbehavior and of a "high crime and misdemeanor in office."

The third article charged a "high misdemeanor in office," alleging that Archbald used his official position to influence a coal company, which was owned by a railroad then a litigant in the commerce court, to lease certain properties to the judge and his friends, in return for which he agreed to use the railroad to transport the products of these properties.

Article four accused the judge of being guilty of "misbehavior in office" and of a "misdemeanor as . . . judge" as a result of his secret communications with an attorney for a litigant in a case before his court, in which he requested to see a witness for the purpose of obtaining his explanation of certain testimony, and informed the attorney of certain evidence "detrimental" to his client and asked for an explanation.

The fifth article charged that he attempted to use his influence as judge to secure an operating lease for a certain individual, knowing that this person had previously failed in such negotiations. The article further alleged that after the attempted negotiations, the judge accepted a promissory note for his efforts, constituting "misbehavior" and "high crimes and misdemeanors in office."

The sixth article charged him with using his influence as a judge to induce the officers of two related companies to purchase a certain tract of land. Article seven accused Judge Archbald of accepting an interest in a speculative stock enterprise with a person involved in a litigation before his court. It further alleged, as did article eight, that Archbald had lent his name to a note, knowing it would be presented to a person subject to his official influence. The ninth article charged the judge with using his position to coerce a party to discount one of his notes by having it presented to an attorney who practiced before the commerce court, and further charged that after the note was discounted, it was never paid. The tenth article accused him of accepting large sums of money for pleasure trips from an individual who was an officer or director in a number of corporations under the jurisdiction of the commerce court. The eleventh article alleged that he accepted money from attorneys who practiced before his court and that money was solicited by court officers whom the judge had appointed. The twelfth article charged that Archbald had appointed as a jury commissioner the general counsel of a railroad company which was under the jurisdiction of the commerce court, and that, knowing of this relationship, he nevertheless allowed the attorney to serve.

The thirteenth and last article charged that Archbald had at various times sought to obtain credit from parties interested in the results of suits pending in his court; that he had carried on business for speculation and profit and, for consideration, compromised cases pending before the Interstate Commerce Commission; that he had used his influence as a judge to induce various officers and companies engaged in interstate commerce to enter into contracts and agreements in which he was then financially interested; that he received interests in these contracts in consideration of his using his influence; and that the judge's efforts in securing contracts from the railroad companies then having suits pending in the commerce court continued for more than a year.[237]

At his trial Archbald claimed that the charges, even if true, did not constitute impeachable offenses. He admitted most of the facts but denied the existence of any wrongful intent.[238] He also challenged articles seven through twelve and part of thirteen on the ground that the acts charged were committed, if at all, prior to his appointment as a court of appeals judges.[239]

The Managers argued in their brief that impeachment may be had for less than indictable conduct.[240] Counsel for Archbald argued to the contrary, based upon a study of the most current English precedents.[241] It was argued that, at the very least, conduct of a criminal nature must be found. In response, Representative John W. Davis, a House Manager, argued that such a standard gives the prosecution nothing to fear because "[i]f the phrase 'criminal in nature' means those things which might be made crimes by legislative prohibition, every act here charged against this respondent comes within the description." [242]

The trial, which was sparsely attended by senators,[243] resulted in a vote of guilty on the first, third, fourth, fifth and thirteenth articles, and Archbald was removed from office.[244] In addition, the Senate voted to disqualify him from holding future office.[245]

Following the vote a number of Senators filed opinions explaining their votes. Some stated that they thought criminality was the standard for removal; [246] some only voted guilty where they thought the offenses, as proven, constituted "high crimes or misdemeanors," and had voted not guilty where the charge involved only misconduct.[247] Others [248] said that they had voted not guilty on charges in which proof of evil intent was lacking, and yet a few others said they had voted guilty on any charge involving less than good behavior.[249]

J. George W. English

On January 13, 1925, Representative Harry B. Hawes of Missouri introduced a resolution calling for an investigation of charges made in the *St. Louis Post-Dispatch* against Judge George W. English, a United States Judge for the Eastern District of Illinois.[250] A subcommittee of the House Judiciary Committee was appointed to investigate, and it presented its report on March 25, 1926.[251] This report consisted of a review of the evidence uncovered, the subcommittee's views on the law of impeachment, and a resolution containing five articles of impeachment.[252] The report was adopted on April 1, 1926, by a vote of three hundred and six to sixty-two.

The first article accused him of having disbarred several attorneys without notice or hearing, and of using his power to summon people in order to harass, threaten and oppress. The second article cited him for managing the bankruptcy affairs of his court for the personal benefit of himself and a certain referee. The third charged unlawful and intentional favoritism in the appointment of receivers and other practices, including his acceptance of a cash "gift" from one of his appointees. The fourth article alleged corrupt practices in the handling of the funds of bankrupt companies before his court, including an agreement to deposit funds in a particular bank which agreed, in turn, to employ his son. The last article alleged several instances wherein the judge had displayed unlawful, intentional and corrupt favoritism in his appointments, rulings and decrees.

On November 4, 1926, prior to the commencement of his trial, Judge English tendered his resignation to President Calvin Coolidge, who accepted it immediately. On November 10 the House Managers presented this information to the Senate, and subsequently recommended that the proceedings be discontinued.[253] On December 13, 1926, the Senate, by a vote of seventy to nine, ordered the proceedings discontinued.

K. Harold Louderback

In May, 1932, the San Francisco Bar Association wrote President Herbert Hoover concerning the conduct of Harold Louderback, a United States district judge in California. The letter contained references to various newspaper articles about the judge.[254] The matter was promptly transferred to the Attorney General's office which, in turn, referred it to the House Judiciary Committee. On May 26, 1932, Representative Fiorello LaGuardia of New York introduced a resolution calling for the designation of a special committee to inquire into the official conduct of the judge.[255] A special committee was appointed; it held hearings, conducted an investigation, and reported that the evidence failed to show that impeachment was warranted.[256] A minority of the committee, led by Representative Hatton W. Sumners of Texas, recommended impeachment. On February 24, 1933, after debating the two recommendations, the House passed a substitute resolution, stating, in part, that "Harold Louderback . . . be impeached of misdemeanors in office." [257] The resolution recited five articles of impeachment.[258]

The first article charged that the judge, at the instance of a party to whom he was

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indebted, by using promises of higher fees and threats of lower allowances, sought to force a court appointed receiver to designate as his counsel an attorney of the judge's choosing and that, not meeting with success, he "willfully" discharged the receiver. The article also charged that Louderback violated the law by establishing a fictitious residence, that he had done so to effectuate the removal of a case in which he shortly expected to be involved, and that he unlawfully registered to vote at this residence—an act which constituted a felony. Article two charged him with unlawfully granting excessive allowances to a receiver and, "contrary to the law," making an order requiring the receiver to pay certain sums over to an Insurance Commissioner conditional on the Commissioner's promise not to appeal from the allowances the judge had granted to the receiver. The third article charged that he appointed an incompetent receiver "in disregard of the rights" of litigants in his court and that he refused to allow a hearing on the subject, depriving interested parties of an opportunity to be heard. The fourth article charged that he "willfully and unlawfully" granted an improper application appointing a personal friend as receiver of a holding company, and that solely because of this appointment, a petition in bankruptcy was filed against the company. Article five charged that he was guilty of "a misdemeanor in office" as shown by his past conduct, including his methods for appointment of incompetent receivers, which practices led to widespread fear that cases in his court were decided with partiality and prejudice.

On April 11, 1933, Louderback answered the charges. He contended that the offenses, even if true, did not constitute impeachable conduct. He specifically objected to the vagueness of article five, as a result of which Manager Sumners consented to have the House revise the article. A month later, he presented a detailed charge. Nevertheless, objections in the form of a motion to strike or make more definite were again made to article five.[259] In addition to an objection based on vagueness, it was argued that certain offenses not committed in his present office were not within the Senate's jurisdiction in an impeachment proceeding. The House again amended article five, after which Louderback filed an answer. During the trial which followed, a dispute arose as to whether or not it was proper for the Managers to introduce evidence of orders made by Louderback when he was a state court judge. This evidence was intended to show that even at that time he had appointed the same close friends as appraisers. The evidence was accepted and upon the conclusion of the evidence, the following question was put to each Senator: "Senator, how say you? Is the respondent, Harold Louderback, guilty or not guilty as charged in this article?" On the call of the roll, the necessary two-thirds vote was not attained and Louderback was acquitted on each of the five articles. Indeed, on four of the five articles not even a majority found him guilty.[260]

L. Halsted L. Ritter

In 1929, four years after moving to the State of Florida, Halsted L. Ritter was appointed a United States district judge. In May 1933, a resolution was passed in the House of Representatives directing an investigation into his official conduct.[261] The investigation lasted three years. After its completion, Representative Green of Florida, in January of 1936, rose in the House and said: "I impeach Halsted L. Ritter . . . for high crimes and misdemeanors."[262] He supported his charge by reading from the committee's investigation report, which concluded that the judge's conduct warranted impeachment.[263]

Seven articles of impeachment were prepared and presented to the Senate.[264] The first charged that Ritter was guilty of "misbehavior and of a high crime and misdemeanor in office" resulting from his acceptance of remuneration from a former law partner, who paid it out of an allowance made by Ritter as compensation for services his former partner had rendered in a receivership. The second article charged him with "misbehavior . . . and high crimes and misdemeanors in office" based on a conspiracy with his former law partner and others to place a certain company in receivership and continue it in litigation before his court, and refusal to dismiss the case after the plaintiff had so requested. Article three stated that Ritter was guilty of "a high crime and misdemeanor in office" for violating a section of the Judicial Code making it unlawful for any federal judge to practice law while in office. It charged specifically that after becoming a judge, he wrote to the counsel for a client of his former law firm stating that he would be available for consultation until completion of the matter upon which he was working when he became a judge. It was alleged that the letter spoke of the fee which he should be allowed and that shortly thereafter he accepted a fee in that amount. Article four also charged him with a "high crime and misdemeanor in office" for practicing law, in that he allegedly received compensation for representing a client in a Florida real estate transaction. Articles five and six both charged him with "high crimes and misdemeanors in office" consisting of willful evasion of income tax. Each of these articles cited separate instances in which Ritter had received sums of money and failed to report them in his return. The seventh and last article charged that Judge Ritter was guilty of a "high crime and misdemeanor" in that his offenses were such as to support a reasonable assumption that they would prejudice the public view of the court's fairness. This article also reiterated specific previous charges, such as practicing law while on the federal bench, accepting gratuities in receiverships, and evading the income tax.

In answer, Judge Ritter admitted most of the facts charged but denied any wrongful intent.[265] He said that he had failed to mention the sums in his tax returns because they would simply have been cancelled out by a loss he had sustained in a prior year. He argued that the money he received from his former partner was due and owing to him by way of a prior debt, and he claimed the gratuities he received were innocently accepted. In his closing argument on behalf of the House Managers, Representative Sumners declared that once a substantial doubt as to a judge's integrity arises, he forfeits his right to office and "[i]t is not essential to prove guilt."[266] Sumners pointed out, however, the unavoidability of finding criminality in Judge Ritter's conduct and went to some length to show him as a corrupt and malicious judge.

On April 17, the Senate voted on the articles presented against Judge Ritter.[267] A majority of the Senate found him guilty on the first, second, third, sixth and seventh articles; however, the two-thirds vote of guilty, requisite for removal, was present only on the seventh and last article.[268] Thereupon, a judgment was entered removing him from office. A proposed order to disqualify him permanently from holding public office, however, was voted down unanimously.[269]

In an opinion filed after the vote, Senator Austin stated that the six acquittals could not have fairly added up to a conviction. He contended that under the circumstances, the conviction on article seven was violative of traditional and basic rules of our system of justice.[270] Subsequently, Ritter sued for his salary, charging that the Senate had exceeded its jurisdiction in trying and convicting him on charges which were not impeachable offenses under the constitution. The court of claims, however, dismissed the case, stating that the Senate has sole jurisdiction in impeachments.[271]

IV. AN INTERPRETATION OF THE IMPEACHMENT PROVISIONS

The debates at the Constitutional Convention of 1787 show that the impeachment provisions contained in the Constitution were not hastily arrived at, but rather evolved over a period of months and were the subject of extensive consideration. In formulating the provisions, the framers were very much concerned with maintaining the independence of the executive and judiciary while at the same time establishing a procedure for removing public officials when the public security required it. They rejected the British system of "address" as a means of removing judges and the use of the word "maladministration" as a ground for impeachment, in both instances because of their concern that the judiciary or executive might be rendered subservient to the Congress.[272] They designed the impeachment provisions as a safeguard against having to continue in public office persons guilty of circumscribed conduct, namely "Treason, Bribery, or other high Crimes and Misdemeanors." In an effort to assure that the power of impeachment would be fairly used, they required that the accused official be given a trial and that the judges, the Senators, take an oath to hear and try the case impartially. To limit the possibility of abuse of the impeachment power, each house of Congress was given a check over the other. The House of Representatives could not convict or remove an officer but could only initiate impeachment proceedings. Although the Senate could convict and remove, it could not act unless the House of Representatives had exercised its initiative. Even then, however, one-third plus one of the members of the Senate could prevent a conviction. Moreover, if a conviction were entered, the punishment was limited to removal from office and disqualification from holding public office in the future.[273] Punishment that might attach to the offense as a result of statutory law could be imposed only by the ordinary courts after indictment, trial and conviction.

To a large extent, the debates at the Constitutional Convention with regard to impeachment centered around the Presidency. The founders debated the propriety of making the chief executive, who was to serve for a fixed term, subject to impeachment. Some expressed the view that impeachment was unnecessary in the case of an officer serving a fixed term, since his electors would give their judgment about his conduct at election time. Others, however, were of the opinion that there were certain types of acts which might be committed by a public official, including the President, which would dictate his removal prior to that time. Among the acts that various delegates suggested as justifying impeachment were treason, bribery, corruption, misfeasance, malpractice, incapacity, neglect of duty, tyrannical and oppressive acts, "great crimes" and "great and dangerous offenses." These suggestions were made at various times during the Convention debates but before the "high Crimes and Misdemeanors" expression was suggested by George Mason on September 8, 1787. While unfortunately, there was no discussion as to the meaning of that expression, it seems clear from the references to British removal practices and the trial of Warren Hastings that it was taken from the parliamentary law.

In attempting to delineate the meaning of "high Crimes and Misdemeanors," reference to English impeachments is helpful and necessary. It is noteworthy that the grounds for impeachment in most English cases charged treason, conduct in the nature of treason, criminal and corrupt acts, or goss

Footnotes at end of article.

abuse of one's official powers. While conduct in violation of statutory or common law was involved in many cases, it does not appear that a violation of the positive law was essential to impeachability.[274] The English cases, on the other hand, furnish little precedent for impeaching an official for conduct not constituting either a crime or gross abuse of official duties.

Although the "high Crimes and Misdemeanors" terminology was not used in any of the early state constitutions, the grounds specified in many of those constitutions seemed to involve conduct associated with the duties of public office. "Maladministration," a frequently used ground was defined in early dictionaries as mismanagement of one's office.[275]

The wording of the impeachment provisions themselves suggests that the framers contemplated that impeachable offenses would include crimes. For example, cases of impeachment are excluded from the President's pardoning power for "offenses against the United States," and cases of impeachment are excluded from the requirement that "the trial of all crimes . . . shall be by jury." Moreover, the expression "other high Crimes and Misdemeanors" appears in juxtaposition to the crimes of "Treason" and "Bribery," suggesting by the use of the word "other" that it would involve matters of a similar grave nature. While the term "Misdemeanor" was, as now, used in one sense to delineate a form of crime that is not a felony,[276] the use of the word "Crime" in Article II, Section 4, would seem to encompass both felonies and misdemeanors. Consequently, it may be argued that "Misdemeanors" was intended to embrace more than criminal conduct; otherwise, its use is superfluous.

If viewed in its component parts, "other high Crimes and Misdemeanors" is susceptible to another construction: Since a "Crime" is a violation of an established law and since the prefix "high" denotes a grave violation, the expression "high Crimes" arguably covers serious criminal conduct, whether or not connected with the exercise of an office. The term "Misdemeanor" was also intended to be modified by the word "high." It would be illogical to limit impeachment to "high Crimes" and yet have it available for any misdemeanor. Moreover, if Article II, Section 4 is considered in connection with the debates, it becomes clear that the words following "other" were meant to cover offenses of a magnitude similar to "Treason" and "Bribery." In looking at the meaning of "high Misdemeanor," one finds it defined as "maladministration." [277] Yet, if this be so, why was that term rejected in favor of "high Crimes and Misdemeanors." An answer is that "maladministration," unlike "high Misdemeanors," was not a term of art and therefore was open to broad and dangerous interpretations. However, a search for the meaning of "high Crimes and Misdemeanors" from the words themselves ignores the important fact that the expression was taken bodily from parliamentary usage in England.

The debates at the Constitutional Convention and in the state ratifying convention reveal that the primary concern of the framers was *not* acts that could be committed by any citizen, but rather acts associated with the exercise of a public trust that could endanger the nation. Thus, on July 20, in arguing that the President ought to be impeachable, Madison declared: "He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers." Randolph asserted: "The Executive will have great opportunities of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands." Morris, who gradually came around to the view that impeachment was necessary, observed that the President "may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard [against] it by displacing him." [278] On the day he offered the "high Crimes and Misdemeanors" language, Mason stated that treason as defined in the Constitution might not include other "attempts to subvert the Constitution." James Iredell of North Carolina said in his state's ratifying convention: "[T]he occasion for its exercise will arise from acts of great injury to the community, and the objects of it may be such as cannot be easily reached by an ordinary tribunal." A common point made during the discussion of the subject in the Virginia, North Carolina and South Carolina conventions was that impeachment was an essential safeguard against a public officer betraying his trust with grave consequences to the country.

The author's examination of the debates at the Constitutional Convention and in the state ratifying conventions indicates that "Treason, Bribery, or other high Crimes and Misdemeanors" were to be the grounds of impeachment applicable to *all* officials subject to impeachment, including judges. There is no evidence from the debates that the "good Behaviour" provision was intended, either directly or indirectly, to furnish an independent or additional ground for impeachment in the case of judges, or to be read in conjunction with Article II, Section 4, in such cases. "Good Behaviour" was an expression of "tenure," used to secure the independence of the judiciary.[279]

As Hamilton stated in number seventy-eight of *The Federalist:*

"The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.[280]"

Later in that paper he said:

"[A]s nothing can contribute so much to [the judiciary's] firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.[281]"

At the Constitutional Convention the delegates discussed only two methods by which judicial tenure could be forfeited: impeachment on stated grounds; and the British system of address, which allowed for removal on grounds not warranting impeachment. In rejecting the system of removal by "address," the debates make clear that impeachment for "Treason, Bribery, or other high Crimes and Misdemeanors" were to be the only means and grounds by which the legislative branch could remove judges. In this regard, it is significant that in past American impeachment trials the House of Representatives has not couched its charges except in terms of "high Crimes and Misdemeanors," believing it necessary to use some form of the words "Treason, Bribery, or other high Crimes and Misdemeanors." The implication is that in the view of past Congresses, no standard other than those contained in Article II, Section 4, could stand as a separate and additional ground for impeachment.

The use of "during good behavior" can be viewed as the framers' way of saying that judges, unlike other public officers, have a lifetime tenure but, like other civil officers, may be impeached. If "bad behavior" is a standard of impeachment, it must be found as part and parcel of the grounds specified in Article II—irrespective of whether an officer serves for a fixed term or during good behavior. There is no indication from the debates that "Treason, Bribery, or other high Crimes and Misdemeanors" were meant to be synonymous with "bad behavior," an expression so vague that had it been suggested, it undoubtedly would have met the same fate as "maladministration."

Turning to the American impeachment cases for guidance in interpretation it is noteworthy that the charges have ranged from offenses of mere intemperate behavior to criminality and have involved misconduct both on and off the bench. Since an impeachment proceeding involves charges which must be proven after a trial by the Senate, an acquittal may mean that the charges were not proven or, if proven, did not amount to impeachable offenses in the opinion of the Senate. Aside from political motivations, an adjudication by the Senate means that the accused has been proven guilty of conduct which, in the opinion of the Senate, warrants removal under the Constitution. For that reason, the convictions are more instructive than the acquittals. In examining the four cases resulting in convictions, it will be noted that Judge Pickering was convicted of statutory, though non-indictable, violations and of conduct committed in the exercise of official duties. Judge Humphreys was convicted of treasonous-like conduct.[282] The value of these cases as precedents, however, is somewhat diminished by the fact that neither accused defended himself, either in person or by counsel.

While the convictions of Judges Archbald and Ritter are regarded as senatorial precedents for impeaching judges for a general course of misconduct, whether or not indictable and whether or not connected with the exercise of official duties, they are subject to other and more narrow interpretations. It is suggested that the Archbald case stands simply for the proposition that a judge who willfully, corruptly and improperly uses the power of his office for personal gain is subject to impeachment. Judge Ritter, on the other hand, was convicted on an article which incorporated charges including statutory violations and criminal offenses. Although he was acquitted on those charges, it can be argued that fifty-five of the fifty-six Senators who found him guilty on the general article did so only because it incorporated specific charges of which they believed him guilty and on which they had previously voted guilty.

On the basis of his study, the author has concluded that it is not essential to impeachability that an act be indictable or violate a specific statutory provision. In framing the impeachment provisions, the concern of the framers was not limited to crimes of which private citizens and public officials could be equally guilty. Had that been their concern, impeachment might not have been necessary, as such offenses could be handled by the ordinary courts. What the framers seemed greatly concerned about during their discussion of impeachment was the abuse or betrayal of a public trust, offenses peculiar to public officials. This was made manifest by two decisions in particular: their rejection of the judiciary and the substitution of the Senate as the trial body; and their limitation of the punishment that could be imposed to removal from office and future disqualification. The debates reveal that the framers were heavily motivated in fashioning the impeachment provisions by the possibility of tyrannical, oppressive, corrupt and willful use of the power connected with a public office. Offenses of this character, involving as they do the highest officers of the country, required a special forum. As Montesquieu, whose views had a profound impact on the framers, said in his classic *The Spirit of Laws:*

Footnotes at end of article.

"It might also happen that a subject entrusted with the administration of public affairs, may infringe the rights of the people, and be guilty of crimes which the ordinary magistrates either could not or would not punish. But, in general, the legislative power cannot try causes; and much less can it try this particular case, where it represents the party aggrieved which is the people. It can only therefore impeach. But before what court shall it bring its impeachment; must it go and demean itself before the ordinary tribunals which are its inferiors, and being composed moreover of men who are chosen from the people as well as itself, will naturally be swayed by the authority of so powerful an accuser? No; in order to preserve the dignity of the people, and the security of the subject, the legislative part which represents the people, must bring in its charge before the legislative part which represents the nobility, who have neither the same interests, nor the same passions.[283]

Richard Wooddeson, the English historian, stated in his lectures at Oxford in 1776 that:

It is certain that magistrates and officers entrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community and at the same time in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents and the nature of such offenses may not unsuitably engage the authority of the highest court and the wisdom of the sagest assembly. The Commons, therefore, as the grand inquest of the nation, became suitors for penal justice and they can not consistently, either with their own dignity or with safety to the accused, sue elsewhere but to those who share with them in the legislature.

On this policy is founded the origin of impeachments, which began soon after the constitution assumed its present form.[284]

He observed that "[s]uch kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are most proper—and have been the most usual—grounds for this kind of prosecution." [285]

A limitation of impeachment to indictable crimes was not, in the author's opinion, the intent of the framers and is not a proper interpretation of the constitutional provisions. On the other hand, the extension of impeachment to non-indictable offenses not connected with the use of official power was not within the intendment of the framers and is not supported by English impeachment precedents.

To be impeachable, an act must fall within one of two categories. It must violate some known, established law, be of a grave nature, and involve consequences highly detrimental to the United States. In the alternative, it must involve evil, corrupt, willful, malicious or gross conduct in the discharge of office to the great detriment of the United States. Acts which result from error of judgment or omission of duty, without the presence of fraud, or from the misconception of duty, without the presence of a willful disregard, are not impeachable.[286] Acts of a non-indictable nature outside of one's office, such as writing books and articles, associating with persons and organizations engaged in questionable activities, delivering speeches of a political nature, and engaging in conduct which some view as socially and morally objectionable are not properly within the scope of impeachment. Indeed, it would be incongruous to find an official exercising constitutional rights of speech and association guilty of "high Crimes and Misdemeanors" against the United States. When a public official engages in private, independent conduct, he is subject to the positive laws as any other citizen, except that if he commits a "high crime, he is subject to the additional punishment of impeachment and removal from office.

In a nation which espouses the rule of law and which abhors bills of attainder and *ex post facto* laws, it certainly would be desirable to define by statute all the acts constituting "high Crimes and Misdemeanors." However, since power can be corruptly used in so many different ways, it would be a difficult, if not impossible, task to carve out for every office whose occupant is subject to impeachment, including that of the Presidency, a satisfactory body of laws describing everything that is permissible and impermissible. Many of the powers that attach to a public office must, of necessity, involve discretion. If statutes were enacted,[287] they would have to be of a general nature so as not to restrict the freedom of action and latitude that a public official requires in the discharge of his office. The benefits that might follow from the establishment of such a body of law would seem to be outweighed by the risks to freedom of action that would be incurred.

While the potential for abuse of the impeachment power may exist in any standard which permits impeachment for non-statutory offenses, this must be balanced against the potential danger to the nation arising from abuse of an official's power. Unless one found a violation of some specific provision of law, we would be powerless to remove from office a public official who willfully, corruptly, recklessly and maliciously used his power to the great injury of the country. In this connection, it is important to note that the construction which is given to the impeachment provisions applies to every official—Presidents as well as judges. As was stated by John W. Davis at the Archbald impeachment trial:

"I say that a judge need take as the guide of his conduct only the statutes and the common law with reference to crimes, and that so long as he remains within their narrow confines he is safe in his position, is to overlook the larger part of the duties of his office and of the restraints and obligations which it imposes upon him. We insist that the prohibitions contained in the criminal law by no means exhaust the judicial dialogue. Usurpation of power, the entering and enforcement of orders beyond his jurisdiction, disregard or disobedience of the rulings of superior tribunals, unblushing and notorious partiality and favoritism, indolence and neglect, all are violations of his official oath, yet none may be indictable.[288]"

The standard for impeachment suggested by this article does not totally eliminate the possibility of congressional abuse of this power. In contrast, the potential harm which can be caused by the abuse of power lodged in the hands of a single public official should not be minimized. It is suggested that the probability of abuse of power is greater where power is concentrated than where it is diffused among many. Furthermore, while the Constitution stated that the House has the sole power to impeach and the Senate the sole power to try, it can be argued that the Supreme Court has, as in the case of other legislative acts, the power to declare that a particular act does not constitute a "high Crime and Misdemeanor" and, therefore, that Congress has exceeded its power in removing an official.[289]

The suggestion made during the current session of Congress that an impeachable offense is whatever a majority of a particular Congress says it is, after the fact, is not only unsupported by the Constitution but it is a dangerous doctrine.[290] If accepted, it would not only pose a serious threat to the independence of the other branches of government but it might gravely limit the freedom which public officials require in discharging the duties of office. Indeed, as applied to judges, it would be tantamount to amending the Constitution by legislative *fiat* so as to provide for the procedure of address—a procedure specifically rejected at the Constitutional Convention as seriously encroaching upon the independence of the judiciary.

While the conduct of judges and other public officials should reflect favorably on the institutions of which they are members, the failure to maintain such conduct, if it does not involve an indictable offense or a willful or corrupt use of power, is not a ground for impeachment. The benefits that might be derived from dealing with personal misconduct of a non-indictable nature and not related to the exercise of official power clearly are outweighed by the risks that would be incurred by giving Congress power to impeach for any reason whatsoever. The remedy for correcting the failure of officials to maintain the highest standards of conduct may be in improving the appointive process, and in other restraints that presently exist within our system through the influence of public opinion, colleagues, members of other branches of government, and bar associations. If experience demonstrates that additional legal restraints are necessary, there may be areas where legislation can be passed, and if it becomes essential, the Constitution can be amended.[291]

Impeachment should be resorted to only for cases of the gravest kind. The process of removing should be made as difficult as possible, though not to the extent of leaving the nation powerless to remove an official who betrays his public trust. If there be any doubt as to the gravity of an offense or as to an official's conduct or motives, the doubt should be resolved in his favor. In the author's opinion, this is the necessary price for having an Independent Judiciary and Executive. Tampering with that price by seeking to broaden the impeachment power invites the use of power "as a means of crushing political adversaries or ejecting them from office." [292] Nothing could be more destructive of our system of government.

FOOTNOTES

*Member of the New York Bar. The author wishes to express his deep appreciation to Associate Editor Robert Quinn of the Fordham Law Review and to Edward Yodwitz, Esq. of his firm for their excellent research and drafting assistance, without which this article would not have been possible.

[1] CONGRESSIONAL RECORD, volume 116, part 9, page 11912.

[2] Ginzburg v. Goldwater, 396 U.S. 1049 (1970), denying cert. to 414 F. 2d 324 (1969).

[3] Professor Leonard F. Manning's review of this book is contained in this issue of the Fordham Law Review.

[4] This statute provides: "Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor." 28 U.S.C. § 454 (1964).

[5] CONGRESSIONAL RECORD, volume 116, part 5, page 11913. A legal memorandum subsequently submitted by Representative Ford from the distinguished Michigan law firm of Dykema, Gossett, Spencer, Goodnow & Trigg, concluded that "it is the conscience of Congress—acting in accordance with the constitutional limitations—which determines whether conduct of a judge constitutes misbehavior requiring impeachment and removal from office." Special Subcomm. in H.R. 920 of the House Comm. on the Judiciary, 91st Cong., 2d Sess., Legal Materials on Impeachment 23 (1970).

[6] H.R. Res. 920, 91st Cong., 2d Sess. (1970). More than one hundred members of the House of Representatives have introduced resolutions calling for the appointment of a Select Committee to investigate the conduct of Justice Douglas. See First Report by the Special Subcomm. on H.R. 920 of the House Comm. on the Judiciary, 91st Cong., 2d Sess. 44–50 (1970).

[7] The Subcommittee consists of Representatives Emanuel Celler of New York, its chair-

man; Byron G. Rogers of Colorado; Jack B. Brooks of Texas; William M. McCulloch of Ohio; and Edward Hutchinson of Michigan. On June 20, 1970, the Subcommittee submitted its first report. See note 6 supra. On August 11, 1970, it submitted a collection of legal materials on impeachment. See note 5 supra.

[8] The subcommittee was originally scheduled to complete its investigation by June 24. The deadline has been extended at the subcommittee's request, reportedly because of its inability to obtain requested information from various departments of the executive branch. See N.Y. Times, Aug. 24, 1970, at 19, col. 3.

[9] An impeachment proceeding may be started by charges on the floor of the House of Representatives against a public official by a member of the House. It may also be initiated by a presidential message, a state legislature, a petition, or a memorial containing charges under oath. Once charges are preferred, a standing or special committee of the House is designated to investigate and report. The official under investigation may be given an opportunity to appear at the committee hearings to testify, present evidence, and cross-examine witnesses. When the committee concludes its investigation, its report is acted upon. If the report recommends impeachment, it will set forth a proposed resolution containing the articles (charges) of impeachment against the official. If the report is adopted by the House, several Representatives will be designated as Managers to prosecute the case. Subsequently, the House notifies the Senate by message of the impeachment; the Senate notifies the House that it is ready to receive the articles of impeachment; the House-appointed Managers present the articles to the Senate; and the Senate organizes for trial. The impeached official is afforded an opportunity to appear, in person or by counsel, and answer the charges. After the pleading stage, the actual trial begins, at which witnesses are sworn and examined by the Managers and may be cross-examined by the impeached official or his counsel. At the conclusion of the Managers' case, the official may present his defense. Thereafter, a vote is taken on each article of impeachment. Special Subcomm. on H.R. 920 of the House Comm. on the Judiciary, supra note 5, at 1–3.

[10] U.S. Const. art. 1, §§ 2, 3.

[11] Id. § 3.

[12] Treason is defined in U.S. Const. art. 3, § 3, which states: "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the testimony of two Witnesses to the same overt Act, or on Confession in open Court."

[13] For an excellent book on the subject, see A. Simpson, A Treatise on Federal Impeachments (116) [hereinafter cited as Simpson]. See also 6 C. Cannon, Cannon's Precedents of the House of Representatives of the United States §§ 455–66 (1935) [hereinafter cited as Cannon's Precedents]; W. Carpenter, Judicial Tenure in the United States (1918); 3 A. Hinds, Hinds' Precedents of the House of Representatives of the United States §§ 2008–23 (1907) [hereinafter cited as Hinds' Precedents]; Brown, The Impeachment of the Federal Judiciary, 26 Harv. L. Rev. 684 (1913); Haley, The Impeachment of Federal Officers in United States History, 10 the Historian 135 (1948); Lawrence, The Law of Impeachment, 15 Am. L. Reg. 641 (1867); Potts, Impeachment as a Remedy, 12 St. Louis L. Rev. 15 (1927); Taylor, The American Law of Impeachment, 180 N. Am. Rev. 508 (1905); Thomas, The Law of Impeachment in the United States, 2 Am. Pol. Sci. Rev. 378 (1908).

[14] This article does not deal with the question of whether impeachment is the exclusive method of disciplining federal judges. For authority that Congress has power to establish non-impeachment procedures, such as a special court or commission, see Comment, Removal of Federal Judges—New Alternative to an Old Problem: Chandler v. Judicial Council of the Tenth Circuit, 13 U.C.L.A.L. Rev. 1385 (1966); Comment, Removal of Federal Judges—Alternatives to Impeachment, 20 Van. L. Rev. 723 (1967); statement of Assistant Attorney General William H. Rehnquist, Hearings on S. 1506 before the Subcomm. on Improvements in Judicial Machinery of the Senate Judiciary Comm., 115 Cong. Rec. 14,909 (June 5, 1969) (remarks of Senator Joseph Tydings). For authority that impeachment is exclusive, see Kurland, The Constitution and the Tenure of Federal Judges: Some Notes from History, 36 U. Chi. L. Rev. 665 (1969); Ziskind, Judicial Tenure in the American Constitution; English and American Precedents, 1969 Sup. Ct. Rev. 135; Comment, Courts—Judicial Responsibility—Statutory and Constitutional Problems Relating to Methods for Removal or discipline of Judges, 21 Rutgers L. Rev. 153 (1966); Comment, The Chandler Incident and Problems of Judicial Removal, 19 Stan. L. Rev. 448 (1967). See generally Kramer & Barron, The Constitutionality of Removal and Mandatory Retirement Procedures for the Federal Judiciary; The Meaning of "During Good Behaviour," 35 Geo. Wash. L. Rev. 455 (1967); Otis, A Proposed Tribunal: Is it Constitutional?, 7 U. Kan. City L. Rev. 3 (1938); Shartel, Federal Judges—Appointment, Supervision, and Removal—Some Possibilities Under the Constitution (pts. 1–3), 28 Mich. L. Rev. 485, 723, 870 (1929–1930); Note, The Exclusiveness of the Impeachment Power Under the Constitution, 51 Harv. L. Rev. 330 (1967). See also the authorities referred to in note 286 infra. In a dissent to the Supreme Court's June 1, 1970 decision in Chandler v. Judicial Council of the Tenth Circuit, 398 U.S. 74 (1970), Justices Douglas and Black stated their view that impeachment is "the only leverage" under the Constitution against a judge. "If they break a law, they can be prosecuted. If they become corrupt or sit in cases in which they have a personal or family stake, they can be impeached by Congress." Id. at 140. See their dissent in the earlier decision in Chandler v. Judicial Council of the Tenth Circuit, 382 U.S. 1003, 1004–06 (1966). For an interesting view of how Congress could "modernize" the impeachment process, see Stolz, Discipling Federal Judges: Is Impeachment Hopeless?, 57 Calif. L. Rev. 659 (1969).

[15] It has been observed that the origins of impeachment can be traced to the Athenian Constitution. Upon leaving office, public officials in Athens were subject to an examination in law courts composed of citizens who acted as judges, in panels, and who were enrolled by lot. The people were given an opportunity to bring charges against the officials in these courts, which were known as the "heliaea." Mr. Hart, The Origin of the Constitution of the United States of America 19, April 25, 1927 (unpublished thesis in Boston College Library). Some English historians trace the origin of impeachment to the early criminal procedures of conviction by record and conviction by notoriety. See Plucknett, The Origin of Impeachment, 24 Royal Historical Soc'y Transactions 47 (4th ser. 1942).

[16] 4 Hatsell's Precedents of Proceedings in the House of Commons 62–63, 73–74 (1796) [hereinafter cited as Hatsell]; 1 H. Taylor, The Origin and Growth of the English Constitution 441 (1889) [hereinafter cited as Taylor].

[17] 1 Tayor 517.

[18] The Commons impeached Richard Lyons for certain misdemeanors in removing the staple of wool from Calais (see 1 W. Blackstone, Commentaries 233–34 (Chitty ed. 1851)), lending funds to the Crown at exorbitant interest, and purchasing Crown debts from creditors below value. Latimer and Neville were subsequently impeached on similar charges. See Hatsell 50–51; Simpson 85–86; A. Wilshire, Constitutional History 43 (1929).

[19] Simpson 85.

[20] Prior to the reign of Henry IV, there were instances of charges being brought against public officials by the Crown, other public officials, lords, commoners, and private citizens. There were also variations in the forum which tried the impeachments. Sometimes the Crown was the trier; at other times, the Crown and the House of Lords; and still other times, various officials. Id. at 5–6; see Hatsell 74–76. In 1387 Richard II (1377–1399) sought and obtained an opinion from the judges that no official or judge could be impeached in Parliament without the will of the King. This opinion was nullified by Parliament during the first year of the reign of Henry IV. Simpson 6–7.

[21] A. Carter, A History of the English Courts 64–65 (1927) [hereinafter cited as Carter]; Hatsell 75.

[22] The House of Commons functioned as prosecutor, appearing by Managers appointed for the trial, who presented the articles of impeachment. Carter 64; G. Cross & G. Hall, The English Legal System 223 (1964) [hereinafter cited as Cross & Hall].

[23] Halsbury's Laws of England 216 n.m. (2d ed. 1937) [hereinafter cited as Halsbury]. In 1388, after convicting five judges, the House of Lords sentenced them to be "drawn and hanged as traitors, their heirs disinherited, and their lands, tenements, goods, and chattels forfeited to the King." Hatsell 54–55. It appears that the sentence was commuted to banishment to Ireland. Simpson 88.

[24] Hatsell states that during this period the Commons impeached for treason, misdemeanors, maladministration, and extrajudicial conduct of judges. Hatsell 63; see Simpson 85–90.

[25] Carter 66; Hatsell 78–88. Taylor states that no impeachments occurred between that of Lord Stanley in 1459 and Sir Giles Mompesson in 1621—a period of one hundred and sixty-two years. 1 Taylor 442. The Star Chamber's criminal jurisdiction covered everything in which the government felt it was interested. Offenses that would have been subject to impeachment were tried there. Offenses of treason and treasonable practices were punished by bills of attainder. Hatsell 66. Attainder enabled Parliament to punish a man without a trial, avoiding the difficulty of proving a crime. See Carter 67; A. Wilshire, supra note 18, at 59. The procedure was successfully employed against Lord Strafford in 1641. Cross & Hall 224. It is said that Lords would not have been able to convict him because of lack of proof, but they were willing to vote for a bill of attainder because they were convinced in conscience of his guilt. Id.; Taswell Langmead's English Constitutional History 530–31 (11th ed. T. Plucknett (1960)) [hereinafter cited as Plucknett].

[26] Simpson 88. Taylor, The American Law of Impeachment, 180 N. Am. Rev. 502, 504 (1905), refers to impeachments between 1621 and 1805 as the "political impeachments."

[27] Simpson 88.

[28] Hatsell 64. This stand was later rejected in 1709, when the Lords resolved that they would try cases of impeachment "according to the law of the land, and 'the law and usage of Parliament.'" Id. at 282–83.

[29] Dwight, Trial by Impeachment, 15 Am. L. Reg. 257, 274 (1867).

[30] Simpson 105–09.

[31] Hatsell 397. The ship money incident involved a dispute between the King and Parliament. In 1628 Charles I consented to the Petition of Right, which prohibited the imposition of a tax without the consent of Parliament. Charles, having disbanded Parliament and in need of funds, sought to raise revenue by requiring both port and inland counties to provide an amount to maintain

and repair the King's ships. The issue of whether this was a tax or a customs duty came before the courts which upheld the "tax," finding that the King's prerogative was superior to statute. When the Long Parliament came to power, it passed an act declaring the judgment void. Those judges who had supported the King were impeached for their "ship money" opinions. See E. Haynes, Selection and Tenure of Judges 60–67 (1944) [hereinafter cited as Haynes]; F. Maitland, The Constitutional History of England 307–08 (1926).

[32] For one whole term subsequent to his impeachment he continued to hold court. Dwight, supra note 29.

[33] Hatsell 113.

[34] Id. at 114; Simpson 130.

[35] See Hatsell 115–16; Simpson 135. "Tumultuous Petitioning" was by statute a misdemeanor. It was committed when more than twenty persons signed a petition to the Crown or Parliament to change the law, without obtaining prior approval from three judges or the grand assizes of the petition's contents. See Black's Law Dictionary 1685 (4th ed. 1951).

[36] See Simpson 136–39.

[37] Id. at 81–188. Blackstone viewed impeachment as the "trial of great and enormous offenders" (4 W. Blackstone, Commentaries 256 (4th ed. 1770)) who had seriously breached a public trust. Id. at 258. Professor Richard Wooddeson agreed, finding that the Lords should try the case since the influence of the accused official might obstruct the administration of justice in the ordinary courts. 2 R. Wooddeson, A Systematical View of the Laws of England 611 (1792). For other views of this author, see note 284 and accompanying text infra.

[38] The convictions are those of the Earl of Suffolk, Chancellor, in 1386 (depriving the Crown of revenue and improper use of tax funds); Sir Henry Yelverton, Attorney General, in 1621 (acting without authority in office and neglect to office); Lord Treasurer Middlesex in 1624 (bribery and corruption in office); Sir Edward Herbert in 1642; George Benyon in 1642 (formulating a seditious petition); Sir Richard Gurney, Mayor of London, in 1642 (circulating illegal proclamations); Nine Lords at York in 1642 (support of the King in his determination to wage war on Parliament); John Goudet and others in 1698 (trading with the enemy in wartime); John Aurioll and John Du Maistre in 1698 (trading with the enemy in wartime); Henry Sacheverell in 1710 (speeches against the government); and Earl of Macclesfield, Lord Chancellor, in 1725 (extortion and sale of judicial offices). Simpson 86–167. Those cases charging "high crimes and misdemeanors" but not listed by Simpson as resulting in a conviction are: Bishop Wren in 1640 (unlawful innovations and restrictions upon religious practices); Richard Spencer in 1642; Sir Edward Dering in 1642 (formulating and circulating a seditious petition); Sir Thomas Gardiner in 1642 (enforcement of the illegal ship money tax and preventing the filing of lawful petitions); Henry Hastings and others in 1642 (inciting an unlawful assembly of three hundred armed persons); Lord Viscount Mordaunt in 1666 (illegally confined and refused to accept bail in Tayleur's case, thereby preventing Tayleur voting in Parliament); Peter Pett, Commissioner of the Navy, in 1668 (violation of orders and negligent command, causing the loss of Crown ships); Sir William Penn, Vice Admiral of His Majesty's fleet, in 1668 (fraud and embezzlement of cargo); Earl of Orrery in 1669; Sir Francis North, Chief Justice of the Common Pleas, in 1680 (drawing and passing an illegal petition); Duke of Leeds in 1695 (sale of his official influence); Earl of Portland in 1701; Earl of Oxford in 1701 (conversion of royal funds and property, and giving false advice to the King); Lord Somers, Lord Chancellor of England, in 1701 (giving false advice to the King and unlawfully affixing the Great Seal to treaties and commissions); Lord Halifax, Chancellor of the Exchequer, in 1701 (corruption in misusing Crown assets); Earl of Strafford in 1715 (acting to the detriment of the nation in wartime by consorting with the enemy); Warren Hastings in 1786 (misgovernment and maladministration in India); Lord Viscount Nelville, Treasurer of the Royal Navy, in 1806 (misappropriation of public funds). Id. at 111–90.

"[I]n applying the term 'high crimes and misdemeanors' to the conduct of English judges, [the Commons] only included in that category such acts as a judge performs while sitting upon the bench, administering the laws of the realm . . . . Excepting bribery, there is no case in the Parliamentary law of England which gives color to the idea that the personal misconduct of a judge, in matters outside of his administration of the law in a court of justice, was ever considered or charged to constitute an impeachable high crime and misdemeanor." Taylor, The American Law of Impeachment, 180 N. Am. Rev. 502, 506 (1905) (emphasis deleted). See Dwight, supra note 29, at 264, concluding that the "weight of authority is, that no impeachment will lie except for a true crime, or, in other words, for a breach of the common or statute law . . . ."

[39] Macaulay's Essay on Warren Hastings 175 (M. Frick ed. 1900) [hereinafter cited as Macaulay].

[40] See 3 G. Gleig, Memoirs of Warren Hastings 283–85 (1841) [hereinafter cited as Gleig]; P. Marshall, The Impeachment of Warren Hastings (1965) [hereinafter cited as Marshall].

[41] Marshall 56–58.

[42] Id. at 19–20.

[43] Id. at 58.

[44] Gleig 332–33; Macaulay 171–78; L. Trotter, Warren Hastings 234–37 (1910). After two days of reading the charges and answers, Burke then consumed four days with his opening speech. He concluded by stating: "I impeach Warren Hastings of high crimes and misdemeanors. I impeach him in the name of the Commons' . . . the English nation . . . the people of India . . . in the name of human nature itself . . . I impeach the common enemy and oppressor of all!" Macaulay 179–80.

[45] Marshall 85. Early in the trial a dispute between the Managers and the defense arose as to whether, in deciding the case, the Lords were bound either by the laws of Parliament or by the laws as observed in other courts. They resolved that they "intended to follow contemporary legal practice rather than seventeen century precedents." Id. at 64, 69.

[46] When judges were appointed during good behavior, the means available for their removal were: "In cases of misconduct not extending to a legal misdemeanour, the appropriate course appears to be by scire facias to repeal his patent, 'good behaviour' being the condition precedent of the judges' tenure; secondly, when the conduct amounts to what a court might consider a misdemeanour, then by information; thirdly, if it amounts to actual crime, then by impeachment; fourthly, and in all cases, at the discretion of Parliament, 'by the joint exercise of the inquisitorial and judicial jurisdiction' conferred upon both Houses by statute, when they proceed to consider of the expediency of addressing the crown for the removal of a judge." 2 A. Todd, On Parliamentary Government in England 728–29 (1869) (emphasis deleted and footnote omitted) [hereinafter cited as Todd]. See also 6 Halsbury 609.

[47] See Haynes 76–77; O. Phillips, A First Book of English Law 23 (5th ed. 1965). A patent has been defined as a "grant by the sovereign to a subject . . . under the great seal, conferring some authority, title, franchise, or property." Black's Law Dictionary 1282 (4th rev. ed. 1968).

[48] See Haynes 62–67; Plucknett 465.

[49] Haynes 54–55; Plucknett 466. Even after the passage in 1701 of the Act of Settlement, which provided for a term during good behavior, judicial commissions continued to expire upon the King's death. In 1720 the commissions were extended to six months after the King's death. Finally, in 1761 it was provided by statute that commissions survive the death of the King. Haynes 54–55; Todd 726.

[50] Haynes 55

[51] See Cross & Hall 224; H. Hanbury, English Courts of Law 127 (1967) [hereinafter cited as Hanbury]; 2 Taylor 239–42.

[52] [M]anipulations of the bench were possible because judges were ordinarily appointed durante beneplacito and were thus removable at pleasure without assigning any professional default." Plucknett 465.

[53] Id. Coke was responsible for the judges of the exchequer refusing to consult with the King prior to rendering their decision in the "case of Commendams." When chastized by James I for this position, Coke alone defended their refusal. He was then dismissed. When asked "whether in a like case in future he would consult with the king before rendering judgment, in the event his majesty should consider himself interested, nothing more could be drawn from him than the statement that when such a case should arise, he would do what was fitting for a judge to do." 2 Taylor 241; see Plucknett 349–52.

[54] The writ of "scire facias" was used to revoke a patent after a determination was made that the holder had breached the condition upon which he held office, e.g., good behavior. Blackstone states that "where the patentee hath done an act that amounts to a forfeiture of the grant, the remedy to repeal the patent is by writ of 'scire facias' in chancery." 3 W. Blackstone, Commentaries 256 (Christian & Archbald ed. 1825). In England the writ survived until 1947, when it was abolished by the Crown Proceedings Act. O. Phillips, supra note 47, at 24 n.5. Interestingly, the Federal Rules of Civil Procedure, after abolishing the writ, state: "Relief heretofore available by . . . scire facias may be obtained by appropriate action . . . under the practice prescribed in these rules." Fed. R. Civ. P. 81(b).

[55] See Haymes 61–62; McIlwain, The Tenure of English Judges, 7 Am. Pol. Sci. Rev. 217, 221 (1913). In 1672, Sir John Archer, a judge of the common pleas who had been appointed for good behavior, refused to surrender his patent without a "scire facias." Although Charles II directed him to cease exercising his duties, he continued to do so. Id. at 223.

[56] 12 & 13 Will. 3, c. 2, § 3 at 360 (1701). For the text of the Act, see Plucknett 460–66; 2 Taylor 422–23. The Act did not take effect until after the death of Queen Anne in 1714. See Haymes, 78; Plucknett 464. Section 8 of the Act confirmed Parliament's decision in the impeachment of Earl Thomas Osborne of Danby that the King's pardon was not a defense to an impeachment by the Commons. See Plucknett 464, 532–34.

[57] "The grant of an office during good behaviour creates an office for life determinable upon breach of the condition, and behaviour means behaviour in matters concerning the office, except in the case of conviction upon an indictment for any infamous offence of such a nature as to render the person unfit to exercise the office, which amounts legally to misbehaviour though not committed in connection with the office.

"Misbehaviour as to the office itself means improper exercise of the functions appertaining to the office, or non-attendance, or neglect of or refusal to perform the duties of the office." 6 Halsbury 609–10 (footnotes omitted). Accord, Todd 727.

[58] Address is a formal request by Parliament to the King seeking the dismissal of a judge whose conduct, while wrongful, fails to warrant an impeachment trial. See Black's Law Dictionary 60 (4th ed. 1951). Address afforded the two Houses of Parliament "a right

to appeal to the crown for the removal of a judge who has, in their opinion, proved himself unfit for the proper exercise of his judicial office." Todd 729.

[59] See W. Carpenter, Judicial Tenure in the United States 125 (1918). Upon an address by both houses, the Crown was bound by convention to comply with the request. O. Phillips, The Constitutional Law of Great Britain and the Commonwealth 445 (1952). "If there is a failure in the administration of justice, from whatever cause, affecting any judge, both Houses of Parliament may address the crown, to remove that judge from office." 1 Todd 355.

[60] This procedure was used in 1830 against Sir Jonah Barrington, judge of the Court of Admiralty in Ireland, for allegedly appropriating funds belonging to the court, 62 Lords Journ. 599 (1830); A. Gibb, Judical Corruption in the United Kingdom 64, 72 (1957). While address was instituted on other occasions, Barrington's case is the only instance where it was carried to a final conclusion. 6 Halsbury 610–11 nn.d, e & h. Removal by address under the Act of Settlement was first considered in 1805 when Parliament investigated the judicial misconduct of Judge Fox, with a view toward a possible address to the King. Between 1805 and 1867 historian Alpheus Todd records eight instances where a possible address was considered by Parliament. Only in 1830 was it brought to a conclusion when the sovereign, regretting the circumstances giving rise to the address, ordered Barrington removed from office. The only restraints on the employment of address were those Parliament, in exercising its position of trust, chose to impose upon itself. Todd, after reviewing available precedents, found six self-imposed "rules" on the utilization of address: The complaint originated in the House of Commons; the complaint could be initiated in various ways (e.g., by a member, a royal commission or even an individual wronged by the judge); members had to investigate the charges before Parliament decided to investigate; an investigation looking toward an address was only to be taken up if the alleged misconduct justified removal; the accused had to be informed of the charges and given an opportunity to present a defense, and the address to the sovereign had to state the misconduct which in Parliament's opinion rendered the judge unfit for office, so the King might exercise "constitutional discretion" in acting on the request. 2 Todd 729–44.

[61] For a description of the various documents of government used during the colonial period, see L. Labaree, Royal Government in America 1–36 (1930) [hereinafter cited as Labaree].

[62] Id. at 125–26.

[63] O. Dickerson, American Colonial Government 1696–1765, at 197 (1912) [hereinafter cited as Dickerson].

[64] A typical instruction provided: "You shall not displace any of the judges, justices, or other officers or ministers within our said province, without good and sufficient cause to be signified unto us, and to our said commissioners for trade and plantations; and to prevent arbitrary removals of judges and justices of the peace, you shall not express any limitation of time in the commissions you are to grant." Id. at 195 & n.445. See also Labaree 381 n.20, 388–89.

[65] Dickerson 196; Labaree 389–90.

[66] Dickerson 199.

[67] Id. at 208.

[68] See id. at 200–09. In 1759, Pennsylvania passed a law providing for judges to hold their tenure during good behavior and establishing address by the assembly as a procedure for removal. This act was rejected by the British Government. Similar legislation was passed in Jamaica in 1751 and proposed in New York in 1761. Labaree 390–91.

[69] The colonial charters and early state constitutions are reproduced in B. Poore, The Federal and State Constitutions, Colonial Charters, and other Organic Laws of the United States (2d ed. 1868) [hereinafter cited as Poore's Constitutions].

[70] Georgia became bicameral in 1789 and Pennsylvania in 1790.

[71] He was elected by the people in Connecticut, Massachusetts, New Hampshire, New York and Rhode Island. In all of these states except New York, he was chosen by the legislature if he did not obtain a majority of the popular vote.

[72] See, e.g., 1 Poore's Constitutions 275 (Del. Const. (1776)); id. at 826 (Md. Const. (1776); id. at 968 (Mass. Const. (1780)); 2 id. at 1286 (N.H. Const. (1784)); id. at 1336 (N.Y. Const. (1777)); id. at 1412 (N.C. Const. (1776)); id. at 1625 (S.C. Const. (1778)); and id. at 1911 (Va. Const. (1776)).

[73] See 1 id. at 276–77 (Del. Const. (1776)); 2 id. at 1912 (Va. Const. (1776)). The North Carolina Constitution of 1776 provided that officers offending the state through violation of any part of the state constitution, "maladministration," or "corruption" were subject to impeachment. 1 id. at 1413.

[74] 1 id. at 963 (Mass. Const. (1780)); 2 id. at 1286 (N.H. Const. (1784)).

[75] 2 id. at 1337 (N.Y. Const. (1777)); id. at 1624 (S.C. Const. (1778)).

[76] 1 id. at 819 (Md. Const. (1776)); 2 id. at 1312 (N.J. Const. (1776)).

[77] 2 id. at 1545 (Pa. Const. (1776)).

[78] 1 id. at 254 (Conn. Charter (1662)); 2 id. at 1599 (Providence Plantations Charter (1663)).

[79] Delaware, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, South Carolina and Virginia all provided for impeachment in this manner. 1 id. at 276, 964, 1287, 1312; 2 id. at 1337, 1413, 1624, 1912. In New York and South Carolina, a two-thirds vote was required for impeachment.

[80] E.g., Delaware, New Hampshire and New Jersey. Id. at 276, 1286, 1312.

[81] E.g., North Carolina and Virginia. 2 id. at 1413, 1912.

[82] In New York and South Carolina, a two-thirds vote was required. Id. at 1337, 1624.

[83] This was true in Delaware, Massachusetts, New Hampshire, New York and Virginia 1 id. at 275, 963, 1286; 2 id. at 1337, 1912.

[84] This limitation was imposed in Massachusetts, New Hampshire and Pennsylvania. 1 id. at 966, 1285; 2 id. at 1545.

[85] E.g., Delaware, Massachusetts, New Hampshire, and South Carolina. 1 id. at 276, 969, 1290; 2 id. at 1625. In Maryland, a two-thirds vote of both houses was required. 1 id. at 819. In Pennsylvania, judges were removable for "misbehavior" at any time. 2 id. at 1545. Delaware also provided for removal of officers on "conviction of misbehavior at common law. . . ." 1 id. at 276.

[86] In 1786 it was proposed that the Articles be amended to provide, among other things, for a federal court to try and punish all officers appointed by Congress for "all crimes, offenses and misbehavior in their offices." See H. Hockett, The Constitutional History of the United States 1776–1826, at 186 (1939).

[87] The Records of the Federal Convention of 1787, at 21–22 (Farrand ed. 1911 & 1937) [hereinafter cited as Farrand].

[88] Id. at 22.

[89] One copy of his plan, which was transmitted to John Quincy Adams in 1818 by Pinckney himself, referred to "Treason, Bribery or Corruption" as the grounds for presidential impeachment. 3 Farrand 600. Upon seeing this copy, Madison questioned its accuracy. Id. at 601–02. A reconstructed copy of the plan (see id. at 604) prepared by certain scholars refers to "all Crimes . . . in their Offices" as the grounds for impeachment of officers of the United States. Id. at 608.

[90] 1 id. at 69.

[91] Id. at 71.

[92] Id. at 85.

[93] Id. at 86.

[94] Id.

[95] Id. at 88.

[96] Id at 232.

[97] Id. at 244.

[98] Id. at 288.

[99] Id. at 292.

[100] One copy of Hamilton's plan specified the forum as a court consisting of the justices of the Supreme Court plus the chief or senior judge of each state. Another copy confined the court to state judges. See 3 id. at 618–19.

[101] 2 id. at 41–42.

[102] Id. at 39. That good behavior tenure provision was unanmiously agreed to Id. at 38.

[103] Id. at 65.

[104] Id. at 64.

[105] Id at 65.

[106] Id.

[107] Madison also noted that the executive was different from the legislative branch, stating: "It could not be presumed that all or even a majority of the members of an Assembly would either lose their capacity for discharging, or be bribed to betray, their trust." He added that the "difficulty of acting in concert for purposes of corruption was a security to the public." Id. at 66.

[108] Id.

[109] Id. at 67.

[110] Id.

[111] Id.

[112] Id. at 68–69. Earlier in the debate Morris said that corruption and "some few other offenses . . . ought to be impeachable; but . . . the cases ought to be enumerated & defined." Id. at 65.

[113] Id. at 61, 69. No decision was reached as to the forum for trying impeachments. Pinckney, King and Randolph urged that the legislature not be involved, since otherwise the President's independence would be sharply curtailed.

[114] Id. at 95. Its members were John Rutledge of South Carolina, Edmund Randolph of Virginia, Nathaniel Gorham of Massachusetts, Oliver Ellsworth of Connecticut, and James Wilson of Pennsylvania. Id. at 97.

[115] Id. at 116.

[116] Id. at 178–79.

[117] Id. at 185–86. The "treason, bribery, or corruption" language appears to have been taken from a document in the handwriting of Edmund Randolph. Id. at 137 & n. 6.

[118] Id. at 186. Section 4 of this article provided that there was to be no jury in impeachment cases. Section 5 provided that the judgment in cases of impeachment "shall not extend further than to removal from Office, and disqualification to hold and enjoy any office of honour, trust or profit, under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgement and punishment according to law." Section 2 of Article XI provided that judges of the Supreme Court and of the inferior courts would hold their offices during good behavior. Id. at 186.

[119] Id. at 231.

[120] Id. at 344.

[121] Id. at 367.

[122] Id. at 411.

[123] Id. at 427.

[124] Id. at 428.

[125] Id.

[126] Id. at 429. Wilson noted that Chief Justice Holt "had successfully offended by his independent conduct, both houses of Parliament. Had this happened at the same time, he would have been ousted." Id.

[127] Id.

[128] Id. at 435. It is interesting to note that also that day the words "high misdemeanor" were eliminated from the extradition provisions of Article XV and the words "other crime" substituted—"it being doubtful whether 'high misdemeanor' had not a technical meaning too limited." Id. at 443. The expression "high misdemeanors" was also referred to by Rufus King during the debate concerning a definition of treason. King stated that treason against particular states could be punishable by such states as "high misdemeanors." Id. at 348.

[129] Id. at 497–99.
[130] Id. at 500. This was one of the reasons why Congress was rejected as the body to elect the President. It apparently was felt that if Congress had the power to elect, it should not have the power to impeach.
[131] Id.
[132] Id. at 550. Mason noted that Hastings' actions would not have been deemed treason as defined.
[133] Id.
[134] Id. at 551.
[135] Id.
[136] Id.
[137] Id. at 552.
[138] With respect to that draft, Mason noted that there was an inconsistency between Article I, Section 3 and Article II, Section 4, in that the latter section did not mandate disqualification from holding office in the future in the event of a conviction on impeachment Id. at 637.
[139] Id. at 612.
[140] Id. at 612–13.
[141] 2 The Federalist No. 79, at 108–09 (Tudor Pub. Co. ed. 1937) (A. Hamilton).
[142] Id. No. 65, at 17.
[143] Id. at 18.
[144] 3 J. Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution 401 (2d ed. 1836) [hereinafter cited as Elliot].
[145] 4 id. at 48.
[146] Id. at 34.
[147] Id. at 113.
[148] Id. at 114.
[149] 1 Annals of Cong. 498 (1789).
[150] In J. Borkin, The Corrupt Judge (1962), the author states that fifty-five federal judges have been subject to congressional inquiry. Eight were censured but not impeached and seventeen resigned during the period of investigation. Id. at 210. According to Borkin, Judge Martin T. Manton of the Second Circuit Court of Appeals was the first federal judge indicted for "corrupting his office." Id. at 28.
[151] 3 Hinds' Precedents § 2294–98, at 644–48.
[152] Id. § 2302, at 653.
[153] Id. § 2310, at 663. See also id. § 2316, at 671.
[154] Id. § 2318, at 679.
[155] See Potts, Impeachment As a Remedy, 12 St. Louis L. Rev. 15, 18–23 (1927); Thomas, The Law of Impeachment in the United States, 2 Am. Pol. Sci. Rev. 378, 386 (1908). Another interpretation is that once a member of the Congress has been expelled, he subsequently may not be impeached.
[156] See 3 A. Beveridge, The Life of John Marshall 167 (1919); W. Carpenter, Judicial Tenure in the United States 110–11 (1918); M. Peterson, Thomas Jefferson and the New Nation 794, 796 (1970).
[157] 3 Hinds' Precedents § 2319, at 682.
[158] Annals of Cong., 8th Cong., 1st Sess. 319–22.
[159] Id. at 328–29.
[160] See W. Carpenter, supra note 156, at 117.
[161] Annals of Cong., 8th Cong., 1st Sess. 332–33.
[162] Id. at 33–53.
[163] Id. at 354–59.
[164] Id. at 364.
[165] Id.
[166] Id. at 365.
[167] Id. at 366.
[168] Id. at 367.
[169] See 3 A. Beveridge, supra note 156, at 170–71.
[170] The Hastings trial was used as a precedent for a single member of Congress putting the impeachment process into motion. 3 Hinds' Precedents § 2343, at 713. See 14 Annals of Cong. 1173 (1804) for the investigating committee's report.
[171] Fries was tried for opposing, in 1799, the collection of a federal property tax enacted by Congress in 1798. He was charged with treason, convicted, and sentenced to death, but was pardoned by President Adams against the advice of his Cabinet. 7 Dictionary of American Biography 34 (Johnson & Malone ed. 1931). Callender was tried under the Sedition Law for remarks about President Adams contained in a book he had written. He was convicted, fined two hundred dollars, and sentenced to imprisonment for nine months. In 1801 President Jefferson granted him a pardon. 3 id. at 425–26 (Johnson ed. 1929).
[172] 3 Hinds' Precedents § 2346, at 722–24.
[173] Annals of Cong., 8th Cong., 2d Sess. 432 (1805). During the course of his argument, Martin cited a number of common law commentators for the proposition that a "misdemeanor" was understood to be a crime. He said that "misbehavior" was synonymous with "misdemeanor" and that "to be guilty of a misdemeanor, is a violation of some law punishable . . . ." Id. at 436. He concluded that Chase's impeachment was an improper usage of the impeachment power and represented a great threat to the integrity of the judiciary. See 3 Beveridge, supra note 156, at 206.
[174] 3 Hinds' Precedents § 2363, at 771.
[175] The vote was as follows:
Article 1: guilty, 16; not guilty, 18.
Article 2: guilty, 10; not guilty, 24.
Article 3: guilty, 18; not guilty, 16.
Article 4: guilty, 18; not guilty, 16.
Article 5: not guilty, unanimous.
Article 6: guilty, 4; not guilty, 30.
Article 7: guilty, 10; not guilty, 24.
Article 8: guilty, 19; not guilty, 15.
[176] Blackmar, On the Removal of Judges: The Impeachment Trial of Samuel Chase, 48 J. Am. Jud. Soc. 183, 187 (1965). Following the vote in the Chase trial, John Randolph, one of the House Managers, proposed an amendment to the Constitution making federal judges removable by the President on the address of the House and Senate. 2 Am. Hist. Ass'n. Ann. Rept. 1896, at 149 (1897); see 15 Annals of Cong. 1213 (1805).
[177] 3 Hinds' Precedents § 2370, at 786–88.
[178] See Taylor, The American Law of Impeachment, 180 N. Am. Rev. 502, 511 (1905).
[179] 3 Hinds' Precedents § 2379, at 798. "Colore officii" has been defined as "[o]fficer's acts unauthorized by officer's position, though done in form that purports that acts are done by reason of official duty and by virtue of office." Black's Law Dictionary 332 (4th rev. ed. 1968).
[180] 3 Hinds' Precedents § 2381, at 800–01.
[181] Id. § 2382, at 801–02. His attorney argued that the court had the power exercised by Peck but that if it did not have such power "or if, having it, the case was not a case proper for its application, still the act did not proceed from the evil and malicious intention with which it is charged, and which it is absolutely necessary should have accompanied it to constitute the guilt of an impeachable offense." Cong. Globe, 40th Cong., 2d Sess. 49 (n. ††) (Supp. 1868).
[182] 3 Hinds' Precedents § 2383, at 803. Following the trial, Congress promptly enacted an amendment to the judicial code limiting the power of judges to punish for contempt. L. Goldberg, Lawless Judges 93 (1935).
[183] 3 Hinds' Precedents § 2383, at 804.
[184] Id. § 2384, at 805.
[185] Id. § 2390, at 810.
[186] Specification two of this article charged that while acting as a judge of the Confederacy, he ordered the confiscation of the property of Andrew Johnson and one John Catron. Specification three charged that, acting in an illegal position, he caused the unlawful arrest of citizens of the United States for their rejection of the Confederacy. Id at 811.
[187] Id. § 2395.
[188] Id. § 2396, at 817.
[189] The vote was as follows:
Article 1: Guilty, 39; not guilty, 0.
Article 2: Guilty, 36; not guilty, 1.
Article 3: Guilty, 33; not guilty, 4.
Article 4: Guilty 28; not guilty, 10.
Article 5: Guilty, 39; not guilty, 0.
Article 6 (Spec. 1): Guilty, 36; not guilty, 1.
Article 6 (Spec. 2): Guilty, 12; not guilty,
Article 6 (Spec. 3): Guilty, 35; not guilty, 1.
Article 7: Guilty, 35; not guilty, 1.
Id. at 818.
[190] D. Dewitt, The Impeachment and Trial of Andrew Johnson 1 (1903) [hereinafter cited as Dewitt].
[191] See E. McKitrick, Andrew Johnson and Reconstruction (1960); G. Milton, The Age of Hate (1930); J. Savage, Andrew Johnson (1866).
[192] Dewitt 180–81.
[193] C. Bowers, The Tragic Era 155 (1929) [hereinafter cited as Bowers].
[194] Dewitt 202. As a result of his strong disapproval, Stanton was selected to assist Seward in preparation of the President's veto message. Id. at 203.
[195] See Bowers 156. "[T]he next day the 'New York World' published the names of the two thirds in borders of black, with the comment: 'The time is coming when every man in the above list will stand accurst in our history.'" Id. (footnote omitted).
[196] Dewitt 344.
[197] The Great Impeachment and Trial of Andrew Johnson (1868) [hereinafter cited as Trial]; Dewitt 344–46.
[198] Trial 14; Dewitt 346–56.
[199] Trial 14.
[200] Id. at 14–15.
[201] Id. at 15.
[202] Id. at 19–20.
[203] Id. at 20.
[204] Id. at 21.
[205] Bowers 178, quoting from the Congressional Globe of March 2, 1868.
[206] Trial 22.
[207] Id. at 22–23.
[208] Id. at 47 (emphasis deleted).
[209] Id. at 48. While such a position has been espoused in 1388, 4 Hatsell 64, it had formally been rejected by the Lords as early as 1709. Id. at 282–83.
[210] Dewitt 406–07.
[211] Bowers 185–86; Dewitt 424–27.
[212] Trial 110.
[213] Id. at 111.
[214] Id.
[215] 2 Trial of Andrew Johnson 484–86 (1868).
[216] Id. at 486.
[217] Dewitt 574–76.
[218] Cong. Rec., 44th Cong., 1st Sess. 1426 (1896).
[219] 3 Hinds' Precedents § 2449, at 910.
[220] Id. at 910–14.
[221] Id. § 2007, at 315.
[222] Id. at 313.
[223] Id. § 2459, at 934.
[224] Id. § 2461, at 936–37.
[225] The vote was as follows:
Article 1: guilty, 35; not guilty, 25.
Article 2: guilty, 36; not guilty 25.
Article 3: guilty, 36; not guilty 25.
Article 4: guilty, 36; not guilty 25.
Article 5: guilty, 37; not guilty 25.
Id. § 2467, at 945. See also Potts, Impeachment as a Remedy, 12 St. Louis L. Rev. 15, 20 (1927).
[226] 38 Cong. Rec. 95 (1903).
[227] H.R. No. 1905, 58th Cong., 2d Sess. (1904); 3 Hinds' Precedents § 2470, at 951. It is to be noted that the only offense characterized by the committee as a high misdemeanor involved statutory violations. None of the other charges were so characterized.
[228] 39 Cong. Rec. 248 (1904).
[229] 39 Cong. Rec. 754–55 (1905).
[230] A minority of the committee contended that none of the charges, except those relating to false certificates, were sufficient to warrant impeachment. Ld. at 755.
[231] Id. at 3028–33 (1905) (emphasis deleted).
[232] 3 Hinds' Precedents § 2011, at 328–29. In support of their primary argument, they suggested a situation in which a judge might be convicted and imprisoned for forging a note. It was argued that under those circumstances he obviously should not continue to draw his salary as a judge. Id. at 328. See generally Taylor, The American Law of Impeachment, 180 N. Am. Rev. 502, 512 (1905), where the author states that this situation

can be cured only by constitutional amendment.

[233] Hinds' Precedents § 2010, at 327.

[234] The vote was as follows:
Article 1: guilty 33; not guilty, 49.
Article 2: guilty, 32; not guilty, 50.
Article 3: guilty, 32; not guilty 50.
Article 4: guilty 13; not guilty 69.
Article 5: guilty, 13; not guilty 69.
Article 6: guilty 31; not guilty 51.
Article 7: guilty 19; not guilty 63.
Article 8: guilty 31; not guilty 51.
Article 9: guilty 31; not guilty 51.
Article 10: guilty, 31; not guilty, 51.
Article 11: guilty, 31; not guilty, 51.
Article 12: guilty, 35; not guilty, 47.
Id. § 2485, at 979. For a political analysis of this and the following cases, see ten Broek, Partisan Politics and Federal Judgeship Impeachments Since 1903, 23 Minn. L. Rev. 185 (1939). See also Littlefield, The Impeachment of Judge Swayne, 17 The Green Bag 193 (1905).

[235] 6 Canon's Precedents § 498, at 685.

[236] H.R. Rep. No. 946, 62nd Cong., 2d Sess. (1912), 48 Cong. Rec. 8697–708 (1912).

[237] Id. at 8706–08.

[238] Id. at 9795–802.

[239] See Part III of Respondent's Brief, 6 Cannon's Precedents 640, citing Record of Trial at 1067. See also ten Broek, supra note 235, at 193. It is not clear in which way the challenge was settled. This is because the only article upon which a conviction was had, and which also charged offenses allegedly committed by the judge in his former position, was article thirteen, an article which the defense conceded consisted only partially of such changes.

[240] 48 Cong. Rec. 8702–05 (1912).

[241] 6 Cannon's Precedents § 462, at 646.

[242] Id. § 463, at 648.

[243] See Simpson, Federal Impeachments, 64 U. Pa. L. Rev. 803, 820 (1916).

[244] The vote was as follows:
Article 1: Guilty, 68; not guilty, 5.
Article 2: Guilty, 46; not guilty, 25.
Article 3: Guilty, 60; not guilty, 11.
Article 4: Guilty, 52; not guilty, 20.
Article 5: Guilty, 66; not guilty, 6.
Article 6: Guilty, 24, not guilty, 45.
Article 7: Guilty, 29; not guilty, 36.
Article 8: Guilty, 22; not guilty, 42.
Article 9: Guilty, 23; not guilty, 39.
Article 10: Guilty, 1; not guilty, 65.
Article 11: Guilty, 11; not guilty, 51.
Article 12: Guilty, 19; not guilty, 46.
Article 13: Guilty, 42; not guilty, 20.
6 Cannon's Precedents 707. J. Borkin, The Corrupt Judge 199 (1962), characterized the Archbald conviction as being based on the judge using his "official position for private gain and accepting loans from litigants before him."

6 Cannon's Precedents 707. J. Borkin, The vote to disqualify was 39 to 35, or less than two-thirds.

[246] Cong. Rec. 1499 (1913) (opinion of Senator Catron); id. at 1537–41 (opinion of Senator Paynter); see id. at 1497 (opinion of Senator Crawford).

[247] 49 Cong. Rec. 1448 (1913) (opinion of Senators Henry Cabot Lodge and Elihu Root); see id. at 1535 (opinions of Senators Penrose and Cullom).

[248] Id. at 1495 (opinion of Senator Gronna); id. at 1498 (opinion of Senator Oliver).

[249] Id. at 1494–95 (opinion of Senator John D. Works); id. at 1498–99 (opinion of Senator Porter J. M'Cumber).

[250] H.R. Res. 402, 68th Cong., 2d Sess. (1925); 66 Cong. Rec. 1790 (1925); 6 Cannon's Precedents 778.

[251] H.R. Rep. No. 653, 69th Cong., 1st Sess. (1926); 67 Cong. Rec. 6280–87 (1926); 6 Cannon's Precedents § 545, at 779.

[252] The subcommittee stated that impeachable conduct included, among other things, gross betrayals of the public interest, tyrannical abuses of power, and inexcusable neglect of duty. All of these were impeachable, in the subcommittee's opinion, whether committed on or off the bench, as long as they were so grave as to shame the country. 67 Cong. Rec. 6283 (1926).

[253] 6 Cannon's Precedents § 547, at 784–85. They made it clear, however, that in their opinion the resignation of English in no way affected the rights of the Senate to hear and determine the charges. The resolution containing this recommendation was passed, 290 to 23. Id. at 785.

[254] 75 Cong. Rec. 12,470 (1932); 6 Cannon's Precedents § 513, at 710–11.

[255] H.R. Res. 239, 72d Cong., 1st Sess.; 75 Cong. Rec. 11,358 (1932); 6 Cannon's Precedents § 513, at 709–10.

[256] H.R. Rep. No. 2065, 72d Cong., 2d Sess. (1933); 6 Cannon's Precedents § 514, at 711. The report did censure the judge for his conduct.

[257] The substitute resolution was proposed by Representative LaGuardia of New York. 6 Cannon's Precedents § 514, at 712.

[258] 76 Cong. Rec. 4914–16 (1933).

[259] 6 Cannon's Precedents § 521, at 731–32.

[260] Id. § 524, at 742.

[261] H.R. Res. 163, 73d Cong., 1st Sess., 77 Cong. Rec. 4575 (1933).

[262] 80 Cong. Rec. 404 (1936).

[263] Id. at 410.

[264] Id. at 3486–88, 4654–56.

[265] Id. at 4899–906.

[266] Id. at 5469.

[267] Id. at 5602–06. The form of the question read: "Senators, how say you? Is the respondent, Halsted L. Ritter, guilty or not guilty?" Id. at 5602.

[268] Id. at 5602–06. There was one vote short of two-thirds on the first of the six articles. It is noteworthy that 55 of the 56 Senators who voted guilty on the seventh article had previously voted guilty on one or more of the first six articles. The remaining Senator (Minton) had voted not guilty on each of the first six.

[269] Id. at 5607.

[270] Id. at 5752–56.

[271] Ritter v. United States, 84 Ct. Cl. 293, cert. denied, 300 U.S. 668 (1936).

[272] See text accompanying notes 124–27, 132–33 supra.

[273] See 1 A. de Tocqueville, Democracy in America 106–11 (Bradley ed. 1945), where the author compares this limitation with the more extended power of punishment available to legislative bodies in European countries.

[274] See 1 J. Bryce, The American Commonwealth 47 (1889).

[275] See N. Bailey, Dictionary (1753); S. Johnson, Dictionary of the English Language (3d ed. 1765); T. Sheridan, a General Dictionary of the English Language (1780); R. Hunter, The Encyclopaedic Dictionary (1885); J. Murray, New English Dictionary 76 (1908).

[276] 4 W. Blackstone, Commentaries 1 (4th ed. 1771); Jacobs Law Dictionary (1st Am. ed. 1811). See also T. Potts, Compendious Law Dictionary (1813). Most nonlegal dictionaries defined "misdemeanor" merely as behaving one's self ill. See, e.g., J. Ash, Dictionary of the English Language (1775); N. Bailey, Dictionarium Britannicum (1730); S. Johnson, Dictionary of the English Language (3d ed. 1765); T. Sheridan, A General Dictionary of the English Language (1780).

[277] See, e.g., 4 W. Blackstone, Commentaries 121 (4th ed. 1771).

[278] 2 Farrand 68.

[279] It is generally agreed that the "good Behaviour" clause was taken from the latin phrase "quamdiu se bene gesserit," as used in the Act of Settlement. This phrase has been defined as "[a] clause often used in Letters Patent of the Grant of Offices, as in those to the Barons of the Exchequer, which must be intended only as to Matters concerning their office; and is nothing but what the Law would have implied, if the Office had been granted for life." Cowel's Law Dictionary (1727); see Blount's Law Dictionary (3d. ed. 1717); Cunningham's Law Dictionary (1764). See generally E. Haynes, The Selection and Tenure of Judges 25 (1944).

[280] 2 The Federalist No. 78, at 99 (Tudor Pub. Co. ed. 1937) (A. Hamilton).

[281] Id. at 100.

[282] For various interpretations of Humphrey's conviction, see Brown, The Impeachment of the Federal Judiciary, 26 Harv. L. Rev. 684, 704 (1913) (treason or in nature of treason); Dougherty, Limitations on Impeachment, 23 Yale L.J. 60, 72 (1913) (treasonable conduct); Taylor, The American Law of Impeachment, 180 N. Am. Rev. 502, 511 (1905) (misconduct on the bench); Thomas, The Law of Impeachment in the United States, 2 Am. Pol. Sci. Rev. 378, 383 (1903) (treason or high crimes and misdemeanors off the bench).

[283] C. Montesquieu, The Spirit of Laws 118 (6th ed. 1793).

[284] 2 R. Wooddeson, A Systematical View of the Laws of England 596–97 (1792). Wooddeson elaborated on his views by stating: "Thus, if a lord chancellor be guilty of bribery, or of acting grossly contrary to the duty of his office, if the judges mislead their sovereign by unconstitutional opinions, if any other magistrate attempt to subvert the fundamental laws, or introduce arbitrary power, these have been deemed cases adapted to parliamentary inquiry and decision. So where a lord chancellor has been thought to have put the seal to an ignominous treaty, a lord admiral to neglect the safeguard of the sea, an ambassador to betray his trust, a privy counsellor to propound or support pernicious and dishonorable measures or a confidential adviser of his sovereign to obtain exorbitant grants or incompatible employments, these imputations have properly occasioned impeachments; because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offences, or to investigate and reform the general policy of the state." Id. at 602.

[285] Id. at 601.

[286] The author's view of what is impeachable is by no means original. See, e.g., State v. Hastings, 37 Neb. 96, 55 N.W. 774 (1893); Ferguson v. Maddox, 114 Tex, 85, 263 S.W. 888 (1924). See also note 57 supra. For the views of various commentators, see 1 J. Bryce, The American Commonwealth 47, 208 (1889) (acts in violation of official duty and against the interests of the nation); C. Burdick, The Law of the American Constitution 87 (1922) (willful or corrupt misconduct in office or acts of a criminal character); T. Cooley, The General Principles of Constitutional Law 177–78 (3d ed. 1898) (serious abuses or betrayals of trust and whatever is deserving of the process in the opinion of Congress); 1 G. Curtis, Constitutional History of the United States 481–82 (1889) (violation of law plus unfitness to exercise office due to immorality, imbecility or maladministration); 1 A. de Tocqueville, Democracy in America 108, 110 (Bradley ed. 1945) (Senate "generally obliged" to find an offense at common law but no reason to tie them to the "exact definitions of criminal law."); R. Foster, Commentaries on the Constitution § 93 (1895) (offenses ranging from breach of official duty to off duty speeches encouraging insurrection); 1 J. Kent, Commentaries on American Law 319–21 (9th ed. 1858) (corrupt violations of public trust); J. Pomeroy, An Introduction to the Constitution Law of the United States 483–93 (1868) (breaches of trust and acts relating to an official's duties and functions); W. Rawle, A View of the Constitution 209–19 (2d ed. 1829) (abuses of important trusts affecting the higher interest of society); F. Sheppard, The Constitutional Text-Book 75 (1855) (violations of law, acts of a political and extraordinary nature, misdemeanors in office, and violations of a public trust); 1 J. Tucker, The Constitution of the United States § 200 (1899) (criminal misbehavior, a purposed defiance of official duty, and lack of good behavior); 2 D. Watson, The Constitution of the United States 1032–37 (1910) (misconduct in office in exercise of non-exercise of a power and public misbehavior that would shame the country); W. Willoughby, Constitutional History of the

United States §§ 927–34 (2d ed. 1929) (offenses of a political character and gross betrayals of the public interest). See generally 1 J. Story, Commentaries on the Constitution of the United States §§ 796–805 (5th ed. 1905).

[287] For statutes involving criminal sanctions against members of the judiciary, see 18 U.S.C. § 155 (1964) (knowingly approving the payment of fixed fees in bankruptcy); id. § 203 (directly or indirectly seeking compensation for the performance of duty, other than as provided by law); id. § 205 (financial sharing in claims against the government in which they assist without authority); id. § 291 (Supp. V, 1970) (purchasing at less than face value certain claims for expenses against the United States). For statutory provisions relating to judicial discretion see 28 U.S.C. § 144 (1964) (disqualification for personal bias or prejudice); id. § 455 (disqualification when judge has a substantial interest in the case); id. § 958 (limitation on the appointment of receivers); 18 U.S.C. § 401 (1964) (restraints on power to punish for contempt). See also 28 U.S.C. § 134(b) (1964) (a district court judge "shall reside in the district or one of the districts for which he is appointed"); id. § 296 (judges shall discharge all judicial duties to which they are designated and assigned). Upon entering office, a judge takes the following oath: "I [name], do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as [title] according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God." Id. § 453.

[288] 50 Con. Rec. 1266 (1914).

[289] See Powell v. McCormack, 395 U.S. 486 (1969).

[290] Indeed, this is made clear by the debates at the Convention. As noted, the framers specifically rejected the term "maladministration" lest an impeachable offense be equated to whatever a particular Congress said it meant (see text accompanying notes 132–33 supra).

[291] 2 Am. Hist. Ass'n Ann. Rep. 1896, at 149–51 (1897), discussing proposed amendments to the Constitution with respect to the removal of federal judges.

[292] Simpson, Federal Impeachments, 64 U. Pa. L. Rev. 803, 812 (1916), citing a statement attributed to de Tocqueville "that a decline of public morals in the United States would probably be marked by the abuse of the power of impeachment as a means of crushing political adversaries or ejecting them from office." See de Tocqueville, supra note 286.

LABOR SUBCOMMITTEE PENSION STUDY

Mr. WILLIAMS. Mr. President, for some months the Subcommittee on Labor has been engaged in a study of pension funds. This study was authorized under Senate Resolution 360—91st Congress, second session, agreed to March 12, 1970—and continued by Senate Resolution 35—92d Congress, first session, agreed to March 1, 1971.

In connection with the study, a survey is being conducted of the operation of approximately 1,500 plans of the 34,000 pension plans registered with the Department of Labor under the Welfare and Pension Plans Disclosure Act.

The purpose of our study is to obtain an indepth and comprehensive understanding of the private pension system and its effect on the retirement expectations of the American worker. Since this work began, the committee has received a large volume of correspondence from people who thought they were going to receive a private pension but found out too late that they had no pension protection.

Some matters the subcommittee will be examining are the eligibility requirements for receiving pension benefits, such as age and service for vesting and continuous service requirements; the level of funding maintained to protect the worker's benefits; the extent of forfeitures; and the fiduciary standards followed by the plan administrators.

To date, more than 1,000 of the 1,500 plans sampled have responded to the survey. We are continuing our efforts to complete the survey; and analysis of the data by actuaries and accountants on loan from GAO is now in progress. As the survey and study continue, the subcommittee plans to conduct extensive hearings into the operations of pension plans where there is a record of workers losing their pensions or where the plan has been weakened by abuses.

In the interim on Wednesday, March 31, a Subcommittee on Labor Staff Analysis of some preliminary data on benefits and forfeitures relating to 87 private pension plans was completed and released.

This analysis, which represents a limited group of the 1,500 private pension plans included in the study of pension plans underway by the Subcommittee on Labor, contains information which I believe should be of interest to all of us who are concerned with the problems faced by older workers who are reaching retirement without adequate income protection.

I ask unanimous consent that my statement, the staff analysis and the survey form be printed in the RECORD.

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

STATEMENT BY SENATOR HARRISON A. WILLIAMS, CHAIRMAN, COMMITTEE ON LABOR AND PUBLIC WELFARE

Senator Javits and I have called this briefing in order to place before the public some background information about the operation of private pension plans.

The Committee is concerned about the private pension system and its ability to provide employees fortunate enough to participate in pension plans with a real promise of a supplement to social security.

In recent years older workers approaching retirement have faced nightmarish problems in receiving adequate retirement income. For many of them the spectre of sudden layoff, or job termination represents more than the loss of present income. All too frequently it can also mean the loss of pension credits built up from long years of service—credits that can never be regained, even with a new job.

The Subcommittee's activity for some months has been directed to conducting a survey of certain private pension plans to determine present practices regarding vesting of benefits, the level of assets maintained for funding, the fiduciary standards observed in fund operations, benefits paid to participants, and the extent of forfeitures.

Private pension plans involve assets of $130 billion, a growth rate of $10 billion a year and 30 million participants. This survey includes 1,500 plans representing a significant sample of 34,000 private pension plans required to be registered with the Department of Labor under the Welfare and Pension Plans Disclosure Act, and is estimated to cover 60 percent of the participants, or more than 18 million workers.

Much of the analysis of the data is being done under the direction of actuaries and accountants assigned to the committee by the General Accounting Office. While cooperation from the plan administrators has generally been good, there is still a large number of plans that have not responded to the survey, or who have responded, but with information that needs further explanation. The magnitude of the project indicates that it will be some time before the survey is completed.

However, some preliminary staff analyses are significant enough to warrant presenting now. This data released today relates to benefits and forfeitures of a selected number of plans for the last 20 years. The materials have been distributed with appropriate explanations. As the introduction states, this is a preliminary analysis based on a limited sample. To this extent, the statistical results may change as more work is done, although the problems of retiring workers will remain. To summarize these results briefly, this sample is based on a study of 87 plans that completed the survey. The plans represent assets of $16 billion and some 9.8 million workers who have participated in these plans since 1950.

While this data, admittedly, must be viewed from a historical perspective some disturbing results have been shown. Overall, the data indicates that only 5% of all participants who have left since 1950 in 51 pension plans with 11 or more years for vesting have received a benefit, and only 16% of all participants who have left since 1950 in 36 pension plans with 10 years or less for vesting have received a benefit.

In terms of forfeitures, 92% of all active participants since 1950 who left the 51 plans forfeited without qualifying for benefits; 73% of all active participants since 1950 who left the 36 plans forfeited without qualifying for benefits.

The study also indicates that substantial members of workers who lost their pension benefits are long service employees. In the 51 plans, for every two participants who have received a normal, early, or deferred retirement benefit since 1950, one participant forfeited with more than 15 years service; for every one participant who received a benefit, one participant with more than 10 years service, forfeited, 3 participants with more than 5 years service forfeited, and 16 participants with 5 years service or less forfeited.

In the 36 plans, for every one participant with more than 15 years service who forfeited since 1950, 24 participants received a normal, early or deferred retirement benefit. For every participant with more than 10 years service who forfeited, 7 participants received such benefits; for every participant with more than 5 years service who forfeited, one participant received such a benefit; for every participant who received such a benefit, 4 employees with 5 years service or less forfeited. Even though the statistical results may change after further analysis and investigation, the essence of the problem—the worker's plight—remains. These statistics come to life in the poignant letters the Committee receives every day from workers trapped by the private pension plans system. They come from every part of the country and tell us a tragic story. Some of the experiences are worth sharing with you. For example:

A man with 28½ years continuous employment at a paper mill lost his job and all pension rights—as he put in his letter to me, "One day security—next day nothing for retirement."

A man who is now 64 years old with more than 15 years for the same company was laid off and could not find work. In applying for his pension he discovered that he was one year short of eligibility for full benefits. Since there was no qualifying job available,

he could not get the one year needed in his pension.

A man employed for 25 years was terminated by his employers "because there were no more opportunities left for me with the company." The plan had no vesting provisions so he left with no pension.

All of these workers expressed the same common grievance—they all lost their pensions but they had no control over the economic forces that conspired to deny them pensions.

We will release data from other parts of the survey as soon as it is prepared. We intend to look into the whole matter of funding and vesting levels as well as party-in-interest transactions, interlocking trusteeships, or directorships and certain investment practices.

In this connection we have distributed a series of case examples that have been abstracted from our survey. The identity of the plan has been removed, but the data contained in the survey form has been presented to illustrate what we are looking for.

In addition to the survey, we have also started preparations for a series of hearings into some of the problems not suitable to analysis by questionnaire.

INTRODUCTORY COMMENTS BY SENATORS WILLIAMS AND JAVITS

We are releasing today preliminary statistical data compiled by the staff of the Senate Subcommittee on Labor, concerning one aspect of the Senate Labor Committee's study of private pension plans.

In mid-1970, we selected a random cross-section sample of private pension plans in the United States and sent out 1500 questionnaires to the administrators of the plans. The survey questionnaires are designed to elicit information on how private pension plans operate in this country and what benefits American workers derive from them. The questionnaires we received from the administrators of the plans are being studied by our Subcommittee, and we expect to develop further information, to provide further analysis and to release to the public further results of this study.

As a preliminary step, the staff has analyzed and compared a limited sample of a group of plans providing no vesting or vesting after at least 11 years of service, and another group of plans providing vesting after ten years of service or less.

The limited study reported here compares the numbers of workers receiving benefits and vested rights with the number of workers who forfeited their rights to benefits. The study demonstrates that generally employees have forfeited their rights to benefits in numbers greatly in excess of those who have received benefits or vested rights, but that in plans with no vesting or more restrictive vesting, longer service employees lost benefits to a higher degree than such employees in plans with less restrictive vesting.

We recognize that these samples, which are only preliminary, are not statistically all-encompassing. In that sense, we know that the final results of our study may show some variance from the numbers and percentages we released today. However, we believe that even these samples should be of interest to those concerned with retirement income for American workers.

In an appendix to the staff analysis appear a number of case examples drawn from the survey which are illustrative of the kinds of problems and abuses being considered by the Subcommittee.

STAFF ANALYSIS: PRELIMINARY DATA ON THE EXTENT OF BENEFITS AND FORFEITURES IN PRIVATE PENSION PLANS IN THE UNITED STATES

INTRODUCTION

One of the objectives of the U.S. Senate study into private pension plans is to determine the impact of private pension plans on participating employees. The study data of this analysis focuses upon the impact of those plans with no vesting or restrictive vesting provisions on employees with substantial periods of service who terminate their employment prior to qualifying for retirement benefits.

For the purpose of this analysis, "vesting" refers to the provision in the plan which gives to the employee a non-forfeitable right to share in the pension fund which covers him in the event of termination of his employment prior to retirement age. Although, in its literal sense, "vesting" has been sometimes construed to mean all types of non-forfeitable benefits, including normal, early or disability retirement benefits, for purposes of this report the term "vesting" is intended to mean that on termination of employment prior to retirement, the employee has a non-forfeitable right to obtain a deferred retirement benefit based upon both the employer's and employee's contribution to the pension fund.

The purpose of this limited study is to examine and compare the historical activity of certain pension plans in terms of benefits and forfeiture rates. These analyses reflect a statistical comparison of the covered participants as between those who ultimately received benefits and those who did not and is based solely on information supplied by plan administrators in response to the survey form. No projection of any kind is made based on this data.

SAMPLING APPROACH

The entire sample of private pension plans randomly selected for study by the Subcommittee in July of 1970 consisted of 1500 plans, representing a broad and diverse segment of the pension industry. Questionnaries (Pension Study: Form P–1) were mailed to the respondents (plan administrators) selected in July and August of 1970.

Out of the 1500 plans, over 1,000 have responded. Of those who have responded, many have so far either refused to respond in whole or in part, have asserted that they are unable to respond in whole or in part, or have provided data which appears questionable on its face in connection with Part III of the survey form—covering data on benefits and forfeitures. As a consequence, many returns will require additional clarification and completion.

Accordingly, for purposes of analysis, a sample was constructed of data from a preliminary group of plans that furnished complete answers to Part III. In addition, in order to create as homogeneous a sample as possible, plans established after 1950 and profit-sharing plans were excluded.

The sample consists of two sets of plans, distinguished by the nature of their vesting provisions. The first set consists of 51 plans with total assets of $10 billion, ranging in size from plans with over 100,000 active participants, to plans with under 100 participants.[1] In this set of plans, no vesting or vesting with 11 years of service or more is provided (with some plans having additional age requirements[2] as well).

Industries in the sample are as follows:

Manufacturing	20
Communications	12
Finance	7
Oil	3
Gas	3
Wholesale and retail	2
Insurance	1
Maritime	1
Construction	1
Service	1
Total	51

No attempt was made to break down these plans by other characteristics, however, the sample covers both single employer and multi-employer plans,[3] insured and non-insured plans, and plans covering hourly-rated, salaried and all employees. The first set of 51 plans also includes eight (8) "contributory" plans, *i.e.*, plans in which contributions are made by both the employer and the employees.[4]

The second set consists of 36 plans with assets of $6 billion, again representing a wide range in terms of participant coverage. The distinguishing characteristics of these plans are that they provide for vesting after ten years of service or less, regardless of age. Industries represented in this group are as follows:

Manufacturing	21
Oil	3
Gas	2
Utilities	1
Transportation	3
Publishing	2
Insurance	3
Construction	1
Total	36

Neither set of samples can as yet be assumed to be statistically representative of all industries in the survey.

This set also includes 14 contributory plans.[5]

It should be noted that many sets of forfeiture figures furnished by the plans in the sample were based on estimates, in which case a footnote explanation is contained within the appropriate table. These responses are tabulated exactly as reported.

ANALYSIS OF 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE

Table 1 depicts the overall comparison of the number of participants who have obtained retirement benefits from the 51 plans[6] since 1950 with the number who have forfeited.[7]

Out of a sample covering a total of 6.9 million participants since 1950, 253,118 or 4 percent have received any kind of normal, early or deferred vested retirement benefit. 4.8 million or 70 percent, without regard to length of service, have left these plans since 1950 without benefits. In terms of the 5.2 million active participants who left the scope of these plans since 1950, the total percentage who forfeited, regardless of length of service, is 92 percent, while the percentage who received benefits is 5 percent.[8]

Of the 4.8 million who forfeited without benefits, close to 4.1 million or 85 percent had five years service or less (Subtable 1–A). The impact of these plans on longer service employees is reflected in Subtable 1–B. For every two employees who received a benefit, one employee with more than 15 years of service forfeited. For every one employee who received a benefit, one employee with more than ten years of service forfeited, nearly three employees with more than five years of service forfeited, while 16 employees with five years service or less forfeited.

Table 2 compares the number of participants who have received vested rights on termination of employment prior to retirement since 1950 with those who have forfeited. Less than one percent of the 6.9 million employees since 1950 who have participated in these plans and the 5.2 million active employees who have left the plans since 1950 have received such vested rights—the precise number is 21,498.

As Subtable 2–A shows, for every one participant who received such a vested right, 223 participants forfeited without regard to length of service. Of these participants, five forfeited with more than 15 years service, 13 forfeited with more than ten years service, 33 forfeited with more than five years service and 186 forfeited with five years service or less.[9]

Table 3 provides the same comparisons as Table 2 except that it is limited to the experience of the last five years.

Footnotes at end of article.

12,536 participants of 2.9 million participating in the last five years—or considerably less than one percent—have received vested rights on termination of employment prior to retirement. In terms of the 1.2 million active participants who have left the scope of these plans in the last five years, the percentage who received such vested rights is one percent.

By contrast, 991,111 participants, regardless of length of service, forfeited in the last five years. This constituted 34 percent of the 2.9 million participating in the last five years but 82 percent of all the active participants who left the scope of the plans.

As Subtable 3–A shows, the largest number of all of the participants who forfeited—835,589 or 84 percent—were in the category of participants with five years service or less. The forfeiture percentages by length of service for the remaining categories of participants are virtually similar to the corresponding forfeiture percentages for the last 20 years (See Subtable 1–A).

Subtable 3–B indicates that for every one participant in the last five years who received a vested right upon termination of employment prior to retirement, 70 participants forfeited without regard to length of service. Of these participants, two forfeited with more than 15 years service, five forfeited with more than ten years service, 12 forfeited with more than five years service, and 67 forfeited with five years service or less.[10]

ANALYSIS OF 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS

Table 4 depicts the overall comparison of the number of participants who have obtained retirement benefits from the 36 plans since 1950 with the number who have forfeited.

Out of a sample covering a total of 2.9 million participants since 1950, 242,510 or 8 percent have received a normal, early or deferred vested retirement benefit. 1.1 million or 38 percent, without regard to length of service, have left the 36 plans since 1950 without benefits. In terms of the 1.5 million who left the scope of these plans since 1950, the total percentage who forfeited, regardless of length of service is 73 percent, while those with benefits is 16 percent.[11]

Of the 1.1 million who forfeited without benefits, 897,797 or 80 percent had five years service or less (Subtable 4–A).

As indicated by Subtable 4–B, 24 employees received a benefit for every one employee with more than 15 years service who forfeited and seven received a benefit for every one employee with more than ten years of service who forfeited.[12] On the other hand, for every one employee that received a benefit, one employee with more than five years service forfeited and four employees with five years service or less forfeited.

Table 5 compares the number of participants since 1950 who have received vested rights on termination of employment prior to retirement with those who have forfeited in the 36 plans. Of the 2.9 million who have participated in these plans since 1950, only 3 percent (91,517 participants) received vested rights. Of the 1.5 million active participants who left the scope of these plans since 1950, only 6 percent (91,517 participants) received such vested rights.

As Subtable 5–A shows, for every one participant who received such a vested right, 12 participants forfeited without regard to length of service. Of these participants, ten had five years service or less. On the other hand, nine participants received vested rights for every one that forfeited with more than 15 years service, and two received vested rights for every one that forfeited with more than ten years service. For every one participant that received a vested right, 2.5 forfeited with more than five years service.[13]

Of 1.8 million participating in the last five years, 38,037 participants, or 2 percent, have received vested rights on termination of employment prior to retirement. This number represents 9 percent of the active participants who have left the scope of the plan in the last five years—the highest percentage in this connection.

332,760 participants, regardless of length of service, forfeited in the last five years. This constituted 18 percent of the 1.8 million participating in the last five years but 83 percent of the 400,000 active participants who left the scope of the plan in the last five years.

As Subtable 6–A shows, 267,583 or 80 percent of the total forfeitures had five years service or less while 65,177 or 20 percent had more than five years service. Subtable 6–B indicates that 80 employees received vested rights on termination of employment prior to retirement for every one employee who forfeited with more than 15 years service. Of these participants, 26 employees received such vested rights for every one employee who forfeited with more than ten years service. Again, employees who forfeited with more than five years service outnumbered those who received such vested rights by two to one.[14]

A COMPARISON OF 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS

As Table 7 demonstrates, while only five percent of the active participants who left the scope of the plan since 1950 obtained benefits in the 51 plans with no vesting or later vesting. 16 percent of such participants obtained benefits in the 36 plans in the earlier vesting sample.

To some extent, this is attributable to the larger numbers of participants in the 36 plans who received deferred retirement benefits based on vested rights obtained when they terminated employment prior to retirement. Only .03 percent of participants who left the scope of the 51 plans obtained such benefits, while .7 percent in the 36 plans obtained such benefits.

The percentages of those who forfeited with more than five years of service is fairly equal in both sets of plans (See Subtable 7–A).

Subtable 7–B shows that in the 51 plans for every two employees with more than 15 years service who received benefits, one employee forfeited, compared with the 36 plans where 24 employees with more than 15 years service received benefits for every one who did not.

A consistent factor is that roughly the same high percentages—in the 80th percentile—forfeit with five years service or less. (See Subtable 7–A)

A comparison of those who have received vested rights on termination of employment prior to retirement is shown by Table 8. Almost three times as many active participants left the 51 plans since 1950 as left the 36 plans, yet in the latter group, 91,517 obtained such vested rights, while in the former group only 21,489 obtained such vested rights—a ratio of over four to one.

The experience of the five years is similar. Three times as many participants have received vested rights on termination of employment prior to retirement in the 36 plans as in the 51 plans, despite the fact that three times as many active participants left the 51 plans as left the 36 plans.

SUMMARY

The benefits, vested rights and forfeiture status of two discrete samples of private pension plans that completely answered Part III Pension Study: Form P–1 was examined. The first sample consisted of 51 plans that had no vesting provisions or vesting with 11 years of service or more. The second sample consisted of 36 plans with vesting after 10 years of service or less.

The principal preliminary results are:

(1) Four percent of all participants since 1950 in the 51 no vesting or later vesting plans have received normal, early or deferred retirement benefits; eight percent of all participants in the 36 earlier vesting plans have received such benefits.

(2) Five precent of all active participants since 1950 who left the plans have received normal early or deferred retirement benefits; 16 percent of all active participants since 1950 who left the 36 plans have received such benefits.

(3) 70 percent of all participants since 1950 in the 51 plans have forfeited without qualifying for benefits; 38 percent in the 36 plans have forfeited without qualifying for benefits.

(4) 92 percent of all active participants since 1950 who left the 51 plans forfeited without qualifying for benefits; 73 percent of all active participants since 1950 who left the 36 plans forfeited without qualifying for benefits.

(5) Of the total forfeitures in the 51 plans since 1950, 85 percent were participants with five years service or less; of total forfeitures in the 36 plans since 1950, 80 percent were participants with five years service or less.

(6) In the 51 plans, for every two participants who has received a normal, early or deferred retirement benefit since 1950, one participant forfeited with more than 15 years service, for every one participant who received a benefit, one participant with more than ten years service forfeited, three participants with more than five years service forfeited, and 16 participants with five years service or less forfeited.

(7) In the 36 plans, for every one participant with more than 15 years service who forfeited since 1950, 24 participants received a normal, early or deferred retirement benefits; for every participant with more than 10 years service who forfeited, seven participants received such benefits; for every participant with more than five years service who forfeited, one participant received such a benefit; for every participant who received such a benefit, four employees with five years service or less forfeited.

TECHNICAL NOTE

In several of the tables presented in this report, percentages in specific columns may not add up to 100 percent and totals may not correspond exactly to their components.

This is due to a number of factors. First, no attempt has been made to adjust the data for any possible overstatement or understatement in the answers to the survey form, except that where a report specifically so indicated, participants who were transferred into supplementary or new plans, with benefit rights intact, were excluded from the items relating to active participants who left the scope of the plans.

Second, as indicated in footnotes to various tables, participants who received disability retirement, death, survivors and similar type benefits were excluded from those items relating to participants who received benefits.

Third, in the contributory plans, participants who forfeited owing to withdrawal of their contributions rather than by failure to meet eligibility requirements were excluded from forfeiture figures. Otherwise there were specifically included.

Fourth, figures and percentages have been rounded when convenient to do so.

FOOTNOTES

[1] "Participant" was defined by Form P–1 as "any employee or former employee of an employee or any member of an employee organnization who is or may become eligible to receive a benefit or any type from any employee pension benefit plan or whose beneficiaries may be eligible to receive any such benefit and included preparticipants where contributions were being made on their behalf as well as persons still eligible to receive benefits whose service is temporarily interrupted."

[2] In addition to length of service require-

ments for vesting of benefits, many plans also require that a minimum age be attained, *e.g.*, 15 years service *and* age 45. For purposes of this analysis, only the service requirements were considered; the age factor has not yet been separately analyzed.

[8] "Multi-employer" referring in this context to a collectively bargained plan to which predominately unaffiliated employers contribute.

[4] In tabulating forfeiture rates, "contributory" plans present somewhat of a problem because it is almost invariably the case that terminating employees who withdraw their contributions will forfeit vested rights in the employer's contributions despite having otherwise satisfied the age and service requirements for vesting. Where the plan specifically indicated that forfeitures were created by these circumstances rather than by failure to meet age or service requirements, the figures furnished were eliminated from tabulation. Otherwise, they were specifically included.

[5] See Footnote No. 4.

[6] For purposes of constructing this table, as well as the comparable tables for the sample of 36 plans, workers receiving disability retirement, death, and other forms of survivors benefits were excluded since receipt of benefits in these circumstances is not primarily conditioned on meeting age or service requirements. However, the total number of participants having received such benefits is provided in footnotes to the respective tables involved.

[7] The tables contained separate percentage calculations which indicate that there are participants still within the scope of the plan who may yet receive benefits.

[8] See technical note on page 16.

[9] For explanation of variations in totals, see technical note on page 16.

[10] For explanation of variations in totals, see technical note on page 16.

[11] See technical note on page 16.

[12] Many plans in this particular sample reported no forfeitures for participants with more than 15 or 10 years of service. For those who did report such forfeitures, it is to be deduced that 10 year vesting or less was not applicable during the entire 20 year period reported.

[13] For explanation of variations in totals, see technical note on page 16.

[14] For explanation of variations in totals, see technical note on page 16.

TABLE 1.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WITH BENEFITS AND FORFEITURES SINCE 1950 IN PLANS WITH NO VESTING OR VESTING REQUIRING 11 OR MORE YEARS OF SERVICE (BASED ON 51 PLANS WITH $10 BILLION IN ASSETS)

Participants, benefits, and forfeitures	Number	Percentage of— Item (1)	Item (4)
(1) Participants since 1950	6.9 million	100	
(2) Active participants presently under plans	1.7 million	25	
(3) Retired participants presently under plans	210, 289	3	
(4) Active participants since 1950 who left scope of plan [1]	5.2 million	75	100
(5) Participants who received normal retirement benefits since 1950	147, 364	2	3
(6) Participants who received early retirement benefits since 1950	104, 124	1	2
(7) Participants who received deferred retirement benefits based on vested rights since 1950	1, 630	.02	.03
(8) Total participants with benefits (items (5), (6), and (7)) [2]	253, 118	4	5
(9) Participants who forfeited since 1950 regardless of length of service [3]	4.8 million	70	29
(10) Participants who forfeited since 1950 with more than 15 years service	115, 573	1.6	2.2
(11) Participants who forfeited since 1950 with more than 10 years service	280, 018	4	5
(12) Participants who forfeited since 1950 with more than 5 years service	719, 688	10	14
(13) Participants who forfeited since 1950 with 5 years or less service	4.0 million	59	77

[1] Includes those who received benefits, vested rights, or died.

[2] Excludes participants who received disability retirement, death, survivors, and similar benefits. The total number of participants receiving benefits of this nature since 1950 was 88,810.

[3] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 1A—RATIO (PERCENT) OF FORFEITURES BY LENGTH OF SERVICE TO TOTAL FORFEITURES (ITEMS (9), (10), (11) AND (12))

Forfeitures	Number	Percentage of item (9)
(9) Total forfeitures since 1950	4.8 million	100
(10) With more than 15 years service	115, 573	2
(11) With more than 10 years service	280, 018	6
(12) With more than 5 years service	719, 688	15
(13) With 5 years or less service	4 million	85

SUBTABLE 1B—PARTICIPANTS WITH BENEFITS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (DERIVED FROM (8), (9), (10), (11) AND (12))

Benefits and forfeitures	Ratio [1]
(a) With benefits	1
(b) Forfeited regardless of length of service	19
(a) With benefits	2
(b) Forfeited with more than 15 years service	1
(a) With benefits	1
(b) Forfeited with more than 10 years service	1
(a) With benefits	1
(b) Forfeited with more than 5 years service	3
(a) With benefits	1
(b) Forfeited with less than 5 years service	16

[1] In terms of 1 participant who received a benefit.

TABLE 2.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED SINCE 1950 IN PLANS WITH NO VESTING OR VESTING REQUIRING 11 OR MORE YEARS OF SERVICE (BASED ON 51 PLANS WITH $10 BILLION IN ASSETS)

Participants, vested rights and forfeitures since 1950	Number	Percentage of— Item (1)	Item (2)
(1) Participants since 1950	6.9 million	100	
(2) Active participants since 1950 who left scope of plan [1]	5.2 million	75	100
(3) Participants since 1950 who received vested rights on termination of employment prior to retirement	21, 498	.3	.4
(4) Participants who forfeited since 1950 regardless of length of service [2]	4.8 million	70	92
(5) Participants who forfeited since 1950 with more than 15 years service	115, 573	1.6	2.2
(6) Participants who forfeited since 1950 with more than 10 years service	280, 018	45	
(7) Participants who forfeited since 1950 with more than 5 years service	719, 688	10	14
(8) Participants who forfeited since 1950 with 5 years or less service	4 million	59	77

[1] Includes those who received benefits, vested rights, or died.

[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 2A.—PARTICIPANTS WITH VESTED RIGHTS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (FROM ITEMS (3) THROUGH (8))

Vested rights and forfeitures since 1950	Ratio [1]
(a) With vested rights	1
(b) Forfeited regardless of length of service	223
(a) With vested rights	1
(b) Forfeited with more than 15 years service	5
(a) With vested rights	1
(b) Forfeited with more than 10 years service	13
(a) With vested rights	1
(b) Forfeited with more than 5 years service	33
(a) With vested rights	1
(b) Forfeited with 5 years or less service	186

[1] In terms of 1 participant who received a vested right.

TABLE 3.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED WITHIN LAST 5 YEARS IN PLANS WITH NO VESTING OR VESTING REQUIRING 11 OR MORE YEARS OF SERVICE (BASED ON 51 PLANS WITH $10 BILLION IN ASSETS)

Participants, vested rights, and forfeitures in last 5 years	Number	Percentage of— Item (1)	Item (2)
(1) Participants in last 5 years	2.9 million	100	
(2) Active participants in last 5 years who left scope of plan [1]	1.2 million	41	100
(3) Participants in last 5 years who received vested rights on termination of employment prior to retirement	12,536	.4	1
(4) Participants who forfeited in last 5 years regardless of length of service [2]	991,111	34	82
(5) Participants who forfeited in last 5 years with more than 15 years service	27,335	.9	2
(6) Participants who forfeited in last 5 years with more than 10 years service	63,894	2	5
(7) Participants who forfeited in last 5 years with more than 5 years service	155,522	5	13
(8) Participants who forfeited in last 5 years with 5 years service or less	835,589	29	70

[1] Includes those who received benefits, vested rights, or died.

[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 3A.—RATIO (%) OF FORFEITURES BY LENGTH OF SERVICE TO TOTAL FORFEITURES IN LAST 5 YEARS (ITEMS (4) THROUGH (8))

Forfeitures last 5 years	Number	Percentage of item (4)
(4) Total forfeitures last 5 years	991,111	100
(5) With more than 15 years service	27,335	3
(6) With more than 10 years service	63,894	5
(7) With more than 5 years service	155,522	16
(8) With 5 years or less service	835,589	84

SUBTABLE 3B.—PARTICIPANTS WITH VESTED RIGHTS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (FROM ITEMS (3) THROUGH (8))

Vested rights and forfeitures in last 5 years	Ratio [1]
(a) With vested rights	1
(b) Forfeited regardless of length of service	79
(a) With vested rights	1
(b) Forfeited with more than 15 years service	2
(a) With vested rights	1
(b) Forfeited with more than 10 years service	5
(a) With vested rights	1
(b) Forfeited with more than 5 years service	12
(a) With vested rights	1
(b) Forfeited with 5 years or less service	67

[1] In terms of 1 participant who received a vested right.

TABLE 4.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WITH BENEFITS AND FORFEITURES SINCE 1950 IN PLANS WITH A VESTING REQUIREMENT OF 10 YEARS OF SERVICE OR LESS (BASED ON 36 PLANS WITH $6 BILLION IN ASSETS)

Participants, benefits, and forfeitures	Number	Percentage of— Item (1)	Item (4)
(1) Participants since 1950	2.9 million	100	
(2) Active participants presently under plans	1.4 million	47	
(3) Retired participants presently under plans	193,663	7	
(4) Active participants since 1950 who left scope of plan [1]	1.5 million	52	100
(5) Participants who received normal retirement benefits since 1950	128,328	4	8
(6) Participants who received early retirement benefits since 1950	103,223	3	7
(7) Participants who received deferred retirement benefits based on vested rights since 1950	10,959	.4	.7
(8) Total participants with benefits (items (5), (6), and (7)) [2]	242,510	8	16
(9) Participants who forfeited since 1950 regardless of length of service [3]	1.1 million	38	73
(10) Participants who forfeited since 1950 with more than 15 years service	9,931	.3	.7
(11) Participants who forfeited since 1950 with more than 10 years service	36,901	1	2
(12) Participants who forfeited since 1950 with more than 5 years service	220,203	7	15
(13) Participants who forfeited since 1950 with 5 years service or less	879,797	30	59

[1] Includes those who received benefits, vested rights, or died.

[2] Excludes participants who received disability retirement, death, survivors and similar benefits. The total number of participants receiving benefits of this nature since 1950 was 71,309.

[3] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

TABLE 4A.—RATIO (PERCENT) OF FORFEITURES BY LENGTH OF SERVICE TO TOTAL FORFEITURES (ITEMS (9), (10), (11), AND (12))

Forfeitures	Number	Percentage of item (9)
(9) Total forfeitures since 1950	1.1 million	100
(10) With more than 15 years service	9,931	.9
(11) With more than 10 years service	36,901	3
(12) With more than 5 years service	220,203	20
(13) With 5 years service or less	879,797	80

TABLE 4B.—PARTICIPANTS WITH BENEFIT COMPARED TO FORFEITURE BY LENGTH OF SERVICE (DERIVED FROM ITEMS (8), (9), (10), (11) AND (12))

Benefits and forfeitures	Ratio [1]
(a) With benefits	1
(b) Forfeited regardless of length of service	42
(a) With benefits	24
(b) Forfeited with more than 15 years service	1
(a) With benefits	7
(b) Forfeited with more than 10 years service	1
(a) With benefits	1
(b) Forfeited with more than 5 years service	1
(a) With benefits	1
(b) With 5 years service or less	4

[1] In terms of one participant who received a benefit.

TABLE 5.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED SINCE 1950IN PLANS WITH VESTING REQUIREMENTS OF 10 YEARS OF SERVICE OR LESS (BASED ON 36 PLANS WITH ASSETS OF $6 BILLION)

Participants, vested rights and forfeitures since 1950	Number	Percentage of— Item (1)	Item (2)
(1) Participants since 1950	2.9 million	100	
(2) Active participants since 1950 who left scope of plan [1]	1.5 million	52	100
(3) Participants since 1950 who received vested rights on termination of employment prior to retirement	91,517	3	6
(4) Participants who forfeited since 1950 regardless of length of service [2]	1.1 million	38	73
(5) Participants who forfeited since 1950 with more than 15 years service	9,931	.3	.7
(6) Participants who forfeited since 1950 with more than 10 years service	36,901	1	2
(7) Participants who forfeited since 1950 with more than 5 years service	220,203	7	15
(8) Participants who forfeited since 1950 with 5 years or less service	879,797	30	59

[1] Includes those who received benefits, vested rights, or died.

[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUITABLE 5A.—COMPARED TO FORFEITURES BY LENGTH OF SERVICE (FROM ITEMS (3) THROUGH (8))

Vested rights and forfeitures since 1950	Ratio [1]
(a) With vested rights	1
(b) Forfeited regardless of length of service	12
(a) With vested rights	9
(b) Forfeited with more than 15 years service	1
(a) With vested rights	2
(b) Forfeited with more than 10 years service	1
(a) With vested rights	1
(b) Forfeited with more than 5 years service	2.5
(a) With vested rights	1
(b) Forfeited with 5 years or less service	10

[1] In terms of one participant who received a vested right.

TABLE 6.—A COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED IN THE LAST 5 YEARS IN PLANS WITH VESTING REQUIREMENTS OF 10 YEARS OF SERVICE OR LESS (BASED ON 36 PLANS WITH $6 BILLION IN ASSETS)

Participants, vested rights, and forfeitures in last 5 years	Number	Percentage of— Item (1)	Item (2)
(1) Participants in last 5 years	1.8 million	100	
(2) Active participants in last 5 years who left scope of plan [1]	400,000	22	100
(3) Participants in last 5 years who received vested rights on termination of employment prior to retirement	38,037	2	9
(4) Participants who forfeited in last 5 years regardless of length of service [2]	332,760	18	83
(5) Participants who forfeited in last 5 years with more than 15 years service	470	.02	.01
(6) Participants who forfeited in last 5 years with more than 10 years service	1,451	.08	.4
(7) Participants who forfeited in last 5 years with more than 5 years service	65,177	4	16
(8) Participants who forfeited in last 5 years with less than 5 years service	267,583	15	67

[1] Includes those who received benefits, vested rights, or died.

[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 6A.—TOTAL FORFEITURES IN LAST 5 YEARS (ITEMS (4) THROUGH (8))

Forfeitures last 5 years	Number	Percentage of item (4)
(4) Total forfeitures last 5 years	332,760	100
(5) With more than 15 years service	470	.1
(6) With more than 10 years service	1,451	.4
(7) With more than 5 years service	65,177	20
(8) With 5 years or less service	267,583	80

SUBTABLE 6B.—PARTICIPANTS WITH VESTED RIGHTS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (FROM ITEMS (3) THROUGH (8))

Vested rights and forfeitures in last 5 years	Ratio [1]
(a) With vested rights	1
(b) Forfeited regardless of length of service	9
(a) With vested rights	80
(b) Forfeited with more than 15 years service	1
(a) With vested rights	26
(b) Forfeited with more than 10 years service	1
(a) With vested rights	1
(b) Forfeited with more than 5 years service	2
(a) With vested rights	1
(b) Forfeited with 5 years or less service	7

[1] In terms of 1 participant who received a vested right.

TABLE 7.—A SIDE-BY-SIDE COMPARISON OF THE NUMBER OF PARTICIPANTS WITH BENEFITS AND FORFEITURES SINCE 1950 IB 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (TABLES 1 AND 4 COMBINED)

Participants, benefits, and forfeitures	51 plans with no vesting or vesting with 11 years of service or more: Number	Percentage of: Item (1)	Item (4)	36 plans with vesting after 10 years of service or less: Number	Percentage of: Item (1)	Item (4)
(1) Participants since 1950	6.9 million	100		2.9 million	100	
(2) Active participants presently under plans	1.7 million	25		1.4 million	47	
(3) Retired participants presently under plans	210,289	3		193,663	7	
(4) Active participants since 1950 who left scope of plan [1]	5.2 million	75	100	1.5 million	52	100
(5) Participants who received normal retirement benefits since 1950	147,364	2	3	128,328	4	8
(6) Participants who received early retirement benefits since 1950	104,124	1	2	103,223	3	7
(7) Participants who received deferred retirement benefits based on vested rights since 1950	1,630	.02	.03	10,959	.4	.7
(8) Total participants with benefits (items (5), (6), and (7)) [2]	253,118	4	5	242,510	8	16
(9) Participants who forfeited since 1950 regardless of length of service [3]	4.8 million	70	92	1.1 million	38	73
(10) Participants who forfeited since 1950 with more than 15 years' service	115,573	1.6	2.2	9,931	.3	.7
(11) Participants who forfeited since 1950 with more than 10 years' service	280,018	4	5	36,901	1	2
(12) Participants who forfeited since 1950 with more than 5 years' service	719,688	10	14	220,203	7	15
(13) Participants who forfeited since 1950 with 5 years' service or less	4,080,312	59	77	879,797	30	59

[1] Includes those who received benefits, vested rights, or died.

[2] Excludes participants who received disability retirement, death, survivors, and similar benefits. The total number of participants receiving benefits of this nature since 1950 in the 51 plans was 88,810; in the 36 plans, 71,309.

[3] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 7A.—A SIDE-BY-SIDE COMPARISON OF THE RATIO (PERCENT) OF FORFEITURES BY LENGTH OF SERVICE TO TOTAL FORFEITURES (ITEMS (9), (10), (11), (12), AND (13)) IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (SUBTABLES 1A AND 4A COMBINED.)

Forfeitures since 1950	51 plans		36 plans	
	Number	Percentage of item (9)	Number	Percentage of item (9)
(9) Total forfeitures since 1950	4.8 million	100	1.1 million	100
(10) With more than 15 years service	115,573	2	9,931	9
(11) With more than 10 years service	280,018	6	36,901	3
(12) With more than 5 years service	719,688	15	220,203	20
(13) With 5 years service or less	4,080,312	85	897,797	80

SUBTABLE 7B.—A SIDE-BY-SIDE COMPARISON OF PARTICIPANTS WITH BENEFITS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (DERIVED FROM ITEMS (8) THROUGH (13)) IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (SUBTABLES 1B AND 4B COMBINED.)

Benefits and forfeitures since 1950	51 plans ratio [1]	36 plans, ratio [1]
(a) With benefits	1	1
(b) Forfeited regardless of length of service	19	42
(a) With benefits	2	24
(b) Forfeited with more than 15 years service	1	1
(a) With benefits	1	7
(b) Forfeited with more than 10 years service	1	1
(a) With benefits	1	1
(b) Forfeited with more than 5 years service	3	1
(a) With benefits	1	1
(b) Forfeited with 5 years service or less	16	4

[1] In terms of 1 participant who received a benefit.

TABLE 8.—A SIDE-BY-SIDE COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED SINCE 1950 IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (TABLES 2 AND 5 COMBINED)

Participants, vested rights, and forfeitures since 1950	51 plans with no vesting or vesting with 11 years of service or more			36 plans with vesting after 10 years of service or less		
	Number	Percentage of Item (1)	Percentage of Item (2)	Number	Percentage of Item (1)	Percentage of Item (2)
(1) Participants since 1950	6.9 million	100	------	2.9 million	100	------
(2) Active participants since 1950 who left scope of plan [1]	5.2 million	75	100	1.5 million	52	100
(3) Participants since 1950 who received vested rights on termination of employment prior to retirement	21,498	.3	.4	91,517	3	6
(4) Participants who forfeited since 1950 regardless of length of service [2]	4.8 million	70	92	1.1 million	38	73
(5) Participants who forefited since 1950 with more than 15 years service	115,573	1.6	2.2	9,931	0.3	0.7
(6) Participants who forfeited since 1950 with more than 10 years service	280,018	4	5	36,901	1	2
(7) Participants who forfeited since 1950 with more than 5 years service	719,688	10	14	220,203	7	15
(8) Participants who forfeited since 1950 with 5 years service or less	4,080,312	59	77	879,797	30	59

[1] Includes those who received benefits ,vested rights, or died.

[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 8A.—A SIDE-BY-SIDE COMPARISON OF PARTICIPANTS WITH VESTED RIGHTS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (DERIVED FROM ITEMS (3) THROUGH (8) SINCE 1950 IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (SUBTABLES 2A AND 5A COMBINED.)

Vested rights and forfeitures since 1950	51 plans, ratio [1]	36 plans, ratio [1]
(a) With vested rights	1	1
(b) Forfeited regardless of length of service	223	12
(a) With vested rights	1	9
(b) Forfeited with more than 15 years service	5	1
(a) With vested rights	1	2
(b) Forfeited with more than 10 years service	13	1
(a) With vested rights	1	1
(b) Forfeited with more than 5 years service	33	2.5
(a) With vested rights	1	1
(b) Forfeited with 5 years service or less	186	10

[1] In terms of 1 participant who received a benefit.

TABLE 9.—A SIDE-BY-SIDE COMPARISON OF THE NUMBER OF PARTICIPANTS WHO HAVE RECEIVED VESTED RIGHTS AND THOSE WHO HAVE FORFEITED IN THE LAST 5 YEARS IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (TABLES 3 AND 6 COMBINED.)

Participants, vested rights, and forfeitures in last 5 years	51 plans with no vesting or vesting with 11 years of service or more			36 plans with vesting after 10 years of service or less		
	Number	Percentage of Item (1)	Percentage of Item (2)	Number	Percentage of Item (1)	Percentage of Item (2)
(1) Participants in last 5 years	2.9 million	100	------	1.8 million	100	------
(2) Active participants in last 5 years who left scope of plan [1]	1.2 million	41	100	400,000	22	100
(3) Participants in last 5 years who received vested rights on termination of employment prior to retirement	12,536	.4	1	38,037	2	9
(4) Participants who forfeited in last 5 years regardless of length of service [2]	991,111	34	82	332,760	18	83
(5) Participants who forfeited in last 5 years with more than 15 years service	27,335	0.9	2	470	0.02	0.1
(6) Participants who forfeited in last 5 years with more than 10 years service	63,894	2	5	1,451	.08	.4
(7) Participants who forfeited in last 5 years with more than 5 years service	155,522	5	13	65,177	4	16
(8) Participants who forfeited in last 5 years with 5 years service or less	835,589	29	70	267,583	15	67

[1] Includes those who received benefits, vested rights, or died.

[2] Many plans provided estimates for this item based on employee turnover statistics in which rehires were counted as separate transactions.

SUBTABLE 9A.—A SIDE-BY-SIDE COMPARISON OF THE RATIO (PERCENT) OF FORFEITURES BY LENGTH OF SERVICE TO TOTAL FORFEITURES IN LAST 5 YEARS (ITEMS (4) THROUGH (8)); IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (SUBTABLES 3A AND 6A COMBINED.)

Forfeitures last 5 years	51 plans		36 plans	
	Number	Percentage of item (5)	Number	Percentage of item (4)
(4) Total forfeitures last 5 years	991,111	100	332,760	100.0
(5) With more than 15 years' service	27,335	3	470	.1
(6) With more than 10 years' service	63,894	6	1,451	.4
(7) With more than 5 years' service	155,522	16	65,177	20.0
(8) With 5 years' service or less	835,589	84	267,583	80.0

SUBTABLE 9B.—A SIDE-BY-SIDE COMPARISON OF PARTICIPANTS WITH VESTED RIGHTS COMPARED TO FORFEITURES BY LENGTH OF SERVICE (DERIVED FROM ITEMS (3) THROUGH (8)) IN LAST 5 YEARS IN 51 PLANS WITH NO VESTING OR VESTING WITH 11 YEARS OF SERVICE OR MORE AND 36 PLANS WITH VESTING AFTER 10 YEARS OF SERVICE OR LESS. (SUBTABLES 3B AND 6B COMBINED)

	51 plans, ratio [1]	36 plans, ratio [1]
(a) With vested rights	1	1
(b) Forfeited regardless of length of service	79	9
(a) With vested rights	1	80
(b) Forfeited with more than 15 years service	2	1
(a) With vested rights	1	26
(b) Forfeited with more than 10 years service	5	1
(a) With vested rights	1	1
(b) Forfeited with more than 5 years service	12	2
(a) With vested rights	1	1
(b) Forfeited with 5 years service or less	67	7

[1] In terms of 1 participant who received a vested right.

APPENDIX

CASE HISTORY NO. 5

A large oil company with a pension plan that is 38 years old.

There are currently approximately 42,000 active employees and 6500 retirees.

The plan's assets exceed $450 million.

This plan has 50 percent vesting after 15 years, increasing at five percent a year until there is 100 percent vesting after 25 years.

Of the 105,000 persons participating since 1950, more than 61,000 have left the scope of the plan with no benefits. Of that number, 13,430 had more than five years service and 3,680 had more than ten years service.

In the last five years, of 53,054 participants, 17,657 have left with no benefits, of whom 3,838 had more than five years service and 1,052 more than ten years service.

The total retirements since 1950 are less than 8500.

CASE HISTORY NO. 18

This plan represents a large, collectively bargained fund in the hotel industry. The plan has been in existence since 1952.

The plan has failed to complete the forfeiture data requested by Part III of the P–1 survey form. The reason given for this failure is that the information is "not available." Yet in response to another question requesting the assumptions with respect to employee termination rates before retirement, a detailed table providing such termination rates is provided along with the notation that this data is "based on the experience during 12 years of operation of the fund."

CASE HISTORY NO. 33

A large communications company with a pension plan that is 58 years old.

There are currently approximately 57,000 active employees and 3,100 retired.

The plan's assets exceed $229 million.

This plan has full vesting at age 40 with 15 years service.

This plan has very high forfeiture rates. Prior to 1969, the plan had no vesting provisions. Of the 320,124 persons participating since 1950, more than 231,000 have left the scope of the plan with no benefits. Of that number, 5,800 had more than 15 years service, 12,741 had more than ten years service, and 31,419 had more than five years service.

In the last five years, of 152,028 participants, 108,035 left the plan without any benefits, of whom 2,284 had more than 15 years service, 4,592 had more than ten years service and 8,778 had more than five years service.

The average age of participants leaving this plan without benefits is as follows:

Average age	*Men*	*Women*
Leaving within the last 5 years with more than 15 years service	43	40
Leaving within the last 5 years with more than 10 years service	39	36
Leaving within the last 5 years with more than 5 years service	35	31

Regarding investments, while the plan is prohibited by its own terms from investments in its own securities more than $11,000,000 has been invested in the last five years in its parent and subsidiaries.

CASE HISTORY NO. 37

A joint union-employer trust plan in the transportation industry. The plan is 18 years old and has 31,000 active employees and 10,000 retired employees.

The plan's assets exceed $164 million.

This plan has no vesting provision but pays a retirement after 20 years service in 30 consecutive years. However, if the employee does not have a specified number of days employment within a three-year period, he will be considered to have a break in service.

This plan has failed to complete the data in Part III on forfeitures.

This plan has $800,000 in loans outstanding for which there is no collateral.

This plan has no appeal procedure for the denial of a benefit claim.

CASE HISTORY NO. 38

This is a pension plan of a major aerospace company. It was established in 1957.* The plan covers salaried employees only and has 36,903 active participants and 1,241 retired as of December, 1969.

Since the plan was established over 60,000 employees have participated with more than 20,000 employees having left the scope of the plan without entitlement to any benefit, over 5,000 of whom had more than five years of service.

In addition, the plan has approximately $349,000,000 in liabilities for accrued vested benefits, but the market value of its assets is only $273,000,000. This means that if the plan were to terminate today, employees with vested benefits would have no legal remedy to obtain all their vested benefits.

CASE HISTORY NO. 39

This is a pension plan of a large data processing manufacturing firm. The plan presently has 169,030 active participants and has been in existence since 1945.

One of the most interesting facets of this plan's operations is its investment of pension fund monies in unsecured loans to the extent of $41,171,580.

Of the 89,652 employees who left the scope of the plan since 1951, 82,326 have left with no entitlement to benefits (this figure excludes death). This plan has a ten year vesting requirement.

CASE HISTORY NO. 40

This plan is from a large manufacturer in the aerospace industry. The plan has been in existence for 26 years and presently covers 46,000 active employees and 2800 retired.

The assets of the plan exceed $493 million.

The plan administrator has advised the Committee that the present employment figures represent a drop of more than 50,000 employees in the last few years.

This plan has a ten-year vesting provision, but did not provide answers to the forfeiture questions in Part III.

In addition, this plan had $1,811,000 in loans without collateral.

CASE HISTORY NO. 43

This pension plan is applicable to a large bank and its affiliates. The current plan has been in existence since 1954, superceding a prior plan established in 1941. There are 11,676 active participants.

There are two interesting facts concerning this plan:

1. The plan failed to report its liabilities, indicating that such information was not available; however, it gave a detailed accounting of its assets.

2. Of an estimated 11,000 employees who left the scope of the plan since 1954, as estimated 8,400 forfeited benefits (over 1,725 of this number had over five years of service and 1,000 had ten years of service).

CASE HISTORY NO. 45

This pension plan is applicable to a large electrical power holding company. It has currently 11,765 active participants.

While this is a contributory plan which has been collectively bargained, the employees do not participate in the administration of the plan.

10,818 employees have left the scope of the plan since 1950. Over 50 percent have left without entitlement to benefits, and over 20 percent had more than five years of service.

CASE HISTORY NO. 47

This is a large pension plan in the communications industry covering many separate employers; therefore there are differing dates for when the plan was established for purposes of any one employer. However, the earliest participating employer date given is for 1937.

Of the approximately 277,0000 participants in the plan since 1950, over 206,000 have left

* The plan was in existence prior to 1957, but in that year the changes in the plan were so great for purposes of this study, it is considered to have been established in 1957.

the scope of the plan and of that number 202,665 have left without entitlement to any vested benefit. Of the 202,665 over 17,000 had more than five years of service.

The plan has two provisions for vesting. The most liberal requires 15 years of service and, in addition, an age requirement of 40 years.

CASE HISTORY NO. 49

This pension plan of a major mining company was established in 1952. It currently covers over 15,000 active participants but has failed to provide complete data in response to Part III of the P–1 form.

Despite the employer having made contributions to the plan since 1952, the plan has only $33.3 million in assets, but $107 million in vested benefit liabilities. If this plan should terminate today, the assets of the fund would cover roughly one-third of the vested benefit liabilities, which would result in many participants with vested rights losing all or a substantial portion of their benefits expectations.

CASE HISTORY NO. 52

This is a pension plan of a large aerospace firm; it was established in 1955 and has over 105,904 active participants. The plan is collectively bargained.

Of the over 81,000 employees who have left the scope of the plan since it was established, over 66,000 have left without entitlement to any benefit. None of the 66,000 had more than five years of service.

CASE HISTORY NO. 161

This is the plan of a major Southern utility company and has been in existence since 1944.

It has failed to fill out Part III of the P–1 form.

This plan is not audited by an independent licensed or certified public accountant at least once a year.

After 26 years of funding, the plan has accumulated assets of $66 million, but has vested benefit liabilities of $133.5 million. In other words, after 24 years of funding, it has only managed to accumulate assets to cover one-half of the vested benefit liabilities incurred.

If this plan should terminate today, substantial numbers of participants with vested benefit rights would have their benefit expectations frustrated.

CASE HISTORY NO. 177

This is the pension plan of a steel fabricating company in Pennsylvania. The plan has been in existence since 1950 and is collectively bargained.

The plan has $25.3 million in assets but $48.2 million in vested benefit liabilities. Assets on hand after 20 years of funding are only sufficient to cover a little over one-half of the vested benefit liabilities covered by the plan. If this plan should terminate today substantial numbers of participants with vested rights would have their benefit expectations frustrated.

CASE HISTORIES NOS. 193, 207, AND 208

These constitute three plans of three major corporations in the United States. The total assets in these three plans aggregates $260 million. All three plans have been in existence since 1950 and two of these plans were in existence as of 1940.

All three plans were unable to furnish any information on Part III. Indeed, all three plans claim that information for the last five years with respect to the total numbers of participants and the total numbers who have received vested rights was unavailable. This information is specifically required to be disclosed by Federal law—the Welfare and Pension Plan Disclosure Act of 1958.

CASE HISTORY NO. 255

This is the plan of a clothing manufacturer in New York. It presently covers 1546 active employees.

The average age of the employees in this plan who forfeited with more than 15 years of service under the plan is 47.

The plan has $2.4 million in assets.

Approximately $400,000 of the fund has been invested in the securities of the contributing employer, roughly 20% of the plan assets.

CASE HISTORY NO. 280

This is the retirement plan of a major transit company operating in a large eastern city.

It has no vesting provisions whatsoever.

It has failed to complete Part III of the P–1 survey, the data dealing with benefits and forfeitures.

It reports $17.2 million in assets. It has failed to report the amount of vested benefit liabilities the plan has incurred, claiming that these figures are not available.

The report of this plan indicates that it has over $2 million is real-estate notes outstanding. This appears to represent a real-estate mortgage in the amount of $2.3 million held by the plan on properties of the transit company.

Although the plan is contributory, employees do not participate in the administration of the plan.

CASE HISTORY NO. 280A

This pension plan is a union-employer pension trust in the transportation industry.

The plan is 26 years old and covers 2,500 active employees and 947 retired.

This plan has assets in excess of $17 million.

There is no vesting provision. Retirement benefits are age 60 and 25 years service. The plan did not furnish forfeiture data.

The investment practices of this plan reflect that the $2 million of the plan's real estate notes are on property of the employer.

CASE HISTORY NO. 327

This is the plan of a major oil company in Oklahoma. It was established in 1944. Of some 8,000 participants who have left the scope of the plan since 1950, over 7,000 participants have forfeited without benefits.

2,000 of those who forfeited have more than five years of service; 1,000 forfeited with more than ten years service; 1,000 persons have received benefits since 1950.

The vesting provision requires 20 years of service.

The plan has $62.2 million in assets, $29 million in vested benefit liabilities and $31 million in accrued benefit values. The plan has twice as much money as it requires to pay all the vested benefit liabilities that have accrued. This plan has reported that it retained new actuaries in 1969 who determined that the plan was overfunded and insisted that no further contributions be made.

The president of this oil company is also a trustee of the plan as well as a director of the bank which is the corporation trustee for the plan and in which funds of the plan are deposited. However, it appears that the corporation trustee involved does not have investment discretion, investment decisions are made by professional investment advisors.

CASE HISTORY NO. 465

This is a pension plan of a midwest utility company and was established in 1950.

The plan has assets of $1.1 million. Of over 300 participants in the plan since 1950 only 37 have received retirement benefits. Of the 206 participants who have left the scope of the plan since 1950, 167 have forfeited.

In response to the question as to whether or not the company has failed to make any contributions to the plan in any of the years since the plan was established, the plan administrator responded that contributions were reduced in 1962 and thereafter by some $20,000 annual by virtue of "actuarial gains" due to employees leaving the company without vested interests.

CASE HISTORY NO. 569

This is the pension plan of a cable corporation in the Mid west. The plan has been in existence since 1943.

The plan was disqualified by the Internal Revenue Service on December 1, 1970 but the company protested the ruling.

It has $1.7 million in assets. Of this amount nearly $900,000 of the pension fund monies have been invested in securities of the company. That is, nearly 53% of the plan assets have been invested in securities of the employer who established the plan.

The report of this plan further indicates that the ratio on total administrative costs charged to the plan in the last five years to the total amount of benefits paid out by the plan in the last five years is in excess of 33 percent.

The report of this plan indicates that the president of the company, who is also on the committee administering the plan, is also a director of the bank in Missouri that invests the plan funds.

PENSION STUDY: FORM P–1 (S. RES. 360)

PART I. IDENTIFICATION

1. A. Name of Plan.
B. Address of Principal Office of Plan.
C. Name of Administrator.
D. Name and title of individuals (s) who prepared response for this study:

PART II. PLAN PROFILE

2. A. Year of Plan establishment.
B. Is the Plan qualified by the Internal Revenue Service? (1) Yes —— (2) No ——
If "No," explain.

3. A. Date employer contributions to the plan commenced (or reserves created).
B. Date initial benefit payments under the Plan were made (other than refund of employee contributions).

4. Funding:
A. Self-administered:
(1) Trust.
(2) Other (specify).
B. Insured (specify).
C. Combination (specify).

5. Type of Administration:
A. Employer or Employer Association.
B. Union.
C. Joint Employer-Employee Board of Trustees.
D. Other (specify).

6. Total number of current Plan participant" as having the same meaning as in the Welfare and Pension Plans Disclosure Act, i.e., "any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from an employee . . . pension benefit plan, or whose beneficiaries may be eligible to receive any such benefit." However, specifically include any preparticipant who has not qualified for membership in the plan but with respect to whose service payment were made into the pension plan or fund. Also include any person whose service has been temporarily interrupted, e.g., persons on military leave, but who may still be eligible to receive benefits if their service is resumed. This procedure should be followed with respect to all subsequent questions involving the term "participant.")
A. Active.
B. Retired.

7. Check the category or categories that best describes the groups covered by the Plan.
A. All Employees.
B. Hourly Rate.
C. Salaried.
D. Other (specify).

8. Industry in which most of the participants are employed (check one):
A. Manufacturing.
B. Mining.
C. Construction.
D. Transportation.
E. Communications and Utilities.
F. Wholesale and Retail trade.
G. Finance, Insurance and Real estate.
H. Services.
I. Other (specify).

9. A. Is the Plan collectively bargained? (1) Yes— (2) No—.

B. Does more than one employer contribute to the Plan? (1) Yes— (2) No—.

10. A. Current employer contribution formula: (1) Fixed rate per hour, week or month or percent of payroll (specify). (2)— Other (specify).

B. Is this formula specified in a written collective bargaining agreement, plan, trust agreement or similar governing document? (1) Yes— (2) No—.

If "Yes," specify the document or documents in which the formula appears:
(a) Collective bargaining agreement.
(b) Plan.
(c) Trust agreement.
(d) Insurance contract.
(e) Other (specify).

11. Current benefit formulas (give data for service which would commence as of date of study).
A. Normal retirement.
B. Early retirement.
C. Disability.
D. Death.
E. Other (e.g., survivorship, temporary retirement, etc) (specify).

12. Age and service requirements for obtaining benefits.
A. Normal retirement.
B. Early retirement.
C. Disability.
D. Death.
E. Other (e.g., survivorship, temporary retirement, etc.) (specify).

13. A. Specify the requirements of the vesting provision, i.e., age, service, type of separation, etc.

B. What percentage of accrued benefits are initially vested?

C. After how many years are all accrued benefits vested?

D. Specify the vesting formula (including whether such formula has retroactive effect).

E. Specify any survivorship rights under the vesting provisions.

F. Specify whether any benefits in the event of illness (i.e., medical, surgical, hospital benefits, etc.) are provided to retirees under the Plan. Indicate the requirements for obtaining such benefits.

14. Does the Plan credit service with other employers or service with respect to other plans of the same employer? A. Yes — B. No —

If "Yes," specify the type of credit provided, i.e., partial, full, etc., and provide such other essential details as will clarify the arrangement (include data on any reciprocal arrangements entered into with other plans, including the identity of such other plans).

15. Does the Plan provide for employee contributions? A. Yes — B. No —

If "Yes," specify that rate of such contributions, and indicate whether the Plan requires such contributions to be made as a condition of participation.

16. A. Specify the pre-participation service period required as a condition precedent to membership in the Plan (check one):
(1) None.
(2) 3–6 months.
(3) 1 year.
(4) 2–3 years.
(5) Over 3 years.
(6) Other (specify).

B. Specify the minimum age required as a condition precedent to membership in the Plan (check one):
(1) None.
(2) 18–21.
(6) 22–25.
(4) Over 25.

C. Does the Plan credit pre-participation service with respect to the Plan? (1) Yes — (2) No —

If "Yes," specify the type of credit provided.

17. Specify the maximum age, if any, at which an employee is barred from membership in the Plan——

18. A. If the Plan contains a continuous service requirement, specify the period of time which will constitute a "break in service." (check one):
(1) Less than 1 year.
(2) 1 year.
(3) 2 years.
(4) Over 2 years.
(5) Other (specify).

B. Enumerate any other conditions which will constitute a "break in service."

C. Enumerate any circumstances recognized by the Plan which will serve to waive a "break in service."

PART III. DATA ON BENEFITS AND FORFEITURES

(Where records of the Plan are unavailable, estimate if necessary but indicate if the figure is an estimate.)

19. A. Specify the total number of persons who have participated in the Plan since 1950 or since the Plan's establishment if that date is later than 1950——

B. Specify the total number of persons who have participated in the Plan within the past 5 years——

20. A. Specify the total number of participants who received benefits since 1950 or since the Plan's establishment if that date is later than 1950:
(1) Normal retirement.
(2) Early retirement.
(3) Disability retirement.
(4) Death.
(5) Other.

B. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement——

C. Specify the total number of participants within the past 5 years who have obtained vested rights under the vesting provision on terminating employment before qualifying for normal or early retirement——

21. A. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for any reason (include those who retired and/or died)——

B. Specify the total number of participants since 1950 or since the Plan's establishment if that date is later than 1950 who left the scope of the Plan for reasons other than normal or early retirement——

C. Specify the total number of participants within the past 5 years who left the scope of the Plan for any reason (include those who retired and/or died)——

D. Specify the total number of participants within the past 5 years who left the scope of the Plan for reasons other than normal or early retirement——

22. Specify according to the following categories the total number of participants, regardless of their age, who left the scope of the Plan without entitlement to any retirement benefits:

A. Since 1950 or since the Plan's establishment if that date is later than 1950——

B. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 15 years service under the Plan——

C. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 10 years' service under the Plan——

D. Since 1950 or since the Plan's establishment if that date is later than 1950 with more than 5 years service under the Plan——

E. Within the past 5 years——

F. Within the past 5 years with more than 15 years service under the Plan——

G. Within the past 5 years with more than 10 years service under the Plan——

H. Within the past 5 years with more than 5 years service under the Plan——

I. Within the past 5 years due solely to voluntary separation——

J. Within the past 5 years due solely to failure to meet continuous service requirements——

23. Specify according to the following categories the average age of participants who left the scope of the Plan without entitlement to retirement benefits:

A. Within the past 5 years with more than 15 years service under the Plan——

B. Within the past 5 years with more than 10 years service under the Plan——

C. Within the past 5 years with more than 5 years service under the Plan——

24. A. Indicate the average monthly benefit paid to retirees 5 years ago.

(1) Normal—— (2) Early —— (3) Disability——

B. Indicate the average monthly benefit paid to retirees within the last year.

(1) Normal—— (2) Early —— (3) Disability——

PART IV. FUNDING STATUS DATA

25. Specify the following (give the latest figures):

A. Total assets of Plan (at cost, book, and market value):
(1) (Cost ——
(2) (Book) ——
(3) (Market) ——
(4) (Date of latest evaluation) ——

B. Total liabilities for all accrued vested benefits (exclude benefits vested under vesting, early retirement, disability retirement and normal retirement provisions, and give present dollar value) (Date of latest evaluations) ——

C. Total value of all accrued benefits, treating all such benefits as if they were vested (give present dollar value) (Date of latest evaluation) ——

26. A. Provide a concise description of the actuarial methods, factors and assumptions used in determining contributions or premium payments under the Plan (indicating specifically the assumption used with respect to the rate of employee termination for reasons other than death, disability, or retirement).

B. Except for multiemployer plans, specify the total number of years (identifying each year) since 1950 or since the Plan's establishment if that date is later than 1950, in which the employer did not make contributions to the Plan, or reduced his rate of contributions to the Plan, indicating concisely the factors which dictated this result.

C. If a multiemployer plan, list those employers who are delinquent in their contributions to the Plan as of the date of this study, the duration of the delinquency, the steps, if any, taken by the Administrator in this respect, the total amount of delinquent contributions, and the total number of currently contributing employers.

SPECIAL INSTRUCTIONS FOR INSURED PLANS IN CONNECTION WITH ITEM 25A

For plans funded in whole or in part through the medium of insurance contracts the asset value of the contract should be calculated as follows:

1. Group Annuity Contract, including Deposit Administration: Asset values reflected in the experience fund, including those applicable to retired lives.

2. Individual Insurance or Annuity Contracts: Cash value plus reserves for retired lives and paid-up benefits.

3. Group Permanent Contract: Asset values

in experience fund, including those applicable to retired lives. If the contract is not experience rated, report cash values plus reserves for retired lives and paid-up benefits.

For the foregoing plans report book and market values only. If necessary, market values should be estimated but indicate if the figure is an estimate.

27. A. Indicate the total amount ($ value) of loans made by the Plan fund which are outstanding as of the date of this study (exclude investments in government, corporate and other bonds)——

B. Indicate the total amount ($ value) of loans made by the Plan fund which are outstanding as of the date of this study which were made without collateral being provided by the debtor——

C. Indicate the total amount ($ value) of loans made by the Plan fund which are in default as of the date of this study——

D. Indicate the total amount ($ value) of loans made by the Plan fund which are in default and which have been written off as uncollectable as of the date of this study——

E. Indicate the total amount ($ value) of debt owed by the Plan fund——

28. A. List and identify all employers contributing to the Plan fund (including any employer controlling such an employer, controlled by such an employer or under common control with such an employer) in whom the Plan fund has invested its assets, or with respect to whom the Plan fund has made a loan, guaranteed a loan, or pledged its assets within the past 5 years. Indicate the amount and date of such investment, loan, pledge, etc., for each employer listed.

B. List and identify all officers or employees of the union whose members are covered by the Plan with respect to whom the fund has invested its assets or made a loan, guaranteed a loan, or pledged its assets, within the past 5 years. List and identify any corporation, joint-stock company, mutual fund, etc., which such officer or employee owns or in which he has controlling interest, with respect to whom the fund has invested its assets or made a loan, guaranteed a loan, or pledged its assets, within the past 5 years. Indicate the amount and date of such investment, loan, pledge, etc., for each officer or employee listed, or of each entity owned or controlled by him.

29. Indicate what percentage of corporate stock at current market value held by the Plan as of the date of this study was purchased directly from the issuer or owner——

30. Specify the following:

A. The average amount of administrative costs charged to the Plan for the last 5 years——

B. The ratio (percent) of current administrative costs charged to the Plan to total fund assets calculated at current market value——

C. The ratio (percent) of total administrative costs charged to the Plan for the last 5 years to the total income earned by the fund during the last 5 years——

D. The ratio (percent) of total administrative costs charged to the Plan for the last 5 years to the total amount of benefits paid out by the Plan during the last 5 years——

31. A. Indicate what percentage of total Plan fund assets at current market value as of the date of this study has been invested in arrangements intended to provide funds for housing or other social-economic improvement programs——

B. List and identify each such program in which the Plan fund has invested and the amount of the investment at current market value——

PART V. INTERNAL ADMINISTRATIVE DATA

32. Does the Plan provide a booklet to each participant explaining the terms, conditions and procedures relative to the Plan? A. Yes— B. No—

33. A. Does the Plan provide the participant with an opportunity to request a hearing on his claim for benefits? (1) Yes— (2) No—

B. Does the Plan require a complete or partial denial of a claim for benefits to be put in writing? (1) Yes— (2) No—

C. Does the Plan provide for any appeal procedures with respect to a denial of a benefit claim? (1) Yes— (2) No—

D. If the Plan provides an appeal procedure, is it set forth in the booklet described in question 32? (1) Yes— (2) No—

34. Indicate approximately how many claims were considered for each of the last 5 years——

35. Indicate whether the Plan utilizes the following (check all which are applicable):

A. Professional administrator.

B. Corporate trustee.

C. Actuary (indicate qualifications).

D. Public accountant (indicate qualifications).

E. Attorney at law.

F. Investment advisor.

G. Other consultants (specify).

36. Are the Plan participants represented at any level in the administration of the Plan? A. Yes— B. No—

If "Yes," explain, and indicate how such participants are selected.

37. A. Specify the procedure for amending the Plan.

B. Indicate approximately how many amendments have been made to the Plan since 1950 or since the Plan's establishment if that date is later than 1950——

C. Indicate approximately the intervals at which the Plan is codified in a single document to incorporate all amendments——

38. If the Plan is administered by a group of individuals, e.g., board of trustees or committee, indicate whether the Plan contains a provision requiring regular periodic meetings of the group. A. Yes— B. No—

If "Yes," specify the period at which such group is required to meet.

39. Investment decisions are made by (check all that participate):

A. Committee appointed by employer.

B. Committee appointed by union.

C. Joint employer-union board of trustees or committee.

D. Corporate trustee.

E. Investment adviser.

F. Corporate trustee or investment adviser with review by employer, union, joint board of trustees, or committees appointed by any of the foregoing.

G. Other (specify).

40. Specify what formal restrictions, if any, limit the discretion of those persons charged with the responsibility for investing Plan assets (e.g., provisions with respect to diversification of funds, investment in securities of the employer, restrictions against investment in corporate stock, etc.)

41. Is the Plan audited at least once a year by an independent licensed or certified public accountant? A. Yes— B. No—

42. Has qualification of the Plan or exemption of the trust under the Internal Revenue Code ever been revoked or suspended? A. Yes— B. No— If "Yes," explain.

43. A. If the Plan is insured, list and identify:

(1) Any administrator, officer or employee of the Plan who is a director, officer or employee of the carrier or service organization providing benefits under the Plan.

(2) Any director, officer or employee of any employer contributing to the Plan who is a director, officer or employee of the carrier or service organization providing benefits under the Plan.

(3) Any officer or employee of the union whose members are covered by the Plan who is a director, officer or employee of the carrier or service organization providing benefits under the Plan.

B. If the Plan utilizes a corporate trustee, list and identify:

(1) Any administrator, officer or employee of the Plan who is a director, officer of employee of the corporate trustee.

(2) Any director, officer or employee of any employer contributing to the Plan who is a director, officer or employee of the corporate trustee.

(3) Any officer or employee of the union whose members are covered by the Plan who is a director, officer or employee of the corporate trustee.

44. Indicate the provisions for distribution of assets upon Plan termination, including the order of priorities for distribution under the Plan.

45. A. Specify any layoffs or closing of a plant, department or subdivision of an employer which resulted in more than 10 percent or more than 500 of the active participants in the Plan being separated from the scope of the Plan (give data for last 5 years and specify in each case the percentage and number of employees separated).

B. Does the Plan cover participants who became eligible to participate in the Plan by virtue of a corporate acquisition, merger, consolidation, lease, etc., which resulted in termination of their prior plan? (1) Yes— (2) No — If "Yes," furnish the following details:

(a) Name of the predecessor corporation——

(b) Date of the acquisition, merger, consolidation, lease, etc.——

(c) Name of the terminated plan of the predecessor corporation——

(d) Date the plan of the predecessor corporation was terminated——

C. Indicate the percentage of participants currently covered by the Plan who received vested rights under other plans of the same or a predecessor employer——

46. List and identify any compensated administrator, officer or employee of the Plan who also receives compensation as a director, officer or employee of the employer contributing to the Plan or as an officer or employee of a union whose members are covered by the Plan.

47. If the Plan is administered by a group of individuals, indicate how frequently within the last 5 years membership of the group has changed——

48. A. Specify the number of lawsuits within the last 5 years brought against the Plan by or on behalf of persons who are or claim to be participants or their beneficiaries——

B. Of the total figure furnished in (A), specify the number which were successfully resolved in favor of such persons or which were settled——

C. Of the total figure furnished in (A), specify the number of suits which were based claims for benefits——

D. Of the total figure furnished in (C), specify the number of suits which were successfully resolved in favor of such persons or which were settled——

E. With respect to all litigation not involving claims for benefits, specify the following:

(1) Title of the action (and court in which the action was brought)——

(2) Date——

(3) Law reporter citation(s) (if any)——

(4) Nature of issue——

(5) Outcome——

THE SENATE LABOR SUBCOMMITTEE STUDY OF PRIVATE PENSION PLANS—PRELIMINARY FINDINGS

Mr. JAVITS. Mr. President, last week the Senator from New Jersey (Mr. WILLIAMS) and I released the first preliminary findings of the Labor Subcommittee's study of private pension plans. The findings are now reprinted in the RECORD and they speak for themselves, but I would like to add a few comments of my own.

It is a rare thing to find a major Amer-

ican institution—private pension plans—built upon human disappointment—a shocking thing, and something which should move us all to act with determination to make that institution deliver upon its promises.

Four years ago I introduced the first bill to require protection of American workers against unreasonable forfeiture of pension benefits under private pension plans. That bill, S. 2, is still the only bill now pending in the Senate on this subject.

If my bill had been law, the 719,688 workers—each with more than 5 years service—in the "no vesting" or late-vesting sample of plans would have received something, instead of nothing, from the $10-billion piling up in those plans for the last 20 years. Instead, of those who left employment under those plans in the last 20 years, only 5 percent got something, while 95 percent got nothing.

Even in the "earlier vesting" sample, in which 16 percent of those who left were protected from forfeitures, there were included in the balance 36,901 employees who worked more than 10 years and got nothing—not a large percentage of the whole, but human beings nevertheless, moving into their older years without the protection they should have had.

No doubt as this study proceeds further the statistics will be refined and amplified. But even as this first flash of daylight begins to reach into the long-hidden statistical truth of the private pension plan industry, it ought to be obvious that something is wrong, and that it needs to be set right.

My bill would, I believe, be a solution—certainly one which would do the job. Under it, a worker with 6 years of service would be guaranteed 10 percent of his earned pension rights, not subject to forfeit, and 10 percent more per year thereafter until 100 percent is "vested" after 15 years.

Obviously, there would still be forfeitures. Indeed, more than half might well continue to forfeit, but those would be the more "casual" employees, and no one with a substantial length of service—more than 5 years—would be completely out in the cold.

We can argue—as no doubt we will—where to draw the line, but one thing is clear beyond question: As things now stand, only a relative handful of the estimated tens of millions of American workers under private pension plans will ever get anything from the plans on which they now stake their futures. And the solution is a minimum standard of vesting.

We have also seen in this report evidences of other weaknesses in the private pension plan system. One case describes a pension plan with 53 percent of its assets invested in the securities of the contributing employer. Others describe weaknesses in funding, and failure either to keep adequate records to disclose what is going on. Those are all problems which can and should be dealt with, and every one of them is dealt with in my bill.

But all the records in the world, all the funding in the world, all the disclosure in the world, will not produce benefits unless the plan provides for them, and unless the workers are protected against forfeiture.

The committee undertook this study at my suggestion over a year ago. The chairman and I, and our respective staffs, have moved it along quite a way. These initial disclosures make it clear beyond question we are on the right track, and I have no doubt that we can, and must, legislate in this field, in this Congress.

Mr. President, I ask unanimous consent that there be printed in the RECORD, in addition to the material concerning the pension study which has already been offered for the RECORD, a brief summary of the major provisions of my bill (S. 2), as well as the full text of it.

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

MAJOR PROVISIONS OF JAVITS BILL (S. 2)—THE PENSION AND EMPLOYEE BENEFIT ACT TO REGULATE PRIVATE PENSION PLANS

1. Require minimum vesting standards: an employee after 6 years would have a nonforfeitable right to at least 10 per cent of any pension benefits earned up to that time, and each year thereafter would "vest" an additional 10 per cent so that after 15 years all benefits would be fully nonforfeitable.

2. Require minimum funding standards to assure that pensions will operate on a sound and solvent basis and will deliver as promised.

3. Establish a federal insurance program for pension plans to guarantee that benefits will be paid even if an employer goes out of business before the plan is fully funded.

4. Establish a central fund which employees could join on a voluntary basis to enable their pension plans to operate on a central clearing house basis for individuals who transfer from one employer to another without any loss of pension benefits.

5. Establish rules of conduct covering conflicts of interest and other unethical practices to prevent graft and mishandling of funds.

6. Consolidate in a new Pension and Employee Benefit Plan Commission existing regulatory standards dealing with pension and welfare plans (now scattered through other agencies and departments) as well as the new standards established by the bill.

7. Provide for effective judicial enforcement of the bill's requirements, and for recovery of pension benefits.

S. 2

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

DEFINITIONS

SEC. 2. (a) As used in this Act—

(1) The term "Commission" means the United States Pension and Employee Benefit Plan Commission established under section 3.

(2) The term "employee" means any person employed by an employer, and includes an officer or director of a corporation or of an unincorporated organization and an agent acting for his principal on a substantially full-time basis.

(3) The term "employees' benefit plan" means any plan providing for the payment of any of the benefits specified in section 2(4).

(4) The term "employees' benefit fund" means any fund, whether established pursuant to a collective bargaining agreement or unilaterally by an employer or by a labor organization, which is available for the payment either from principal or income, or both, to persons who are employed in an industry affecting commerce or who are members of a labor organization representing employees in an industry affecting commerce, or to members of the families, dependents, or beneficiaries of such persons, of one or more of the following benefits: Medical or hospital care, pension on retirement or death of employees, benefits under a profit-sharing-retirement plan, compensation for injuries or illness resulting from occupational activity o. insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness benefits, or accident benefits, or pooled vacation, holiday, severance or similar benefits, or defraying the costs of apprenticeship training programs, or, in the case of a fund subject to the restrictions of section 302(c) of the Labor-Management Relations Act, providing any other benefit which may be permitted by subsections 302(c)(5) or 302(c)(6) of that Act: *Provided,* That any fund to which contributions are made solely to provide workmen's compensation benefits, disability benefits, or other benefits required by State or local law to be provided to employees (including supplemental workmen's compensation or supplemental disability benefits permitted but not required by State or local law) shall not be deemed to be an employees' benefit fund. To the extent that benefits under an employees' benefit plan are provided through the medium of an insurance contract under which benefits are guaranteed by the insurance company to the extent that insurance premiums are paid, and under which neither the employer nor any labor organization retains the power to instruct the insurance carrier with respect to entitlement to receipt of benefits, disposition of assets or any other matter relating to the moneys received by the insurance carrier pursuant to the plan, such plan shall not be deemed to involve an employees' benefit fund subject to the provisions of title IV.

(5) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to a pension plan or employee's benefit fund, and includes a group or association of employers acting for an employer in such capacity.

(6) The term "person" means an individual, partnership, corporation, mutual company, joint stock company, trust, unincorporated organization, association, or employee organization.

(7) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act.

(8) The term "commerce" means trade, commerce, transportation, or communication, among the several States, or between any foreign country and any State, or between any State and any place outside thereof.

(9) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(10) The term "life annuity" means an annuity that continues for the duration of the life of the annuitant, whether or not it is thereafter continued to some other person.

(11) The term "deferred life annuity" means a life annuity that commences at retirement age under a pension plan, but in no event later than age seventy.

(12) The term "pension benefit" means the aggregate annual, monthly, or other amounts to which an employee will become entitled upon retirement or to which any other per-

son is entitled by virtue of such employee's death.

(13) The term "pension plan" means a pension fund or plan, other than a profit-sharing-retirement plan, organized and administered to provide pension benefits for employees or their beneficiaries, and includes, without limiting the generality of the foregoing:

(A) a unit benefit plan under which pension benefits are determined with reference to remuneration of an employee for each year of service, or for a selected number of years of service.

(B) a money purchase plan under which pension benefits are determined at the retirement of an employee with reference to the accumulated amount of the aggregate contributions paid by or for the credit of the employee, and

(C) a flat benefit plan under which the pension benefits are expressed either as a fixed amount in respect of each year of employment or as a fixed periodic amount.

(14) The terms "registered pension plan" and "registered profit-sharing-retirement plan" mean, respectively, a pension plan or profit-sharing-retirement plan registered with and certified by the Commission as a plan organized and administered in accordance with title I.

(15) The term "reinsured pension plan" means a registered pension plan which has been reinsured under title II and which has been in operation for at least five years and, for each of such years, has met the registration requirements of title I: *Provided*, That any addition to or amendment of a reinsured pension plan shall, if such addition or amendment involves a significant increase, as determined by the Commission, in the initial unfunded liability of such pension plan, be regarded as a new and distinct pension plan which may become a "reinsured pension plan" only after meeting the five-year operation requirements of this paragraph and section 202(c) and the registration requirements of title I.

(16) The term "supplemental pension plan" includes a pension plan established for employees whose membership in another pension plan is a condition precedent to membership in the supplemental pension plan.

(17) The term "voluntary additional contribution" means an additional contribution by an employee to or under a pension or profit-sharing-retirement plan except a contribution the payment of which, under the terms of the plan, imposes upon the employer an obligation to make concurrent additional contribution to or under the plan.

(18) The term "experience deficiency" with respect to a pension plan means any actuarial deficit, determined at the time of a review of the plan, that is attributable to factors other than (i) the existence of an initial unfunded liability, or (ii) the failure of the employer to make any payment as required by the terms of the plan or by the provisions of title I, other than as required by section 108(b)(3).

(19) The term "fully funded" with respect to any pension plan means that such plan at any particular time has assets actuarily determined by a person authorized under section 108(e) to be sufficient to provide for the payment of all pension and other benefits to all employees and former employees then entitled to an immediate or deferred benefit under the terms of the plan.

(20) The term "unfunded liability" means the amount, on the date when such liability is computed, by which the assets are actuarily required to be augmented to insure that the plan is and will remain fully funded.

(21) The term "initial unfunded liability" means the amount, on the effective date of this Act, or the effective date of a pension plan or any amendment thereto, whichever is later, by which the assets are actuarially required to be augmented to insure that the plan is and will remain fully funded.

(22) The term "special payment" means a payment made to or under a pension plan for the purpose of liquidating an initial unfunded liability or experience deficiency.

(23) The term "fund" shall mean a trust fund, but shall also include a contractual right pursuant to an agreement with an insurance company.

(24) The term "funding" shall mean payment or transfer of assets into a fund, but shall also include payment to an insurance company to secure a contractual right from such company.

(25) The term "profit-sharing retirement plan" means a plan established and maintained by an employer to provide for the participation in his profits by his employees in accordance with a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds accumulated under the plan upon retirement or death. Such plan may include provisions permitting the withdrawal or distribution of the funds accumulated upon contingencies other than, and in addition to, retirement and death.

(26) The term "interest in a profit-sharing retirement plan" means the amount allocated to the account of a participant in a profit-sharing retirement plan.

(27) The term "service for a continuous period" means service for a period of time without regard to periods of temporary suspension of employment, and shall include equivalent aggregate service as provided in section 107(f).

(28) The term "Administrator" means the person defined in section 2(b)(3) of this Act.

(b) As used in titles IV and V of this Act, and in the Welfare and Pension Plans Disclosure Act,

(1) The term "party in interest" means any administrator, officer, trustee, custodian, counsel, or employee of any employee benefit plan, or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or any person controlling, controlled by, or under common control with, such employer or officer or employee or agent of such employer or such person, or an employee organization having members covered by such plan, or an officer or employee or agent of such an employee organization, or a relative, partner or joint venturer of any of the above described persons.

(2) The term "relative" means a spouse, ancestor, descendant, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

(3) The term "administrator" means—

(A) the person specifically so designated by the terms of the plan, collective bargaining agreement, trust agreement, contract, or other instrument, under which the plan is operated; or

(B) in the absence of such designation (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) the association, committee, joint board of trustees, or other similar group of representatives of the parties who established or maintain the plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

(4) The term "adequate consideration" means either (1) at the price of the security prevailing on a national securities exchange which is registered with the Securities and Exchange Commission or (2) if the security is not traded on such a national securities exchange, at a price not less favorable to the fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer.

(5) The term "security" has the same meaning as in the Securities Act of 1933 (15 U.S.C. 77(a) et seq.).

(6) The term "fiduciary" means any person who exercises any power of control, management, or disposition with respect to any moneys or other property of an employee benefit fund, or has authority or responsibility to do so.

(7) The term "market value" or "value" when used in this Act means fair market value where available, and otherwise the fair value as determined in good faith by the administrator.

ESTABLISHMENT OF PENSION AND EMPLOYEE BENEFIT PLAN COMMISSION

SEC. 3. (a) There is hereby established in the executive branch of the Government an independent agency to be known as the "United States Pension and Employee Benefit Plan Commission". The Commission shall be composed of five members to be appointed by the President, by and with the advice and consent of the Senate. Members of the Commission shall serve for terms of six years, except that (i) of the members first appointed two shall be appointed for a term of two years, two shall be appointed for a term of four years, and one shall be appointed for a term of six years, and (ii) members appointed to fill vacancies occurring by reason of death or resignation shall be appointed for the unexpired terms of their predecessors. Not more than three members of the Commission shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No member of the Commission shall engage in any business, vocation, or employment other than that as serving as a member, nor shall any member participate, directly or indirectly (except as a beneficiary), in the management of any plan or fund subject to regulation under this Act. One of the members shall be designated by the President as Chairman of the Commission. Three members shall constitute a quorum of the Commission.

(b)(1) Section 5314 of title 5, United States Code (which lists positions in level III of the Executive Schedule) is amended by adding at the end thereof the following:

"(46) Chairman, United States Pension Commission."

(2) Section 5315 of such title (which lists positions in level IV of the Executive Schedule) is amended by adding at the end thereof the following:

"(78) Members, United States Pension Commission."

(c) The Commission is authorized to appoint and fix the compensation of such officers and employees, and to incure such expenses, as may be necessary to enable it to carry out its functions.

POWERS AND DUTIES OF COMMISSION

SEC. 4. (a) It shall be the duty of the Commission—

(1) to promote the establishment, extension, and improvement of pension, profit-sharing-retirement and other employee benefit plans;

(2) to accept for registration all pension and profit-sharing-retirement plans required and qualified to be registered with the Commission under title I, and to reject any pension or profit-sharing-retirement plan that does not qualify for registration;

(3) to cancel certificates of registration of pension and profit-sharing-retirement plans registered under such title which cease to be qualified for such registration;

(4) to direct and administer the pension reinsurance program established by title II;

(5) to direct and administer the pension portability program established by title III;

(6) to enforce the provisions of title IV; and

(7) to perform such other functions as may be necessary to administer the provisions of this Act.

(b) The Commission or its duly authorized representatives shall have power, at any reasonable time—

(1) to inspect the books, files, documents, and other records respecting pension and profit-sharing-retirement plans kept by an administrator, employer, insurer, trustee, or other person in relation to such plans: *Provided*, That the Commission may delegate its powers under this subsection (b) to the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation in cases involving books, files, documents, or other records held by a bank or trust company, subject to their respective supervisory power, and

(2) to require any such administrator, employer, insurer, trustee, or other person to furnish, in a form acceptable to the Commission, such information as the Commission deems necessary for the purposes of ascertaining whether this Act and regulations of the Commission hereunder have been or are being complied with.

(c) The Commission is authorized by regulation to prescribe minimum standards and qualifications for persons performing services required by the provisions of this Act to be performed by actuaries and, upon application of any person, to determine whether such person meets the standards and qualifications so prescribed. The Commission shall issue certificates of qualification to applicants determined by the Commission after such examination, investigation, or other procedure as it may deem necessary, to meet such standards and qualifications.

(d) The Commission is authorized by regulation to prescribe reasonable fees for the registration of pension and profit-sharing-retirement plans and other services to be performed by it in connection with such plans under this Act, and to make and enforce such other regulations as may be necessary to enable it to carry out its functions and duties under this Act. All fees collected by the Commission shall be paid into the general fund of the Treasury.

(e) The Commission shall transmit to the Congress annually a report of its activities under this Act during the preceding fiscal year together with the results of such studies as may be directed by this Act or, from time to time, by other Acts of Congress. In its first such report, the Commission shall include information, research findings and recommendations for such further legislation as may be advisable, including but not limited to additional coverage under this Act.

(f) In accordance with the Administrative Procedure Act, the Commission may prescribe such rules and regulations as may be necessary or appropriate to carry out the purposes of this Act. Among other things, such rules and regulations may define actuarial, accounting, technical, and trade terms; may prescribe reasonable limitations or actuarial assumptions as to interest rates, mortality, turnover rates, and other matters; may prescribe the form and detail of all reports required to be made under this Act; and may provide for the keeping of books and records and the inspection of such books and records. Prior to promulgating rules or regulations, the Commission shall consult with other Federal departments or agencies which have jurisdiction over employee benefit plans with a view to avoiding unnecessary conflict, duplication or inconsistence in the rules and regulations which are applicable to such plans under other laws of the United States.

APPROPRIATIONS

SEC. 5. There are authorized to be appropriated such sums as may be necessary to enable the Commission to carry out its functions and duties.

ADMINISTRATION OF WELFARE AND PENSION PLANS DISCLOSURE ACT

SEC. 6. (a) The functions of the Secretary of Labor and the Department of Labor under the Welfare and Pension Plans Disclosure Act, as amended, are hereby transferred to and shall be administered by the Commission.

(b) All personnel, property, records, and unexpended balances of appropriations, which the Director of the Bureau of the Budget determines are used or intended for use by the Secretary of Labor or the Department of Labor primarily in the administration of functions transferred under the provision of this section, are transferred to the Commission.

(c) In addition to the filing requirements of the Welfare and Pension Plans Disclosure Act, it shall be a condition of compliance with section 7 of such Act that each annual report hereinafter filed under that section shall be accompanied by a certificate or certificates in the name of and on behalf of the plan, the administrator, and any employer or labor organization participating in the establishment of the plan, designating the Commission as agent for service of process on the persons and entities executing such certificate or certificates in any action arising under the Welfare and Pension Plans Disclosure Act or this Act.

TITLE I—BENEFIT STANDARDS

PLANS TO WHICH TITLE APPLIES

SEC. 101. (a) Except as provided by subsection (b), this title applies to any pension plan and, to the extent hereinafter provided, to any profit-sharing-retirement plan, established by an employer engaged in commerce or in any industry or activity affecting commerce or by any employee organization or organizations representing employees engaged in commerce or in an industry or activity affecting commerce or by both.

(b) This title shall not apply to a pension or profit-sharing-retirement plan if—

(1) such plan is administered by the Federal Government or the government of a State or subdivision thereof, or by an agency or instrumentality thereof;

(2) such plan is administered by an organization which is exempt from taxation under the provisions of section 501(a) of the Internal Revenue Code of 1954 and is administered as a corollary to membership in a fraternal benefit society described in section 501(c)(8) of the Internal Revenue Code of 1954 or by an organization described in section 501(c) (3) or (4) of such Code; *Provided*, That the provisions of this paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining;

(3) such plan is established by a self-employed individual for his own benefit or for the benefit of his survivors or established by one or more owner-employers exclusively for his or their benefit or for the benefit of his or their survivors;

(4) such plan covers not more than twenty-five participants;

(5) such plan is established and maintained outside the United States by an employer primarily for the benefit of employees who are not citizens of the United States; or

(6) such plan is unfunded and is established by an employer primarily for the purpose of providing deferred compensation for a select group of management employees and is declared by the employer as not intended to meet the requirements of section 401(a) of the Internal Revenue Code.

REGISTRATION OF PLANS

SEC. 102. (a) Every administrator of a pension or profit-sharing retirement plan to which this title applies shall file with the Commission an application for registration of such plan. Such application shall be in such form as shall be prescribed by regulation of the Commission, and shall be accompanied by a copy of the plan, a copy of the trust deed, insurance contract, by law, or other document under which the plan is constituted. Thereafter, while such plan is in force, the administrator shall maintain its qualification for registration under this title.

(b) In the case of plans established on or after the effective date of this Act, the filing required by subsection (a) shall be made within six months after such plan is established. In the case of plans established prior to the effective date of this Act, such filing shall be made within six months after such effective date.

(c) If, after examination of a pension or profit-sharing retirement plan filed under this section, the Commission is satisfied that such plan is qualified for registration under this title the Commission shall issue a certificate of registration with respect to such plan. If the Commission is not so satisfied it shall notify the administrator.

(d) If at any time subsequent to the issuance of a certificate under subsection (c) with respect to any plan, the Commission determines that such plan is no longer qualified for registration under this title, it shall notify the administrator.

(e) A notification under subsection (c) or (d) shall set forth the deficiency or deficiencies in the plan or in its administration by reason of which the notification is given, and shall give the administrator, the employer of the employees covered by the plan, and the labor organization, if any, representing such employees a reasonable time within which to remove such deficiency or deficiencies. If the Commission thereafter determines that the deficiency or deficiencies have been removed it shall issue or continue in effect the certificate, as the case may be. If it determines that the deficiency or deficiencies have not been removed it shall enter an order denying or canceling the certificate of registration.

ANNUAL REPORTS ON REGISTERED PLANS

SEC. 103. The Commission may, by regulations promulgated pursuant to the Administrative Procedures Act, provide for the filing of single reports satisfying the reporting requirements of this Act, the Welfare and Pension Plans Disclosure Act, and such other Acts as are administered or enforced by the Commission.

AMENDMENTS OF REGISTERED PLANS

SEC. 104. Where a pension or profit-sharing-retirement plan filed for registration under this title is amended subsequent to such filing, the administrator shall within six months after the effective date or the date of adoption of such amendment, whichever is later, within sixty days after the effective date of such amendment file with the Commission a copy of the amendment and such additional information and reports as the Commission by regulation requires to determine the amount of any initial unfunded liability created by the amendment and the special payments required to liquidate such liability.

QUALIFICATION OF PLAN FOR REGISTRATION

SEC. 105. A pension or profit-sharing-retirement plan shall be deemed to be qualified for registration under section 102 if it conforms to, and is administered in accordance with, the standards and requirements set forth in section 102 and sections 106 to 110, inclusive.

GENERAL REQUIREMENTS

SEC. 106. (a) Every pension plan and, to the extent required by regulations issued by the Commission, every profit-sharing-retirement plan shall define the benefits provided by such plan, the method of determination and payment of benefits, conditions for qualification for membership in the plan and the financial arrangements made to insure pro-

visional or full funding of benefits under the plan. Each such plan shall provide for the furnishing of a written explanation to each member of the plan of the terms and conditions of the plan and amendments thereto applicable to him, together with an explanation of the rights and duties of the employee with reference to the benefits available to him under the terms of the plan and such other information as may be required by regulations of the Commission.

(b) The Commission shall, by regulation, require each plan to furnish each participant, upon termination of service with a vested right to a deferred life annuity, pension, or other vested interest, with a certificate setting forth the benefits to which he is entitled, including but not limited to the name and location of the entity responsible for payment, the amount of benefits, and the date when payment shall begin, as such regulations shall specify. A copy of each such certificate shall be filed with the Commission. In any proceeding arising under this Act, such certificate shall be deemed prima facie evidence of the facts and rights set forth in such certificate.

(c) A pension or profit-sharing-retirement plan filed for registration under this title, and any trust forming a part of such plan, shall meet all the requirements set forth in section 401 of the Internal Revenue Code of 1954, as determined by the Commission, except to the extent such requirements are inconsistent with the provisions of subsection (a) of this section or of sections 107 to 110, inclusive.

VESTING OF BENEFITS

SEC. 107. (a) A pension or profit-sharing-retirement plan filed for registration under this title shall provide, under the terms of the plan in respect of service on or after the effective date of this Act, or by amendment to the terms of the plan or by the creation of a new plan on or after such date in respect of service on or after the effective date of such amendment or new plan, that—

(1) a member of the plan who has been in the service of the employer, or has been a member of the plan, for a continuous period of six years is entitled upon termination of his employment or membership in the plan prior to attaining retirement age (i) in the case of a pension plan to a deferred life annuity commencing at his normal retirement age, and (ii) in the case of a profit-sharing-retirement plan to a nonforfeitable right to his interest in such plan, equal to 10 per centum of full pension benefits as provided by the plan in respect of such service or of such interest, respectively, and such entitlement shall increase by at least 10 per centum per year of continuous service thereafter until the completion of fifteen years of continuous service, after which such member shall be entitled upon termination of employment or membership in the plan prior to attaining retirement age to a deferred life annuity commencing at his normal retirement age equal to the full pension benefits as provided by the plan in respect to such service, or to the full amount of such interest in the profit-sharing-retirement plan, respectively;

(2) the pension benefits provided under the terms of a pension plan, the deferred life annuity referred to in paragraph (1), and an interest in a profit-sharing-retirement plan referred to in paragraph (1) shall not be capable of assignment or alienation and shall not confer upon an employee, personal representative, or dependent, or any other person, any right or interest in such pension benefits, deferred life annuity, or profit-sharing-retirement plan, capable of being assigned or otherwise alienated: *Provided*, That the Commission may by regulation provide for the final disposition of plan assets when beneficiaries cannot be located or ascertained within a reasonable time;

(3) an "employee" shall be deemed a "member" of a pension plan beginning on the day when contributions are first made to the plan or its fund with respect to the employee's service to the employer, but in no event shall any pension plan subject to this Act provide, as a condition of membership or eligibility to participate in such plan, a period of service longer than six months.

(b) Anything in subsection (a) to the contrary notwithstanding, a pension or profit-sharing-retirement plan may provide for vesting upon service or membership in the plan for a lesser period than is provided in such subsection.

(c) Anything in subsection (a) to the contrary notwithstanding, when a plan so provides, an employee may receive in discharge of his rights thereunder upon termination of employment prior to attaining normal retirement age as defined in the plan, or upon attaining such retirement age, a lump sum amount equal to the commuted value of the annuity prescribed by the plan, or, in the case of a profit-sharing-retirement plan, the value of his interest in such plan.

(d) If a pension plan so provides, a person who is entitled to a deferred life annuity under subsection (a) may, before the commencement of payment of such life annuity, elect to receive, partly or wholly in lieu of the deferred life annuity described by subsection (a)—

(1) a deferred life annuity the amount of which is reduced or increased by reason of early or deferred retirement, by provision for the payment of an optional annuity to a survivor or to the estate of the employee, or by variation of the terms of payment of such annuity to any person after the employee's death, and

(2) a payment or series of payments by reason of a mental or physical disability as prescribed by regulations of the Commission.

(e) For the purposes of subsections (b) (2) and (c), the commuted value of a deferred life annuity shall be computed on the basis of such interest rate and mortality tables and in such manner as may be approved by the Commission.

Aggregate Service

(f) In any case in which an employee has been a member of the plan for an aggregate number of days equivalent to the period of time required for a non-forfeitable right under section 107(a)(1), such employee shall be deemed to have satisfied the continuous service requirement to which his aggregate days of service are equivalent, on the basis of 240 working days being equivalent to one working year and 20 working days being equivalent to one working month, but in no event shall an employee's time worked in any period in which he is credited for a period of service under the plan be credited under this paragraph to any other period of time.

FUNDING OF PLANS

SEC. 108. (a) A pension plan filed for registration under this title shall provide for funding, in accordance with this title, that is adequate to provide for payment of all pension benefits, deferred life annuities and other benefits required to be paid under the terms of the plan.

(b) Provisions for funding shall set forth the obligation of the employer to contribute both in respect of the current service cost of the plan and in respect of any initial unfunded liability and experience deficiency. The contribution of the employer, including any contributions made by employees, shall consist of the payment currently into the plan or fund of—

(1) all current service costs;

(2) where the plan has an initial unfunded liability, special payments consisting of equal annual amounts sufficient to liquidate such initial unfunded liability over a term not exceeding,

(A) in the case of an initial unfunded liability existing on the effective date of this Act, in any plan established before that date, forty years from that date, and

(B) in the case of an initial unfunded liability resulting from an amendment to a pension plan made on or after the effective date of this Act, or resulting from the establishment of a pension plan on or after the effective date of this Act, thirty years from the date of such amendment or establishment; and

(3) where the plan has an experience deficiency, special payments consisting of equal annual amounts sufficient to liquidate such experience deficiency over a term not exceeding five years from the date on which the experience deficiency was determined: *Provided*, That the Commission may suspend the special payments requirements or extend the five-year period provided in this subparagraph (3) in cases involving business necessity or substantial risk to the continuation of the employing enterprise.

Notwithstanding the provisions of this subsection, (i) the liquidation of initial unfunded liabilities or experience deficiencies may be accelerated at any time, and (ii) where an insured pension plan established before the effective date of this Act is funded by level annual premiums to retirement age for each individual member and benefits are guaranteed by the insuurance company to the extent that premiums have been paid, it shall be deemed to meet the requirements of paragraph (2) (A) of this subsection.

(c) One year after the effective date of this Act, in the case of pension plans registered on or before that date, or within six months after the date of establishment of the plan in other cases, the Administrator shall submit a report of the person authorized by subsection (e) certifying—

(1) the estimated cost of benefits in respect of service in the first year during which such plan is required to register and the rule for computing such cost in subsequent years up to the date of the next report;

(2) the initial unfunded liability, if any, for benefits under the pension plan as of the date on which the plan is required to be registered; and

(3) the special payments required to liquidate such initial unfunded liability in accordance with subsection (b).

Where an insured pension plan is funded by level annual premiums extending not beyond the retirement age for each individual member and benefits are guaranteed by the insurance company to the extent that premiums have been paid, the report required by this subsection may certify the adequacy of the premiums to provide for the payment of all benefits under the plan in lieu of the matters required to be certified under clauses (1), (2), and (3).

(d) The Administrator in respect of a registered pension plan shall cause the plan to be reviewed by a person authorized by subsection (e) not more than three years after registration and at intervals of not more than three years thereafter and the person reviewing the plan shall prepare a report certifying—

(1) the estimated cost of benefits in respect of service in the next succeeding year and the rule for computing such cost in subsequent years up to the date of the next report;

(2) the surplus or the experience deficiency in the pension plan after making allowance for the present value of all special payments required to be made in the future by the employer as determined by previous reports; and

(3) the special payments which will liquidate any such experience deficiency over a term not exceeding five years.

If any such report discloses a surplus in a pension plan, the amount of any future pay-

ments required to be made to the fund or plan may be reduced by the amount of such surplus. A report under this subsection shall be filed with the Commission by the Administrator upon its receipt.

(e) The reports and certificates referred to in subsections (c) and (d) shall be made by an actuary certified by the Commission under section 4(c): *Provided*, That the Commission may exempt any plan, in whole or in part, from the requirement that such reports and certificates be filed where the Commission finds such filing to be unnecessary.

(f) Anything in this section 108 to the contrary notwithstanding, if evidence satisfactory to the Commission shall be filed on behalf of a pension plan in connection with an application for registration under this title demonstrating that (i) such pension plan is a multiemployer plan in which at least 25 per centum of the employees in the industry covered by the plan, either nationally or in a particular region in which a substantial number of employees in such industry is employed, participate, and (ii) no single employer employs more than 20 per centum of the employees covered by the plan, and (iii) the history and present business condition of the industry make it improbable that there will be a substantial decrease in employment in the industry within the foreseeable future—

(I) the Commission may register such plan without regard to the funding requirements of section 108 if such plan meets the following alternative funding requirements:

(1) annual payment into the fund of all current service costs;

(2) annual payment into the fund of an amount equal to the interest, at such rate of interest as the Commission shall prescribe, but not more than 6 per centum per annum, on the unfunded liability of such fund at the date each such payment is made;

(3) annual payment into the fund of an amount equal to the insurance premium for such year required to be paid on behalf of such fund by section 203 of title II of this Act; and

(4) in computing unfunded liability under this subsection (f), the Commission may permit a multiemployer plan to compute such liability solely on the basis of information obtained from participants pursuant to a requirement of the plan under which each such participant, upon reaching the age of forty and completing ten years of continuous service, is required to file with the Administrator of the plan notification of his status under the plan.

(II) the Commission may by regulation approve alternative requirements for payments into the fund other than those specified in subparagraph I of this subsection (f) when, in the opinion of the Commission, such standards will provide reasonable assurance of sufficient assets in the fund of the multiemployer plan to provide for payment of anticipated benefits.

(g) Each pension plan shall, as a condition of registration under this title, apply for reinsurance and pay the reinsurance premiums provided in title II.

(h) For the purpose of this section, a profit-sharing-retirement plan, within the meaning of section 2(26) of this Act which meets the requirements of title I insofar as they are made specifically applicable to such a plan by section 105, and any money purchase plan within the meaning of section 2(13)(B), shall be deemed fully funded.

DISCONTINUANCE OF PLANS

SEC. 109. (a) Upon complete termination, or substantial termination as determined by the Commission, of a pension plan—

(1) All contributions by an employer, a labor organization, an employee or other person made after January 1, 1968, in respect of the deferred life annuity prescribed in section 107(a) shall be applied under the terms of the plan—

(A) first, in the case of persons who have already retired and begun to draw benefits under the plan, or who, on the date of such termination, had the right to retire and begin to draw such benefits immediately, to provide the life annuities to which such persons were entitled at the date of termination of their employment;

(B) second, in the case of persons who have vested rights under the plan but who have not reached retirement age and begun to draw benefits, to provide the deferred life annuities to which they were entitled at the date of such termination of the plan;

(C) third, in the case of any other participants in the plan, to provide deferred life annuities to which they are entitled under the plan pursuant to the requirements of section 401(a)(7) of the Internal Revenue Code of 1954, as amended; and

(D) in any case, the Commission may approve payment of survivor benefits with priorities equal to those of the employees or former employees on whose service such benefits are based.

(2) The employer, and the employees if the plan so provided, shall be liable to pay all amounts that would otherwise have been required to be paid to meet the tests of solvency prescribed by section 108, up to the date of such termination, to the insurer, trustee, or administrator of the plan.

(3) No part of the assets of the plan shall revert to the employer until provision has been made for all pensions and other benefits vested or otherwise payable under section 109 according to the plan in respect of age and service up to the date of the discontinuance to members of the plan and for all benefits to pensioners and their pension beneficiaries in accordance with the terms of the plan.

(b) Upon complete termination, or substantial termination as determined by the Commission, of a profit-sharing-retirement plan, the interests of all participants in such plan shall fully vest.

PAYMENTS TO SURVIVORS

SEC. 110. (a) Where in accordance with the terms of a pension or profit-sharing-retirement plan an employee or former employee has designated a person or persons to receive a benefit payable under the plan in the event of the employee's death—

(1) the employer's liability to provide the benefit shall be discharged upon payment to such person or persons of the amount of the benefit; and

(2) such person or persons may upon death of the employee or former employee enforce payment of the benefit, but the employer shall be entitled to set up any defense that he could have set up against the employee or former employee. As used in this subsection, the term "employer" includes a trustee or insurer under a pension or profit-sharing-retirement plan.

(b) An employee or former employee may from time to time alter or revoke a designation made under a pension or profit-sharing-retirement plan, but any such alteration or revocation may be made only in the manner set forth in the plan.

AMENDMENTS TO INTERNAL REVENUE CODE

SEC. 111. (a) Section 401 of the Internal Revenue Code of 1954 (relating to qualified pension, etc., plans) is amended by redesignating subsection (j) as (k) and by inserting after subsection (i) the following new subsection:

"(j) PENSION AND PROFIT-SHARING-RETIREMENT PLANS TO WHICH THE PENSION AND WELFARE BENEFITS ACT OF 1969 APPLIES.—For purposes of this part, any pension or profit-sharing-retirement plan to which title I of this Act applies, and any trust forming a part of such plan—

"(1) shall be treated as meeting the requirements of this section during any period for which a certificate of registration with respect to such plan issued by the United States Pension Commission under such title is in effect or an application therefor is pending before the Commission, and

"(2) shall be treated as not meeting the requirements of this section during any period for which such application has not been timely filed or such certificate has been denied or cancelled by such Commission."

(b) The amendment made by subsection (a) shall apply with respect to periods after the effective date of this Act, except that with respect to any pension plan established before the effective date of this Act, such amendment shall not apply to any period before the date specified by the Commission under section 102(b).

MINIMUM WAGE QUALIFICATION

SEC. 112. Contributions by an employer to a registered pension or profit-sharing-retirement plan shall not be deemed to be part of or to affect the "regular rate" as that term is used in section 7 of the Fair Labor Standards Act.

DELEGATION OF OTHER REGULATORY AUTHORITY

SEC. 113. The President, as may be necessary or appropriate to establish and maintain a uniform, consistent, and simplified system of law applicable to employee benefit plans, may by Executive order delegate to the Commission authority to administer and enforce any other provisions of the laws of the United States insofar as such provisions regulate or affect employee benefit plans.

DELAY IN THE APPLICATION OF TITLE I

SEC. 114. If the Commission finds that the application of this title to any employee benefit plan would increase the costs of the parties to the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employees' compensation it may grant to such plan a delay, not to exceed five years, in satisfying the requirements of this title, under such conditions as it may prescribe as necessary or appropriate to effectuate the policies of this Act.

TITLE II—PENSION REINSURANCE

ESTABLISHMENT OF PROGRAM

SEC. 201. There is hereby established a program to be known as the Federal pension reinsurance program (hereinafter referred to as the "program"). The program shall be administered by, or under the direction and control of, the Commission.

CONTINGENCY INSURED AGAINST UNDER PROGRAM

SEC. 202. (a) The program shall insure (to the extent provided in subsection (b)) beneficaries of a reinsured pension plan against loss of nonforfeitable benefits to which they are entitled under such pension plan arising from substantial cessation of one or more of the operations carried on by the contributing employer in one or more facilities of such employer before such plan has been fully funded.

(b) The rights of beneficiaries of a reinsured pension plan shall be insured under the program only to the extent that such rights do not exceed—

(1) in the case of a right to a monthly retirement or disability benefit for the employee himself, the lesser of 50 per centum of the average monthly wage he received from the contributing employer in the five-year period after the registration date of the plan for which his earnings were the greatest, or $500 per month;

(2) in the case of a right on the part of one or more dependents, or members of the family, of the employee, or in the case of a right to a lump sum survivor benefit on account of the death of an employee, an amount found by the Commission to be reasonably related to the amount determined under subparagraph (1).

In the case of a periodic benefit which is paid on other than a monthly basis, the monthly equivalent of such benefits shall be regarded as the amount of the monthly benefit for purposes of clauses (1) and (2) of the preceding sentence.

(c) If a registered pension plan has not been registered under title I for each of at least the five years preceding the time when there occurs the contingency insured against, the rights of beneficiaries shall not be insured: *Provided,* That the Commission may, in its discretion, credit against the five year requirement of section 202(c) one or more years prior to the effective date of this Act for any pension plan which, during such prior years, would have satisfied the registration requirements of title I had this Act been in effect.

PREMIUM FOR PARTICIPATION IN PROGRAM

SEC. 203. (a) Each registered pension plan shall pay an annual premium for reinsurance under the program upon payment of such annual premium as may be established by the Commission. Premium rates established under this section shall be uniform for all pension funds insured by the program and shall be applied to the amount of the unfunded liability for non-forfeitable benefits of each insured pension fund. The premium rates may be changed from year to year by the Commission, when the Commission determines changes to be necessary or desirable to give effect to the purposes of this title; but in no event shall the premium rate exceed 1 per centum for each dollar of such unfunded liability. Premiums under this title shall be payable as of the effective date of this Act, or for plans adopted after that date, as of the effective date of such plans.

(b) If the Commission determines that, because of the limitation on rate of premium established under subsection (a) or for other reasons, it is not feasible to insure against loss of rights of all beneficiaries of reinsured pension plans, then the Commission shall insure the rights of beneficiaries in accordance with the following order of priorities—

First: Individuals who, at the time when there occurs the contingency insured against, are receiving benefits under the pension plan, and individuals who have attained normal retirement age or if no normal retirement age is fixed have reached the age when an unreduced old-age benefit is payable under title II of the Social Security Act, as amended, and who are eligible, upon retirement, for retirement benefits under the pension plan;

Second: Individuals who, at such time, have attained the age for early retirement and who are entitled, upon early retirement, to early retirement benefits under the pension plan; or, if the pension plan does not provide for early retirement, individuals who, at such time, have attained age sixty and who, under such pension plan, are eligible for benefits upon retirement;

Third: In addition to individuals described in the above priorities, such other individuals as the Commission shall prescribe.

(c) Participation in the program by a pension plan shall be terminated by the Commission upon failure, after such reasonable period as the Commission shall prescribe, of such pension fund to make payment of premiums due for participation in the program.

REVOLVING FUND

SEC. 204. (a) In carrying out its duties under this title, the Commission shall establish a revolving fund into which all amounts paid into the program as premiums shall be deposited and from which all liabilities incurred under the program shall be paid.

(b) The Commission is authorized to borrow from the Treasury such amounts as may be necessary, for deposit into the revolving fund, to meet the liabilities of the program. Moneys borrowed from the Treasury shall bear a rate of interest determined by the Secretary of the Treasury to be equal to the average rate on outstanding marketable obligations of the United States as of the period such moneys are borrowed. Such moneys shall be repaid by the Commission from premiums paid into the revolving fund.

(c) Moneys in the revolving fund not required for current operations shall be invested in obligations of, or guaranteed as to principal and interest by, the United States.

TITLE III—PENSION PORTABILITY PROGRAM

ACCEPTANCE OF DEPOSITS

SEC. 301. (a) It is declared to be the policy of the Congress that a system of pension portability should be established by the Federal Government to facilitate the voluntary transfer of credits between registered pension or profit-sharing-retirement plans having similar benefit features and actuarial assumptions. Nothing in this title nor in the regulations issued by the Commission hereunder shall be construed to require participation in such portability system by a plan as a condition of registration under this Act.

(b) The Commission is authorized and directed, in accordance with regulations prescribed by it, to receive amounts which are transferred to it from a registered pension or profit-sharing-retirement plan and which are in settlement of an individual's rights under the plan when such individual is separated from employment covered by the plan before the time prescribed for payments under the plan to such individual or to his beneficiaries.

SPECIAL FUND

SEC. 302. Amounts received by the Commission pursuant to section 301 shall be deposited in a special fund which shall be established by it for the purposes of this title. The amounts in the funds which are not needed to meet current withdrawals shall be invested as provided under regulations prescribed by the Commission.

INDIVIDUAL ACCOUNTS

SEC. 303. There shall be established and maintained in accordance with regulations prescribed by the Commission, an account for each individual with respect to whom the Commisison receives amounts under this title. The amount credited to each such account shall be adjusted at the times and in the manner provided by such regulations to reflect earnings of the special fund and transfers from the special fund for costs of administration.

PAYMENTS FROM INDIVIDUAL ACCOUNTS

SEC. 304. Amounts credited to the account of any individual under this title may, in accordance with regulations prescribed by the Commission, be paid by the Commission—

(1) to a registered plan, if such individual becomes an employee covered by such plan and if such plan has benefit features and actuarial assumptions similar to those of the plan from which such amount was originally transferred, or

(2) to such individual or his beneficiaries, if he dies or reaches the age of sixty-five.

Payments under this section shall be made at such times, in such manner, and in such amounts in a lump sum or otherwise as may be determined under such regulations. The amount of any periodic payments shall be determined on an actuarial basis.

COST OF ADMINISTRATION

SEC. 305. There are authorized to be made available out of the special fund established pursuant to section 302 such amounts as the Congress may deem appropriate to pay the costs of administration of this title.

EFFECTIVE DATE

SEC. 306. No amount may be transferred to the Commission pursuant to section 301 of this title before the first day of the twelfth month following the month in which this Act is enacted.

TECHNICAL ASSISTANCE

SEC. 307. The Commission and the Secretary of Labor are authorized to provide technical assistance to employers, trade unions, and administrators of pension and profit-sharing-retirement plans in their efforts to provide greater retirement protection for individuals who are separated from employment covered under such plans. Such assistance may include, but is not limited to (1) the development of reciprocity arrangements between plans in the same industry or area, and (2) the development of special arrangements for portability of credits within a particular industry or area.

TITLE IV—DISCLOSURE AND FIDUCIARY STANDARDS

PART A—AMENDMENTS TO, AND ADMINISTRATION OF, THE WELFARE AND PENSION PLANS DISCLOSURE ACT

SEC. 401. (a) The functions and powers of the Secretary of Labor and the Department of Labor under the Welfare and Pension Plans Disclosure Act, as amended, are hereby transferred to and shall be administered by the Commission. Such powers provided in the Welfare and Pension Plans Disclosure Act shall be available to the Commission in the enforcement of the provisions of this Act. Wherever the term "Secretary" appears in the Welfare and Pension Plans Disclosure Act, the term "Commission" as (defined in this Act) is hereby substituted.

(b) All personnel, property, records, and unexpended balances of appropriations, which the Director of the Bureau of the Budget determines are used or intended for use by the Secretary of Labor or the Department of Labor primarily in the administration of functions transferred under the provision of this section, are transferred to the Commission.

(c) In addition to the filing requirements of the Welfare and Pension Plans Disclosure Act, it shall be a condition of compliance with section 7 of such Act that each annual report hereinafter filed under that section shall be accompanied by a certificate or certificates in the name of and on behalf of the plan, the administrator, and any employer or labor organization participating in the establishment of the plan, designating the Commission as agent for service of process on the persons and entities executing such certificate or certificates in any action arising under the Welfare and Pension Plans Disclosure Act or this Act.

(d) Section 6 of the Welfare and Pension Plans Disclosure Act is amended to read as follows:

"(a) A descripton of any employee benefit plan shall be published as required herein within ninety days after the establishment of such plan or when such plan becomes subject to this Act.

"(b) The description of the plan shall be comprehensive and shall include the name and type of administration of the plan; the name and address of the administrator; the schedule of benefits; a description of the provisions providing for nonforfeitable pension benefits (if the plan so provides) written in a manner calculated to be understood by the average participant, and if the plan does not provide such benefits, a statement to this effect; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to

the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported in accordance with regulations prescribed by the Commission".

(e) Subsection (a) of section 7 of such Act is amended by adding the number "(1)" after the letter "(a)", and by striking out that part of the first sentence which precedes the word "if" the first time it appears and inserting in lieu thereof the words "An annual report shall be published with respect to any employee benefit plan if the plan provides for an employee benefit fund subject to section 14 of this Act or".

(f) Section 7(a)(1) of such Act is further amended by striking out the word "investigation" and inserting in lieu thereof the words "notice and opportunity to be heard", by striking out the words "year (or if" and inserting in lieu thereof the words "policy or fiscal year on which", adding a period after the word "kept", and striking out all the words following the word "kept."

(g) Section 7(a) of such Act is further amended by adding the following paragraphs:

"(2) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such reasonable information determined by the Commission to be necessary to enable such administrator to comply with the requirements of this Act.

"(3) The administrator of an employee benefit plan shall cause an audit to be made annually of the employee benefit fund established in connection with or pursuant to the provisions of the plan. Such audit shall be conducted in accordance with accepted standards of auditing by an independent certified or licensed public accountant, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan, if such books or records are subject to periodic examination by an agency of the Federal Government or the government of any State. The auditor's opinion and comments with respect to the financial information required to be furnished in the annual report by the plan administrator shall form a part of such report."

(h) Sections 7 (b) and (c) of such Act are amended to read as follows:

"(b) A report under this section shall include:

"(1) the amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets, liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes; the name and address of each fiduciary, his official position with respect to the plan, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position or employment he holds with any party in interest;

"(2) a schedule of all investments of the fund showing as of the end of the fiscal year:

"(A) the aggregate cost and aggregate value of each security, by issuer;

"(B) the aggregate cost and aggregate value, by type or category, of all other investments, and separately identifying (i) each investment the value of which exceeds $100,000 or 3 per centum of the value of the fund and (ii) each investment in securities or properties of any person known to be a party in interest.

"(3) a schedule showing the aggregate amount, by type of security, of all purchases, sales, redemptions, and exchange of securities made during the reporting period; a list of the issuers of such securities; and in addition a schedule showing, as to each separate transaction with or with respect to securities issued by any person known to be a party in interest, the issuer, the type and class of security, the quantity involved in the transaction, the gross purchase price, and in the case of a sale, redemption, or exchange, the gross and net proceeds (including a description and the value of any consideration other than money) and the net gain or loss;

"(4) a schedule of purchases, sales, or exchanges during the year covered by the report of investment assets other than securities—

"(A) by type or category of asset the aggregate amount of purchases, sales, and exchanges; the aggregate expenses incurred in connection therewith; and the aggregate net gain (or loss) on sales, and

"(B) for each transaction involving a person known to be a party in interest and for each transaction involving over $100,000 or 3 per centum of the fund, an indication of each asset purchased, sold, or exchanged (and, in the case of fixed assets such as land, buildings, and leasehold, the location of the asset); the purchase or selling price; expenses incurred in connection with the purchase, sale, or exchange; the cost of the asset and the net gain (or loss) on each sale; the identity of the seller in the case of a purchase, or the identity of the purchaser in the case of a sale, and his relationship to the plan, the employer, or any employee organization;

"(5) a schedule of all loans made from the fund during the reporting year or outstanding at the end of the year, and a schedule of principal and interest payments received by the fund during the reporting year, aggregated in each case by type of loan, and in addition a separate schedule showing as to each loan which—

"(A) was made to a party in interest, or

"(B) was in default, or

"(C) was written off during the year as uncollectible, or

"(D) exceeded $100,000 or 3 per centum of the value of the fund,

the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and as to loans written off as uncollectible an explanation thereof;

"(6) a list of all leases with—

"(A) persons other than parties in interest who are in default, and

"(B) any party in interest,

including information as to the type of property leased (and, in the case of fixed assets such as land, buildings, leaseholds, etc., the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; if property is leased from persons described in (B) the amount of rental and other expenses paid during the reporting year; and if property is leased to persons described in (A) or (B), the date the leased property was purchased and its costs, date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, and with respect to any such leases in default, their identity, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

"(7) a detailed list of purchases, sales, exchanges, or any other transactions with any party in interest made during the year, including information as to the asset involved, the price, any expenses connected with the transaction, the cost of the asset, the proceeds, the net gain or loss, the identity of the other party to the transaction and his relationship to the plan;

"(8) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the report shall include a statement of assets and liabilities and a statement of receipts and disbursements of such common or collective trust or separate account and such of the information required under section 7(b) (2), (3), (4), (5), (6), and (7) with respect to such common or collective trust or separate account as the Commission may determine appropriate by regulation. In such case the bank or similar institution or insurance carrier shall certify to the administrator of such plan or plans, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, the information determined by the Commission to be necessary to enable the plan administrator to comply with the requirements of this Act; and

"(9) in addition to reporting the information called for by this subsection 7(b), the administrator may elect to furnish other information as to investment or reinvestment of the fund as additional disclosures to the Commission.

"(c) If the only assets from which claims against an employee benefit plan may be paid are the general assets of the employer or the employee organization, the report shall include (for each of the past five years) the benefits paid and the average number of employees eligible for participation."

(i) Section 7(d) of such Act is amended by striking out the capital "T" in the word "The" the first time it appears in paragraphs (1) and (2) and inserting in lieu thereof a lower case "t".

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

"(e) Every employee pension benefit plan shall include with its annual report (to the extent applicable) the following information:

"(1) the type and basis of funding,

"(2) the number of participants, both retired and nonretired, covered by the plan,

"(3) the amount of all reserves or net assets accumulated under the plan,

"(4) the present value of all liabilities for all nonforfeitable pension benefits and the present value of all other accrued liabilities,

"(5) the ratios of the market value of the reserves and assets described in (3) above to the liabilities described in (4) above.

"(6) a copy of the most recent actuarial report, and

"(A)(i) the actuarial assumptions used in computing the contributions to a trust or payments under an insurance contract, (ii) the actuarial assumptions used in determining the level of benefits, and (iii) the actuarial assumptions used in connection with the other information required to be furnished under this section 7(e), insofar as any such actuarial assumptions are not included in the most recent actuarial report,

"(B)(i) if there is not such report, or (ii) if any of the actuarial assumptions employed in the annual report differ from those in the most recent actuarial report, or (iii) if different actuarial assumptions are used for com-

puting contributions or payments than are used for any other purpose, statement explaining same,

"(7) a statement showing the number of participants who terminated service under the plan during the year, whether or not they retain any nonforfeitable rights, their length of service by category, the present value of the total accrued benefits of said participants and the present value of such benefits forfeited, and,

"(8) such other information pertinent to disclosure under this section 7(e) as the Commission may by regulation prescribe."

(k) Section 7 of such Act is further amended by striking out in their entirety subsections (f), (g), and (h).

(l) Section 8 of such Act is amended by striking out subsections (a) and (b) in their entirety and by redesignating subsection (c) as subsection (a). The subsection redesignated as subsection (a) is further amended by striking out the words "of plans" after the word "descriptions", striking out the word "the" before the word "annual" and adding the word "plan" before the word "descriptions".

(m) Section 8 of such Act is further amended by adding subsections (b), (c), (d), and (e), to read as follows:

"(b) The administrator of any employee benefit plan subject to this Act shall file with the Commission a copy of the plan description and each annual report. The Commission shall make copies of such descriptions and annual reports available for public inspection.

"(c) Publication of the plan descriptions and annual reports required by this Act shall be made to participants and beneficiaries of the particular plan as follows:

"(1) the administrator shall make copies of the plan description (including all amendments or modifications thereto) and the latest annual report and the bargaining agreement, trust agreement, contract, or other instrument under which the plan was established and is operated available for examination by any plan participant or beneficiary in the principal office of the administrator;

"(2) the administrator shall furnish to any plan participant or beneficiary so requested in writing a fair summary of the latest annual report;

"(3) the administrator shall furnish to any plan participant or beneficiary so requesting in writing a complete copy of the plan description (including all amendments or modfications thereto) or a complete copy of the latest annual report, or both. He shall in the same way furnish a complete copy of the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established and operated. In accordance with regulations of the Commission, an administrator may make a reasonable charge to cover the cost of furnishing such complete copies."

PART B—FIDUCIARY STANDARDS

SEC. 402. (a) Every employees' benefit fund established to provide for the payment of benefits under an employees' benefit plan shall be established pursuant to a duly executed trust agreement which shall set forth the purpose or purposes for which such fund is established and the detailed basis on which payments are to be made into and out of such fund. Such fund shall be deemed to be a trust and shall be held for the exclusive purpose of (1) providing benefits to participants in the plan and their beneficiaries and (2) defraying reasonable expenses of administering the plan.

(b)(1) A fiduciary shall discharge his duties with respect to the fund—

(A) solely in the interests of the participants and their beneficiaries;

(B) with the care under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

(C) in accordance with the documents and instruments governing the fund insofar as is consistent with this Act: *Provided,* That any assets of the fund remaining upon dissolution or termination of the funds shall, after complete satisfaction of the rights of all beneficiaries to benefits accrued to the date of dissolution or termination, be distributed ratably to the beneficiaries thereof or, if the trust agreement so provides, to the contributors thereto: *Provided further,* That in the case of a registered pension or profit-sharing-retirement plan, such distribution shall be subject to the requirements of the previous titles of this Act.

(2) Except as permitted hereunder, a fiduciary shall not—

(A) lease or sell property of the fund to any person known to be a party in interest;

(B) lease or purchase on behalf of the fund any property known to be property of any party in interest;

(C) deal with such fund in his own interest or for his own account;

(D) represent any other party with such fund, or in any way act on behalf of a party adverse to the fund or to the interests of its participants or beneficiaries;

(E) receive any consideration from any party dealing with such fund in connection with a transaction involving the fund;

(F) loan money or other assets of the fund to any person known to be a party in interest;

(G) furnish goods, service, or facilities to any person known to be a party in interest;

(H) permit the transfer of any property of the fund to, or its use by, or for the benefit of any person known to be a party in interest; or

(I) permit any of the assets of the fund to be held, deposited or invested outside the United States unless the indicia of ownership remain within the jurisdiction of a United States district court, except as authorized by the Commission by ruling or regulation.

The Commission may by rule or regulation provide for the exemption of any fiduciary or transaction from all or part of the proscriptions contained in this subsection 402(b)(2), when the Commission finds that to do so is consistent with the purposes of this Act and in the interest of the fund and its participants and beneficiaries; *Provided, however,* That any such exemption shall not relieve a fiduciary from any other applicable provisions of this Act.

(c) Nothing in this section shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan under which the fund was established;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the fund: *Provided,* That no person so serving who already receives full-time pay from an employer or an association of employers whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed;

(3) serving in such position in addition to being an officer, employee, agent, or other representative of a party in interest;

(4) engaging in the following transactions:

(A) purchasing on behalf of the fund any security which has been issued by an employer whose employees are participants in the plan under which the fund was established or a corporation controlling, controlled by, or under common control with such employer: *Provided,* That the purchase of any security is for no more than adequate consideration in money or money's worth: *Provided further,* That if an employee benefit fund is one which provides primarily for benefits of a stated amount, or an amount determined by an employee's compensation, an employee's period of service, or a combination of both, or money purchase type benefits based on fixed contributions which are not geared to the employer's profits, no investment shall be made subsequent to the enactment of this amendment by a fiduciary of such a fund in securities of such an employer or of a corporation controlling, controlled by, or under common control with such employer, if such investment, when added to such securities already held, exceeds 10 per centum of the fair market value of the assets of the fund. Notwithstanding the foregoing, such 10 per centum limitation shall not apply to profit-sharing plans, nor to stock bonus, thrift, and savings or other similar plans which have the requirement that some or all of the plan funds shall be invested in securities of such employer;

(B) purchasing on behalf of the fund any security other than one described in (A) immediately above, or selling on behalf of the fund any security which is acquired or held by the fund, to a party in interest: *Provided,* (i) That the security is listed and traded on an exchange subject to regulation by the Securities and Exchange Commission, (ii) that no brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with such transaction, and (iii) that adequate consideration is paid;

(5) making any loan to participants or beneficiaries of the plan under which the fund was established where such loans are available to all participants or beneficiaries on a nondiscriminatory basis and are made in accordance with specific provisions regarding such loans set forth in the plan;

(6) contracting or making reasonable arrangements with a party in interest for office space and other services necessary for the operation of the plan and paying reasonable compensation therefor;

(7) following the direction in the trust instrument or other document governing the fund insofar as consistent with the specific prohibitions listed in subsection 402(b)(2);

(8) taking action pursuant to an authorization in the trust instrument or other document governing the fund, provided such action is consistent with the provisions of subsection 402(b).

(d) Any fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this Act shall be personally liable to make good to such fund any losses to the fund resulting from such breach, and to restore to such fund any profits of such fiduciary which have been made through use of assets of the fund by the fiduciary.

(e) When two or more fiduciaries undertake jointly the performance of a duty or the exercise of a power or where two or more fiduciaries are required by any instrument governing the fund to undertake jointly the performance of a duty or the exercise of a power, but not otherwise, each of such fiduciaries shall have the duty to prevent any other such cofiduciary from committing a breach of a responsibility, obligation, or duty of a fiduciary or to compel such other cofiduciary to redress such a breach: *Provided,* That no fiduciary shall be liable for any consequence of any act or failure to act of a cofiduciary who is undertaking or is required to undertake jointly any duty or power if he shall object in writing to the specific action and promptly file a copy of his objection with the Commission.

(f) No fiduciary may be relieved from any responsibility, obligation, or duty under this

Act by agreement or otherwise. Nothing herein shall preclude any agreement allocating specific duties or responsibilities among fiduciaries, or bar any agreement of insurance coverage or indemnification affecting fiduciaries, but no such agreement shall restrict the obligations of any fiduciary to a plan or to any participant or beneficiary without prior approval of the Commission.

(g) A fiduciary shall not be liable for a violation of this Act committed before he became a fiduciary or after he ceased to be a fiduciary.

(h) No person who has been convicted of, or has been imprisoned as a result of his conviction of: robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, kidnaping, perjury, assault with intent to kill, assault which inflicts grievous bodily injury, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)(1)), or a violation of any provision of this Act, or a violation of section 302 of the Labor-Management Relations Act of 1947 (61 Stat. 157, as amended; 29 U.S.C. 186), or a violation of chapter 63 of title 18, United States Code, or a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, or a violation of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, as amended; 29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve—

(1) as an administrator, officer, trustee, custodian, counsel, agent, employee (other than as an employee performing exclusively clerical or janitorial duties) or other fiduciary position of any employee benefit plan; or

(2) as a consultant to any employee benefit plan,

during or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Commission determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. No person shall knowingly permit any other person to serve in any capacity referred to in clause (1) or (2) in violation of this subsection. Any person who willfully violates this subsection (h) shall be fined not more than $10,000 or imprisoned for not more than one year, or both. For the purposes of this subsection (h), any person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after the date of enactment of this section. For the purposes of this subsection (h), the term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(i) No person who is a party in interest shall receive or accept, directly or indirectly, whether through a corporation or other entity owned or controlled in any substantial degree by such person or otherwise, any payment, loan, pledge, hypothecation, assignment, or other transfer out of the assets of such fund (other than benefits to which such person is entitled as an employee), except that if such person is an officer or employee of such fund, reasonable fees or expenses of attending meetings in connection with the business thereof may be paid from the fund to any such officer or employee attending such meetings in an official capacity. Nothing herein contained shall prohibit the purchase of a profit-sharing-retirement plan or other profit-sharing plan, in the ordinary course of business, of the securities or indebtedness of any corporation or other business entity employing directly or through a subsidiary or parent entity a substantial number of the beneficiaries of such fund.

(j) All investments and deposits of the funds of an employees' benefit fund and all loans made out of any such fund shall be made in the name of the fund or its nominee, and no officer or employee of the fund, no trustee or administrator or officer or employee thereof, no employer or officer or employee thereof, and no labor organization, or officer or employee thereof shall either directly or indirectly accept or be the beneficiary of any fee, brokerage, commission, gift, or other consideration for or on account of any loan, deposit, purchase, sale payment or exchange made by or on behalf of the fund.

TITLE V—ENFORCEMENT

SEC. 501. Whenever the Commission—

(1) determines, in the case of a pension or profit-sharing-retirement plan required to be registered under title I, that no application for registration has been filed in accordance with section 102(a), or

(2) issues an order under section 102(e) denying or canceling the certificate of registration of a pension or profit-sharing-retirement plan,

the Commission may petition any district court of the United States having jurisdiction of the parties, or the United States District Court for the District of Columbia, for an order requiring the employer or other person responsible for the administration of such plan to comply with such requirements of title I as will qualify such plan for registration under title I.

SEC. 502. Whenever the Commission has reasonable cause to believe that an employees' benefit fund is being or has been administered in violation of the requirements of part B of title IV, the Commission may petition any district court of the United States having jurisdiction of the parties or the United States District Court for the District of Columbia for an order (1) requiring return to such fund of assets transferred from such fund in violation of the requirements of such title, (2) requiring payment of benefits denied to any beneficiary in violation of the requirements of such title, and (3) restraining any conduct in violation of the requirements of part B of such title, and granting such other relief as may be appropriate to effectuate the purposes of this Act.

SEC. 503. Upon the filing of any petition pursuant to section 501 or 502, the district court may, in its discretion, (a) appoint a receiver to take possession of the assets of the plan or fund which is the subject of the petition and to administer them until such time as the violations of law alleged in such petition no longer exist, and (b) remove a fiduciary who has failed to carry out his duties or is serving in violation of the provisions of this Act.

SEC. 504. Suits by persons entitled, or who may become entitled, to benefits from employees' benefit funds or plans may be brought in any court of competent jurisdiction, State or Federal, or the United States District Court for the District of Columbia, without respect to the amount in controversy and without regard to the citizenship of the parties (1) against any such fund or plan to recover benefits required to be paid from an employees' benefit fund or plan pursuant to the terms of the agreement pursuant to which such fund or plan is established or other constituent instrument; or (2) on behalf of and in the name of an employees' benefit fund against any person who shall have transferred or received any of the assets of such fund in violation of any such agreement or of the requirements of part B of title IV. Where such action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. In any such action the court in its discretion may—

(A) allow a reasonable attorney's fee and costs of the action to any party;

(B) require the plaintiff to post security for payment of costs of the action and reasonable attorney's fees. A copy of the complaint in any such action shall be served upon the Commission by certified mail who shall have the right, in his discretion, to intervene in the action.

SEC. 505. The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115) shall not be applicable with respect to suits brought under this title.

SEC. 506. Suits by an administrator or fiduciary of a pension plan, a profit-sharing-retirement plan, or an employees' benefit fund, to review any final order of the Commission, to restrain the Commission from taking any action contrary to the provisions of this Act, or to compel action required under this Act, may be brought in the name of the plan or fund in the direct court of the United States for the district where the fund has its principal office, or in the United States District Court for the District of Columbia.

"SEC. 507. It is hereby declared to be the express intent of Congress that the provisions of this Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the subject matters regulated by this Act: *Provided*, That nothing herein shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary. Nothing herein shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (other than the Welfare and Pension Plans Disclosure Act of 1958 as amended (92 Stat. 994)) or any rule or regulation issued under any such law."

SEC. 508. Any action, suit, or proceeding based upon a violation of this Act or the Welfare and Pension Plans Disclosure Act shall be commenced within five years after the plaintiff has notice of the acts or events forming the basis of the claim: *Provided*, That truthful disclosure of a fact in any form or other document required to be filed with the Commission shall be deemed such notice.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. RIBICOFF). The Chair, on behalf of the Vice President, pursuant to Public Law 90–321, appoints the Senator from Tennessee (Mr. BROCK) to the National Commission on Consumer Financing.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

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

EXPORT-IMPORT BANK AMENDMENTS OF 1971

The PRESIDING OFFICER (Mr. CHILES). Pursuant to the previous order, the Chair lays before the Senate the unfinished business, which the clerk will state.

The legislative clerk read as follows:

A bill (S. 581) to amend the Export-Import Bank Act of 1945, as amended, to allow for greater expansion of the export trade of the United States, to exclude Bank receipts and disbursements from the budget of the United States Government, to extend for three years the period within which the Bank is authorized to exercise its functions, to increase the Bank's lending authority and its authority to issue, against fractional reserves and against full reserves, insurance and guarantees, to authorize the bank to issue for purchase by any purchaser its obligations maturing subsequent to June 30, 1976, and for other purposes.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time consumed for the quorum call be charged equally against both sides on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. The Senator from Alabama is recognized for 10 minutes.

Mr. SPARKMAN. Mr. President, S. 581 is a crucial piece of legislation and deserves the full support of the Congress. Its passage can result in immediate benefits to employment, domestic economic health and the strength of the dollar throughout the world.

The Senate last year recognized the necessity of removing the Export-Import Bank from budget calculations and approved S. 4268 which was introduced to accomplish that purpose. This budgetary exclusion is no less urgent, necessary or desirable this year.

Exclusion of Eximbank from the budget, which has the unconditional support of the administration—the President, the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, the Office of Management and Budget—also has the support of the Senate Committee on Banking, Housing and Urban Affairs.

In successive years, the Committee has heard testimony explaining how the unified budget literally strangles the Export-Import Bank's ability to provide full service to the Nation's exporters. While Congress each year establishes a ceiling on the Bank's obligational authority, and would continue to do so with enactment of S. 581, the Office of Management and Budget establishes the degree of the Bank's net lending impact allowable in the total context of the Federal budget. This OMB constraint effectively reduces the ability of the Bank to assist exports in the magnitude Congress has approved.

Enactment of S. 581 would free Eximbank of this OMB constraint and would restore the Congress to the position of ultimate authority over the Bank's activities.

Arguments have and will be raised that exclusion of Eximbank from the unified budget runs counter to the single budget summary concept. Actually, however, the inclusion of Eximbank in the budget does not contribute to the planning goal which the unified budget concept was designed to achieve. Since Eximbank disbursements for export credits lag behind authorization by 1 to 6 years, the Bank's net disbursement figures for any 1 year in large part reflect obligational activity of previous years. Moreover, exclusion of the Bank's net disbursements from the annual calculation of Federal expenditures and their relationship to the expenditure ceiling does not mean exclusion of the Bank's lending activities from the budget document.

The magnitude of the Bank's lending activities should not be restricted by control over net lending; rather, and more realistically, the magnitude should, and would under S. 581, be controlled by the congressional review each year of all obligational activity proposed for the following fiscal year.

Eximbank's net lending activities are unique and demonstrably needed. The Bank's activities cannot justifiably be equated with other Government programs operating with appropriated funds strictly within the domestic economy. The Bank makes dollar loans on hard terms which are repaid in dollars in the United States. Its losses are negligible.

In analyzing the necessity for this legislation, it is essential to understand what has been happening in the world marketplace over the past several years. The growth of U.S. exports has not kept pace with the rate of world export growth. The U.S. share of world trade during the past decade has dropped.

We have different buyers in different markets today than we saw 10 years ago. As the economic viability of the less developed nations has improved, new markets have appeared for materials, services and products. And there is a difference in the products we sell to the industrialized as well as to the less developed countries. There has been an increasing shift in the composition of our export trade to sales abroad of technology-intensive products.

Buyers require and are demanding credit terms on their purchases. These demands have forced U.S. exporters to extend credit on terms that equal those offered by their foreign competitors with Government support if they are to be successful in the international marketplace and expand their export sales. Major exporting countries, such as the United Kingdom, France, Italy, Germany and Japan are offering highly attractive Government-supported terms in the short-, medium- and long-term fields.

The Export-Import Bank is this country's principal means of assuring U.S. exporters the financing they need to compete effectively in this environment. Eximbank is the principal means by which we can reverse the U.S. export trend of the past several years and achieve a favorable balance in the international payments account. A solution to the balance of payments problem is critical to the Nation's future fiscal strength and long-term economic health.

While the results from Eximbank activities of the past year are impressive, the support which it is able to offer U.S. exporters is insufficient to meet their requirements. The resources available to it within the unified budget are inadequate for the existing programs. They will not permit the launching of new programs, such as a short-term discount program which would be of real benefit to the agricultural community, where the Bank could make a substantial contribution to the export trade account.

The Legislation pending before us is necessary. Eximbank must have it now if it is to fulfill the role assigned to it by Congress.

Mr. President, I call attention to the fact that a similar piece of legislation, to that being proposed, passed the Senate last year but failed in the House very late in the session.

I am pleased to present this legislation and recommend it to the Senate for passage.

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

The PRESIDING OFFICER. Who yields time?

If no one yields time, time will be charged against both sides equally.

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

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. PROXMIRE. Mr. President, I ask unanimous consent to dispense with reading of the amendment and I will explain it.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendment will be printed in the RECORD, as requested.

The text of the amendment is as follows:

On Page 3, strike lines 14 through 25.
On Page 4, strike lines 1 through 5.
On Page 4, line 6, strike "(b)" and insert "(a)".
On Page 4, line 9, strike "(c)" and insert "(b)".
On Page 4, line 12, strike "(d)" and insert "(c)".
On Page 4, line 16, strike "(e)" and insert "(d)".
On Page 5, line 4, strike "(f)" and insert "(e)".
On Page 5 strike lines, 14 through 20.

The PRESIDING OFFICER. The Chair would inquire of the Senator from

Wisconsin whether this amendment is the one on which there is an agreed-upon time of 2 hours.

Mr. PROXMIRE. That is correct.

Mr. President, I yield myself such time as I may require on this amendment.

The PRESIDING OFFFICER. The Senator from Wisconsin may proceed accordingly.

Mr. PROXMIRE. Mr. President, my amendment is a simple one. It would merely keep the Export-Import Bank in the Federal budget as it is now. The amendment is supported by the GAO and the Federal Reserve, both of whom have indicated in testimony before the committee, and in communications to the committee, that they feel the Export-Import Bank should not be singled out for exclusion from the budget. In so doing, my amendment will reaffirm the priority of our domestic needs over our balance of payments.

By way of contrast, the bill reported by the committee gives top priority to the balance of payments. It sacrifices our needs for better housing, for more schools, and hospitals, and pollution control facilities in favor of an economic abstraction—the balance of payments. I cannot understand how a committee, which in the past has been so dedicated to improving housing for the American people, can suddenly turn its back on our real human needs and give first priority to the balance of payments.

Let us briefly review the history of the budgetary status of the Eximbank. The Bank was set up by Congress in 1934 to help finance U.S. exports. It is a Government corporation wholly owned by the U.S. Treasury. At the end of fiscal year 1970, Treasury's equity investment in the Bank exceeded $2.2 billion.

During the middle 1960's, the President's Commission on Budget Concepts was formed to unify the Federal Budget and give consistent treatment to similar programs. The Commission carefully studied the advisability of exempting all Federal loan programs from the budget. Frankly I think we can make a very strong argument for exempting all of them. It was argued that loan disbursements were not really current expenditures for goods or services. A loan was like acquiring a capital asset which would be fully repaid with interest over the life of the loan.

Despite these arguments, the Commission decided otherwise. They felt that the net lending figures of all Government loan programs should be carried in the budget and treated as an expenditure. Net lending is the difference between loan disbursements and loan receipts. It is the amount which must be financed.

There are only three ways by which an agency's net lending can be financed. One, they can borrow directly in the private capital market as does the Ex-Im Bank; two, they can borrow from the Treasury which in turn must increase its borrowings in the private market; or three, they can obtain appropriated funds which Treasury must again finance in the private market.

If the Treasury is running a surplus, it would not have to increase its borrowing—it simply decreases its surplus which amounts to the same thing.

Regardless of the method of financing, an increase in net lending requires a corresponding increase in the Federal Government's claims upon the private capital market. One of the basic purposes of the budget is to show the total claims of the Government on the private sector. Therefore, the Commission decided that the net lending figures of all Government lending programs should be carried in the budget.

I might point out that the Chairman of the President's Commission on Budget Concepts was former Treasury Secretary David Kennedy and its Executive Director was former Budget Director Robert Mayo. As former bankers and longtime financial executives, these gentlemen were in a good position to make sound recommendations on increasing the integrity of our budgetary statements to the public.

The principles of the unified budget developed by the President's Commission were first applied in fiscal year 1969. During this year the Bank approved total loan authorizations of $1.3 billion. In 1970 they authorized $2.2 billion and they have projected $2.9 billion for 1971, more than double the 1969 rate. Thus, the Bank has not exactly suffered under the unified budget procedures.

Despite this favorable record, Bank officials were not satisfied. They wanted to be completely exempt from the budget even though all other Federal lending programs would remain in the budget. They somehow managed to persuade the members of the Senate Banking Committee that it was in the national interest to single out to single out the Export-Import Bank and give it preferential treatment over all other Federal lending programs including those for housing, small business, mass transit, urban renewal, TVA, economic development, rural electrification, and agricultural development.

For the life of me, I cannot see why the Export-Import Bank should be given preferential treatment over these socially important domestic lending programs. I think if most Members of the Senate had to rank our Federal lending programs in order of priority, the Export-Import Bank would be far down on the list. I know it would be far down on my list—perhaps at the bottom. I certainly think better housing for the American people is more important than exporting luxury jet aircraft to some foreign airline.

The ostensible reason given for exempting the Bank from the budget is that it would permit the Bank to expand their export loans and thus enhance our balance of payments. Bank officials estimate that if they were free from budgetary restrictions, they would increase their export loans by an additional $2 billion over the next 2 fiscal years.

The Bank obtains its money by borrowing in the private capital market. Therefore, if it expands its loans by an additional $2 billion, it would have to borrow the same amount in the private capital market.

Where will the money come from? There is only a fixed supply of savings in our economy available for investment. If the Export-Import Bank borrows $2 billion more, someone else will have $2 billion less. What areas of our economy will find their available supply of credit reduced?

The sectors most likely to be affected are the mortgage market and the market for municipal bonds. These are the sectors which have stood last in line in the competition for funds. They are the most vulnerable to an increased pressure on the capital market.

During 1969, a total of $88 billion was raised in our money and capital markets. However, $48 billion of this was raised by the business sector. Most corporations borrow what they need and are not significantly deterred by rising interest rates. A total of $16 billion was raised through home mortgages and $8 billion through State and local bond issues. Most of the pressure exerted by the Export-Import Bank will be felt in this area. The additional $2 billion to be borrowed by the Eximbank constitutes a significant percentage—nearly 10 percent—of the $24 billion accounted for by home mortgages and municipal bond issues. Additional borrowings of this magnitude cannot easily be accommodated without some painful readjustment.

It is unfortunate that we would sacrifice our housing and other domestic needs for such an elusive concept as the balance of payments. Economists cannot even agree on how to measure it—there are four principal measures and they often give contradictory information. For example, in 1969, one measure of our balance of payments showed a deficit of $7 billion whereas another measure showed a surplus of nearly $3 billion. Which figure are we to believe?

Moreover, even with an expansion of U.S. exports made possible by an Eximbank loan, there would be little or no immediate impact on our balance of payments. The increase in the balance of payments arising from an additional export would be offset by the outflow of funds to the foreign importer. For example, assume an Eximbank loan to a foreign airline made it possible for a U.S. firm to export a $10 million jet aircraft. The $10 million export would be counted on the plus side of the ledger in our international accounts. However, the loan to the foreign airline would be counted as a capital outflow and would be entered on the minus side of the ledger. Thus, there would be little immediate effect on the balance of payments unless the foreign airline came up with a substantial downpayment.

There would be no real improvement in the balance of payments until the loan was repaid by the foreign airline which could take as long as 5 years. Thus, the legislation would sacrifice our immediate needs for better housing, and for more schools and hospitals in return for some presumed but uncertain benefit in the balance of payments which might take as long as 5 years to be realized. No one knows whether we will even have a balance of payments problem 5 years from now; it is certain, however, that we have an immediate and serious shortage of decent housing. Once

again, the legislation seriously misplaces our national priorities.

One would expect there has been a substantial depression in the export business which would justify the extraordinary budget procedures being proposed by the Bank and the administration. However, when one looks at the figures, just the opposite conclusion emerges—the export business is booming.

For example, in 1968 merchandise exports were $33.6 billion. During 1970 we exported $42.0 billion, or an increase of 25 percent in 2 years. By way of contrast, expenditures on residential home construction totaled $30.3 billion in 1968 and only $29.7 billion in 1970, a decrease of 2 percent in 2 years.

In other words, exports are up 25 percent and housing is down 2 percent. One would think under these circumstances, if view of the fact that exports have been booming and that housing has been suffering, if we were to give a priority now, it would be to housing. However, this legislation gives the priority not to housing, but to exports. The legislation before us would widen this gap by freeing exports from budgetary restrictions while continuing those restrictions on housing. I cannot imagine a more glaring example of misplaced priorities. Surely the administration can do better than this.

It is indeed ironic that the legislation gives the balance of payments top priority when many economists regard it as no longer important as it once was. Practically every witness before the Joint Economic Committee who was questioned on the subject said our balance of payments should not take priority over our domestic needs. I remember questioning Secretary Connally on this point. He said our domestic needs should come first; that our balance of payments should not come first. And yet, this is exactly what S. 581 would do.

Mr. President, I ask unanimous consent that the names of the Senator from Virginia (Mr. BYRD) and the Senator from Colorado (Mr. ALLOTT) be added as cosponsors of my amendment.

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

Mr. PROXMIRE. Mr. President, our obsessive concern with the balance of payments was due in large part to the preachings of William McChesney Martin, who in turn, was sold a bill of goods by the European central bankers. Instead of distorting our own domestic priorities, we should put a greater burden on our European trading partners to make appropriate adjustments in their exchange rates and import barriers. If we are really concerned about the balance of payments, it would make much more sense to withdraw our troops from Western Europe which by now should be capable of defending themselves.

Mr. President, the primary—indeed the only justification for taking the Bank out of the budget is to improve our balance of payments. However, despite the claims of the Bank, there is some doubt that the balance of payments would actually be improved, or at least to the degree estimated by the Bank.

The Federal Reserve Board has a far greater concern over our balance of payments than the Export-Import Bank and considerably more economic expertise. In a letter to the committee last year, Chairman Burns of the Federal Reserve Board cast doubt upon the argument that the legislation would necessarily strengthen our balance of payments. The Federal Reserve Board Chairman stated that:

> The Board is fully aware of the desirability of expanding U.S. exports to help improve our balance of payments. However, not all Export-Import Bank loans result in additional export sales. This is especially true when the Bank finances the sale of U.S. goods for which there is little or no competition in world markets. Frequently the Bank's loans are substitutes for other financing in the United States or from abroad. Finally, to the extent that the Bank's credit is used to substitute for offshore financing of our exports, our balance of payments will suffer.
>
> Accordingly, the Board recommends against enactment of the bill.

If additional Eximbank loans are merely substitutes for private financing as Chairman Burns suggests might be the case, the net effect of the legislation will be to expand governmental lending programs at the expense of private commercial banks without any benefit to our balance of payments. For an administration purportedly dedicated to free enterprise, it is somewhat anomalous to suggest that the Federal Government take over functions now being handled in the private sector. Had a Democratic administration made the same proposal, one could have confidently predicted cries of "socialist takeover" emanating from the banking community. I can only conclude the bankers have been lulled into a sense of false complacency by the supposedly conservative credentials of the present administration.

In summary, if the Bank is successful in increasing the total amount of export credit, our domestic needs will suffer. To the extent an expansion of the Bank's loans merely replace credit being extended by private banks, we increase governmental control over our lending markets without any compensating balance of payments benefits. Either result affords adequate grounds for rejecting the proposed exclusion of the Bank from the Budget.

Mr. President, the legislation infringes upon the jurisdiction of the Committee on Appropriations insofar as expenditure of outlay ceilings are involved. This committee has, from time to time, established Government-wide expenditure ceilings. The legislation seeks to bypass the Appropriations committee and bind future Congresses when it states that the receipts and disbursements of the Bank "shall be exempt from any annual expenditure and net lending (budget outlays) limitations imposed on the budget of the United States Government." This means that the Bank would not be restrained by any future congressional ceiling on expenditures unless the legislation establishing the ceiling specifically included the Eximbank.

If a case can be made for excluding Eximbank operations from a congressionally imposed expenditure ceiling, proper procedure would call for the Bank to justify a specific exemption each time the ceiling is set. The burden of proof to secure an exemption should be on the Bank; we should not place the burden on Congress to revoke a preexisting exemption.

Mr. President, the Committee on Appropriations has in special cases approved exemptions from the governmentwide ceiling on expenditures. This is the proper committee to hear the arguments for exempting the Export-Import Bank along with any other agency or program which desires an exemption.

If the Bank wants an exemption, why is it afraid to take its case to the Appropriations Committee. This is the committee responsible for expenditure ceilings. Why is the Bank sneaking behind the backs of the Appropriations Committee members in order to secure a special exemption?

I think the answer is painfully obvious. The officials of the Bank must know their case is not any more meritorious than the case for exempting other government lending programs. Therefore, the Bank decided to end-run the Appropriations Committee. If the Bank is permitted to succeed in this ploy, we might as well forget expenditure ceilings. Every agency will run to their favorite committee for special treatment just as the Eximbank has done.

It has also been argued that Export-Import Bank loans are not true expenditures since they are fully repayable with interest. Accordingly, it is argued that no great harm is done if the net lending figures are removed from the budget.

This argument is also misleading. Eximbank loans do represent a claim on private resources to achieve public objectives. Moreover, the net outlays of the Bank must be financed in the capital markets the same as any other Federal spending program. One of the basic purposes of the budget is to show the total financial claims of the public sector on the private sector. Excluding Eximbank loans therefore understates the degree or extent of Federal claims upon the economy.

An argument has also been made that the Bank does not operate on appropriated funds hence its activities need not be carried in the budget. Once again, this argument is seriously misleading. Even though the Bank does not use Federal funds, hidden Federal subsidies to the Bank cost the American taxpayer nearly $70 million a year. The legislation before the Senate would exempt these funds from budgetary control.

One way of appreciating the subsidized nature of Eximbank loans is to examine their operations for fiscal year 1970. During the year, the Bank was making export loans at 6 percent when market rates were 8 or 9 percent. Moreover, the Bank still earned a profit of $110.7 million. How can the Bank earn money by making below-market-rate loans? The answer is that it does so through hidden Federal subsidies.

There are two backdoor subsidies to the Bank. The first is the investment of Government capital at a ridiculously low rate. The Bank has over $2.2 billion in Government capital, including $1 bil-

lion in initial capital stock and $1.2 billion in retained earnings. The entire $2.2 billion belongs to the American taxpayer. If we closed down the Bank, the $2.2 billion would be returned to the Treasury and the funds could be used to reduce the national debt. Interest paid on the national debt would be similarly reduced. Thus, the real cost to the taxpayer is measured by the interest he is paying on his total investment of $2.2 billion. During fiscal year 1970, the average yield on all outstanding Treasury obligations was 7.4 percent. Thus the interest cost of financing the Eximbank in fiscal year 1970 was $162 million ($2.2 billion times 7.4 percent).

What did the taxpayers get back for their $162 million? They received only $50 million in dividends or less than 2.5 percent on their total investment. The Bank also kept $60 million in retained earnings for a total "profit" of $110 million which is substantially less than the true cost of Treasury capital measured at $162 million. The difference of $52 million represents a hidden subsidy paid by the taxpayer.

The second backdoor subsidy comes from the ability of the Bank to borrow directly from the Treasury at rates below the cost of funds to the Treasury. The General Accounting Office estimates this backdoor subsidy cost the taxpayers $16.8 million in fiscal year 1970.

When we add the two backdoor subsidies together—$52 million in low cost capital and $16.8 million cut rate loans—we get a total subsidy of $68.8 million.

In summary, Mr. President, I believe the exemption of the Eximbank would be a serious mistake.

It distorts our national priorities.

It threatens the credit needs of housing and State and local governments.

It constitutes a $2 billion raid on the private capital market for low priority needs.

It could take away business from private banks.

It invades the jurisdiction of the Appropriations Committee.

It threatens the complete collapse of congressional expenditure ceiling.

It removes a $70 million subsidy program from congressional control.

Mr. President, I ask unanimous consent that the amendments I have sent to the desk be considered en bloc, because I think they refer to several parts of the bill.

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

Mr. PROXMIRE. Mr. President, I urge the Members of the Senate to reject this unwise, unwarranted proposal. I reserve the remainder of my time.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed a concurrent resolution (H. Con. Res. 257) providing for an adjournment of the House from April 7, 1971, until April 19, 1971, in which it requested the concurrence of the Senate.

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

H.R. 6531. An act to amend the Military Selective Service Act of 1967; to increase military pay; to authorize military active duty strengths for fiscal year 1972; and for other purposes,

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bill, and it was signed by the Acting President pro tempore (Mr. BENTSEN):

S. 789. An act to amend the tobacco marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended.

HOUSE BILL REFERRED

The bill (H.R. 6531) an act to amend the Military Selective Service Act of 1967; to increase military pay; to authorize military active duty strengths for fiscal year 1972; and for other purposes, was read twice by its title and referred to the Committee on Armed Services.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, April 5, 1971, he presented to the President of the United States the enrolled bill (S. 789) an act to amend the tobacco marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended.

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1971

The Senate continued with the consideration of the bill (S. 581) to amend the Export-Import Bank Act of 1945, as amended, to allow for greater expansion of the export trade of the United States, to exclude Bank receipts and disbursements from the budget of the U.S. Government, to extend for 3 years the period within which the Bank is authorized to exercise its functions, to increase the Bank's lending authority and its authority to issue, against fractional reserves and against full reserves, insurance and guaranties, to authorize to the bank to issue for purchase by any purchaser its obligations maturing subsequent to June 30, 1976, and for other purposes.

The PRESIDING OFFICER. Who yields time?

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

The present proposal affecting the Export-Import Bank enjoys the strong bipartisan support of a strong majority of the Senate Committee on Banking, Housing, and Urban Affairs, which heard the testimony from all sources bearing on the issues raised by the amendments offered by the Senator from Wisconsin.

This measure seeks to allow the Eximbank to compete effectively with some 50 public institutions in other countries which offer export credits, guarantees, direct loans, and insurance for businesses located in those countries needing such assistance.

We were strongly impressed by the degree to which other nations have, through their counterpart institutions, sought to increase employment and sought to improve the balance of payments and trade for those countries.

We felt at the start that there was no rational reason for arbitrarily limiting the Export-Import Bank from those activities necessary to compete in credit terms and guarantees with our competitors elsewhere in the world. Indeed, even with the changes found in this proposal, in many respects and often, American businessmen will nevertheless be handicapped by superior credit and other terms made available through the central banks and credit extending public agencies of other countries as against those which would be possible under the Eximbank under the reforms offered and proposed by the Senate Committee on Banking, Housing and Urban Affairs.

This is a jobs proposal. All of the credit and guarantees offered and made available under the Eximbank are for goods created through production made possible by U.S. workers.

It seems to be, in my opinion, a very unwise policy to unilaterally restrict the opportunities for trade growth and increased employment which could spring from these changes in order to serve some bookkeeping concept from some sources in American government.

We need to realize the serious nature of the trade crisis which this country faces. World trade is growing at approximately 14 percent per year. Many of our chief trading partners are increasing their world trade at about that same amount—14 percent—but the increase in export trade by this country is increasing at an annual rate of only half of that—7 percent—and one of the reasons has been that the Eximbank, in part as a result of the restrictions imposed by putting it under the unified budget and under the spending ceiling, has been unable to compete with comparable agencies in other countries in giving American business an opportunity to find new sources of commerce and to provide the expanded trade opportunities which our economy and our people require.

So it seems to me it would be terribly self-defeating to cripple the key, and for American business often the sole agency available to them for export expansion, for credits, loans, and guarantees necessary, if this country is going to have a favorable balance of payments and if we are going to have the growing employment so obviously needed in the present slack labor market in the country today.

Also, if I may add this final point, we have during the last 2 or 3 years seen an increasing amount of debate and expressions of concern over the difficulties which this country faces in terms of our international trade policies.

In the last session of the Congress, several weeks of our deliberations were spent debating a series of proposals which in effect would make a broad new change of policy by which we essentially moved into a broad protectionist strategy through the establishment of quotas, protecting up to 120 industries, which would have greatly raised consumer costs, which might have in the long run cost us jobs, but, in any event, I think

was a reflection of the great concern and great doubts which Americans have about the trade policies of this country.

I think they are proper concerns and they are ones which I think will assume a greater share of the attention of the Congress.

The present occupant of the Chair (Mr. RIBICOFF) is the chairman of a newly created Subcommittee of the Finance Committee assigned to inquire into factors involved in these difficult, complicated, and sometimes heartbreaking problems of international trade and what this country's policy should be to best protect our economy and the interests of a stable world.

But this is a case dealing with the Eximbank's having a chance to take action with which every American ought to agree. It is a chance to make progress in the expansion of healthy exports which would produce jobs in the United States; would help relieve pressures being brought toward dangerous protectionism; it would help us move forward in providing healthy, competitive, Export-Import Bank lending and trade credit policies.

Mr. President, another important provision contained in this bill is an amendment which removes the absolute prohibition against the Export-Import Bank giving any assistance to exports to Eastern Europe.

Mr. President, approximately 22 years ago, this Nation adopted a policy of severely restricting the export of goods and materials from this country to the Soviet Union and the nations of Eastern Europe. That policy was adopted in the height of the cold war, which escalated drastically shortly after World War II. It was felt at that time that such a policy was necessary in order to inhibit the redevelopment of the economies of the nations of Eastern Europe and the Soviet Union which were adopting a posture of severe hostility to the United States. Our restrictive policy continued without change for approximately 20 years.

In 1968 and 1969, the Subcommittee on International Finance of the Senate Banking Committee held extensive hearings to determine whether our restrictions on East-West trade had in fact accomplished the purpose of inhibiting the redevelopment of the nations in question and whether this policy should be continued. The evidence gathered during those hearings was overwhelmingly persuasive that our refusal to trade extensively with Eastern Europe had not had the desired effect. To the contrary, the Soviet economy experienced an almost unprecedented boom. It rapidly achieved the status of the nation with the second largest gross national product in the world—a gross national product equal to approximately one-half of our own. During the same period of time, the nations of Eastern Europe were able to rely on exports from the Soviet Union and were able to develop their own economies.

During these same hearings, we ascertained that the United States was the only country in the world that had such a highly restrictive policy in regard to East-West trade. Every other major trading nation in the world—all of them our allies—freely carry on trade with Russia and the other nations of Eastern Europe in all goods except those goods which were declared to be strategic under an international agreement subscribed to by these countries and the United States.

We found there were some categories of goods that could not be exported from the United States to Eastern Europe without going through a long and laborious licensing process. These 1,300 categories are not in any manner similarly restricted by the other countries of the world.

The conclusions we reached after those hearings were inescapable. The restrictive trade policies of the United States were having virtually no effect on the development of the economies of the Soviet Union and Eastern Europe. Their only effect was to prohibit American business from competing freely for the business of Eastern Europe, which is one of the fastest growing markets in the world.

Accordingly, in December of 1969, Congress approved the Export Administration Act of 1969 which declared it to be the policy of the United States "to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest." The President has made no such determination with respect to trade with the Soviet Union or the nations of Eastern Europe. Accordingly, it is now the policy of the U.S. Government to encourage trade with the Soviet Union and with Eastern Europe in addition to all other countries with which we have diplomatic or trading relations.

It is a well known fact that in the area of international trade, it is vital that there exist some export credit and guarantee mechanism. That is the reason for the existence of the Export-Import Bank of the United States. Without a facility to guarantee the credit of foreign purchases of American exporters or a facility to make loans to foreign purchasers with which to purchase American exports, the exports from this country would be highly curtailed.

Since its formation in 1945, the Export-Import Bank has participated in the financing of literally billions of dollars of U.S. exports that would not have been possible had the Export-Import Bank or similar organization not been in existence. However, at this particular time, there is an absolute prohibition contained in the Export-Import Bank Act against its extending credit to or participating in the financing of exports to the Soviet Union or the nations of Eastern Europe. Because of this absolute prohibition, it is impossible for the United States to pursue to the fullest the policy which was adopted in 1969 to encourage trade with all countries with which we have diplomatic or trading relations.

The markets of Eastern Europe and the Soviet Union are among the fastest growing markets in the world. Currently, trade with Russia and Eastern Europe comprises approximately 16 percent of total world trade. World trade is increasing at an annual rate of approximately 14 percent. The increase in trade of our major trading competitors is also around 14 percent. However, U.S. trade is increasing at the annual rate of only 7 percent. At present, the United States has approximately 15 percent of total world trade. However, our percentage of East-West trade amounts to only 3 percent.

It is obvious from these figures that the United States is falling behind in the area of trade and is particularly behind with respect to our trade with Eastern Europe.

During this time of extremely high unemployment and a deteriorating balance of payments situation, it would be foolish for the United States to do anything less than pursue every possible means of expanding our trade. To do so will create additional jobs and generate additional revenues to improve our balance of payments and stimulate a sagging economy. To remove the absolute prohibition against Eximbank financing on exports to Eastern Europe should permit American business to increase immediately its exports to that region.

In this regard, I believe it is helpful to discuss briefly the policies of the other nations of the world with respect to export financing to Eastern Europe. Currently, there are more than 50 export credit and insurance entities operating throughout the world. We have been unable to find a single one—other than the Export-Import Bank of the United States—which pursues differential policies with respect to East-West trade and other trade.

We were unable to ascertain the exact amount of business being done with the Soviet Union and Eastern Europe by all of these export credit entities. However, we were able to obtain some examples. As of June 30, 1970, Hermes, the principal German insurer of exports had exposure in Eastern Europe totaling approximately $640 million. The Italian export credit and insurance facility had exposure totalling approximately $800 million as of December 31, 1968 which is the latest figure we have. The Eximbank Bank's counterpart in Sweden and exposure in Eastern Europe totaling approximately $120 million as of June 30, 1970. Similarly, the Austrian exposure excluding Yugoslavia, was approximately $281 million as of December 31, 1970. We were unable to obtain any figures on the other major trading countries such as the United Kingdom and Japan. However, it is obvious from these examples that our other trading competitors are not inhibiting themselves in regard to financing and guaranteeing export credit to the Soviet Union and Eastern Europe.

In short, Mr. President, it is both good business and good sense at this time for the Congress to remove the absolute prohibition against Export-Import Bank financing or guarantees for exports to Eastern Europe and the Soviet Union. I hasten to point out that by removing this absolute prohibition, we are not making such export credit and guarantees automatically available to Eastern Europe. We still retain the provision which prohibits such export assistance unless the President determines that a

particular transaction would be in the national interest. Thus, the bill gives the President the maximum flexibility which he must have in order to pursue the total interests of the United States. I should point out that there are other acts which prohibit the export of strategic goods and materials to Eastern Europe. Thus, the export financing or guarantee that would be made available as a result of the passing of this bill will only be available for the support of exports of peaceful goods and only after the President has determined that the particular transaction will be in the national interest.

It is my hope that the President will utilize this authority liberally in order to create more export business for the United States, thereby putting back to work thousands of our currently unemployed, increasing our trade surplus, and improving our balance of payments.

At this point I would like to yield to the ranking Republican member of the subcommittee, who has done much work in this field, the distinguished Senator from Oregon (Mr. PACKWOOD).

Mr. PROXMIRE. Mr. President, will the Senator yield for a question before he does that?

Mr. MONDALE. I am glad to yield.

Mr. PROXMIRE. The Senator said two things about which I find myself somewhat puzzled. No. 1, the Senator indicated that the present arrangement which requires the Export-Import Bank to be in the budget constitutes a unilateral restriction.

Mr. MONDALE. That is correct.

Mr. PROXMIRE. In what manner is it unilateral? Does it not apply to all loan programs in this country?

Mr. MONDALE. It is a unilateral restriction on the Export-Import Bank which does not apply to any of the competing public agencies which guarantee exports in other countries. The central bankers in Europe, in some 50 countries, have institutions like the Eximbank. Practically all of them have broader powers than the Eximbank will have even under the reforms proposed here. What I am saying is, what sense does it make in this era of difficult trade, particularly in this era of slack employment in this country, for us to deny ourselves a chance to expand in healthy foreign exports; should we deny ourselves a chance to expand employment here at home—in the name of a bookkeeping principle?

I say that is a unilateral imposition of a restriction which should not be imposed at this time.

Mr. PROXMIRE. I say, No. 1, it is not unilateral in that it does apply equally to all other Federal lending programs, and, No. 2, Mr. Kearns testified that our terms are not disadvantageous; and this is the whole heart of the argument of the Senator from Minnesota, that somehow we are at a serious disadvantage.

Mr. Kearns said we were not. He said there were some short-term export programs on which perhaps we were, but that overall, they were not disadvantageous.

Furthermore, where does the Senator get his figures which indicate that our increase in exports has been only 7 percent, whereas the increase in exports of our trading partners has been 14 percent? The fact is that since 1968, the increase has been 25 percent, or 12.5 percent a year. That is a very favorable increase, which compares favorably with the drop in housing, which, as the Senator knows, is also fed by Federal loans.

Mr. MONDALE. Mr. President, will the Senator yield? I yielded for a question. I think we are on controlled time.

Mr. PROXMIRE. I am willing to take it out of my own time.

Mr. MONDALE. Fine.

Mr. PROXMIRE. I ask the Senator how he explains that statistic.

Mr. MONDALE. Permit me to say, first of all, I think the Senator from Wisconsin asked two questions. The first is whether it is true that the lending agencies and comparable institutions in other countries are in a position to outcompete the terms that can be offered by the Export-Import Bank.

I think, if the Senator from Wisconsin will review the record, there is substantial evidence that the other countries very frequently offer terms which are far more attractive than the terms offered by the Export-Import Bank. The last year or so, there is testimony that they have been more competitive than they had been, but there is further testimony that on many occasions lending agencies from other countries have been able to insulate themselves from their domestic interest markets, for example, to a greater extent than does the Export-Import Bank; that some of the other countries, in their credit policies, have permitted more of the management with respect to a certain facility to be supplied locally, and that reduces the cost; and that in other ways our Export-Import Bank has been unable to be as competitive as it would like to be.

I think the record is already clear on that, and so I think that unless we see some important bookkeeping reasons for saying that U.S. business should be put at that disadvantage, there is every reason to warrant the reforms which the committee has so strongly recommended.

If I may make one other point——

Mr. PROXMIRE. In that connection, I should like to ask why the Senator, who is one of the most persuasive and eloquent Members of this body, or of any body, has not given us any solid factual information. He has given us all kinds of generalizations, but there is no statistical comparison to show that the terms by which the Export-Import Bank is limited are disadvantageous in the important respects as compared with the terms that England, Germany, Japan, and other countries are offering. I ask the Senator why.

Mr. MONDALE. I would refer the Senator to page 215 of the hearing record.

May I also point out that there is another feature here which we have not discussed, and that is the availability of export-import activity in Eastern Europe. Eastern Europe is now one of the largest and fastest growing commercial markets in the world. While we enjoy something like 14 to 15 percent of world trade generally, the United States enjoys slightly less than 3 percent of nonstrategic commercial trade in Eastern Europe. One of the other features in this measure would try to make it possible, if the President approves, to permit the Export-Import Bank to be active in that area as well.

I now yield to the Senator from Oregon such time as he may require.

Mr. PACKWOOD. Mr. President, at the time we heard Mr. Kearns, who is Chairman of the Export-Import Bank, testify, he indicated that at the time of the adoption of the unified budget, it was not the intention that this would apply to the Export-Import Bank, that the inclusion was accidental.

That possibly may not have been intended, but in any event, the Export-Import Bank now finds itself in that situation. Not only on occasion are they unable to be competitive on rates, because our rates fluctuate up and down, but much more dramatic is the question of the availability of money. Because of the Office of Management and Budget, and the fact that Export-Import is within the Office of Management and Budget's limitation, they do not have the money either to make direct loans or, in many cases, to guarantee loans made by banks or other financial institutions to enable American exporters and manufacturers to compete overseas.

Whether or not Export-Import was included in the unified budget by inadvertence or was intended to be included, I think, is not the point to be argued about here. The question we have to face is whether Congress wants to recognize its independence, and say to the Executive, "We regard the balance of payments and the possibility of exporting overseas, not only to Europe but to Asia and to the markets, as so significant and singular that we want to exercise the decision as to whether or not the Export-Import Bank should be allowed to expand its activities."

We heard much last year about the delegation of power to the Executive, and we are going to hear it again this year. We have heard about it specifically in the field of foreign affairs. Right now we are talking about a facet of foreign affairs—business overseas. At the moment, under the unified budget concept, we have delegated to the Executive the sole power to decide how much, if any, the Export-Import Bank will be allowed to compete overseas, if they are allowed to compete at all, at what level of interest, and how much money they can loan. I do not think that is a decision that should be left solely to the Executive.

The argument can be made that the Executive can change that, that the President can take the Export-Import Bank out from under the unified budget by executive action if he chooses. I think we have heard some testimony that he could. But I think we are all aware of the political ramifications if the Executive should undertake to do that by himself. This is a decision in which Congress should participate. As far as I am concerned, it is a major policy decision which Congress alone should make.

By passing this legislation, we are not making the Export-Import Bank some kind of a financial institution by which to withdraw ourselves from any kind of

fiscal restraint by any one. All of their loans over $10 million will have to be approved by the Treasury and others. Their total lending capacity will be approved year by year by Congress. Their principal appropriations will come under the jurisdiction of the Appropriations Subcommittee chaired by the Senator from Wisconsin. We are not, by passing this legislation, removing all of the fiscal restraints on the Export-Import Bank. What we are doing is saying that henceforth the restraints will be set by Congress, and not at the whim of the Executive.

I think that is where the policy decision belongs, and for that reason, this particular bank, the Export-Import Bank, should be taken out from under the unified budget without regard, at the moment, to whether we choose as a matter of congressional policy to take any other lending programs in other domestic programs out from under the unified budget.

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

Mr. PACKWOOD. I yield.

Mr. PROXMIRE. If this is so urgent, if it is so necessary to give exports this benefit and priority, how does the Senator explain the fact that our exports have increased 25 percent in the last 2 years? How does he explain the fact that the Export-Import Bank volume of lending has increased from $1.3 billion in 1969 to $2.9 billion in 1971, a fantastic increase?

They are doing beautifully. Why should they be given priority over housing, for example, in which the Senator from Oregon is deeply interested and which he has a fine record of supporting, or small business or farmers or any other kind of loan program which we insist remains in the budget?

Mr. PACKWOOD. I am not quarreling with the record of the Export-Import Bank in the past, nor at this particular juncture am I prepared to argue about the merits or demerits of other lending programs in the domestic field that apparently we are going to consider in a few moments.

I am saying that, as we look toward the future and toward the policy of the Office of Management and Budget, the Export-Import Bank is going to be limited as to availability of money. I am not quarreling with the interest rates. That will depend upon the fluctuation in our own markets. The Export-Import Bank is going to find itself short of capital because it will not be able to float its bonds, and we will find ourselves in an unfavorable position overseas as to availability of money, not cost of money.

Mr. PROXMIRE. My argument was that they did not seem to have a problem, and we know what an urgent problem we have for housing. The Senator from Oregon is familiar with the fact that housing has declined in the last couple of years, and the heart of the problem is financial, in my view. There are other problems.

I do not see how we can exempt from the budget this program, which has been so dramatically successful over the past couple of years and seems to be in no real need of assistance, and then turn our back on the domestic programs.

No one has addressed himself to the fact that the Comptroller General, who is Congress' authority in this area, our accountant, says that it is unsound on an accounting basis and has testified against it.

The Federal Reserve Board, which is an expert in the whole area of banking and balance of payments, has also testified against it and has said it is unsound and opposes the legislation.

Mr. PACKWOOD. The Comptroller General did not say this was unsound in accounting practice. As a matter of fact, if we were in a private business enterprise, we would not be operating under this net lending theory.

Mr. PROXMIRE. I do not like net lending either.

Once you take it, once you make exemptions for some programs and not others——

Mr. PACKWOOD. That is a decision Congress should make, not the President, and especially not the Office of Management and Budget. We are debating at this time whether the Export-Import Bank is a sufficiently worthwhile program to change and go to gross lending instead of net lending, which in my estimation is an artificial restraint.

Mr. PROXMIRE. I think there is a tendency on the part of all of us to get away from the substantive effect of this program. If we go ahead with this bill, it will mean, according to Mr. Kearns, that the Export-Import Bank will borrow another $2 billion it otherwise would not in the private market. That $2 billion is going to come primarily from housing and State and local government, because they are most vulnerable. Big business takes care of itself and can borrow what it needs. It seems to me that Congress should consider that before we go ahead with this kind of exemption, we should recognize the effect on domestic problems, which in my view should have a higher priority.

Mr. MONDALE. I yield to the distinguished Senator from Alabama such time as he requires.

Mr. SPARKMAN. I thank the Senator from Minnesota.

First, I want to be clear on this: The Senator from Wisconsin has two amendments. There has been a great deal of talk about taking not only the Export-Import Bank, as well as several other agencies and programs, out from under the budget. Do I correctly understand that the amendment we are considering now is the one that would take other agencies out from under the budget?

Mr. PROXMIRE. I am not going to offer the other amendment unless this amendment is rejected. If this amendment is rejected and if we insist on exempting the Export-Import Bank from the budget, I am going to say, "Let us treat all programs the same. Let us be consistent. Let us not be unfair to the other programs." If this amendment is rejected, I will offer an amendment to treat the other lending programs exactly the same. I will not offer that amendment if my amendment is agreed to.

Mr. SPARKMAN. I was under the impression that it was that amendment to which the 2 hours of time was assigned.

Mr. PROXMIRE. No. This is the principal amendment.

Mr. SPARKMAN. A good deal has been said about the effect of excepting the Eximbank from the budget on housing. Of course, we know that in a tight money situation, housing, small business, agriculture, and a few other programs such as these always take the brunt. But this does not happen to be a time when housing is in a money crunch. Actually, there is more money for housing in the banks and in savings and loan institutions than can be used presently. And they are not using all of it, by any means. Dr. Burns has testified to that effect before our committee several times.

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

Mr. SPARKMAN. I yield.

Mr. PROXMIRE. Is it not true that homebuilders testified before our committee just 2 days ago——

Mr. SPARKMAN. Yes. I think they made a mistake, and I told them so at the time. At this time there is more money than can possibly be used for housing. It is pretty much like the dog in the manger.

I have supported housing. I do not think anybody in this Congress or in this country has supported housing more ardently than I. I have been on the Housing Subcommittee of our committee since 1947.

Mr. PROXMIRE. There is no question that the Senator from Alabama is "Mr. Housing" in this body, or in both bodies, in my book.

Mr. SPARKMAN. I think that the homebuilders, in answering the question put to them by the Senator from Wisconsin, made a mistake. I told them so, when they said that they would be opposed to any agency going into the private market and getting $2 billion. So would I, if it would put the pinch on housing as has been done several times during the past decade.

Furthermore, I pointed out that industrial expansion during the last 3 years, and even longer, has been going up and up each year, even though at no time during that period have we used fully the capacity we have.

If we want to urge restraints in a place that will put money back into the market and make it available for housing, let us put some restraint on lending to the industries which have been expanding to such an extent each year. It has been going up each time by billions of dollars.

There is more money today in the savings and loan institutions and in the commercial banks than housing can use. The newspapers are full of advertisements advertising lower rates on home mortgages, with all the money one can get. Every day I hear commercials on radio:

> We have all the money we need. Anybody who wants to borrow money for a home mortgage can get it without delay. It is here, waiting for you.

And that is true. I am glad it is true.

Mr. PROXMIRE. Mr. President (Mr.

STEVENSON) will the Senator yield at that point?

Mr. SPARKMAN. I yield.

Mr. PROXMIRE. Is it not true that the $2 billion would be taken out of the capital market in fiscal 1972 and 1973, when there is likely to be, on the basis of all past experience, another crunch on housing? The Federal Reserve Board indicated that they intend to continue to use monetary policy when necessary to restrain inflation. The homebuilders expect that by the end of this year, there will be pressure once again on housing.

Mr. SPARKMAN. I think we ought to legislate on the way things are now. I do not share the gloomy outlook that there will not be money for housing in 1972 and 1973. We enacted legislation last year—and the Senator from Wisconsin played a major part in it—that has been most helpful in the mortgage money market. In the housing field today, we have Fannie Mae operating out from under the budget. The funds generated by FNMA for these home mortgage operations are out from under the budget.

We have the Home Loan Bank Board, and we gave them special authority in legislation last year to set up a secondary market for conventional mortgages. In addition the HLBB's operations on advances made to savings and loan associations are out from under the operation of the budget.

Why make all this complaint about how bad housing would be affected? First of all, we have specially subsidized housing programs under which some 225,000 of units were built in 1969. Then there is federally assisted housing. In 1970, 450,000 units were built under this program. In addition, we have given flexibility to the Home Loan Bank Board—even provided $250 million to the Board to put out to the savings and loan associations and subsidized them so that they would be able to take care of the differential between the mortgages they were holding in their portfolio at, maybe, 4½ percent as against mortgages for which, at this time, they would have to be able to show 7 percent or 8 percent. We gave FNMA its independence. We have done a lot for housing and we will do much more. I do not believe, just because housing is something in which we are all interested, that it should be made, let us say, the stalking horse, as against doing something to allow the Export-Import Bank to do things that will help the people of this country who are producing goods and trying to sell them abroad.

Mr. MONDALE. Mr. President, will the Senator from Alabama yield right there?

Mr. SPARKMAN. I yield.

Mr. MONDALE. If an American wanted to buy a house, would credit availability be the bigger problem or would a job be the bigger problem?

Mr. SPARKMAN. A job. That is, the Export-Import Bank—by building up exports——

Mr. PROXMIRE. Does not housing too provide the same kind of thing?

Mr. SPARKMAN. Just a minute. Let me say that one industry which right now is threatened with as real a collapse as any other industry in this country—the aircraft industry—has thrown thousands of people out of work, and thousands more see unemployment ahead for them in the aircraft industry.

Aircraft exporting has been one of our best ventures and the Export-Import Bank can help it and put thousands more people back to work by our being able to sell aircraft overseas.

The Senator from Minnesota (Mr. MONDALE) and the Senator from Wisconsin (Mr. PROXMIRE) were having an exchange a while ago about specific examples of an American industry that has gone overseas and built a plant and is producing goods there with the people overseas getting the jobs.

Where are they selling the product? They are selling most of it back here, or at least a great part of it.

About 2 years ago the head of one of the largest manufacturing industries in this country said to me, "My company is building in West Germany one of the largest plants anywhere. I feel bad that we are doing that but I cannot help it. In the first place, West Germany is in a position to make a sizable grant to us and, in addition, will lend us money enough—whatever is needed to go ahead and put up the plant—at a very low rate of interest; and, furthermore, when the product is manufactured, West Germany will give us an export subsidy to help send the product back to this country to sell to Americans who otherwise would be buying the same product from one of their own producers in America."

I wish we had been in a position to compete with the kind of help right at that time. I wish we could have given help that would have been competitive with the help given by many countries in the world to their exporters.

Now my friends' explanation may seem a little thing, but I was impressed by it.

A year or so ago, my wife and I were in Copenhagen and we went into a store and purchased some silver or porcelain—I was not sure what it was—but the clerk in the store wrapped it and then she said, "Do you want to take this with you, or do you want to have it mailed to you in the United States?"

My wife said, "Oh, no, we will take it with us now."

The sales clerk said, "If we mail this to you, we can give you a 20-percent discount which is approximately the equivalent of the customs you will otherwise be paying."

Mr. President, you see what these countries are doing? They are making it possible for goods to be shipped over here that will take up the cost of the customs duty.

They have many different ways of helping their exporters and all we are trying to do in this bill is to provide a mechanism for our own Government to make possible opportunities to help our own manufacturers sell American goods in other countries and be able to compete realistically with the exporters in those countries.

Mr. MONDALE. Will the Senator from Alabama yield further?

Mr. SPARKMAN. I yield.

Mr. MONDALE. There has been a suggestion made during this debate that that is not a serious concern, that the nature of our export expansion has been such that everything is going swimmingly. I should like to cite some data submitted to us by the chamber of commerce, based upon Department of Commerce statistics, which show that in 1960, the U.S. share of world exports of manufactured goods was 25 percent.

Mr. PROXMIRE. Would the Senator give us the page he is reading from?

Mr. MONDALE. Page 217.

In 1967, it had slipped 3 percentage points to 22.3 percent. Transport equipment had slipped from 33 percent to 32. Electrical machinery had slipped from 28 percent to 24; nonelectric machinery, from 32 to 28. Chemicals, from 29 percent to 21. And under "Manufactures," from 17 down to 14. That is what is happening in the world markets. There are many other factors that bear on that, but once they have permitted one of the key elements in trade; namely, credit and guarantees, to slip to a disadvantageous competitive position as against other terms offered by competing institutions in other countries, I do not find those figures comforting. I am appalled by them. They reflect the loss of hundreds of thousands of American jobs.

This measure today is designed to try to do something to correct that.

Mr. SPARKMAN. The Senator is right. We should not bind ourselves any longer. What we are trying to do is to give the Export-Import Bank a reasonable amount of flexibility, and that is all we are doing.

VISIT TO THE SENATE BY THE AMBASSADOR FROM THE NETHERLANDS AND THE UNDER SECRETARY OF STATE FOR SOCIAL AFFAIRS AND HEALTH FROM THE NETHERLANDS

Mr. BYRD of West Virginia. Mr. President, I am happy to present to the Senate today the Honorable Roelof Y. Kruisinga, Under Secretary of State for Social Affairs and Health from the Netherlands, and also His Excellency Baron Rijnhard B. Van Lynden, Ambassador to Washington from the Netherlands. They are in the Chamber and I ask unanimous consent that the Senate stand in recess for 2 minutes so that Senators may greet and extend a welcome to these very distinguished and honorable guests.

(The distinguished visitors rose in their places and were greeted with applause, Senators rising.)

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

Thereupon, at 1:21 p.m. the Senate took a recess until 1:23 p.m.

During the recess the distinguished guests were greeted by Members of the Senate.

On the expiration of the recess the Senate reassembled and was called to order by the Presiding Officer (Mr. STEVENSON).

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1971

The Senate continued with the consideration of the bill (S. 581) to amend the Export-Import Bank Act of 1945, as

amended, to allow for greater expansion of the export trade of the United States, to exclude Bank receipts and disbursements from the budget of the U.S. Government, to extend for 3 years the period within which the Bank is authorized to exercise its functions, to increase the Bank's lending authority and its authority to issue, against fractional reserves and against full reserves, insurance and guarantees, to authorize the bank to issue for purchase by any purchaser its obligations maturing subsequent to June 30, 1976, and for other purposes.

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

The PRESIDING OFFICER (Mr. STEVENSON). The Senator from Colorado is recognized.

Mr. ALLOTT. Mr. President, I intend to vote for the pending amendment against removing the Export-Import Bank from the Federal budget. In doing so I will be supporting the considered judgment of the Federal Reserve Board and the General Accounting Office.

More important, in opposing this, I am supporting a principle which too often is honored in the breach. I am supporting a principle in which I have believed for a long time. This is the principle that, to the fullest extent possible, the Federal budget should give a full and accurate picture of every use of the public's resources. This is not done by today's budgets. In 1969, for instance, fully 64.2 percent of the Government's $184.6 billion budget was defined as relatively uncontrollable under present law. That is, Congress had no immediate control over the expenditure of $118.6 billion. By 1970, 66.2 percent of the budget was relatively uncontrollable.

And by 1971, 68.6 percent, or $146.0 billion out of our $212.8 billion budget was relatively uncontrollable. The odds are that over two-thirds of all Federal spending will remain within the relatively uncontrollable category in the fiscal year 1972 budget. This situation is too restricting of congressional latitude, and too dangerous to sensible consideration of priorities, to permit even so meritorious an agency as the Bank to be granted immunity from the constraint of inclusion in the budget.

Mr. President, I want to call attention to one paragraph of a letter sent by Mr. Arthur F. Burns, Chairman of the Federal Reserve Board, to the distinguished chairman of the Committee on Banking and Currency. The paragraph is this:

> Enactment of S. 4268 would constitute a breach in the new concept of the unified budget. The objective of revising the budget, as you know, was to present budget totals that would give an accurate and comprehensive account of the receipts and disbursements of the Federal Government. Whether a government agency borrows in the market directly or goes through the Treasury Department does not alter the fact that the Federal Government is acquiring command over the real resources represented by the borrowed funds. In either case, the outlays of the agency should be subjected to thorough scrutiny and included in the total of Federal disbursements.

Mr. President, Chairman Burns has stated with customary cogency the case against removing the Bank from the budget.

In my investigation of this question with representatives of the Bank I have found the representatives unfailingly courteous, and not entirely unpersuasive. I am sensitive to the fact that the Bank, precisely because it is a bank, might benefit in two ways if it were exempted from our normal rules of budgetary due process. In the first place, the Bank might find that it could perform its functions more conveniently. In addition, the Bank might find that it could perform more of its proper functions more conveniently if it were removed from the budget.

Mr. President, without conceding the accuracy of either of these expectations, I want to emphasize that neither, or both, of these expectations, if accurate, would be sufficient to justify suspending a rule of good budgeting.

Unfortunately, the same expectations could more or less plausibly be adduced by countless other agencies of the Federal Government. And it is a virtual certainty that this would be said by countless agencies. If we grant the Bank exemption from the constraints of inclusion in the Budget, we run the risk of opening the floodgates.

I refer to the words of the Senator from Wisconsin (Mr. PROXMIRE), the author of this amendment, in a letter to me in which he said:

> When this legislation is debated on Monday, I plan to offer an amendment to put the Export-Import Bank into the budget. If this fails, I plan to offer a second amendment to remove our housing, small business, and mass transit loan programs from the budget on exactly the some basis as the Export-Import Bank, so that they are not placed at a competitive disadvantage. I hope you can support my position.

I do support his position on the pending amendment. However, I must say that I could not go for his second proposition.

It is a fact of life—public and private—that it is very convenient to diminish the uncertainties surrounding access to resources. This is true for individuals, families, and Government agencies. Those of us in Congress day after day, month after month, and year after year see people attempting to get at the vast governmental resources of the country without going through the budgetary or appropriation processes. But we cannot properly bend the rules of good government to maximize the convenience—or even the efficiency—of various agencies. There are some principles which take precedence over even such valid considerations as convenience and efficiency.

One such principle is at stake here today. It is the principle that, insofar as possible, all agencies making claims on the public resources should face equal hazards of competition for those resources. Stated differently, it is the principle that Congress should have as many "targets of opportunity" as possible when it makes its annual decisions about national priorities.

I understand the reasons for this legislation. However, there is no conclusive reason that the Export-Import Bank should not take its chances and face its own competition for the resources through the budgetary process. Whether we are talking about housing, mass transit, agricultural loans, or urban renewal, no matter what it is, the Export-Import Bank should stand on an equal footing and take its own chances with every other agency needing the attention of the Congress.

This is a principle which is of timeless validity and importance. Needless to say, as our needs accumulate, and as demands accumulate even faster, and as the pressure on the taxpaying and money borrowing public mounts to intolerable levels, this principle becomes an ever more central principle of good government.

Mr. President, I understand that nothing we do here today with regard to the proposed exclusion of the Bank from the budget will exempt the Bank from congressional scrutiny and control. The Bank would like to expand its activities by $2 billion and not have it reflected in the budget. But this expansion will be subject to congressional approval, whether or not the Bank is included in the budget. Therefore, I am not alarmed by the idea that excluding the Bank from the budget will unleash the Bank from all control.

Mr. President, it is a hard, cold fact, whether admitted or not, that in those areas where the Appropriations Committee acts by way of limitation rather than by appropriations, the limitations never receive the examination and close scrutiny that the direct appropriations and obligational authority receives.

The really worrisome thing is that exclusion of the Bank from the budget will further limit our options when we come to the central legislative task—apportioning our very finite resources among what appear to be infinite demands.

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

Mr. ALLOTT. I yield.

Mr. PROXMIRE. Mr. President, the Senator is making an excellent speech. I want to make sure that I understood the Senator when he said this was not excluded from limitations. It would exclude it from overall spending. This would take it out until it be given special priority status.

Mr. ALLOTT. In that sense, the Senator is correct.

Mr. PROXMIRE. Mr. President, that is one reason I oppose it. I do not think we could make an argument for that.

Mr. ALLOTT. The Senator is entirely correct. If Congress would put a ceiling, an expenditures control ceiling, as we did, as I recall it, first with President Johnson, and then in 2 subsequent years, then the Bank's money would not be within this ceiling.

The effect of removing the Bank from the budget will be to further tighten the focus of the debate on priorities. As more and more items are removed from the budget, we find that the scramble for resources takes place at the expense of fewer and fewer—and often more and more vital—programs. Mr. President I am increasingly alarmed about the fact that the effort to reorder our priorities is

in danger of degenerating into an annual assault on the defense budget, for example.

If this degeneration does in fact occur, it will occur not because of anyone's malevolence, but because the military budget stands increasingly exposed as the most eligible "target of opportunity" for those seeking resources for favored programs. That is, the defense budget may get attacked simply because so much of the rest of the Federal budget is essentially uncontrollable.

Mr. President, my opposition to this bill should not be construed as implying any dissatisfaction with the Export-Import Bank's record of achievement, or any doubt about its promising future. Indeed, I want to emphasize that this organization has a wholly exemplary record. It is a model of creative, pragmatic Government. It is in part because the Export-Import Bank has such a satisfactory record of achievement that we can be confident in leaving it situated as it currently is, after all, it has been pointed out in this Chamber this afternoon how it has grown.

If the Bank were unable to function well under current arrrangements, then we might be more ready to suspend an important principle in order to improve its situation. But the Bank can function well in its current situation, and therefore there is a compelling reason to abandon a principle which needs special refurbishing now.

It would be wrong to exempt the Bank from this principle. And to repeat a point I made a few month ago, I understand that the senior Senator from Wisconsin, who agrees with me on this point, intends, if the Bank is exempted, to seek similar exemption for various other agencies.

In my judgment, and I say this with all due respect to my friend from Wisconsin, this would be a disastrous aggravation of a deplorable situation.

I applaud the Senator from Wisconsin for his steadfast defense of principle with regard to the Bank. I do not think that equity or any other consideration could justify an about-face which would seek to make a valid principle out of an unwise violation of a valid principle.

Mr. President, it is my hope that the Senate will not arrive at a situation wherein any Member is provoked into going down that mistaken path. The surest—indeed, it would seem the only—way of avoiding such a situation today is by affirming a clear and unambiguous principle of good government by keeping the Bank in the budget.

Mr. President, for all the reasons enumerated today, I intend to oppose removing the Export-Import Bank from the budget.

Without prejudice to the high reputation which the Export-Import Bank enjoys and deserves, I urge all Senators to join me in supporting a principle of sound government that too often has been honored in the breach.

Now is the time for all Senators to join in asserting our common interest in a more accurate, informative, flexible and controllable budget. Today we have a chance to promote this common interest by insisting that the Export-Import Bank remain in the budget. This will be a constructive first step toward regaining control over our vast Government. It also will be a manifestation of determination to breathe new life into an old and proven principle of government. Therefore, we should recognize the wisdom of leaving the Export-Import Bank situated as it currently is. It has worked well in the past under these conditions and I am confident it will continue to do so.

Mr. President, I am not an authority and I do not claim to be an authority on international trade. I do not claim to be an authority on banking and currency. But I do know something about these matters. I have been a member of the Committee on Appropriations for going on 13 years and in the course of those years I have learned a little bit about the processes of trade and banking. The pending amendment would not hinder these processes. The amendment would aid the process of Government.

I am astounded at the number of moves that have been made to remove various agencies from under the direct scrutiny and control of the Committee on Appropriations. If we continue to do this—and defeat of the pending amendment would be a continuation of this deplorable trend—we soon will be left with a situation, not where Congress has control of only 30 percent of the budget as it does today, but we will be at a point where it will have control of only 25 percent or less.

It is a fact well recognized by anyone who deals with appropriations that out of all of that vast Federal budget—$229 billion this year, I believe—only about 34 percent of it is actually controllable by Congress.

Are we going to take yet another step and place the Eximbank into the category where they are removed from scrutiny, justification, and direct immediate control of Congress. I hope not. It would be a great mistake to do this. If it is done, then various interests—such as housing, in which I, as well as other Senators, have had a great interest in, or mass transportation, in which I have had tremendous interest, or even the SST, in which I have had a great interest, and my friend from Wisconsin has had none—various interests would seek similar treatment.

I think all interest should be entitled to go before the Appropriation Committees of Congress and make their demands for consideration and priorities.

Why, then, remove this agency? Again, as the Senator from Wisconsin said, perhaps we might just as well remove others, such as the Small Business Administration, Housing, and what about our farms, FHA, and the Federal Farm Home Administration? Our farmers and agricultural people in this country have been skating along for years without adequate financing. They are at the very bottom of the totem pole, but they represent one of the greatest industries of this country. Would they not deserve special treatment also?

So we could make and enter different justifications for a hundred different priorities and remove them from under the budget. But if we do that we will have no budget at all.

So I hope the amendment of my friend from Wisconsin, in which I believe he has joined me as a cosponsor, will be adopted and that we do not remove the Eximbank from the budget.

Mr. MONDALE. Mr. President, I yield to the Senator from Oregon such time as he desires.

The PRESIDING OFFICER. The chair recognizes the Senator from Oregon.

Mr. PACKWOOD. Mr. President, the Senator from Utah (Mr. BENNETT) is unable to be here today because of a death in his family. He strongly supports this bill and he has asked that I place in the RECORD a statement of his.

I ask unanimous consent that it be placed in the RECORD after I finish my present remarks.

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

Mr. PACKWOOD. Mr. President, let us get straight what we are talking about here with reference to the Export-Import Bank. We are not talking about taking this Bank out from any kind of scrutiny by Congress. What we are talking about really is putting it under the scrutiny of Congress and taking it out from the authority of the executive to determine for itself how much money this Bank can lend in any given year and what priority it shall have with relation to other priorities of the Nation.

We have bandied about the concept of "net lending." To make the record clear, let me broadly generalize what we are talking about. Net lending is the amount of money we will allow any agency to borrow to make up the difference between what it lends and what it receives on the sale of bonds, only we do not allow, in the concept of net lending, to be included the total amount the agency might borrow and in turn might lend.

Let me give an example. Let us say an agency is given a net lending authority of $300 million. This agency might be able to sell $2 billion worth of bonds to finance its activities and lend $3 billion, and its net lending difference would be $300 million. The fact that Congress might have set its authority to borrow and to lend at $2, $3, or $4 billion higher is of no matter, because what we have done is delegate to the Executive, and specifically he delegates it to the Office of Management and Budget, the power to set a ceiling lower than we choose to set.

Next year, if the Office of Management and Budget wants to say that the Export-Import Bank can lend no moneys, it has the power to do it. Next year if the Office of Management and Budget wants to decide that housing is a higher or lower priority than exports, or that student loans is a higher or lower priority than exports, all it has to do, in its net lending capacity, is to tell any agency what its net lending limitation can be, and that is all that agency can do, no matter what Congress has said.

By passing this legislation today, we are not taking the Export-Import Bank out from under the control of Congress. The one thing we are doing is telling the Office of Management and Budget that it cannot set a limitation lower than the

authorization that Congress chooses to give the Export-Import Bank.

If we are talking about Congress controlling expenditures, then we should be supporting this legislation, because without this legislation we are giving willy-nilly to the Executive the power to say that the Export-Import Bank can either lend or borrow to the absolute capacity of the authorization given to it by Congress, or it can do nothing. I do not think that is the kind of power we ought to be delegating away to the Office of Management and Budget.

The statement previously ordered to be printed in the RECORD is as follows:

STATEMENT BY SENATOR BENNETT

Mr. President, in my judgment the enactment of S. 581 would be the single most important act that this body could take to help relieve our chronic balance of payments deficit. The Export-Import Bank has taken Herculean strides in expanding U.S. exports in recent years through the establishment of a large number of new and imaginative programs of financial assistance to exporters, but they have gone about as far as they can go without the budgetary relief that only the Congress can provide.

The outstanding success of Eximbank in meeting the challenges of foreign government-supported financing assistance is a matter of public record, but it bears repeating here. Eximbank authorizations in Fiscal Year 1970 supported export sales of $5.5 billion, up 90 percent from the $2.9 billion supported in 1969, which in itself represented a significant increase over the record of Fiscal Year 1968. The Bank expects to continue to increase its support to U.S. exporters at a dynamic rate, if it is given the tools to work with—and S. 581 is designed to provide those tools.

I believe it to be significant that in all the discussions concerning S. 581, we have heard no argument advanced which suggests that the inclusion of the Bank's operation under the unified budget concept has contributed in any way whatever to the success the Bank has demonstrated in increasing U.S. exports through timely and imaginative financing assistance to overseas buyers. To the contrary, the retention of the Bank under this concept is certain to restrict the extent to which this marked success can be continued.

We are accustomed in these chambers to reducing the largest problems down to the lowest common denominator, and in this discussion I submit that the lowest common denominator is people. People out of work or people holding jobs. For the average corporation in the United States, export business represents a very small percentage of gross sales, so they may be considered as extensions over and beyond the domestic business which most organizations are geared to handle. This means that when such a corporation concludes a sale overseas, jobs are created here. The Labor Department has estimated that sales of $1 billion translates into 87,000 full-time jobs for a year.

Thus, when we are talking about export sales of $5 billion, we're talking about nearly a half million man-years of labor, in every field from agriculture to nuclear physics. It is in these terms that I urge that consideration be given to my remarks concerning S. 581.

By being included within the unified budget, the Bank has been placed in a virtual strait jacket. The harder the Bank works to extend loans to enable our exporters to survive in the highly competitive markets overseas, the more unfavorably it appears to impact the balance of the budget here at home. I use the phrase "appear to impact," because it is only the budgetary accounting system which casts an unfavorable light on what is in fact a profit-making operation.

Under the unified budget accounting system, disbursements on direct loans by the Bank are listed as budget expenditures while only the collections of principal and interest on earlier loans are accounted as receipts to offset the budget outlays. Now, had the Bank been supporting U.S. exports over the past ten years at the same scale as they are presently operating, this would present no problem, since the expenditures and receipts could be expected to stay in reasonable balance.

However, the Bank has not been conducting business as usual. It has reacted vigorously to the demands imposed by the President of the United States—and by the Congress—to find ways to relieve our balance of payments problem through the expansion of exports, and as a result the disbursements are logically exceeding collections during a particular fiscal year. Thus the Bank operation has shown as a "net lending outlay" or budget deficit for the past two years. In Fiscal Year 1969, for example, the net lending outlay appeared as $246 million, while in fact the Bank made a profit of $104 million and paid a $50 million dividend to the general fund of the Treasury.

In Fiscal Year 1970, the Bank's net lending outlay appeared as $219 million while in fact a profit of $110 million was being realized, and again the Bank paid a $50 million dividend to Treasury.

Gentlemen, it is unreasonable to expect the Export-Import Bank to continue to take a leading role in improving our balance of payments situation when their very successes appear as failures in the efforts of the Administration to maintain a balanced budget at home.

The removal of Eximbank from the unified budget has been attacked as simply an effort on the part of one agency to escape the eagle eye of the Office of Management and Budget, and of the Congress. If this were true, you may rest assured that I would not endorse S. 581, and would vigorously oppose any similar bill that might have been introduced. I submit that relief from the unified budget would in no way diminish the controls exerted by the Administration or by the Congress over this institution.

The overall obligation authority of the Bank remains subject to the review and authorization of the Congress.

Eximbank must continue to justify its request for authorization on an annual basis through the Office of Management and Budget and through the appropriations procedures of the Congress.

There will continue to be full legislative review preceding Congressional action to extend Eximbank's life periodically.

The statutory requirement of Secretary of the Treasury clearance on all funding remains intact.

Every significant transaction of the Bank remains subject to immediate policy review of the National Advisory Committee on International Monetary and Fiscal Policy.

Eximbank is required by S. 581 to continue to make full annual disclosure of all the Bank's operations. The President will even report to the Congress each year the amount that the Export-Import Bank would have impacted the budget if they had continued to be included under the unified budget.

All budget schedules now published regarding the Bank in the U.S. budget would continue to be pubilshed in the budget document.

I have confidence that we could expect the Office of Management and Budget to oppose S. 581 if it were read as an effort on the part of Eximbank to escape scrutiny of that agency. Perhaps that fear can be laid to rest by recalling that the Office of Management and Budget actively supports S. 581 in its entirety.

In addition to removing the bank from the accounting restrictions imposed by the unified budget concept, S. 581 provides other features essential to the continued successful operation of Eximbank:

It increases the Bank's loans guarantee and insurance authority from the present statutory limitation of $13.5 billion to $20 billion. Budget estimates project a level of activity which will result in the Bank's almost reaching the $13.5 billion limit by the end of fiscal year 1972.

S. 581 increases the amount which the Bank may have outstanding in guarantees and insurance chargeable against its overall authority at 25 percent of the related contractual liability from the present limit of $3.5 billion to $10 billion. This increased authorization is critical, for present estimates indicate that only some $52 million of this authority will remain unobligated at the end of this fiscal year. Once the $3.5 billion limit is reached, further guarantee and insurance transactions must be charged at full value against the current $13.5 billion overall limits which would result in the Bank's reaching the limit of its obligation authority even sooner than the end of fiscal year 1972.

This bill will extend the life of Eximbank for three years, to June 30, 1976, assuring continuity in the Bank's operations.

Further, it would provide the needed clarification in the Bank's charter of its authority to issue debt obligations with maturities beyond its statutory life.

As presently required by the Government Corporation Control Act, S. 581 provides that the Bank continue to submit its budget to the President through the Office of Management and Budget, and the President shall transmit to the Congress the Bank's budget for program activities and for administrative expenses. At the risk of repeating myself, Mr. President, I call attention to the fact that the ultimate decision as to the amount and nature of Eximbank activities will continue to rest with the Congress.

Finally, Mr. President, S. 581 requires that the President report to the Congress within 30 days after enactment of this bill the amount by which the FY 1971 expenditure and net lending limitation imposed on the budget will be reduced as a result of exempting the Export-Import Bank's disbursements and receipts from the totals of the budget.

In the interest of providing the flexibility required for Eximbank to proceed with its vital functions, and to remove the accounting restrictions which impede its successful operation, I urge the enactment of S. 581.

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

Mr. PACKWOOD. I yield.

Mr. PROXMIRE. How does the Senator reason that we are controlling in any way effectively the Export-Import Bank when we exempt it from the budget, in the first place, and, in the second place, we exempt it from any ceiling set for budget expenditures?

Mr. PACKWOOD. We are controlling it by the maximum authorization in the bill as to what it can borrow. It cannot go beyond the ceiling set by Congress. Congress can change it every year.

Mr. PROXMIRE. Congress can, but there is no discipline, no reason for Congress to do so. Theoretically it can, but if I as chairman of the International Operations Subcommittee of the Appropriations Committee made that kind of proposal, I would not have a prayer. The argument is that this is not a ceiling anyway.

Mr. PACKWOOD. The Senator indicated very well in the SST fight the powers he can exercise.

Mr. PROXMIRE. I do not mean to make this personal, but anyone who is chairman of the Subcommittee on International Operations who dealt with that question, is what I am talking about. For example, if the Senator from Colorado (Mr. ALLOTT) and I worked on it together, we would be outside the overall discipline of the limitations of the Federal budget. We would get outside the Federal budget, so there would be no opportunity to limit that spending. The way the bill is today, there is no opportunity to limit that spending.

Mr. PACKWOOD. That is nonsense. We can put any limitation on it we want to. We can determine a net lending limitation. But what I object to is the executive being able to determine how much the Export-Import Bank can lend or borrow as opposed to what Fannie Mae or or Gennie Mae might be able to borrow. That is a decision the executive ought not to be making. That is a decision the Congress ought to be making. When we leave it within a unified budget we are saying that the executive makes a determination of the priorities and what that limitation is going to be. I do not think that is what the Congress intends.

Mr. PROXMIRE. The administration offers the budget. We can change it. We are not bound by it. It has great force, but that does not mean we have to rubber stamp it. We can lower it, raise it, put any limitation on it. It is for us to decide that. We have the power of the purse.

Mr. PACKWOOD. So long as we leave it under the unified budget and leave it to the Executive to determine what the limitation of this or any other agency shall be, then we have effectively tied our hands.

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

Mr. PACKWOOD. I yield.

Mr. ALLOTT. I must confess I do not quite follow his reasoning. I would like to repeat one thing. I notice that there are several paragraphs in which the authorization has been raised substantially.

Section (2) provides specifically that the President shall transmit annually to the Congress the budget for program activities and for administrative expenses of the Bank.

I think there is confusion here. I think Congress has the right, through the appropriation process, to set a limitation on the amount the Bank will borrow; but there have been authorized in the bill some quite huge sums for the Bank to operate under.

My point is, and I make it very strongly from the practical standpoint, that I have never known an instance in which Congress had to pass upon limitations when these limitations were given the examination and required justification that direct obligational authority requires.

Contrary to my friend's reasoning, I feel this proposal is far less under the control of Congress and more under the control of the executive than it would be in any other way.

Mr. PACKWOOD. What we are saying in the bill, beyond raising it to $10 billion instead of $3.5 billion and from $13.5 billion to $20 billion, to the Export-Import Bank is, "Those are your maximum limitations." The President might want to go below those, but we delegate it to him. If he wants to say the Export-Import Bank shall lend nothing, he can do that, rather than the fiction of telling them there is no lending capacity. I do not think we want to do that. If we want the Export-Import Bank to be able to borrow to the limit we want, we should indicate that, but why give to the President the power to set a lesser limit?

Mr. ALLOTT. In my opinion, I think the Senator has done just that. Of course, Congress could provide for more, but we have submitted definitely that the President shall provide a budget.

I think we need to understand what the power of the budget is. Most Members of Congress do not understand what it is. If my recollection is correct, Congress created a Bureau of the Budget under chapter 11 of the United States statutes, I think.

When people cry about what is now the Office of Management and Budget, let me point out that we can repeal that any day we want, and the President would not have to submit any budget at all, unless the President wanted to.

In other words, while we created an office, the Bureau of the Budget, for the President, Congress has the right to repeal that law at any time it wishes. It is not something that the President has by virtue of the fact that he is President. He has it because Congress created it and gave it to him, and we did more than that: we required him to submit a budget to us each year at the opening of the year.

I guess this is a matter on which people may differ honestly, but I cannot see it any other way than the way the Senator from Wisconsin and I have described it. That is, that what is sought here is the removing of real restraints.

I was very unhappy when we picked up the unified budget. I think it is a disgrace. I thought it nothing less when it was done, several years ago. We are still under it, and it will never be revoked. We take all the trust fund moneys that come in to the Government Treasury and treat them as income. This is all nonsense.

Mr. PACKWOOD. On the contrary, what we are doing here is telling the Import-Export Bank they can borrow as much money as we tell them they can borrow, and lend.

Mr. ALLOTT. This is something I think should not be done, without subjecting it to the regular appropriation process.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield for 1 minute?

Mr. ALLOTT. I yield.

ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES FROM APRIL 7, 1971, UNTIL APRIL 19, 1971, AND OF THE SENATE FROM APRIL 7, UNTIL APRIL 14, 1971—CONCURRENT RESOLUTION

Mr. BYRD of West Virginia. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on House Concurrent Resolution 257.

The PRESIDING OFFICER laid before the Senate House Concurrent Resolution 257, which was read by the legislative clerk, as follows:

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on Wednesday, April 7, 1971, it stand adjourned until 12 o'clock meridian, Monday, April 19, 1971.

The PRESIDING OFFICER. Is there objection to the consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. BYRD of West Virginia. Mr. President, I offer an amendment, and I ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 1, at the end of line 5, strike the period and insert a comma and the following:

"and that when the Senate adjourns on Wednesday, April 7, 1971, it stands adjourned until 10 a.m., Wednesday, April 14, 1971."

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from West Virginia.

The amendment was agreed to.

The concurrent resolution (H. Con. Res. 257), as amended, was agreed to, as follows:

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on Wednesday, April 7, 1971, it stand adjourned until 12 o'clock meridian, Monday, April 19, 1971, and that when the Senate adjourns on Wednesday, April 7, 1971, it stand adjourned until 10 a.m., Wednesday, April 14, 1971.

The title was amended so as to read: "Providing for an adjournment of the House from April 7, 1971, until April 19, 1971, and the Senate from April 7, 1971, until April 14, 1971."

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1971

The Senate resumed the consideration of the bill (S. 581) to amend the Export-Import Bank Act of 1945, as amended, to allow for greater expansion of the export trade of the United States, to exclude Bank receipts and disbursements from the budget of the U.S. Government, to extend for 3 years the period within which the Bank is authorized to exercise its functions, to increase the Bank's lending authority and its authority to issue, against fractional reserves and against full reserves, insurance, and guarantees, to authorize the bank to issue for purchase by any purchaser its obligations maturing subsequent to June 30, 1976, and for other purposes.

Mr. MONDALE. Mr. President, could we be advised as to the time situation?

The PRESIDING OFFICER. The Senator from Alabama has 10 minutes remaining, and the Senator from Wisconsin has 17 minutes remaining.

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

Mr. MONDALE. I yield.

Mr. PROXMIRE. I state to the Senator from Minnesota that if he would like this, I understand he would like to sum up, and since it is my amendment, I would like to take 2 or 3 minutes to sum up, and then, if he is agreeable, we could vote in about 5 or 6 minutes.

Mr. MONDALE. Yes. Mr. President, the Export-Import Bank is the only noncommercial agency which supports the export of U.S. goods and services. If the Proxmire amendment is adopted, that agency cannot grow under present budgetary policy; it cannot grow in terms of expanding the commercial export of the U.S.-produced goods. If this amendment passes, the United States will be constricting itself to the operations of the Export-Import Bank in a way which voluntarily——

Mr. PROXMIRE. Mr. President, will the Senator yield so that I may ask for the yeas and nays? I hesitate to interrupt, but we can get them now.

Mr. MONDALE. I yield.

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

The yeas and nays were ordered.

Mr. PROXMIRE. I thank the Senator, and I apologize for the interruption.

Mr. MONDALE. If we agree to this amendment, we will be saying, in effect, that, from here on out, the competing guaranteeing and lending agencies found in the countries of Western Europe, Japan, and a total of 50 other nations can grow to the point where they can outdo U.S. business in seeking normal commercial exports.

I do not see how this makes any sense, from any standpoint whatsoever. The chairman of our committee, the Senator from Alabama, pointed out that one of the important users of this service is the American aircraft industry. A few days ago, we defeated the proposed supersonic transport. I voted, under the brilliant leadership of the Senator from Wisconsin, against that proposal, but I know we all feel nothing but heartache for the thousands of decent Americans who are not going to be employed because that supersonic transport did not go forward.

One of the obvious avenues for increased employment in the aircraft industry is increased export sales of U.S.-produced aircraft. If we adopt the amendment offered by the Senator from Wisconsin, this kind of opportunity and many others on the part of many other industries, which can only be made available, in many cases, because of a liberally operating Export-Import Bank, will not be possible.

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

Mr. MONDALE. I am happy to yield.

Mr. SPARKMAN. When the Senator speaks of unemployment in the aircraft industry, does not the aircraft industry employ people all across the board, all trades and classes?

Mr. MONDALE. That is correct.

Mr. SPARKMAN. From the blue-collar worker and common laborer right up to the most competent scientists and engineers?

Mr. MONDALE. There is no question of that.

Mr. SPARKMAN. And is it not true that there is a tremendous rate of unemployment so far as engineers, scientists, and physicists in this country are concerned?

Mr. MONDALE. That is true. The other day we passed the public employment bill, to produce 150,000 jobs. We said, "Let us set some money aside to employ engineers and scientists; and let us set some money aside to employ veterans." Ten percent of the veterans from Vietnam are now walking the streets looking for employment, and large numbers of others as well. It is estimated—conservatively, I think—by the Export-Import Bank that for every $1 billion in export sales, another 87,000 jobs are produced—engineers, scientists, technicians, skilled and unskilled workers.

This is a jobs proposal. More than that, it is, in my opinion, almost impossible to understand why we would gratuitously hand a tremendous competitive advantage to our western industrial competitors and a competitor such as Japan. We should be competing fully and effectively. The adoption of this amendment would, I think, prevent any growth in the Export-Import Bank's activity. World trade is increasing by 14 percent a year. If we adopt the Proxmire amendment, our chances of maintaining any reasonable or fair proportion of that trade increase is greatly impaired.

Mr. PROXMIRE. Mr. President, I have great respect for the Senator from Minnesota and the Senator from Alabama. There are no two abler Senators. But I submit that their last argument, that we need this measure in order to help the aircraft industry, has no merit whatsoever. Mr. Kearns indicated that if we expand exports, it will not be in the industries that are now already exporting heavily like aircraft.

I think anyone who understands why we are able to sell aircraft overseas recognizes it is because we are miles ahead of every other country in aircraft technology. If we give the Export-Import Bank an opportunity to subsidize some markets at a favorable rate, to say that we will sell more airplanes abroad is nonsense. We are not going to sell any more planes. We may sell some products in competition in which there is a very narrow range of hard price competition but aircraft does not fall into this category; but Mr. President, this whole jobs argument makes no sense at all. If we do not provide this $2 billion for export jobs, we will provide the $2 billion in housing, or in State and local government and these other areas. There is no provision here to provide more credit for the whole country. What this provision says is that we are going to give a top priority to the Export-Import Bank. We are going to exempt them and only them from the budget. This means the exporter is going to be able to expand by $2 billion more than he would expand otherwise. And housing and State and local and other industries $2 billion loss. Jobs are just as productive if they are $2 billion in the State and local government and housing, as in exports.

As to the argument that the export industry has suffered, I would like to suffer that way. They have expanded by 25 percent in the last 2 years. The Export-Import Bank itself has increased its loans from $1.3 billion 2 years ago to $2.9 billion today. This is a smashing success. This bill says this is not enough; we have to give them more. I should like to see more for housing, State and local government, student loans, and many other things that are going to be hurt because we are giving a higher, exceptional priority to the Export-Import Bank.

The argument has been made that we have done all kinds of things for housing, that we have set up Fannie Mae as a private operation. The General Accounting Office and the Federal Reserve Board both proposed that there be exactly the same private operation for the Export-Import Bank. Make that a private corporation. I would have supported that. But Exim did not want that. They want to continue the subsidy they get. They got a subsidy of $70 million last year, and I say it ought to be in the budget.

I offered an amendment in the committee asking the committee simply to let us consider the subsidy part of it—exempt everything else from the budget, and let us consider the $70 million. They did not want to do that. The agency did not want to have the spotlight on that subsidy.

I say that Congress should know exactly what it is doing, and it should be put in the position of effective priority competition.

What this bill would do is this, and I will read the language, in answer to the distinguished Senator from Oregon:

The receipts and disbursements of the Bank in the discharge of its functions shall not be included in the totals of the budget of the United States Government and shall be exempt from any annual expenditure and net lending (budget outlays) limitations imposed on the budget of the United States Government.

That is what this bill does. It exempts the Export-Import Bank. It leaves all the other lending programs in the budget, but not the Export-Import Bank.

Mr. President, this comes down to a question of priorities—a question of whether we need more housing, more State and local government activity, especially in the capital area, where we need hospitals and schools urgently, or whether our top priority, the exceptional priority, the singled out priority, should be in the Export-Import Bank area. That is what this amendment represents.

If the Senator from Minnesota is ready to yield back the remainder of his time, I am ready to yield back the remainder of my time.

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

Mr. SPARKMAN. Mr. President, the Senator from Wisconsin has pointed out that the Federal Reserve Board and the Comptroller General expressed some opposition to this bill. But I invite attention to the fact that the President, the Secretary of the Treasury, and the Office of the Budget approved it, and they certainly have the matter at interest. After all, the President is the one who is really at the head of the entire budget movement, and he has approved it and has

urged its adoption, along with the urging of the Secretary of the Treasury and the Bureau of the Budget.

Mr. MONDALE. I thank the Senator from Alabama.

Mr. PROXMIRE. May I say, in response to the Senator from Alabama, that this is exactly what many people, especially on the other side of the aisle, criticized the Johnson administration for—back-door spending, exempting programs like this from the budget. This is the whole reason for the consolidated budget. I understand why the administration wants to do this. If I were in their position, I would want to do the same. It enables them to spend more without having that reported in the budget, either as a large budget, which of course is adverse publically, or as a limitation. It frees them, gives them more discretion, more authority, and more power. It is perfectly understandable why the administration would want this.

Mr. MONDALE. I thank the Senator from Alabama.

I refer the Senate to the expressions of interest about this matter by various segments of the American economy.

On page 297, the Aerospace Industry Association pleads for this measure, pointing out the need for this support for that American industry.

On the same page is a letter from the American Cotton Shippers Association, pointing out the importance of this proposal to the American cotton farmer and cotton industry.

There are statements by the American Textile Machinery Association, the Electronic Industries Association, the National Cotton Council of America, the National Foreign Trade Council, and many other organizations.

I think it is quite clear that those industries, which offer the best opportunity for expanding U.S. commercial exports and increasing jobs in the United States, are unanimous, so far as I know, in support of this proposal.

Mr. PROXMIRE. What would the Senator expect an industry to do, when they have a measure which will enable them to get more subsidized loans at a lower rate so that they would have higher profits? Certainly they are for it.

The homebuilding industry came in and said they were against it, because they recognize what this bill would do to housing, because they are left out of this subsidy benefit. Of course, the subsidized industries are going to be for it. That is no surprise. It would be stunning if they were not.

Mr. MONDALE. I am not one who believes that because a business wants a certain measure, they always must be assumed to have a perverse reason for supporting it.

Mr. PROXMIRE. It is not perverse; it is perfectly normal.

Mr. MONDALE. The truth of the matter is that if we adopt this amendment, we are going to be saying to these industries, "If you locate your business in England, West Germany, France, or Italy, you can get competitive credit terms that will grow with the market. But if you continue to have your plants or businesses in the United States, you cannot." I do not think that makes much sense.

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

Mr. PROXMIRE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Wisconsin. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NELSON (after having voted in the affirmative). On this vote I have a pair with the distinguished Senator from Washington (Mr. MAGNUSON). If he were present and voting, he would vote nay; if I were at liberty to vote, I would vote yea. I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. BIBLE), the Senator from Nevada (Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. HARTKE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Iowa (Mr. HUGHES), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Missouri (Mr. SYMINGTON), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Virginia (Mr. BYRD), the Senator from Missouri (Mr. EAGLETON), and the Senator from New Mexico (Mr. MONTOYA) are absent on official business.

I also announce that the Senator from North Carolina (Mr. JORDAN) is absent because of illness.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), and the Senator from California (Mr. TUNNEY) would each vote "nay".

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from New York (Mr. BUCKLEY), the Senator from Kentucky (Mr. COOK), the Senator from Hawaii (Mr. FONG), the Senator from Ohio (Mr. TAFT), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Arizona (Mr. GOLDWATER) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

Also, the Senator from Tennessee (Mr. BAKER), the Senator from Colorado (Mr. DOMINICK), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from New York (Mr. BUCKLEY), the Senator from South Dakota (Mr. MUNDT), the Senator from Ohio (Mr. TAFT), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) would each vote "nay."

The result was announced—yeas 14, nays 53, as follows:

[No. 38 Leg.]

YEAS—14

Allott	Ervin	Prouty
Case	Fulbright	Proxmire
Chiles	Jordan, Idaho	Spong
Cotton	Kennedy	Stennis
Ellender	Mansfield	

NAYS—53

Aiken	Gambrell	Muskie
Allen	Griffin	Packwood
Anderson	Gurney	Pearson
Beall	Hansen	Pell
Bellmon	Harris	Percy
Bentsen	Hatfield	Randolph
Boggs	Hruska	Ribicoff
Brock	Humphrey	Roth
Brooke	Inouye	Schweiker
Burdick	Jackson	Scott
Byrd, W. Va.	Javits	Smith
Church	Mathias	Sparkman
Cooper	McClellan	Stevens
Cranston	McGee	Stevenson
Curtis	McIntyre	Talmadge
Dole	Metcalf	Williams
Eastland	Miller	Young
Fannin	Mondale	

PRESENT AND GIVING A LIVE PAIR AS PREVIOUSLY RECORDED—1

Nelson, for.

NOT VOTING—32

Baker	Goldwater	Moss
Bayh	Gravel	Mundt
Bennett	Hart	Pastore
Bible	Hartke	Saxbe
Buckley	Hollings	Symington
Byrd, Va.	Hughes	Taft
Cannon	Jordan, N.C.	Thurmond
Cook	Long	Tower
Dominick	Magnuson	Tunney
Eagleton	McGovern	Weicker
Fong	Montoya	

So Mr. PROXMIRE's amendment was rejected.

Mr. SPARKMAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. MONDALE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PROXMIRE. Mr. President, I send an amendment to the desk and ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be printed in the RECORD.

The amendment reads as follows:

On page 3, strike lines 14 through 25.

On page 4, strike lines 1 through 5.

On page 4, line 6, strike "(b)" and insert "(a)".

On page 4, line 9, strike "(c)" and insert "(b)".

On page 4, line 12, strike "(d)" and insert "(c)".

On page 4, line 16, strike "(e)" and insert "(d)".

On page 5, line 4, strike "(f)" and insert "(e)".

On page 5, strike lines 14 through 20, and insert the following:

"SEC. 2. (a)(1) To the extent the President so determines as being in the public interest, the receipts and disbursements of any department or agency of the Government referred to in paragraph (2) of this subsection in the discharge of functions described in such paragraph shall not be included in the totals of the budget of the United States

Government and shall be exempt from any annual expenditure and net lending (budget outlays) limitations imposed on the budget of the United States Government.

"(2) This section applies to—

"(A) The Export-Import Bank of the United States with respect to its functions under the Export-Import Bank Act of 1945.

"(B) The Department of Housing and Urban Development with respect to its lending functions under any program administered by that Department.

"(C) The Small Business Administration with respect to its lending functions under any program administered by that agency.

"(D) The Department of Agriculture with respect to its lending functions under title V of the Housing Act of 1949.

"(E) The Department of Transportation with respect to its lending functions under the Urban Mass Transportation Act of 1964.

"(b) The President shall—

"(1) Within 30 days after enactment of this Act, report to the Congress the amount by which the annual expenditure and net lending limitation imposed on the budget of the United States Government by title V of the Second Appropriations Act, 1970, will be reduced as a result of his determinations under subsection (a); and

"(2) Report annually to the Congress the amount of net lending with respect to the functions of the departments and agencies described in subsection (a)(2) which would be included in the totals of the budget of the United States Government if such functions were not excluded from those totals as a result of this section."

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

The yeas and nays were ordered.

Mr. PROXMIRE. Mr. President, the time under the unanimous-consent agreement is an hour for the amendment, a half hour on each side. I ask unanimous consent at this time that the time be limited to a half hour, 15 minutes to the side.

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

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

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 10 minutes.

Mr. PROXMIRE. Mr. President, this amendment has a plain, mild purpose. It does not exempt, but it gives the President the authority to exempt from the budget and any expenditure ceiling the loan programs administered by the Department of Housing and Urban Development, the housing loan programs administered by the Farmers Home Administration, the loan programs administered by the Small Business Administration, and the mass transit loan programs administered by the Department of Transportation. I was naturally disappointed that the Senate voted to exempt the Export-Import Bank from the Federal budget. In my opinion, the programs I have just cited are far more important than the activities of the Export-Import Bank and should be given similar treatment.

What we have done by very large majority, is to take the Export-Import Bank out of the budget. If we do that, the least we can do is to say that if the President should decide it is in the public interest to exempt these other loan programs, they can be exempted from the budget.

The authority to exempt these programs from the budget as well as the Export-Import Bank would be subject to a Presidential determination. In other words, the President has complete discretion in the matter. He could exempt only the Export-Import Bank and none of the additional programs I have cited. Or he could exempt all of them. Or he could exempt some combination of the programs which I have listed.

The legislation requires the President to inform the Congress of his determinations within 30 days after enactment. By giving the President the authority to exempt our housing, small business, and mass transit loan programs as well as the Export-Import Bank, we insure that all high-priority programs are at least afforded the opportunity for fair and equal treatment. Moreover, it is appropriate that these priority determinations be reflected at the highest levels of the Government.

I also wish to emphasize that my amendment deals only with the loan programs for housing, small business, and mass transit. Grant funds would, of course, continue to remain in the budget and be subject to expenditure ceilings.

Our ability to solve our housing needs has been considerably restricted by including the HUD direct loan programs in the Federal budget. Because housing loan disbursements have such a heavy impact on the budget, we have often gone to more complicated and expensive ways to subsidize housing. For example, many of the housing programs under HUD involve interest rate subsidies. While this method has a much smaller budget impact, it does tend to increase interest rates. Moreover, the cost to the Government over the life of the housing is far more expensive than if the Government had borrowed the money itself and made a direct loan. Thus, our housing programs are seriously distorted for essentially bookkeeping reasons. If the President were permitted to exempt our housing loan programs from the budget, these distortions would be eliminated.

Also, Mr. President, if the housing loan programs were eliminated from the budget, the Department of Housing and Urban Development would be able to revive a number of excellent programs which it has permitted to go dormant because of their budgetary impact. For example, under section 221(d)(3) of the National Housing Act, the general national mortgage association can make 3 percent loans to finance housing for moderate-income families. This is one of the most successful housing programs ever developed, and it has produced thousands of units of decent housing for moderate-income families. Unfortunately, because of its heavy budgetary impact it has had to be substantially curtailed. The administration is planning no expenditures on this program in the coming years, largely because of its budget impact. My amendment, giving the President the authority to exempt this program from the budget, would permit this excellent program to remain alive.

Another HUD program which is being curtailed for budgetary reasons is the direct loan program for housing for the elderly projects authorized under section 202 of the National Housing Act. In the past, this program has made a vital contribution in meeting the housing needs of our senior citizens. It has provided thousands of senior citizens with decent housing in which to live out their remaining years. However, since it is a direct loan program, and since direct loans impact the budget, the administration has decided not to fund it in subsequent years. If my amendment were to pass, the President could exempt this excellent program from the budget, thus continuing to meet the housing needs of our senior citizens.

Once again, the same arguments can be made for this as for the Export-Import Bank. These are loans repayable with interest; they are not grants.

Mr. President, my amendment would also give the President the authority to exempt the loan programs of the Small Business Administration. The operations of this Agency have been substantially curtailed because their loans are counted in the Federal budget. For example, in fiscal year 1968 Congress appropriated $55 million for the Small Business Investment Company program; however, the Bureau of the Budget released only $15 million. In fiscal year 1969, the Congress had appropriated $30 million; however, the Bureau of the Budget released only $12 million. In fiscal year 1970, Congress had to virtually order the Bureau of the Budget to make $70 million available to the program from existing funds. However, despite this clear directive, the Bureau of the Budget only authorized $60 million.

The reason the Bureau of the Budget holds up funding of this important program is due to the substantial budget impact which SBA loans have. Expenditure ceilings established by the Congress hit these programs as well as those programs involving direct grants.

Because the Bureau of the Budget or the Office of Budget and Management often impound funds appropriated to the Small Business Administration, the Agency has a difficult time in running its programs. It never knows from one day to the next how much funds are going to be available. As a result it can never inform its small business customers with certainly that their loan requests will be accommodated. Because of these delays and uncertainties, small businessmen have had considerable difficulty in dealing with the SBA.

All of these problems would be remedied if the President decided to exempt the loan programs of the Small Business Administration from the budget. My amendment would give the authority to do this.

Mr. President, my amendment would also permit an improvement in the loan activities of the Farmers Home Administration. This agency makes home loans to families living on the farm or in towns with less than 5,500 population. The Farmers Home Administration finances its activities by selling mortgage loans directly to large institutional investors. It could finance its activities far more cheaply if it were permitted to issue general debentures backed by the full faith and credit of the Federal Government.

However, if it did so it could not count these debentures as a receipt, thus adding considerably to the size of the Federal budget.

My amendment would permit the President to exempt the loan activities of the Farmers Home Administration from the Federal budget. If he did so the agency could finance their activities at a much lower cost, thus making additional funds available for rural housing. Recent studies have shown that over one-half of our substandard housing is contained in rural areas. We have shamefully neglected the housing needs of rural Americans, and one of the contributing reasons has been the inclusion of Farmers Home Administration loans in the Fedreal budget.

Mr. President, if we are to exempt the Export-Import Bank from the Federal budget, I believe we should be consistent and give the President the option of exempting other socially important loan programs on the same basis.

Mass transit is another area that should have high priority, perhaps higher than the Eximbank. It should be given the same opportunity to be financed as long as there is a loan program repayable with interest.

I am confident the President will exercise this authority in a fair and reasonable manner.

Those Members of the Senate who are concerned about reordering our national priorities should vote for my amendment. It gives the President the widest possible latitude to exempt all of our socially important loan programs from the Federal budget and not just those of the Export-Import Bank. It avoids giving special and preferential treatment to just one Federal lending program which many Members of the Senate would regard as having a lower priority than our domestic programs. I urge the Members of the Senate to adopt my amendment.

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

Mr. MONDALE. Mr. President, I yield such time to the Senator from Oregon as he may require.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. PACKWOOD. Mr. President, on my time I wish to direct an inquiry to the Senator from Wisconsin. I am doubtful about the amendment, section 2, to the extent the President so determines to be in the public interest. Are we not back to where we are now if we pass this amendment, to the extent the President determines it is not in the public interest? Then, all this goes back to the unified budget.

Mr. PROXMIRE. I want to make sure I understand what the Senator is asking. Is the Senator asking if this will change present law? On the basis of the statements of the Comptroller General this would not change the law at all. The President can do this now.

Some have the notion the budget is a legislatively fixed entity. But in fact the President can leave out whatever he wants; in this case he decided to include the Eximbank.

I want to reaffirm the determination of Congress to let the President decide on this priority and not to feel that he has to come to us, as he did in the case of the Eximbank, with a special bill giving them an exemption.

Mr. PACKWOOD. Then, I have to object to it on the same basis I supported the other. I do not like the idea of giving the President——

Mr. PROXMIRE. The Senator voted against my amendment.

Mr. PACKWOOD. I did, and left the matter in the hands of Congress as to whether or not the Eximbank should be able to borrow or loan, and not leave it in the discretion of the President.

Mr. PROXMIRE. We differed in that interpretation.

Mr. PACKWOOD. Yes. Now, the Senator is saying to the extent the President determines it to be in the public interest, the disbursements shall not be included in the budget. The Senator has said that he has the discretion to put them in the budget or not. It is not a discretion he should have.

If we talk about Congress having the responsibility, this would leave in his hands the decision as to whether or not he wants to put the Export-Import Bank in the budget, whether or not he wants to leave in housing and urban development. He can say yes, no, yes, no. That is not a responsible Congress. That is giving our power to the President and telling him to make the decision.

Mr. PROXMIRE. I wish to differ with the Senator. This would place all lending programs on the same basis.

Mr. PACKWOOD. And permit the President——

Mr. PROXMIRE. What we have done now is to say we will exempt the Eximbank but everything else has to be in the budget. I would like to put all of them on the same basis.

Mr. PACKWOOD. But by putting them all on the same basis it woud be putting them all back in his hands to make a decision as to where priorities exist.

Mr. PROXMIRE. That is correct; otherwise we have made a decision against these desirable and important social priorities. We decided for the Eximbank and against housing, against small business borrowing and farm home borrowing. We should have a chance to consider this at length.

Mr. PACKWOOD. We did not decide against those. If the Senator's amendment did not give to the President what is against public interest we might be able to make a decision as to what should be excluded from the unified budget, although we have had no hearings and had any ideas submitted as to the relative meritorious claims; but by the passage of the amendment of the Senator from Wisconsin, if we adopt it, we go back to where we are today, and that is that the President and the Office of Management and Budget are going to decide what priorities shall be within or without the budget and what shall be determined as to the Export-Import Bank. That is the wrong place to decide that.

Mr. PROXMIRE. We do not go right back. Before the amendment, the President had the strong feeling that it was up to Congress to exempt or include the Export-Import Bank. We are putting the ball back in his court, as to whether the President feels he should exempt that or other high priority programs.

Mr. PACKWOOD. Who does the Senator think should make the decision as to whether housing or other programs should have priority?

Mr. PROXMIRE. I would prefer that Congress make that decision, but under the decision made, it was that the Export-Import Bank should be exempted and should be given top priority, but other programs which should have higher priority we have put in an inferior position and said they should be under the Budget.

Mr. PACKWOOD. We have not voted on the others.

Mr. PROXMIRE. I like President Nixon very much. We should give him a chance.

Mr. PACKWOOD. President Nixon likes the Senator from Wisconsin. We ought to make the decision, not the President. We talk month after month about the unconstitutional war in Vietnam, if it is unconstitutional. We talk about delegating our right in foreign relations. Yet here we are talking about giving domestic programs, including the Export-Import Bank, to the President to determine what is in the public interest to include in the budget.

Mr. PROXMIRE. The General Accounting Office and Mr. Staats certainly made sense when they said the President can put into the budget anything he wants. He can exclude the Export-Import Bank if he wants to. That is the law. The Senator from Minnesota (Mr. MONDALE) agreed in the hearings that that is the law. We are enforcing that. We do not want to indicate that in the future the President can exclude small business, for example.

Mr. PACKWOOD. He has that kind of authority now. When we agreed he has administrative power to take any one of these agencies away from the unified budget, frankly, that power he should not have; Congress should have that power.

Mr. PROXMIRE. Let us give him the clear word on the budget. That will not upset anything. He can exempt housing if he chooses to do so.

Mr. PACKWOOD. I do not want to give him that clear word. If we wanted to exempt housing, we should do it. I do not want the President to set the clear priorities of this Nation.

Mr. PROXMIRE. Mr. President, I yield myself 1 minute. Congress would have to change the Budget and Accounting Act, because the President has that authority now. All this amendment really does is re-enforce what is in the law, but the President can exempt various social programs, not just the Export-Import Bank.

Mr. MONDALE. Mr. President, what we are asked to do is to vote whether certain programs ought to be exempted from the net ceiling of the budget. We voted on this question in the last session and we voted on it about 10 minutes ago. This amendment would undo the decision we have made and put that question back into the Executive's hands.

First of all, no hearings have been held

on any of these proposals. None of the agencies, to my knowledge, have come up on the Hill to ask to be relieved in the way in which the Senator from Wisconsin proposes. We have not had hearings on those matters as we have on the Eximbank proposal.

There is no question that the General Accounting Office, at least in principle, is on record opposing the Senator from Wisconsin. One of the key arguments last time was that we should follow the recommendations of the Comptroller General. The Office for Management and Budget supported the earlier proposal we voted on. Although the office has not spoken here, it is clear that it has not supported this proposal. In my opinion, the only effect of this amendment is to undo what we have just acted on and try to embarrass us by indicating that we prefer export expansion ones against other matters.

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

Mr. MONDALE. If I may make my point first. My record on the other matters to which the Senator has referred is clear. If this proposal came up and had hearings on it, I might support a good many of them, but it is the Export-Import Bank we are dealing with here today, and the question is what we want to do on that.

It seems to me this is an extraneous measure for the purpose of undoing what we have already done, and I shall reluctantly oppose it.

Mr. PROXMIRE. How does it undo anything? We know what the President wants. He wants the Export-Import Bank out of the budget. If we give him discretion, he is not going to put it in. There is no question as to whether the Export-Import Bank is going to be put back in the budget. It does not undo anything. Does the Senator believe in priorities for housing, Farmers Home Loan Administration, or does he not? I am surprised that the Senator from Minnesota, who has a fine record in this area, stands on a procedural reason for opposing giving the same status to housing and the other high priority matters that he is willing to give to the Export-Import Bank.

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

Mr. MONDALE. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Minnesota has 6 minutes; the Senator from Wisconsin has 4 minutes.

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

Mr. SPARKMAN. Mr. President, do I understand correctly from what the Senator from Wisconsin said, and does the Senator from Minnesota understand, that the President has the power now to do everything that is in the proposed amendment?

Mr. MONDALE. My understanding is that the President can administratively exempt.

Mr. SPARKMAN. Any item he wants to?

Mr. MONDALE. From his unified budget, but not from the net spending ceiling.

Mr. SPARKMAN. From the budget?

Mr. MONDALE. Yes.

Mr. SPARKMAN. Is not this proposal restating what is already in his power?

Mr. MONDALE. I think that is correct; and, more than that, in section 2(a), it tries to undo—and I think that is the main reason I object to it—what the Senate did at the end of the last session and what it did just a few minutes ago.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, let me read a question by the distinguished Senator from Oregon which appears on page 124 of the hearings:

> If the President makes an administrative decision next year to take the Export-Import Bank out from under the unified budget, to treat it as it was treated before the unified budget or as CCC loans are treated and Congress sets an expenditure limitation, must the President in the total allocation of the budget still include the net lending operations of the Export-Import Bank in the expenditure limitation?
>
> Mr. STAATS. The answer is "No".

So what I am doing is simply what is already in the law, except I am reinforcing it to indicate what Congress prefers. I am saying he may exempt housing, he may exempt small business, and he may exempt other programs, too.

Mr. PACKWOOD. The Senator from Wisconsin is exactly right. Under the present law the President can do anything he wants. He can exempt the Export-Import Bank, he can take it away from the unified budget, he can do it to housing and small business. That is a power that should not exist in his hands. It should exist in our hands. Under the Senator's amendment he is putting that power back in the President's hands, including that over the Export-Import Bank.

Mr. PROXMIRE. He has that power anyway, under the Budget and Accounting Act.

Mr. PACKWOOD. We have just taken away the authority he has over the Export-Import Bank, by taking it away from under the unified budget.

Mr. PROXMIRE. I think the President will be very unhappy about that. I agree he should be unhappy. He can send anything he wants to in his budget.

Mr. PACKWOOD. He can send anything he wants to, but he should not have power to determine in terms of priorities on it—in terms of housing or exports or anything else. That should be our decision.

There is nothing in the Senator's amendment that does anything but give that power right back to the President.

Mr. PROXMIRE. Mr. President, my amendment, substantively, is very important because what it does is say that we do not want to give top priority to export and import business over domestic programs such as housing, small business, and so forth. We think they should be on an equal basis. In that sense, it does reverse what was done.

Mr. PACKWOOD. But the Senator's amendment does leave to the President the authority he has now to determine what shall be excluded from the budget, and what shall not.

Mr. PROXMIRE. Yes. My argument is that we have not changed the Budget and Accounting Act, that he still has that power.

Mr. PACKWOOD. My argument is that he should not have it.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, I yield back the remainder of my time. Have the yeas and nays been ordered on this amendment?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. MONDALE. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. BROCK). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Wisconsin. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. BIBLE), the Senator from Nevada (Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. HARTKE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Missouri (Mr. SYMINGTON), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Virginia (Mr. BYRD), the Senator from Missouri (Mr. EAGLETON), and the Senator from New Mexico (Mr. MONTOYA) are absent on official business.

I also announce that the Senator from North Carolina (Mr. JORDAN) is absent because of illness.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from California (Mr. TUNNEY) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from New York (Mr. BUCKLEY), the Senator from Kentucky (Mr. COOK), the Senator from Hawaii (Mr. FONG), the Senator from Ohio (Mr. TAFT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Arizona (Mr. GOLDWATER) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

Also, the Senator from Tennessee (Mr. BAKER), the Senator from Colorado (Mr. DOMINICK), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from New York (Mr. BUCKLEY), the Senator from South Dakota (Mr. MUNDT), the Senator from Ohio (Mr. TAFT), and

the Senator from South Carolina (Mr. THURMOND) would each vote "nay."

The result was announced—yeas 3, nays 65, as follows:

[No. 39 Leg.]

YEAS—3

Fulbright	Nelson	Proxmire

NAYS—65

Aiken	Ervin	Muskie
Allen	Fannin	Packwood
Allott	Gambrell	Pearson
Anderson	Griffin	Pell
Beall	Gurney	Percy
Bellmon	Hansen	Prouty
Bentsen	Harris	Randolph
Boggs	Hatfield	Ribicoff
Brock	Hruska	Roth
Brooke	Humphrey	Schweiker
Burdick	Jackson	Scott
Byrd, W. Va.	Javits	Smith
Case	Jordan, Idaho	Sparkman
Chiles	Kennedy	Spong
Church	Mansfield	Stennis
Cooper	Mathias	Stevens
Cotton	McClellan	Stevenson
Cranston	McGee	Talmadge
Curtis	McIntyre	Tower
Dole	Metcalf	Williams
Eastland	Miller	Young
Ellender	Mondale	

NOT VOTING—32

Baker	Goldwater	Montoya
Bayh	Gravel	Moss
Bennett	Hart	Mundt
Bible	Hartke	Pastore
Buckley	Hollings	Saxbe
Byrd, Va.	Hughes	Symington
Cannon	Inouye	Taft
Cook	Jordan, N.C.	Thurmond
Dominick	Long	Tunney
Eagleton	Magnuson	Weicker
Fong	McGovern	

So Mr. PROXMIRE's amendment was rejected.

Mr. MONDALE. Mr. President, I move that the vote by which the amendment was rejected be reconsidered.

Mr. SPARKMAN. Mr. President, I move that the motion to reconsider be laid on the table.

The motion was agreed to.

Mr. MONDALE. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

AUTHORITY FOR THE SECRETARY OF THE SENATE TO TAKE CERTAIN ACTION DURING ADJOURNMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, during the adjournment of the Senate following completion of business on Wednesday, April 7, 1971, until 10 a.m. on Wednesday, April 14, 1971, the Secretary of the Senate may be permitted to receive messages from the President and from the House of Representatives.

The PRESIDING OFFICER (Mr. BROCK). Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

AUTHORITY FOR COMMITTEES OF THE SENATE TO FILE REPORTS ON TUESDAY, APRIL 13, 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on Tuesday, April 13, 1971, all committees of the Senate may be authorized to file their reports.

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

AUTHORITY FOR THE SECRETARY OF THE SENATE TO RECEIVE MESSAGES FROM THE HOUSE OF REPRESENTATIVES DURING THE ADJOURNMENT OF THE SENATE ON TUESDAY, APRIL 6, 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Secretary of the Senate may be authorized to receive messages from the House of Representatives during the adjournment of the Senate on Tuesday, April 6, 1971.

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

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1971

The Senate continued with the consideration of the bill (S. 581) to amend the Export-Import Bank Act of 1945, as amended, to allow for greater expansion of the export trade of the United States, to exclude Bank receipts and disbursements from the budget of the U.S. Government, to extend for 3 years the period within which the Bank is authorized to exercise its functions, to increase the Bank's lending authority and its authority to issue, against fractional reserves and against full reserves, insurance and guarantees, to authorize the Bank to issue for purchase by any purchaser its obligations maturing subsequent to June 30, 1976, and for other purposes.

Mr. MILLER. 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:

Strike the end quotes on line 3 of page 5 and insert the following:

The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase of any product, technical data, or other information by a national or agency of any nation if the President determines that any such transaction would be contrary to the national interest.

Mr. MILLER. Mr. President, the purpose behind this amendment is to fill what I detect to be a gap in the law as it would be amended by the pending legislation. The committee report on page 8 states that the bill provides the President may permit the Export-Import Bank to engage in these transactions when he determines it to be in the national interest.

The bill does not really provide for that.

I believe that the committee report intended to mean that this is provided for in the basic law——

Mr. MONDALE. That is correct.

Mr. MILLER. But the basic law refers only to Communist countries. The pending bill sets up another category of nationals in which these transactions would be prohibited; namely, those nations which are engaged in armed conflict, declared or otherwise, with the United States. But there is nothing said in the bill, or in the basic law, with respect to other countries, in which such transactions could be contrary to the national interest. I believe it is desirable for this legislation to cover that and my amendment would cover it. Failing to have my amendment included in the legislation could be interpreted to mean that Congress was concerned with only two categories; namely, those countries engaged in armed conflict, which the bill covers, or the Communist countries, which the basic law covers—and everything else is all right.

I am quite confident that the Senate does not intend that result and my amendment would prevent it.

Mr. MONDALE. Mr. President, I have talked with the distinguished chairman of the committee, the Senator from Alabama (Mr. SPARKMAN), and the ranking member of the International Finance Subcommittee, the Senator from Oregon (Mr. PACKWOOD), and we all think the amendment makes sense and will be glad to accept it.

Basically, the Senator's description of it is correct. It would apply to non-Communist countries to which the President might determine questions concerning the national interest might arise. We have no objection.

Mr. MILLER. I thank my colleague from Minnesota.

The PRESIDING OFFICER (Mr. BROCK). The question is on agreeing to the amendment of the Senator from Iowa.

The amendment was agreed to.

The PRESIDING OFFICER (Mr. BROCK). The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

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

The bill was ordered to be engrossed for a third reading, and was read the third time.

RELEASE OF PRISONERS OF WAR AND WITHDRAWAL OF AMERICAN MILITARY PERSONNEL FROM SOUTH VIETNAM

Mr. MANSFIELD. Mr. President, has the period of germaneness expired?

The PRESIDING OFFICER (Mr. BROCK). The Senator is correct.

Mr. MANSFIELD. If I may have the attention of the distinguished Senator from Iowa (Mr. MILLER), I was on the floor most of the time this morning but, unfortunately, was not on the floor at the time the Senator made his speech.

I note, in the course of that speech, that he makes the following statement:

The fatal and terrible defect of the majority views of the Senate and House Democratic Party caucuses is that they imply credibility to the North Vientamese proposal.

Mr. President, I want the Senate to listen very carefully to this next sentence:

They—the Democrats—would have all American military personnel withdrawn from South Vietnam by the end of this Congress

and trust the fate of our prisoners of war to the unilateral dictation of the leaders in Hanoi.

Mr. President, the Senator from Iowa (Mr. MILLER) makes reference to a "fatal and terrible defect in the majority views of the Senate and House Democratic Party caucuses."

Incidentally, Mr. President, I believe that the Republican leader in the House, Representative FORD, found a great deal of merit in what the House did as a result of the decision rendered by the Democratic caucuses.

The defect, it is suggested, is that somehow the Senate and House Democrats with their resolutions would seal the doom of American prisoners in Indochina. That is a cruel and mistaken characterization. Let me read a pertinent portion of the Senate Democratic resolution:

That it is the sense of the Committee that in the 92nd Congress the Senate Majority should work to achieve the following purposes:

1. To end the involvement in Indochina and to bring about the withdrawal of all U.S. forces and the release of all prisoners in a time certain;

What the Senator from Iowa (Mr. MILLER) failed to perceive in what the Senate Democrats overwhelmingly approved was the willingness to provide the President of the United States prior backing for any date he selected within the overall time frame indicated. Support is extended therefore for the complete withdrawal of all U.S. forces and the contingent return of all U.S. prisoners of war. Linking total troop withdrawals to the release of our prisoners was expressly set forth.

I regret the characterization of the Senate Democratic action by the able Senator from Iowa (Mr. MILLER). It reflects, in my judgment, not only a misunderstanding of the action taken by the Democratic caucus, but a misstatement of the text of the Senate Democratic action.

I believe the record should be made clear and I ask unanimous consent that the full text of the Democratic Resolution be printed at this point in the RECORD.

There being no objection, the resolution be printed at this point in the RECORD.

RESOLUTION OF SENATE MAJORITY PURPOSE IN THE 92ND CONGRESS

The Majority Policy Committee of the United States Senate, having noted with deep concern the burdens which are imposed on the people of the nation by the continuing involvement in the war in Indochina, by the decline in the economy and by the unsatisfactory state of the public services—federal, state and local—and by the continuing fear of citizens for their freedom and safety;

Resolves, That it is the sense of the Committee that in the 92nd Congress the Senate Majority should work to achieve the following purposes:

1. To end the involvement in Indochina and to bring about the withdrawal of all U.S forces and the release of all prisoners in a time certain;

2. To stop the inflation and reverse the recession and, further, to take all possible interim measures to alleviate the condition of those who are the principal victims of these failures of public leadership—businessmen, the unemployed, farmers, social security and other retired pensioners and families of fixed, moderate or inadequate income;

3. To contribute to a streamlining of federal-state financial relationships which will insure more equitable distribution of costs and a more efficient flow of public services to the people as, for example, in welfare, health, safety, transportation, recreation, education—provided always that fiscal responsibility for the expenditures of federal revenues shall not be impaired.

4. To bring about by close oversight of present procedures by streamlining and/or by consolidation where necessary, a more effective operation of the legislative and executive branches of the federal government;

5. To strengthen police training and compensation; and the court system, including probation, parole; and correction institutions.

Resolves, Further, that in pursuit of these objectives, the Committee urges full support wherever possible by both Senate Democrats and Republicans of the initiatives of the President, the Senate Committees and Members, and the House, which may be pertinent to these ends.

The PRESIDING OFFICER. Who yields time on the bill?

Mr. MANSFIELD. I yield to the Senator from Iowa (Mr. MILLER) as much time as he requires.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. MILLER. Mr. President, I thank my colleague from Montana. Perhaps it is helpful that the record be clarified by the distinguished majority leader with respect to the intention, if not the wording of the statement of principles by the Democratic caucuses. However, I want to state that he has been very fair in pointing out that the intention and probably the wording of the Democratic caucus position was with respect to a time certain as far as withdrawal of the troops is concerned, and that, Mr. President, is exactly what the Senator from Iowa was condemning.

The President has steadfastly refused to set a time certain. He has not wanted the help of the Democratic caucus on that. Neither does the Senator from Iowa suggest that a time certain will get the job done.

The entire thrust of my comments this morning was to get down to the bedrock of that problem. And that is that when we start talking about fixing a time certain for the withdrawal of American forces, we are in fact putting the fate of the American prisoners of war at the unilateral, dictatorial determination of the leaders of Hanoi.

That is why my resolution has been introduced, to require the return of the prisoners first and then within a time certain—namely, 12 months—all American troops would be withdrawn from South Vietnam.

I am happy that the majority leader has stated the intention. I am happy that the intention—certainly as he said—is not to put the fate of the American prisoners of war at the mercy of the North Vietnamese leaders. I suggest to the majority leader that the wording of the Democratic caucus proposal, certainly in the eyes of Hanoi, could lend itself very well to that interpretation.

I hope that his clarification will make the matter clear. However, I would feel much more comfortable about it if the statement itself were changed so that there could be no question on that point at all.

Mr. MANSFIELD. Mr. President, all I can say is that I appreciate the statement made by the distinguished Senator from Iowa. It appears to me that the Republicans are falling into the situation which has confronted the Democrats for so many decades. There are divisions within the party.

May I reiterate that the distinguished minority leader of the House, Mr. FORD, seemed to indicate what the House did—and it was a little more drastic than what the Senate did—was in support of the President. And I would assume that, as he is the minority leader of the other body, he would know what he was talking about.

I would like to recall to the Senate a speech I made on the floor on December 9, 1970. In that speech I made the following statement:

This week, at the 95th Session of the peace talks in Paris, Madame Nguyen Thi Binh repeated a previous proposal offering an immediate ceasefire in Viet Nam in return for a declaration of U.S. and allied troop withdrawal by June 30, 1971.

She also stated that U.S. acceptance of this proposal would mean immediate negotiations on the release of captured American prisoners. Madame Binh ignored the U.S. proposal that meetings be held every day to try to bring about the release of all U.S. prisoners by Christmas.

Shortly after that meeting concluded, Xuan Thuy, the Chief of the North Vietnamese Delegation, noting that Ambassador Bruce has rejected the proposal for a U.S. withdrawal by June 30, 1971, said "I, therefore, propose that if the United States is not willing to accept June 30, 1971 as the date for final withdrawal of all its troops, then it should suggest *another reasonable date*. In that case, we can immediately consider the American suggestion."

At the 95th Conference, Ambassador Bruce, after calling for "immediate negotiations on an internationally supervised ceasefire-in-place throughout all of Indochina," repeated the readiness of the U.S. to negotiate on an agreed timetable "for complete troop withdrawal as part of an over-all settlement in Viet Nam, Laos and Cambodia."

And these are my remarks:

Perhaps in this give and take at Paris and also based in part on the President's proposals of October 7th and Hanoi's proposals of September 17th, the two points to which reference is made—that is, the release of all U.S. prisoners of war coupled to a timetable for the final withdrawal of U.S. forces—might be explored *exclusively*, to see whether or not they may be reconciled as a starting point of a ceasefire to be followed by the negotiation of a complete settlement. It would be my hope, Mr. President, that this approach may light a clear signpost to peace.

Mr. President, I might say that I am getting a little tired of the POW's being used as a pawn in this country and being used as a pawn by Hanoi. I think it is most unfair to them.

I want to make it very clear that as far as the Democratic caucus is concerned, we thought there should be a timetable, with the release of American prisoners of war.

I want them released. That is why I believe in a more definite timetable than the Democratic caucus agreed to.

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

Mr. MANSFIELD. Yes, indeed.

Mr. MILLER. Mr. President, no one is imputing any bad faith to the distinguished majority leader or the Democratic caucus. However, when we start talking about a fixed timetable for the withdrawal of all American forces and then say we will cooperate with respect to the release of U.S. prisoners of war with the Vietnamese, any way we slice it, that is putting the fate of the American prisoners of war into the unilateral, dictatorial determination of the leaders of Hanoi. That is unfair to them.

What ought to be done is to have them exchanged for North Vietnamese prisoners first. Then after Hanoi cooperates, we will get out within a time certain, such as 12 months.

Mark my words, I am not going to put the fate of our prisoners of war into the good faith of the North Vietnamese after they have treated our prisoners with such flagrant violation of the Geneva accords regarding prisoners of war. They have destroyed their credibility. They have destroyed their credibility regarding successful negotiations with respect to the release of prisoners of war if we have a time certain for the withdrawal of American prisoners. The President recognizes that. That is why he has declared that as long as there are American prisoners of war being held in North Vietnam, there will be a residual American force in South Vietnam, which is not yet determined.

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

Mr. MILLER. I yield.

Mr. MANSFIELD. Mr. President, in my opinion, as long as there is a residual force in South Vietnam, the North Vietnamese are going to hold captive the American prisoners of war.

I want to do something about this. I do not want to talk about it. I want something done to help bring about a release of the prisoners of war.

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

Mr. MANSFIELD. I yield.

Mr. MILLER. Mr. President, what happens if a time certain is declared and all U.S. troops are withdrawn by that time certain and we do not have all our prisoners of war back? What happens then?

The Democratic caucus did not deal with that possibility.

Mr. MANSFIELD. Mr. President, if there is an agreement reached and if negotiations are not entered into and if there are no prisoners of war released, the situation remains as is, because it will not be a complete end total withdrawal now and a release of prisoners of war now.

Mr. MILLER. Mr. President, what the Senator, I think, has said is that we would set a time certain for the withdrawal of American forces.

Mr. MANSFIELD. And be out of there.

Mr. MILLER. And that we would have negotiations with the North Vietnamese regarding prisoners of war. However, if those negotiations are not successful, then all bets would be off as far as the time certain that we set would be concerned.

Mr. MANSFIELD. The time for the prisoners of war to be released would be within the time certain.

Mr. MILLER. Mr. President, I do not believe that the Democratic caucus position states that if the prisoners are not released within that time frame that all bets are off. I wish the Democratic position so stated, but it does not.

Mr. MANSFIELD. The Senator should read that resolution a little more carefully because it gives to the President a great deal of flexibility without actually setting a date certain.

The purpose of that caucus resolution was to strengthen the President's hand and to indicate if he took steps to bring about the release of the POW's and the ending of this war and total withdrawal, that as far as the opposition party is concerned, it would not be a matter of politics.

Mr. MILLER. I am sure the President does not need to have the Democratic caucus so advise him. Everybody in the United States would be pleased to have this over by a time certain.

The problem is this. No nation with a conscience, least of all the United States, should be willing to leave the fate of its prisoners of war to the dictatorial decisionmaking by the leaders of Hanoi; and the only way to avoid that, in my opinion, is to make sure that those prisoners must be released and safely returned before we pull out altogether. The President made that crystal clear.

The President did not welcome the assurance that the Democratic caucus gave him. The assurance of the caucus is contrary to the residual force concept and the principle that the President announced that as long as Americans are held prisoner by North Vietnam we are not going to leave them to shift for themselves by pulling out everything from South Vietnam.

Mr. MANSFIELD. Does the President expect to get our approval of things we do in our capacity as Members of the Senate? After all, we have responsibilities, just as he, and while his responsibilities are greater than ours, and we all understand that, we have our individual and collective responsibilities, as well. I am sure the Senator would agree with that statement.

Mr. MILLER. The Senator well knows how strongly I feel about the independence of the legislative branch of Government. But I plead with my colleague from Montana to help let the executive branch and the legislative branch work together, just once, from here on out, and if we do, the return of the prisoners of war will be hastened and the end of American involvement in Vietnam will be hastened.

This business of going out unilaterally, alone, or on the Democratic caucus' own, contrary to the President's position, will not be very helpful.

We are getting near the end of the tunnel. The President said we are getting near the end of the tunnel. I believe it is time for us to show greater unity than we have shown in the last year or two.

Mr. MANSFIELD. May I say I hope the President is right.

Mr. MILLER. We should have the unity that characterized the Republican side of the aisle back in the early days when the war was getting bigger and worse. Now, it is going down and out.

Mr. MANSFIELD. May I say I hope the President is right; that there is some light at the end of the tunnel. But I must say in all candor I cannot see a glimmer at the present time.

As far as the Senator's other statement is concerned, there is nothing that the Democrats in this body would rather do than to work together in tandem with the President to bring this mistaken war to a close, to the end that we could withdraw—and may I say most emphatically—lock, stock, and barrel from all Southeast Asia.

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

Mr. MANSFIELD. I yield.

Mr. TOWER. Mr. President, I would remind my distinguished friend, the majority leader, that the President has already offered to exchange all of the North Vietnamese prisoners we now have, or I should say that the allied forces have, in exchange for the American prisoners of war. The North Vietnamese numerically would gain substantially by this because we hold so many more of their prisoners than they of ours. He indicated his willingness to do this and to divorce the issue of prisoners from the rest of the negotiations.

It seems to me the Senator from Iowa made extremely good points here because if we say we agree to a time certain for withdrawal in exchange for their agreeing to negotiate on the business of the release of prisoners, they will never be released because these people show no willingness to negotiate in good faith or anything.

Ambassador Bruce is not partisan. He has served in Democratic and Republican administrations alike. He is a professional diplomat. He has spent more time in Democratic administrations than in Republican administrations. He seems convinced that these people at this time have no willingness to negotiate on anything because they think ultimately they are going to wear us down and stimulate pressures in this country, by being patient, to force the President to get out; that that will achieve what they want to achieve, and if they choose to, they will never release our prisoners.

I think it is virtual suicide to agree, as a condition to negotiations, that we will withdraw our troops at a time certain, and having done that we will sit down and negotiate the release of prisoners. It would be a position of weakness and our prisoners could rot and die there.

I cannot comprehend the efficacy of what the Democratic caucus has done. As the majority leader pointed out we were mistaken to get into this war. I agree that we made a sad mistake getting into it.

Mr. MANSFIELD. A tragic mistake.

Mr. TOWER. President Nixon is getting us out in an orderly way. Therefore, I see no need to impose timetables on him. If you accept a specified time to get all American forces out as a condition

for the North Vietnamese to negotiate about the prisoners, this is a foolish thing to do and nothing in history indicates it will be successful.

Mr. MANSFIELD. May I say again there is a request for the date certain as well for negotiations seeking to bring about the release of American POW's.

Again I want to repeat there has been too much political capital made of the fate of the POW's. I think they are being held hostage by North Vietnam until certain conditions are met in the meantime.

I will point out that as far as a withdrawal is concerned, President Nixon has been doing quite well—not as fast as I would like to see the troops withdrawn but as of today, based on a release from Saigon, we have approximately 300,000 troops left there out of something like 546,000 when President Nixon took office.

I anticipate, and I have no knowledge but I assume, that the day after tomorrow the President is going to announce further substantial withdrawals, perhaps on an average rate of 12,500 a month, which is now in effect, and perhaps more. We will have to wait and see.

But I wish to repeat again the one sentence which is all-inclusive as to what the Democratic caucus agreed to by a vote of about 40 to 13: "To end the involvement in Indochina and to bring about the withdrawal of all U.S. forces and the release of all prisoners in a time certain."

So there is the end of the war, the total withdrawal, and the prisoners in toto, which are considered in this part of the resolution.

I have no doubt as far as any Member of this body is concerned, be he Democrat or Republican, but that he wants to see all of our POW's released, and that he wants to see us withdraw, lock, stock, and barrel from South Vietnam. We may differ on the time, on the date, but we certainly do not differ on the objective.

What I wanted to do was to just make the record straight that, as far as the Democrats are concerned, we do not want to be accused politically of not thinking of the fate of the POW's, because they are as close to our hearts as they are to those of the Republicans across the aisle.

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1971

The Senate continued with the consideration of the bill (S. 581) to amend the Export-Import Bank Act of 1945, as amended, to allow for greater expansion of the export trade of the United States, to exclude Bank receipts and disbursements from the budget of the U.S. Government, to extend for 3 years the period within which the Bank is authorized to exercise its functions, to increase the Bank's lending authority and its authority to issue, against fractional reserves and against full reserves, insurance, and guarantees, to authorize the Bank to issue for purchase by any purchaser its obligations maturing subsequent to June 30, 1976, and for other purposes.

Mr. TOWER. Mr. President, I support S. 581, a bill to amend the Export-Import Act of 1945 to allow for greater expansion of the export trade of the United States, to exclude Bank receipts and disbursements from the budget of the U.S. Government, and for other purposes.

During its 25-year existence, the Eximbank has functioned effectively as an independent corporate agency of the U.S. Government having as its sole purpose the facilitation of exports of U.S. goods and services for sale in international markets in exchange for payment in dollars by overseas customers. In fulfilling this role, the Eximbank has thus made a valuable contribution in our Government's continual struggle to achieve a favorable balance-of-payments posture. The continued effectiveness of the Bank's operations, however, is heavily dependent upon its receiving the increased flexibility which S. 581 provides.

The needs of the U.S. export community are constantly changing, and it is this fact coupled with the rapidly increasing export financing capabilities of Eximbank's competitors which necessitates the increased flexibility.

Inclusion of the Bank in the unified Federal budget has, however, curtailed its ability to provide U.S. exporters and their foreign customers the assurance that their transactions can be financed despite sudden and unforeseen fluctuations in governmental monetary and fiscal policies.

Mr. President, the bill now before the Senate contains important provisions which will enable the Eximbank to assume an even more aggressive role in providing its vital services. Several of the provisions have not generated a great deal of discussion or controversy, and I shall but briefly mention them: S. 581 amends the Export-Import Bank Act of 1945 to—

First, extend the life of the Bank from its present expiration date of June 30, 1973, to June 30, 1976;

Second, increase the loan, guarantee, and insurance authority from $13.5 to $20 billion;

Third, increase the limitation on the amount of guarantees and insurance which can be charged on a fractional reserve basis from $3.5 to $10 billion;

Fourth, clarify in the Bank's charter its authority to issue debt obligations with maturities beyond its statutory life to purchasers in addition to the Secretary of the Treasury; and

Fifth, provide that the Bank, insofar as practicable, shall provide guarantees, insurance, and extension of credit at rates and on terms and conditions which are reasonably competitive with those offered by its principal trading competitors.

While these foregoing provisions are generally well accepted, there are other proposed changes in this bill which have precipitated a great deal of debate.

The provision causing the most concern is that one which amends section 2(a) of the act to provide that the receipts and disbursements of the Bank be excluded from the totals of the budget of the U.S. Government.

Those who oppose exclusion of the Bank from the strictures of the unified budget voice the fear that its exclusion will prompt other Federal agencies to follow the same course. Attention, therefore, must be directed to the unique status of the Bank which differentiates it from other agencies of our Government:

First. Eximbank does not and will not require annual appropriations;

Second. Eximbank pays substantial dividends to the U. S. Treasury each year and has accumulated substantial reserves which insure its continuing operations and added income to meet its needs;

Third. Repayment of Eximbank lending has a 100-percent favorable effect upon our balance of payments. Repayments of both principal and interest are always made by non-U.S. entities in dollars; and

Fourth. Eximbank always loans upon commercial terms. Thus, the very uniqueness of the scope of operations of the Eximbank places it apart from the other Federal agencies.

Mr. President, budgetary accounting anomalies and convention have obstructed severely the export financing potentials of Eximbank at a time of demonstrated need for competitive export credit. The very nature of the present operations of the Bank, characterized by high activity, requires that its disbursements exceed collections. These loan disbursements are accounted for in the budget as outlays or expenditures rather than loans receivable. Therefore, despite the fact that the moneys disbursed will be repaid with interest over a period of time, the requirements of the budget dictate that they be recorded as "net lending outlays," thus a negative impact on the budget. Removal of the Bank from the budget would correct this accounting procedure which can only be termed an anomaly.

It should be noted that removal of the Bank's operations from the budget would not alter the congressional review which presently exists as regards to level of Eximbank activity. This review centers first on the overall limitation on the bank's operations during its 5-year life as recommended by the House and Senate Banking Committees and approved by the Congress in the Bank's enabling legislation, and second, upon the specific annual authorization and expense ceilings as recommended each year by the Appropriations Committees of each house.

In addition, to provide further assurance that the Congress is informed of the operations of the Bank, S. 581 requires that the President report annually to the Congress the amount of net lending of the Bank which would be included in the totals of the budget if the Bank's activities were not excluded. Thus, there will continue to be full annual disclosure of the Bank's operations.

Mr. President, S. 581 contains a provision which would amend the Fino amendment to permit Eximbank to support those exports to, or for use in, Eastern European countries which have been licensed or approved by the Office of Export Control in the Department of Commerce only if the President determines, pursuant to the requirement contained

in section (2)(b)(2) of the Bank's Act—Tower-Hickenlooper amendment — that the transaction would be in the national interest, and he so reports that determination to the Senate and the House of Representatives.

Thus, the Bank would be prohibited from supporting any U.S. export to, or which would be transshipped through any other country for use by or in, a country with which the United States is engaged in armed conflict. A Presidential determination of national interest would still be required, however, before the Bank could support any export for sale or lease to any Communist country.

By returning to the President the authority to determine that export-import assistance might be given in certain instances not possible under present law, the Congress shall be assuring him the flexibility he must have in order to pursue an expansionary export program when and only when such expansion will not compromise our national security.

Mr. President, if the Export-Import Bank is to effectively pursue its objective of increasing U.S. exports of goods and services, it must be given the increased flexibility and capacity contained in the provisions of S. 581.

Mr. MONDALE. Mr. President, I yield back all my time.

Mr. MANSFIELD. Mr. President, I yield back whatever time I have.

Mr. PACKWOOD. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the bill has been yielded back.

The question is on passage. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senators from Nevada (Mr. BIBLE and Mr. CANNON), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Iowa (Mr. HUGHES), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Connecticut (Mr. RIBICOFF), the Senator frrom Missouri (Mr. SYMINGTON), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Virginia (Mr. BYRD), the Senator from Missouri (Mr. EAGLETON), and the Senator from New Mexico (Mr. MONTOYA) are absent on official business.

I also announce that the Senator from North Carolina (Mr. JORDAN) is absent because of illness.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Washington (Mr. MAGNUSON), the Senator from Rhode Island (Mr. PASTORE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from California (Mr. TUNNEY), the Senator from Iowa (Mr. HUGHES), the Senator from North Carolina (Mr. JORDAN) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from New York (Mr. BUCKLEY), the Senator from Kentucky (Mr. COOK), the Senator from Hawaii (Mr. FONG), the Senator from Ohio (Mr. TAFT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

The Senator from Arizona (Mr. GOLDWATER) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

Also the Senator from Tennessee (Mr. BAKER), the Senator from Colorado (Mr. DOMINICK), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from New York (Mr. BUCKLEY), the Senator from Kentucky (Mr. COOK), the Senator from South Dakota (Mr. MUNDT), the Senator from Ohio (Mr. TAFT) and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 67, nays 1, as follows:

[No. 40 Leg.]

YEAS—67

Aiken	Fulbright	Muskie
Allen	Gambrell	Nelson
Allott	Griffin	Packwood
Beall	Gurney	Pearson
Bellmon	Hansen	Pell
Bentsen	Harris	Percy
Boggs	Hart	Prouty
Brock	Hatfield	Randolph
Brooke	Hruska	Roth
Burdick	Humphrey	Schweiker
Byrd, W. Va.	Inouye	Scott
Case	Jackson	Smith
Chiles	Javits	Sparkman
Church	Jordan, Idaho	Spong
Cooper	Kennedy	Stennis
Cotton	Mansfield	Stevens
Cranston	Mathias	Stevenson
Curtis	McClellan	Talmadge
Dole	McGee	Tower
Eastland	McIntyre	Williams
Ellender	Metcalf	Young
Ervin	Miller	
Fannin	Mondale	

NAYS—1

Proxmire

NOT VOTING—32

Anderson	Fong	Moss
Baker	Goldwater	Mundt
Bayh	Gravel	Pastore
Bennett	Hartke	Ribicoff
Bible	Hollings	Saxbe
Buckley	Hughes	Symington
Byrd, Va.	Jordan, N.C.	Taft
Cannon	Long	Thurmond
Cook	Magnuson	Tunney
Dominick	McGovern	Weicker
Eagleton	Montoya	

So the bill (S. 581) was passed, as follows:

S. 581

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635) is amended—

(a) By inserting "(1)" immediately after "SEC. 2. (a)" of such Act, and by adding at the end thereof the following new paragraph:

"(2) The receipts and disbursements of the Bank in the discharge of its functions shall not be included in the totals of the budget of the United States Government and shall be exempt from any annual expenditure and net lending (budget outlays) limitations imposed on the budget of the United States Government. In accordance with the provisions of the Government Corporation Control Act, the President shall transmit annually to the Congress a budget for program activities and for administrative expenses of the Bank. The President shall report annually to the Congress the amount of net lending of the Bank which would be included in the totals of the budget of the United States Government if the Bank's activities were not excluded from those totals as a result of this section."

(b) Section 2(c)(1) of such Act is amended by striking out "$3,500,000,000" and inserting in lieu thereof "$10,000,000,000".

(c) Section 7 of such Act is amended by striking out "$13,500,000,000" and inserting in lieu thereof "$20,000,000,000".

(d) Section 8 of such Act is amended by striking out "June 30, 1973" and inserting in lieu thereof "June 30, 1976", and by inserting immediately following the words "Secretary of the Treasury" "or any other purchasers".

(e) Section 2(b)(3) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(3)) is amended to read as follows:

"(3) The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with (A) the purchase of any product, technical data, or other information by a national or agency of any nation which engages in armed conflict, declared or otherwise, with the Armed Forces of the United States, or (B) the purchase by any nation (or national or agency thereof) of any product, technical data, or other information which is to be used principally by or in any such nation described in subparagraph (A). The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase of any product, technical data, or other information by a national or agency of any nation if the President determines that any such transaction would be contrary to the national interest."

(f) Section 2(b) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)) is amended by adding at the end of paragraph (1) the following: "In the exercise of its functions the Bank shall, insofar as feasible and practicable, provide guarantees, insurance, and extensions of credit at rates and on terms and conditions which are reasonably competitive with the Government-supported rates, terms, and other conditions available for the financing of exports from the principal countries whose exporters compete with United States exporters."

SEC. 2. The President shall, within thirty days after enactment of this Act, report to the Congress the amount by which the annual expenditure and net lending limitation imposed on the budget of the United States Government by title V of the Second Supplemental Appropriations Act, 1970, will be reduced as a result of the amendment made by section 1(a) of this Act.

Mr. SPARKMAN. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, may I extend the thanks of a grateful Senate to the distinguished senior Senator from Alabama (Mr. SPARKMAN) and to the distinguished Senator from Minnesota (Mr. MONDALE) for their handling of the Export-Import Bank measure. Its overwhelming acceptance by the Senate speaks abundantly for the quality of their advocacy and legislative skill.

As the chairman of the Committee on Banking, Housing, and Urban Affairs, Senator SPARKMAN has again demon-

strated his most effective leadership. Senator MONDALE's presentation of the proposal in the Chamber is to be commended particularly. Together their strong support assured the Senate's near-unanimous approval.

To be commended equally for his cooperative support is the distinguished Senator from Oregon (Mr. PACKWOOD). He, too, exhibited most effective advocacy. Other Senators similarly should be thanked for contributing their own strong and sincere views to the discussion. The distinguished Senator from Wisconsin (Mr. PROXMIRE) falls into this category. He urged his amendment with the greatest skill and sincerity. The distinguished Senator from Colorado (Mr. ALLOTT) and others are to be thanked similarly.

The passage of this proposal represents another outstanding achievement for the Senate obtained expeditiously and with full regard for the views of all Senators.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

AUTHORIZATION FOR THE SECRETARY OF AGRICULTURE TO CLASSIFY WILDERNESS AREAS IN MONTANA

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 54, S. 484.

The PRESIDING OFFICER (Mr. BROCK). The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 484) to authorize and direct the Secretary of Agriculture to classify as wilderness the national forest lands known as the Lincoln Back Country, and parts of the Lewis and Clark and Lolo National Forests, in Montana, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

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

Mr. MANSFIELD. Mr. President, this bill passed the Senate twice before unanimously.

I ask unanimous consent that an excerpt from the report which accompanied the reporting of this bill be printed at this point in the RECORD.

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

PURPOSE

This bill, S. 484, would add approximately 240,500 acres in three national forests in Montana to the National Wilderness Preservation System established by the Wilderness Act of 1964 (78 Stat. 890). The lands involved embrace parts of the Helena, Lewis and Clark, and Lolo National Forests, which straddle the Continental Divide in central-western Montana. While this has sometimes been known as the Lincoln-Scapegoat Back Country, it is more popularly referred to as the Lincoln Back Country.

Sponsored by Senators Metcalf and Mansfield, S. 484 directs the Secretary of Agriculture to classify specifically designated tracts in the area as wilderness, which would in effect combine the Lincoln Back Country with the existing Bob Marshall Wilderness.

THE AREA

The Lincoln Back Country is typical of the scenic grandeur that is reflected in Montana's motto "The Big Sky Country." It contains vast, unbroken spaces, glittering mountains, deep forests, and flashing clear lakes and streams. It is described by the Sierra Club as a "friendly wilderness," containing "an environment essential to the survival of the grizzly bear population and other big-game animals. Native cutthroat trout, an increasingly scarce game resource, is also found in substantial amounts."

Other wildlife and fish of a rare or endangered nature abound in the undisturbed mountains, meadows, and waters, and the opportunities for ecological research are highly regarded by wooded rolling lands studded with mountain lakes. Several nearby high but relatively accessible points such as Red Mountain, Pyramid, and Olsen Peaks add opportunities for zestful, rewarding climbs. This portion of the area, although possessing true wild character, is readily available to easy family hiking and saddle-horse trips.

The north-central portion in contrast is characterized by spectacular relatively remote peaks, high ridges, and intervening canyons. These present a true challenge for those who wish to spend a little more time and effort to sample the more rugged aspects of wilderness. Here the great Scapegoat Mountain complex dominates the scene. The alpine tundra of its highlands presents a unique climax to the most adventurous type of wilderness travel. Short, relatively easy back-country trips are available on the far northern end and much of the eastern side of the area.

As mentioned above, the Lincoln-Scapegoat region, with its relatively undisturbed environment, represents ideal living space for a unique variety of game animals, birds, and fish. An important segment of Montana's remnant grizzly bear population has found this place much to its liking.

Elk, mountain sheep, goats, deer, and moose are also there and depend, in many important respects, upon the relatively remote character of the land for their living requirements and even survival. The rare west slope cutthroat trout is well suited to its cold, clear streams and the lighter fishing pressure of trail access country. Along with the Montana grayling the area supports a variety of fish that add much to the joy of visiting this unique region. Ptarmigan, a seldom seen grouse of the alpine environment, adds special interest to the interesting bird life of the area. Thus, a pleasing variety in the topography, vegetative cover, and animal life blend in making the Lincoln Back Country an ideal area for meaningful wilderness classification.

LEGISLATIVE HISTORY

In the 90th Congress, Senators Metcalf and Mansfield introduced this bill as S. 1121, and field hearings were conducted on the measure at Great Falls, Mont., on September 23, 1968, with overwhelming support evidenced for the proposal. Reintroduced as S. 412, hearings were held in Washington on February 7, 1969, and the bill passed the Senate without amendment on May 29, 1969. The House, however, did not act because of the lack of a completed mineral survey. The survey has now been completed, and shows that although 131 mining claims were located in the area, no ore is known to have been produced from them. Veins containing copper are reportedly too low in average grade to be mined economically at present, but are likely to be further explored, said the report, which is summarized later.

MONTANA LEGISLATURE ACTS

The Montana Legislature this year enacted a joint resolution urging that the Lincoln Back Country be designated as wilderness. A copy of the memorial follows in this report.

ALTERNATIVES CONSIDERED

Careful consideration was given alternative proposals presented during the hearings, including that of the Forest Service for a type of modified multiple use. The committee became convinced, however, that the Lincoln Back Country is too fragile, both geologically and ecologically, to permit the driving through of roads, and construction of permanent roadside and camping facilities as proposed.

COSTS

There will be no additional costs to the Government as the result of the enactment of this bill.

COMMITTEE RECOMMENDATIONS

In enacting the Wilderness Act (Public Law 88–577), the Congress clearly reserved to itself the ultimate authority to act with respect to enlargement of the wilderness system it created. Section 3, article IV, of the Federal Constitution imposes such a responsibility on Congress.

In this instance, the committee unanimously recommends that Congress exercise its power and include in the system an area it finds uniquely qualified for inclusion and thus preserve the Lincoln Back Country's rare and fragile features for the physical enjoyment, the spiritual refreshment, and the enrichment of the life of this generation and future generations.

The proposal has the backing of the entire congressional delegation from Montana.

MINERAL SURVEY SUMMARY AND MONTANA LEGISLATIVE RESOLUTION

Following is the summary of the report on the mineral resources of the Lincoln Back Country, Mont., by the U.S. Geological Survey and the U.S. Bureau of Mines, and a joint resolution of the Senate and House of Representatives of the State of Montana.

MINERAL RESOURCES OF THE LINCOLN BACK-COUNTRY AREA, POWELL AND LEWIS AND CLARK COUNTIES, MONT.[1]

SUMMARY

A mineral survey of the Lincoln Back-Country Area was made by the U.S. Geological Survey and the U.S. Bureau of Mines during the summer of 1970; the U.S. Geological Survey made an aeromagnetic survey in 1966 and a gravity survey in 1970. The area, about 375 square miles, lies about 45 miles northwest of Helena and about 59 miles northeast of Missoula, Mont. Sedimentary rocks of Precambrian (Belt Supergroup), Cambrian, Devonian, and Mississippian ages crop out in the area. The Precambrian rocks have been intruded by diorite sills of Precambrain age, sills of uncertain age of monzonite to andesite composition, and aplite dikes of probable Cretaceous age. In addition there are small exposure of tuff of Tertiary age. The rocks, except for the tuff, have been broken by thrust and normal faults and are folded in places.

The mineral-resources potential of the area was evaluated by close examination of the rocks and mining claims, by geological mapping, by geochemical sampling, and by aero-

[1] By Melville R. Mudge, Robert L. Earhart, and Kenneth C. Watts, Jr., U.S. Geological Survey and Ernest T. Tuchek and William L. Rice, U.S. Bureau of Mines.

magnetic and gravity surveys. Foot traverses along most ridges and streams in the area resulted in the collection of 3,321 samples of which 402 are stream pebbles, 523 are water, 690 are stream sediments, and 1,706 are outcrop samples. South of the area, aeromagnetic and gravity survey data reflect intrusive igneous bodies, some of which contain ore deposits, but similar geophysical anomalies were not found within the area. A large magnetic positive anomaly southwest of Scapegoat Mountain is interpreted to indicate a deeply buried (10,500 ± 1,200 feet below ground surface) pluton. Other magnetic trends in the area are related to exposed Precambrian sills.

Copper is the only mineral commodity found that has possible economic importance. Other metallic commodities, such as silver, lead, and zinc, are locally present in low concentrations that are not economically significant. Copper is present in quartz-carbonate veins and in green beds in the Precambrian sedimentary rocks.

The copper-bearing quartz-carbonate veins are in the southernmost part of the area, at Mineral Hill, Bugle Mountain, and in the upper reaches of Copper Creek; they are of hydrothermal origin.

Weak copper mineralization in green to greenish-gray clastic Precambrian rocks is widespread in the Lincoln Back-Country Area, but the occurrences contain insufficient grade and are too small for exploitation. The copper is commonly in thin strata in green sequences in the Spokane and Empire Formations and in the Snowslip Formation; locally it is in similar beds in the Helena Dolomite, and in the Shepard, Mount Shields, and McNamara Foundations. The copper was probably deposited syngenetically in the rocks and redistributed and concentrated during periods of depositional and postdepositional oxidation.

County records show that 131 mining claims have been located in the area; none are known to have produced ore. Most of the claims were located in a belt explored for copper on the southwest edge of the study area. The belt extends from the Copper Creek area to Bugle Mountain, a distance of 10 miles. The larger deposits in the belt are not economically minable but are a potential resource of copper and are likely to be further explored. High-grade samples, containing 18.2 and 45.2 percent copper, from the Porto Rico mine and Bugle Mountain group, respectively, indicate that small shoots of high-grade rock are present.

The Bugle Mountain group and the Fisher group prospects appear to have more potential than other prospects in the area and are contiguous. Shear zones at these prospects may be as much as 800 feet long, and attendant mineralization may be as much as 35 feet thick. Resources at these two prospects are estimated to total in the order of 400,000 tons containing from 1 to 1.8 percent copper. A much larger resource, in the order of 1 million tons, may be present if the mineralization extending into country rock is persistent along the shear zones. The grade of the material is too low for mining to be economically feasible at present.

SENATE JOINT RESOLUTION No. 23

(Introduced by Mitchell, Bertsche, Hibbard, Drake)

A Joint Resolution of the Senate and House of Representatives of Montana to the Honorable Mike Mansfield and the Honorable Lee Metcalf, Senators from the State of Montana to the Honorable Richard Shoup and the Honorable John Melcher, representatives from the State of Montana, urging that parts of the Lincoln Back Country and Scapegoat Mountain area be enjoined with the National Wilderness preservation system

Whereas, parts of the Lincoln Back Country and Scapegoat Mountain area lie within the national forest system and are in a natural wilderness condition at the present time; and

Whereas, the area is presently being heavily utilized as a natural recreation area for horseback riding, hiking, fishing, hunting, camping, photography, and observation of wildlife; and

Whereas, there is a growing population of Americans seeking high quality outdoor recreational opportunities; and

Whereas, the Lincoln Back Country and Scapegoat Mountain area contain some of the most spectacular scenic and recreational opportunities to be found in the United States; and

Whereas, these outstanding recreational areas, and the wildlife and scenic opportunities therein are of the highest value in attracting people to Montana for the enjoyment of these areas; and

Whereas, Montana is one of the few States where this type of outdoor recreation containing a complete wildlife community in its natural environment can still be enjoyed; and

Whereas, the grizzly bear, the majestic elk, the native cutthroat trout, the Rocky Mountain goat, and various other species, some of them endangered, abound in this area; and

Whereas, these areas should be preserved and protected for the enlightenment, education, and enjoyment of future generations.

Now, therefore, be it resolved by the Senate and House of Representatives of the State of Montana:

That the 42d legislative assembly of the State of Montana urges the Congress of the United States to take the appropriate action necessary to identify those parts of the Lincoln Back Country/Scapegoat areas best suited to optimum recreational purposes and include them in the National Wilderness System.

Be it further resolved, That the secretary of state is instructed to send copies of this resolution to each member of the Montana congressional delegation.

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

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 484) was passed, as follows:

S. 484

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture is hereby authorized and directed to classify as wilderness those national forest lands containing approximately 240,500 acres in the Helena National Forest in Montana, known as the Lincoln Back Country, and parts of the Lewis and Clark and Lolo National Forests specifically described as bounded by a line on the southeast boundary of the Bob Marshall Wilderness Area at Deadman Hill running southeasterly to Bench Mark, then along the ridge of Wood Creek Hogback to the top of Crown Mountain and across Welcome Pass to the midpoint of Steamboat Mountain; thence running in a more southerly direction down the ridge between Milk and Pear Creeks, across the Dearborn River and up the Continental Divide to a point above Bighorn Lake; thence along the divide and down the ridge northwest of Falls Creek, across Landers Fork to the top of Lone Mountain; thence in a southwesterly direction to Heart Lake Trail, westward to the top of Red Mountain; thence southwesterly to Arrastra Peak; thence along Daly, Iron, and Echo Mountain Peaks, and across Windy Pass to Mineral Hill; thence across the North Fork of the Blackfoot River at the Big Slide to BM 8320, northwesterly across Canyon Creek (excluding the upper Conger Creek timber stand) to the top of Canyon Peak; thence more westerly to the top of Omar Mountain, and northward along the ridge to the southern boundary of the Bob Marshall Wilderness Area on a ridge west of Danaher Pass, and thence along the southern boundary of the Bob Marshall Wilderness Area to the point of beginning. The Secretary of Agriculture shall promptly after such classification transmit to the Congress a map and legal description of the wilderness area and such description shall have the same force and effect as if set forth in this Act. Upon its classification, such wilderness area shall be subject to the same provisions and rules as those designated as wilderness areas by the Wilderness Act of September 3, 1964 (78 Stat. 890).

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

THE PRESIDENT'S YOUTH OPPORTUNITY COUNCIL

Mr. HUMPHREY. Mr. President, last week, on Thursday, April 1, I took the time of the Senate, at the conclusion of the session, to speak about the order from the White House to abolish the President's Youth Opportunity Council. I said at that time that I intended to speak of this from time to time until the administration came to its senses and reestablished this vital unit of coordination of employment, educational, and recreational opportunities for America's young people.

I am hoping that the President of the United States will take a look at what I am sure was basically a bureaucratic decision in the process of reorganization of Federal agencies, and reverse that decision of his Office of Management and Budget, and that he will restore an effective instrumentality for coordinating the programs of the Federal Government, in cooperation with State and local government and private resources, for the employment of young Americans, particularly the poor and needy youth in this country.

Over the weekend, new figures were released which tell us of the mounting tide of unemployment among teenagers, particularly among minority groups—blacks, Indians, Mexican Americans—yes, and among many of our white youth.

The announcement, in the letters of rural and urban, of low-income families. March 23 and 24 to the staff members of the President's Youth Opportunity Council, that this Council would be abolished and that its activities would be dispersed among several agencies of the Federal Establishment, is a tragedy; and I think it can result in untold misery and trouble not only for young people but for the Nation as well. We have no program in the Federal establishment for concentrating on the needs of our young people. It is one of the shortcomings of our Government.

But the Presidential office, by Executive order, in 1967 did establish a co-

ordinating instrumentality known as a council. That council has been effective, and it can be effective if it is given leadership and if it is given Presidential support and Vice Presidential leadership. That is what it requires. Without it, nothing will happen. With the backing of the President, with the careful attention of the Vice President, as the representative of the President, the President's Youth Opportunity Council can do things that need to be done.

I have in hand an official report of the President's Youth Opportunity Council known as "A History of the President's Council on Youth Opportunity" for the years 1967, 1968, and 1969. This report tells of the efforts that were made to employ needy youth, to extend to many of our disadvantaged young people some of the opportunities that others in more fortunate circumstances enjoy.

The year of 1968 represented a high point of activity for the President's Council on Youth Opportunity. We had, for example, in that year a National Job Fair proposal, which called for business hiring of disadvantaged, needy, poor young people. These Job Fairs were locally directed, and they were based on individual community needs. They were sponsored by American business. The chairman was Henry Ford II.

Later, the National Alliance of Businessmen undertook the responsibility for the Job Fair program for reaching the goal of hiring 200,000 disadvantaged teenagers, young men and women, in all parts of our country.

We have at hand a specific record that should give us some encouragement as to what can be done.

In the summer of 1968, approximately 871,000 specifically identifiable poor youth were hired as a result of Federal and National Alliance of Businessmen efforts, as compared with 574,000 in 1967. That figure does not include what was done at the State and local level.

The nonwhite youth unemployment rate in 1968, in the summer, when the rate generally goes up because they are out of school, dropped from 28 percent to 22 percent. Today, that rate is up to 42 percent nonwhite, meaning in the main, black youth unemployed, in the poor areas of the major cities of the United States.

In 1968, the Federal Government, through its regional offices, directly hired 78,000 poor youth as compared with 43,000 in 1967. The most dramatic increase in 1968 was the hiring of 2,247 Indian youth as compared with 427 in 1967.

In 50 major cities, there were day camps for children between the ages of 6 and 10. In 1968, there were 431,000 youngsters in those day camps, compared with 265,000 in 1967.

There were also lesser activities, with fewer numbers involved, but indicative of what was undertaken. For example, the Boy Scouts of America provided free resident camps for 50,000 poor, non-Scout youth in the summer of 1968, doubling what they did the year before.

Mr. President, we had 127 sports clinics spread across the country which provided sports instruction for 840,000 young men and women in 43 cities. These were conducted by professional athletes who were enlisted in the Vice President's summer youth sports and recreation program.

I met with these athletes to ask their help and their help came at no cost to the Federal Government.

We also developed a photographic skill program in which over 5,000 youngsters were involved in what we called "youth photography."

We had free airplane rides, and tickets were made available by the National Association of Theater Owners. We had cerative workshops for over 40,000 young people in 16 cities supported with matching funds from the National Endowment for the Arts. Fifty major cities of the United States were organized through public and private efforts to conduct a massive and intensive youth employment and recreation program.

Mr. President, these facts clearly demonstrate that the job can and must be done.

I submit that the present administration is abandoning these needy young people—teenagers and youngsters below the teenage level—to the streets. We will pay and pay and pay in lost lives, in violence, disorder, crime, sickness, sadness and despair.

I cannot understand why a government that says it cares about people, forgets the youngsters.

Mr. President, I do not contend that the President's Council on Youth Opportunity is the last word in governmental organization. As a matter of fact, it was improvised. But it did develop a background of experience. It brought together many services in this country. For example, the National Guard, instead of standing guard on campuses with loaded guns, has provided recreational activities and the use of its National Guard facilities for thousands of young men and women. Camping opportunities were opened up for 2,000 boys and girls from the Watts area of Los Angeles in the Army's Camp Roberts; 1,300 disadvantaged boys and girls in the Arkansas National Guard's Camp Robinson; 1,600 inter city boys and girls in the Boy Scouts' Camp Roosevelt near Washington, D.C.

These are just a few of the things that were done.

I was able to get the cooperation of General Wilson of the National Guard to provide trucks, cots, blankets, camping equipment, as well as kitchen equipment in vast amounts, to help young people, not to police them.

Mr. President, I realize that on the agenda of the Government's program the President's Council on Youth Opportunity does not seem to stand at the head of the list. I also realize that the Senate may feel constrained to deal in subject matters that seem to be more significant and profound than a job, or a camping experience, or an educational opportunity for a disadvantaged child. But, Mr. President, if we abandon the efforts we began, we will rue the day.

What is more, it is morally wrong, economically wrong, socially wrong—it is foolish, stupid, and indefensible.

Mr. President, I want to assure the administration that I am gathering a substantial amount of facts and material around the country as to the needs of our young people.

If anyone believes that the Office of Management and Budget, with all of its expertise, can run a youth opportunity program, I will welcome their explanation of this new-found sense of social commitment and understanding on the part of that important agency of the executive branch.

I have respect for the Office of Management and Budget. It has a job to do. But, it is not an action agency. Its people are not oriented to this kind of program. This kind of program requires commitment. One really has to care about youngsters to make the program work.

The city of Washington, D.C., has thousands of youngsters on the streets every day and every night. The President's Council on Youth Opportunity opened camps and playgrounds in the city and they illuminated them. It was able to get playground instructors, many of them hired by private business, all done as a gift to the youth of this community, right here in the District of Columbia.

Instead of all this talk about how much crime there is—and it is serious—and how much trouble there is in this city—and we have plenty of it—I think it is about time that we tried to do something about it.

One of the ways to do something about it is to give young men and women something to do.

The neighborhood youth program is so vital and so much needed. All one needs to do is drive through Rock Creek Park in Washington, D.C. There is enough work in that park for 5,000 young men for the next 5 years. But we prefer to let them stand on street corners, apparently, or have them receive welfare or food stamps, rather than a job so that they can make something of their lives and learn something about the discipline of work.

Mr. President, if the administration cannot find anything for these young people to do, I can take them down into southwest Washington and show them garbage that has not been picked up, streets that have not been cleaned, lots owned by the Government of the United States under some urban renewal programs or land reclamation programs that are a disgrace to the Government of the United States—filled with broken bottles, debris, and refuse.

We say that we have to slow down the youth program. But young men of the ages of 15, 16, 17, and 18 need to be at work, Mr. President. And there ought to be a special program for them. And that program ought to have the direction of competent leadership.

I am of the opinion that one of the ways the Government of the United States can show that it has some understanding of the needs of young people is to really get busy and work with them and give them attention.

Mr. President, I intend to be on the Senate floor speaking on this critical need practically every day until something is done. The mayors of the cities

in America are asking for help. I met with county commissioners today from all over the United States. They are asking for help.

The major cities of the United States have youth opportunity councils. They are expecting some coordination from Washington. That is what the Federal Government is supposed to do, give a helping hand. Instead of that, it has sawed off the arm of assistance to the needy youth of this country. Not a dime is in the Federal budget for the program of a youth opportunity council.

Mr. President, I repeat that I expect the administration to present to the Congress a supplemental budget. I think that will be part of the test as to whether or not they care. I hope it will be enough to do the job.

I want to be sure that when the figures are presented as to how many of the needy youth they will hire, that these figures will not only spell out numbers of young people but also the hours that they will work each week.

Now that the President is engaged in reorganizing the instruments of government, I ask him to put new strength in the Youth Council rather than dismantle it. I ask him to put some funds at their disposal rather than to starve them. I ask him to direct his Vice President to run it and be in charge. I ask that the staff of that Council be brought back together and that a program be launched at once—a program that is commensurate to the problem.

If the Government officials are unaware of the scope of the youth unemployed, might I suggest that they write to each of the 50 Governors or to the mayors of the top 100 cities, and ask what the needs are.

I think every citizen in this country is interested in seeing to it that young Americans have something to do except get in trouble. And I believe that all this talk about human rights, civil rights, and a fair deal for everybody is a lot of talk, a lot of plain, old, ordinary hypocritical talk unless we put something behind the program—funds, resources, and people.

So, we shall wait, but not for long. Maybe we will have to legislate, and that takes time.

I would hope that it could be done without that. I shall await the response of the administration to the letter submitted by the Senator from New York (Senator JAVITS) under date of February 23. I realize that a letter can be lost sometimes, but I doubt that a letter between the Senate of the United States and the Vice President's office gets lost in the mail.

I would hope there would be a response to that communication other than just an announcement to the press. And, by the way, it was really not an official announcement, because it was an active, observing reporter who was able to get the information that the program of the Youth Council had been discontinued.

Mr. GRIFFIN. Mr. President, I have listened with interest to the remarks of the distinguished junior Senator from Minnesota today, the distinguished former Vice President. I am also aware, having read the RECORD, of some of his remarks made on last Thursday.

I regret that he saw fit last Thursday to characterize the discontinuance of the President's Council on Youth Opportunities and the transfer of its functions to the Domestic Council and the Office of Management and Budget as "a cruel, low blow to the youth of this country."

I regret that he has seen fit today to speak in terms of "abandoning" the youth of America.

I regret that he has further characterized the action of the administration as "foolish, stupid, and indefensible."

I call attention to the fact that the action taken does not result in the discontinuance of one single youth program. Nor does it reduce the size or scope of any single youth program. Nor does the action affect the National Alliance of Businessmen's summer youth employment program.

Mr. President, the action to which the junior Senator from Minnesota refers does not affect the Federal Government's summer program of hiring one disadvantaged youth for every 40 Federal employees.

Nor does it affect the State and local governments' youth opportunities programs.

An the action taken does not affect the question whether additional funds should be made available for summer youth opportunity programs.

Simply put, what has been done has been a reorganization—responsibilities and activities formerly vested in a President's Council on Youth Opportunity have been transferred. This was done to conform with certain organizational changes that have heretofore been made in the executive branch of the Government. The change was necessary in order to assure that responsibilities and activities on behalf of youth opportunities would be afforded the highest priority within the executive branch.

Let us examine the Executive order to which the junior Senator from Minnesota has referred several times—the Executive order which created the President's Council on Youth Opportunity in the first place. By that order, the Council was made responsible for five basic functions:

First, to assure effective program planning,

Second, to strengthen the coordination of youth opportunity programs.

Third, to evaluate the effectiveness of these programs,

Fourth, to encourage the private and public sector to enhance youth opportunity, and finally,

Fifth, to report progress to the President.

Mr. President, in this regard it is important to examine the responsibilities which were assigned last year to the Domestic Council and to the Office of Management and Budget. With the single exception of the role of liaison, the Domestic Council and the Office of Management and Budget were assigned the very functions enumerated for all domestic programs, including the youth opportunities program.

Mr. President, it is important that youth opportunity programs and policies be dealt with at the highest level of Government. To exclude them as a prime concern of the Domestic Council and the Office of Management and Budget would be unthinkable.

Unfortunately, almost every Federal activity today suffers from duplication, overlapping, and excessive governmental bureaucracy. We can ill afford such confusion anywhere, least of all in our programs for disadvantaged youth. Yet, that is what we have had and what we would continue to have if this duplication had not been resolved.

Through his special revenue sharing programs and Government reorganization, President Nixon is attempting to make comparable improvements across the board. Frankly, I am thankful we do not have to wait for legislation to be enacted by Congress to assure that youth opportunity programs will have the recognition and attention they deserve at the highest level of Government.

With respect to liaison with State and local governments, it would be well to take a look at the Youth Coordinators program as it operates today.

As the former Vice President, the junior Senator from Minnesota, will recall, the principal activity of the Council, to encourage State and local governments to enhance opportunities for youth, is achieved through the Youth Coordinators Program. This program provides funds to State and local governments to enable the Governor and the mayor to engage appropriate staff personnel. Such personnel are to assist the mayors and Governors in coordinating and energizing the private and public sector in the area of youth opportunity. These youth coordinators are to be the principal link for youth opportunity matters between the Federal Government and the Governors and mayors. When President Nixon assumed office this program was in effect in the 50 largest cities of the country and Gary, Ind., and San Juan, Puerto Rico. Upon assuming his responsibility as chairman of the Youth Council, Vice President AGNEW took steps to expand the Youth Coordinators Program in order to include State governments and entire metropolitan areas. The Vice President's action was based on the fact that many disadvantaged youth live in rural America as well in the metropolitan areas. These young people need help as well as those of the 50 largest cities. Additionally, Vice President AGNEW sought to secure the resources and the involvement of the States and of the surburban communities.

As a result of his effort, youth coordinators programs were established in 45 States where none had been before; and rather than grants to 52 cities, last year grants were made to 67 local jurisdictions which covered approximately 120 local governments, including for the first time rural areas. These improvements and expansions in the youth opportunity program will be continued.

Last year Vice President Agnew asked the Office of Management and Budget to evaluate the youth coordinators program and to make recommendations as to its future. The Office of Management

and Budget recommended that the administration of the program be transferred from the Youth Council to the Department of Labor. Since the youth coordinators program had been initiated, the Department of Labor through its CAMPS program had started making grants to Governors and mayors to assist them in coordinating manpower programs. In that nothing is more important to these youth programs than the employment opportunity aspect, it was felt desirable to provide closest possible coordination between the youth coordinators and the labor coordinating program. The transfer has been very smoothly and effectively accomplished and we feel to the benefit of the youth it is designed to serve. The remaining activities of the Council are being transferred to the Office of Student Affairs in the Department of Health, Education, and Welfare.

It should be noted that the transfer of the Youth Coordinators Program to the Department of Labor and the discontinuation of the President's Council on Youth Opportunity were done in full consultation with the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties and the National Governors' Conference. None of these groups nor the governments they represent have protested this action nor has anyone else other than the former chairman of the Council. The fact that the Council would be discontinued was set forth in the President's budget submitted to Congress on January 29. Although the Youth Council could have continued until June 30, 1971, it was felt desirable that those persons and agencies involved should fully assume their responsibilities before summer months; a time which we all know offer particular problems as well as opportunities for disadvantaged youth. As an example, at a recent meeting with the President and a number of mayors the question of additional funding for summer youth programs was raised. Deputy Director of the Office of Management and Budget, Mr. Caspar Weinberger, advised the mayors that this matter was currently under active consideration by OMB and the Domestic Council and that a decision hopefully could be made by the middle of April.

Last December Vice President AGNEW requested the Domestic Council to consider the policy question of summer recreation funds for disadvantaged youth. This issue is currently being raised by the mayors, and the Domestic Council study on that request is a part of this review.

I think it is appropriate to consider other charges made by the junior Senator from Minnesota in that speech last Thursday. He said discontinuation of the President's Council on Youth Opportunity was in fact telling mayors that we are "withdrawing." The distinguished junior Senator from Minnesota did not say withdrawing from what; however, if he meant withdrawing from youth programs, such a statement is patently incorrect.

He further said that if we abandoned the youth opportunity programs and the Youth Council there would be unbelievable trouble. I would agree with him if we were in fact abandoning youth opportunity programs. But I must ask: What does discontinuing one Government body and transferring its functions and activities to another have to do with abandoning youth opportunity programs?

The distinguished junior Senator from Minnesota may be of the opinion that the administration of the program would be less effective under the reorganization—although others disagree with him—but certainly the impression should not be left that this administration is abandoning youth opportunity programs. Indeed, youth opportunity programs in fact have been expanded under the Nixon-Agnew administration.

Mr. President to assert or to even suggest that the elimination of one Government agency and the elimination of duplication and overlapping is equivalent to discontinuation of the Federal youth opportunity programs is very unfortunate. Such inaccurate statements or implications serve only to inflame what is already a very difficult situation.

Mr. President, Teddy Roosevelt stated there is nothing more immortal than a Government agency. Frankly, I am pleased to see occasionally that his point is disproved, especially when it will result in better opportunities for the Nation's disadvantaged youth.

Mr. HUMPHREY. Mr. President, I have listened with keen interest, and always with great respect, to the Senator from Michigan. I seek to make a mild rejoinder.

I am impressed with what the Senator says about the youth opportunity program not being abolished, that it is just being placed in the Domestic Council. It will be a stepchild so far down the list of programs of the Domestic Council that it will take a seeing-eye dog and a Geiger counter to find it.

The Domestic Council coordinates all of the domestic programs of this Government. That is its purpose, its stated purpose. As to whether it does or not, only time will be able to prove or demonstrate.

One of the reasons for the Youth Council was to focus attention upon a particular problem that is separate and distinct from other problems that relate to employment.

A President's Youth Opportunity Council, or Council on Youth Opportunity, was established because the functions relating to youth had been submerged or lost or given inadequate emphasis or attention under the existing agencies of Government.

The Domestic Council is a sort of gathering agency of all of the departments and agencies of Government related to our domestic concerns. Indeed, there is no reason at all why the President's Council on Youth Opportunity could not be represented in such a council. But for the President's Youth Opportunity Council to lose its identity is to lose the sense of direction that this program needs.

I must also point out that the youth opportunity program was not related only to 50 large cities. I ought to know. I conducted that program. The chronology of its activities will relate and indicate that the Chairman of the President's Council on Youth Opportunity appeared before Governors, legislators, county officials—the National Association of County Officials—the U.S. Conference of Mayors, the National League of Cities, the National Alliance of Businessmen, asking their cooperation and getting it in Governors' offices, in county offices, and in municipal offices.

I do not deny that the administration undoubtedly will have some funds for youth programs. I simply say that it will be difficult for the mayors and the local officials to find the center of responsibility.

Everybody's business is nobody's business, and the problem of youth employment is one that is so intense and is so critical that I submit it needs more than just ordinary attention. And in all candor and fairness to the distinguished Senator from Michigan, who knows government and knows it well, he knows and I know that the Office of Management and Budget cannot run an action program. The Office of Management and Budget is an analytical office, an evaluation office. It is not an action office.

I am not saying it is not vital. I am not saying it is not important or competent. I think it is all of that. But it is not an action agency.

Furthermore, the Domestic Council is not an action agency. The Domestic Council is a coordinating agency. The President's Council on Youth Opportunity was the action agency. It brought to bear the power of the Presidency, the authority of Government. It used the prestige of the Presidency and the White House to accomplish an aim and a goal, and it did something.

I find it difficult to imagine the Director of the Budget going out and getting camps opened for young people, or to see the Director of the Budget or a member of the Domestic Council working with the National Guard to get their equipment and to sponsor a summer camp in one of our several States. No; what this council needs is direction and organization.

Let me cite the agencies that were involved in the President's Council on Youth Opportunity. The membership included the Secretaries of Defense, Interior, Agriculture, Commerce, Labor, Health, Education, and Welfare, Housing and Urban Development, the Attorney General, the Chairman of the Civil Service Commission, the Director of the Office of Economic Opportunity, and the Vice President, serving as chairman of the Council. That was in the Executive order.

One of the largest contributors to the national youth program was the Department of Defense. The budget that was finally brought together out of existing budgets was $680 million, and a goodly amount of that came from the Department of Defense for the purpose of helping young men and women—getting youngsters jobs in defense industries, and employing unused military facilities for summer camps.

So I am not impressed by the rejoinder

by the Senator from Michigan. I realize the Government is going through reorganization, but one thing we have said that we need in this country is identity. People are worried that they may lose their identity in this mass society of ours. I think one of the things needed in Government is identity—identity as to where responsibility rests, and who is supposed to do what, and to hold that party accountable.

There is no way a youth opportunity program can be held accountable when it is consumed, surrounded, and absorbed by the Domestic Council.

I shall have a further report as to the activities of the council. I realize that the budget for fiscal 1972 did not have any funds in it for the Youth Council.

I hope that this discussion on the Senate floor will precipitate a reaction on the part of the Administration to send up a supplemental request that should receive prompt attention if it comes.

May I say I have been talking with some mayors. I know a lot of them. I was one, myself. I meet regularly with mayors and county officials. I talked with some this morning. They are asking about the program of the President's Council on what the Administration says. The mayors have been having their difficulties getting an audience. Finally they got one with the President. They have been having difficulties with funds locked up by the administration—$11.145 billion already appropriated by the Congress of the United States for fiscal 1971. $1.324 billion for programs of direct assistance to our cities were impounded, refused to be released, for fiscal 1971. I had reason to believe that under those circumstances mayors and local officials might wonder how many funds are going to be released for youth.

We have a "full employment" budget for 1972. We have an unemployment budget for the balance of fiscal 1971. I wonder what it is that makes it so important that up until June 30, 1971, millions of dollars of the funds appropriated by the Ninety-First Congress should go unexpended, unallocated, unused, locked up. But on July 1st, 1971, a brand new day is supposed to dawn, and from that day on it is the full employment budget.

It just does not make much sense. I would suggest that we need less reorganization and more action. Let us make what we have work. Reorganization is no substitute for policy or program. Reshuffling programs is no substitute for money and purposes. Abolishing something that works is no substitute for doing the job that needs to be done.

Mr. GRIFFIN assumed the chair as Presiding Officer.

Mr. BROCK. Mr. President, I want to congratulate the Senator from Michigan for bringing this matter into some perspective and I would like to share my own thinking on this matter, in that the charges made by the junior Senator from Minnesota do warrant objective response.

I would like to point out, as the Senator from Michigan said, that to my knowledge, not one single program—not one—in the youth area has been reduced in funds, impact, or thrust. As a matter of fact, in this administration there has been a substantially increased effort to involve American youth within the system of this Government of ours.

I would point out that, in my experience gained while visiting more than 100 campuses over the last 8 to 10 years and through my work in the field of disadvantaged youth, what those young people who are not on campuses, but who are trying to make it in a very tough economic society, need more than somebody taking care of them is for somebody listening to them, to give them a voice, an opportunity to be involved in a meaningful way and a constructive role in this society of ours.

I think one of our fundamental problems is that too little attention has been paid to reorganization and too much attention has been paid to political lipservice translated into programs passed by an establishment that seemed more intent on political self-perpetuation than on solving the basic problem.

We have over 500 programs in the Federal Government with impact on American young people. The previous administration's answer to bringing those programs under one roof was totally ineffective Youth Opportunity Council. It provided no authority whatsoever, to resolve the basic conflicts that exist today between youth programs in various agencies of the Government. There is no device in the Federal Government today for evaluating the impact of youth programs on those human beings. Does the Senator want to say that it is just talk about reorganization? The fact of the matter is that the Government is a large part of the problem. When there are 500 different youth programs, which one does a young person go to? Who listens? Where do they get a response? Who is really doing something about the problems? Who is providing an oversight, in terms of the new legislation, to see what impact each programs is going to have on young people?

The most desperate need we have right now is to reorganize this Federal structure so that it becomes responsive again—not a self-perpetuating, self-regenerating bureaucracy. I think if there is one compelling need, it is not just to take this and other elements and put them into the domestic council, but it is to bring all of the areas affecting young people within the oversight of an executive, to make those programs move together, to complement each other, and not to compete with each other as they often do today. These programs must work together to solve the problems that afflict the young people of our society, and give them a voice in making change.

Mr. President, you do not do it simply with more money. You do not do it by patting America's young people on the head. You do not do it by creating a Youth Opportunity Council that has no thrust, no effect, no authority. You do it by making this Government respond to young people as human beings.

I think it is important that we take the oversight responsibility. In the Senate, we must take a look at all of these programs see what else we can do to quit packing political layer upon political layer, and reduce the size of this bureaucracy, so that a person can find out where to go to get an answer. We must not just layer it up again and add more jobs, but we must add the kind of quality needed to provide opportunity where the people are.

I compliment the Senator from Michigan for his comments, and I join in those sentiments.

Mr. HUMPHREY. Mr. President, this is an enjoyable experience for us, and I think it may be worth the time we give it. Today we are not really interrupting or interfering with the other business of the Senate. I appreciate the efforts of my friends on the other side as they send in advocates in platoon strength in behalf of the administration.

I wish to comment just briefly on the remarks of my good friend from Tennessee. When he mentioned that there are some 500 different programs affecting our young people, I gather he meant by that, programs within the governmental structure. I accept his figure.

He asks, "Who listens? Who analyzes? Where can you go for answers?"

Mr. President, that is exactly why we need a specialized agency called the Youth Opportunity Council. May I say that this specialized agency prepared a full manual on all of these programs for all local youth coordinators in 1968. It can be brought up to date for 1969 and 1970. It was prepared and distributed to more than 5,000 local officials; and on January 29–31, 1968, a conference was held in Washington that was attended by 800 Federal, State, and local voluntary organization officials.

Besides that, field trips were made to 50 of the larger cities between the months of February and August by staff representatives of the President's council, to discuss these programs.

Moreover, in my capacity as liaison between the White House and local governments, in which I served for 4 years, we prepared for the first time a total manual, with cross indexes, for local government officials on Federal programs, what appropriation there was, how to apply for them, and where to get help. Forty-four separate meetings were held in which Cabinet officers and others were present to work with these local officials.

My good friend from Tennessee points out that the Youth Opportunity Council had no authority. I would respectfully point out that it had the authority of the President of the United States, under the Executive order. Now the Domestic Council was also created under Executive order. The only difference is that the Domestic Council is like the old lady who lived in the shoe; she had so many children she did not know what to do. It takes care of everything on the domestic side.

The Domestic Council is the broad umbrella under which any of the domestic departments and agencies serve—a splendid idea, one that has been endorsed by many. I compliment the administration for effectuating it.

But, Mr. President, when we are talking about this particular program, it is not just a matter of communication between the administration and the college campus youth. I am not talking about that. That is another problem.

I am talking about the ghetto youth, the high school dropout, the grade school dropout. I am talking about the kid on the street corner. I am talking about a boy who never has seen a college, and most likely spent less than a year in high school. I am talking about young Americans by the thousands who need help.

Some Senators say, "Well, name me any program that has been abolished." I keep hearing that all the time. But I will name some programs that have been underfed, and that is the subject of the mayors' meeting at the White House, mentioned in my earlier remarks. That is what is going on today, with $200 million worth of funds appropriated by this Congress on a subject far removed from youth employment; namely, sewers and water, impounded and unreleased. People understand that.

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

Mr. HUMPHREY. I yield.

Mr. BROCK. Can the Senator name me one that was not funded under the youth program?

Mr. HUMPHREY. The Senator made the charge. He said they were all funded well, and none were abolished, and none going without funds.

I ask the Senator, have the planning funds for youth opportunity for fiscal 1972 been released?

Mr. BROCK. I do not know about that.

Mr. HUMPHREY. I can tell you. No. Is there any money in the budget for fiscal 1972 for the youth opportunity program?

Mr. BROCK. Under the Senator's own argument, the Youth Council has been abolished, and its function transferred to the domestic council, which, of course, has adequate funds for budgeting. So the function will not be reduced. The services will not be reduced. The programs will not be reduced. In not one single area can the Senator, as far as I know, cite me an example where the funding level is at or below the level of 2 years ago.

Mr. HUMPHREY. The number of allowable work hours projected for the Neighborhood Youth Corps has been reduced from the year previously, and the length of the program itself is being cut back. But more importantly, I say most respectfully to the Senator, there is no money being programed yet. He says it is going to happen. I hope so. I was born in South Dakota. I always lived in hopes of a good crop, but many times it did not rain.

But I am also saying there must be solid authority to coordinate these programs. I say there is as much or more authority to coordinate programs under the President's Council on Youth Opportunity than there is in the domestic council, surely as much as there is in the Office of Management and Budget.

The Senator wants this coordination and I want it. We want to have a place where a mayor of a Governor can come and get some assistance, some sense, and cooperation, and we want to be able to have someone here at the Washington level who has the prime responsibility to get this job done.

I am advised that there have been, over the last 2 years, four meetings, and possibly five of the President's Council on Youth Opportunity. The chairman of that council—namely, the Vice President attended one. I submit you cannot have much of a program under that kind of a schedule.

And when I hear about evaluations, may I say that the Youth Opportunity Council had expert evaluations, too, and they were done on a consistent basis. We did not build bureaucracy. As a matter of fact, there were never over 25 employees in the first year; and I will guarantee you that when you subdivide these responsibilities in the proposed reorganization of the Youth Opportunity Council's functions, you will have more employees than that.

Mr. BROCK. If the Senator will yield at that point——

Mr. HUMPHREY. I will, indeed.

Mr. BROCK. I am delighted there were evaluations. The questions is, What happened to the evaluations? What was accomplished as a result? Is it not illustrative of the problem that the Senator from Minnesota would cite as an accomplishment of his administration that they produced with a cross-index list of all Federal programs?

Mr. HUMPHREY. That was only one accomplishment—a small part of the total picture.

Mr. BROCK. It was an enormous accomplishment considering the number of programs in existence. There has been inadequate coordination. It is not just a matter of young people, but of making these programs work for all people. Of course, young people need employment.

Mr. HUMPHREY. There is an enormous unemployment problem, especially with young blacks.

Mr. BROCK. All efforts should be coordinated so that everything this Government does, works to the advantage of our young people. The fact is that there has been no coordination nor has there been an evaluation to achieve a concentration of Federal efforts on the problem area. That is why the need for reorganization is absolutely desperate.

I cannot understand the argument that the simple transfering of the functions of the youth agency into the domestic council would be "disastrous." I think it strengthens it, not weakens it, because it makes it a part of the total effort of the Government to solve the enormous problem affecting people who cannot get jobs and who have little opportunity for wide range of reasons.

Mr. HUMPHREY. The Domestic Council has had coordinating jurisdiction over the work of the President's Youth Opportunity Council ever since it has been established. The Vice President is a member of the Domestic Council. He is Chairman of the Youth Opportunity Council, by Executive order. There is no lack of knowing what is going on. The difference is in whether you are going to analyze and reorganize or whether you are going to lead.

I submit to the Senator that the problem here is leadership. I also submit that when you can employ needy youth in one summer to the extent of 850,000 to 900,000, and 500,000 the summer before, and very few the summer before that, there are some results. When you can get, for example, even in the recreation field, several hundred top people in athletics in this country, because there is a place of leadership, to go to work and help youngsters, it is worthwhile.

The Senator wants to help young people, and so do I. I say that they are not helped by burying this program in the established agencies in Government and in the Office of Management and Budget. I say that attention has to be focused upon it, and I think that one of the reasons why this program is being dismantled is that it has had no one in charge of it. The man who is supposed to be in charge of it has been there very few times.

Mr. BROCK. Does the Senator deny that more youth will be employed under this administration than under the previous administration?

Mr. HUMPHREY. I certainly do, unless this administration comes up with something far beyond what it has now. As a matter of fact, the one hallmark of this administration is not employment but unemployment—adult and youth.

Would the Senator like to comment on that?

Mr. BROCK. When I came into politics, the unemployment rate was 8½ percent under a previous administration, and I am delighted to see it is a considerable rate below that now, and I think we are continuing to move in the right direction.

I should also like to point out that in our youth program we have found more jobs for more young people. No matter how one refers to the leadership of this program, we have found more jobs for young people in the last 2 years than were found in the previous 4 years put together.

Mr. HUMPHREY. That is why 42 percent of the young blacks in the poor neighborhoods of our major cities of the United States are without jobs. That is why youth unemployment has gone up from 18 to 28 percent. Let us be honest. Today, 6 percent of the work force is unemployed; 28 percent of the white youth are unemployed; 42 percent of the black youth in the poor urban areas are unemployed—almost double what it was a year ago. And the Senator is going to tell me that they have more jobs for young people than ever before. That must be the new math of the Nixon administration.

Mr. BROCK. We are not talking about math. We are talking about people.

SENATE ACHIEVEMENTS IN THE FIRST SESSION OF THE 92D CONGRESS

Mr. MANSFIELD. Mr. President, as the Eastertime recess nears, it seems to me this might be an appropriate time to note for the record what the Senate has been doing since the 92d Congress convened on January 21.

At the outset, let me state that it seems to me essential that the Congress be adaptable in its actions in order to remain an effective institution of govern-

ment and thereby fulfill its only purpose which is to serve the American people.

One of the questions the people of the United States have been asking in recent years—and rightly so—is whether the structure and procedures of Congress are attuned to the times. Members of Congress have searched diligently for an answer to this question during this session. Considerable time and thought have been devoted to improving the functioning of the institution of government of which they are a part.

During the last Congress, it will be recalled, a major revision of the Legislative Reorganization Act was enacted into law. The impact has been evident in the functioning of Congress since the first session began. Moreover, in the past few months the Congress has been trying to put into effect additional reforms. The Senate, for example, deliberated at length on a proposed revision of rule XXII. The proposed revision would have provided for bringing Senate debate to a close by a vote of three-fifths of those Senators present and voting rather than by the existing requirement of two-thirds. The change is one which I have favored for a number of years. While I was personally disappointed in the final outcome in the issue, the proposal showed a marked growth in acceptance and the impact of the month and a half which was devoted to its consideration, I venture to suggest, will serve to increase the concern with this question in the future.

Also, in the area of Senate reform, the joint leadership endorsed and put into practice a number of procedural innovations suggested by a bipartisan group consisting of Senators CRANSTON, HUGHES, SAXBE, and SCHWEIKER. Both the Democrats and Republicans in the Senate have also taken steps to review the system of seniority. And the Senate leadership on both sides of the aisle is inclined to continue to listen to and examine any additional proposals which might improve the functioning of the Senate.

There is underway in the Senate at this time an extensive consideration of campaign reform. Later in the year I am confident there will be devised—especially with the help and guidance of the distinguished Senator from Rhode Island (Mr. PASTORE)—a workable measure which will deal honestly with the issues of campaign financing and spending and accountability of contributions to political campaigns.

In recent weeks the Congress has considered whether or not the civil supersonic transport development should continue to be funded by the Government. In my opinion, the decision in the negative on the SST was an expression by Congress of its independent judgment that the proposed venture did not warrant the continuance of the immense expenditure of the public's money which it entailed. However, this Congress, also acting independently, initiated and with the House provided for a 10-percent across-the-board increase in social security benefits which will extend to 26 million Americans. The Senate also joined with the House in a proposed amendment to the Constitution to lower the voting age to 18 in all elections. Last year Congress acted, by the statutory route, to insure that at the age of 18, a citizen of the United States could vote in Federal elections.

On March 10, by a vote of 94 to 0, the Senate overwhelmingly started the constitutional amendment on its way to the legislatures of the States. Hopefully, the requisite number of States will approve the amendment in time to make the 18-, 19-, and 20-year-olds' right to vote a reality in all the elections in 1972.

This session the Senate has also initiated and passed a bill extending for 4 years the Appalachian regional development program and carrying forward for 1 year the Public Works and Economic Development Act. Last Thursday the Senate passed an Emergency Employment Act which focuses on the crisis of high unemployment the Nation is experiencing as a result of the recession and tries to do something to alleviate its hardships, as called for in the initial resolution of the majority policy committee for this Congress.

A proposal calling for the establishment of a rural telephone bank has been enacted into law, and other legislation in the agricultural field has been approved by the Senate. A bill dealing with the ceiling on the public debt has become a public law. The Interest Equalization Act has been extended for an additional 2 years. Legislation calling for the creation of a Joint Congressional Committee on the Environment the Senate has strongly endorsed. Approval has been given to over 6,000 nominations and to three treaties reaching the Executive Calendar. The Senate has acted upon a number of other measures as well, including, if I may make a highly personal reference, two bills in which Montana is especially interested. Today the Senate concluded action on a measure extending the life of the Export-Import Bank for 3 years and containing other provisions relating to the operations of the Bank.

As a practical matter, the Senate's calendars—Executive and Legislative—are clear at this point and the committees are hard at work engaged in the processing of other legislation.

In my opinion, thus far this session the Senate has dealt quietly but effectively with a substantial body of highly significant work. In this connection, I ask unanimous consent, Mr. President, that there be printed in the RECORD at the conclusion of my remarks a summary of major legislation approved by the Senate through today.

It is a source of gratification to the leadership that the Senate has been consistently able to keep its calendar clear by taking prompt action on measures reported by its committees. It would not have been possible to achieve this result, of course, without the invaluable assistance the Democratic leadership has received from the distinguished Republican leader (Mr. SCOTT) and, indeed, the outstanding degree of cooperation the leadership has received from Members of the Senate of both parties.

In conclusion, I would note that the committees are currently actively at work on such matters as extension of the Military Selective Service Act, military pay, military procurement, cost-of-living stabilization, maritime authorizations, consumer legislation, war power hearings, executive branch reorganization, Alaska native claims legislation, authorizations for the Atomic Energy Commission and the Space Administration, higher education, economic opportunity programs, employment conditions for prevailing wage employees, environmental legislation, and appropriations bills. These matters and many others will be taken up by the Senate in the coming months.

I ask unanimous consent to have printed in the RECORD a résumé of Senate legislative activity.

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

SENATE LEGISLATIVE ACTIVITY: 92D CONGRESS, FIRST SESSION

(By Senate Democratic Policy Committee)

Through April 2, 1971:

Days in session	42
Hours in session	200:05
Total measures passed	76
Public Laws	7
Treaties	3
Confirmations	6,468

Symbols: P/H—Passed House; P/S—Passed Senate.

Following is a brief summary of major Senate activity.

AGRICULTURE

Burley tobacco: Extending the time for proclamation of marketing quotas for burley tobacco for the 3 marketing years beginning October 1, 1971. Public Law 92–1.

Burley Tobacco—Poundage Quotas: Provided for poundage quotas, without acreage allotments, for burley tobacco; provided for a referendum of burley tobacco growers to determine whether they favor or oppose the establishment of farm marketing quotas on a poundage basis for the next 3 crop years; increased to 15,000 pounds the amount of quotas a farmer may lease; provided that farm quotas cannot be reduced more than 5 percent in any year; prevented allotments of ½ acre or less from being cut more than 2½ percent in the years 1972 and 1973. S. 789. Public Law 92–10.

Citrus Exports: Called on the President to promptly make every effort to obtain the removal of the discriminatory import preferences maintained by the European Economic Community (EEC) with respect to citrus fruits and, should such efforts not succeed, to exercise within 60 days his authority to increase United States import duties or impose other import restrictions against products entering the United States market from the EEC. S. Res. 89. Senate adopted 4/1/71.

Feed Grain Bases or Domestic Wheat Allotments for Certain Sugar Producers; wheat history preservation: Authorizes (1) the establishment of feed grain bases, or wheat domestic allotments, for sugar beet producers who have no processing plant available, because their former processing plant ceased operations on or after January 1, 1970 and (2) the Secretary of Agriculture to permit acreage planted to barley prior to November 30, 1970 to be considered as devoted to feed grains or wheat for the purpose of preserving acreage history. S. 795. P/S 3/25/71. H.R. 5981. H. Cal.

Rural Telephone Bank: Creates a rural telephone bank to provide supplemental financing for telephone borrowers. S. 70. P/S 3/1/71. P/H amended 3/24/71. In conference.

APPROPRIATIONS

Supplemental-Labor: Appropriated $50,675,000 for unemployment compensation for

Federal employees and ex-servicemen. Public Law 92–4.

Continuing Appropriations: Continued, through June 30, 1971 funding for the Department of Transportation and related agencies, appropriating $2,404,134,605 in new budget authority for fiscal year 1971 and $150 million in fiscal year 1972 advance funding for the Washington Metropolitan Area Transit Authority. Public Law 92–7.

CONGRESS

Commission on Art and Antiquities of the Senate: Expands the authority of the Commission on Art and Antiquities of the United States Senate to enable it to acquire any work of art, historical object, document or material relating to historical matters, or exhibit for placement or exhibition in the Senate wing of the Capitol, the Senate Office Buildings, or in rooms, spaces, or corridors thereof. S. Res. 95. Senate adopted 4/1/71.

Joint Committee on the Environment: Provides for the establishment of a 22-member Joint Committee on the Environment to consist of 11 Members each of the Senate and the House. S.J. Res. 17. P/S 3/16/71.

ECONOMY-FINANCE

Adjustment of Outstanding Currency: Permits the write-off of Federal Reserve bank notes, national bank notes, and silver certificates issued after June 30, 1929 when the Secretary of the Treasury determines they have been lost or destroyed, or are held in collections and will never be presented for redemption. S. 670. P/S 2/18/71.

Appalachian Regional Development Act Amendments of 1971: Extends the Appalachian highway program for an additional 5 years and increases the authorizations by $925 million; authorizes the continuation of the general program portions of the Appalachian program for an additional 4 years with biennial authorizations of $277 million for fiscal years 1972 and 1973 and $294 million for fiscal years 1974 and 1975; adds a 4-year, $40 million Appalachian Airport Safety Improvements program; extends for 1 year until June 30, 1972 the Public Works and Economic Development Act of 1965; and makes other changes. S. 575. P/S 3/11/71. H.R. 5376. H. Cal.

Export-Import Bank Act Amendments of 1971: Excludes the receipts and disbursements of the Export-Import Bank of the United States in the discharge of its functions from the totals of the budget of the U.S. Government and exempts the Bank's operations from any annual expenditure and net lending (budget outlays) limitations imposed on the budget of the U.S. Government; requires, in accordance with the provisions of the Government Corporation Control Act, as amended, that the President transmit annually to the Congress a budget for program activities and for administrative expenses of the Bank; requires the President to report annually to Congess the amount of net lending of the Bank which would be included in the U.S. Government budget if the Bank's activities were not excluded as a result of this legislation, increases from $3.5 billion to $10 billion the amount of outstanding guarantees and insurance the Bank may charge on a fractional reserve basis against its overall limitation; increases the overall limitation on the amount of loans, guarantees, and insurance the Bank may have outstanding at any one time from $13.5 billion to $20 billion; extends the life of the Bank for 3 years (from June 30, 1973, to June 30, 1976); and contains other provisions. S. 581. P/S 4/5/71.

Interest Equalization Tax—Extension: Extended the interest equalization tax for 2 years from March 31, 1971 to March 31, 1973; provided discretionary authority to the President to extend the tax to debt obligations with maturities of less than 1 year; restricted the tax-free rollover privilege of existing funds to investments in the funds prior to March 24, 1971; and made other changes. H.R. 5432. Public Law 92– .

Interest Rates and Cost-of-Living Stabilization—Temporary Extension: Provides a temporary extension until June 1, 1971 of certain provisions of law relating to interest rates and cost-of-living stabilization. S.J. Res. 55. P/S 3/4/71. H.R. 4246. P/H 3/10/71.

Lost or Stolen Securities: Authorizes the Secretary of the Treasury to replace for their owners lost or stolen bearer securities of the United States prior to their maturity. S. 1181. P/S 3/19/71.

Public Debt and Interest Rate Limitations: Increased the permanent debt limitation from $380 billion to $400 billion and provided for a temporary increase (until July 1, 1972) from $15 billion to $30 billion; provided that long-term U.S. obligations, in an aggregate amount not exceeding $10 billion, may be issued without regard to the statutory 4¼ percent limitation on the interest rate on long-term bonds; and provided that U.S. Government obligations issued after March 3, 1971 having a market value below face value cannot be redeemed at face or par value in payment of any U.S. tax. Public Law 92–5.

Social Security Amendments: Increased social security benefits by 10 percent across-the-board retroactive to January 1, 1971; increased by 5 percent special payments to certain persons age 72 and over; and provided for an increase in the taxable wage base from $7,800 to $9,000 effective January 1972 and a 5.15 percent increase in the tax rates in 1976 and thereafter. Public Law 92–5.

Transfer of Trust Funds to the Philippines: Provides for the transfer to the Philippine Government of money the Secretary of the Treasury holds in a special trust account to make principal and interest payments on outstanding matured bonds of the Philippines and its political subdivisions issued before 1934. S. 1330 P/S 3/25/71.

GENERAL GOVERNMENT

Lowering the Voting Age to 18: Proposed an amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age or older, S.J. Res. 7. P/S 3/10/71. P/H 3/23/71.

INDIANS

Blackfeet and Gros Ventre Tribes, Montana: Authorizes division and disposition of judgment funds awarded to the Blackfeet Tribe of the Blackfeet Reservation, Montana, and the Gros Ventre Tribe of the Fort Belknap Reservation, Montana. S. 671. P/S 3/11/71.

INTERNATIONAL

Passport Fees: Authorizes the United States Postal Service to receive the fee of $2 for execution of an application for a passport. S. 531. P/S 2/11/71.

TREATIES

Bryan-Chamorro Treaty of 1914—Termination: Ex. L (91–2). Resolution of ratification agreed to 2/17/71.

Extradition Treaty With Spain: Covers 23 extraditable offenses, including aircraft hijacking and offenses relating to narcotic drugs. Ex. N (91–2). Resolution of ratification agreed to 2/17/71.

Treaty With Mexico Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties: Ex. K (91–2). Resolution of ratification agreed to 2/11/71.

LABOR

Blind and Other Severely Handicapped—Sale of Products and Services: Amends the Wagner-O'Day Act to extend the special priority in the selling of certain products to the Federal Government now reserved for the blind to the other severely handicapped, assuring, however, that the blind will have first preference, and to expand the category of contracts under which the blind and other severely handicapped would have priority to include services as well as products, reserving to the blind first preference for 5 years after enactment; authorizes $200,000 annually to carry out the provisions of the Act. S. 557. P/S 3/25/71.

Emergency Employment Act of 1971: Provides, when the national rate of unemployment equals or exceeds 4.5 percent for 3 months, for programs of public service employment for unemployed persons; funding for such programs to be triggered as unemployment increases; authorizes ceilings of $750 million through June 30, 1972 and $1 billion for the fiscal year ending June 30, 1973, at which time said authorization is to expire; and contains other provisions. S. 31. P/S 4/1/71.

PROCLAMATIONS

National Week of Concern for Prisoners of War/Missing in Action: Authorized the President to designate the week beginning March 21, 1971 as "National Week of Concern for Prisoners of War/Missing in Action." Public Law 92–6.

Volunteers of America Week: Authorized the President to proclaim the second week of March 1971 as Volunteers of America Week. Public Law 92–3.

RESOURCE BUILDUP

Lincoln Back Country, Lewis and Clark and Lolo National Forests, Montana: Directs the Secretary of Agriculture to classify as wilderness the national forest lands known as the Lincoln Back Country, and parts of the Lewis and Clark and Lolo National Forests in Montana. S. 484. P/S 4/5/71.

TRANSPORTATION

Sonic Booms—Regulation: Prohibits, with certain exceptions, operation of civil aircraft at a speed greater than sound (mach 1) over the United States except by authorization of the Federal Aviation Administration; provides that supersonic transport (SST) prototypes comply with existing noise standards applicable to new subsonic jets; and requires the Secretary of Transportation to submit to Congress and the public a report covering all aspects of the prototype program when it is completed. S. 1117. P/S 3/19/71.

EXTENSION OF TIME FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there again be a period for the transaction of routine morning business at this time, with statements therein limited to 3 minutes.

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

SUBMISSION OF A REPORT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may be permitted to submit, for the able Senator from Washington (Mr. JACKSON), a report from the Committee on Interior and Insular Affairs with reference to Senate Resolution 45.

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

ORDER FOR ADJOURNMENT TO 10 A.M. WEDNESDAY, APRIL 7, 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m. on

Wednesday next, April 7, for a pro forma session on that day, with no business, no speeches, no bills and resolutions to be introduced.

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

ORDER FOR RECOGNITION OF SENATOR STENNIS, SENATOR TALMADGE, AND SENATOR ERVIN ON WEDNESDAY, APRIL 14, 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Wednesday, April 14, at the conclusion of the remarks by the distinguished Senator from Kansas (Mr. DOLE), the distinguished Senator from Mississippi (Mr. STENNIS) be recognized for not to exceed 15 minutes, to be followed by the distinguished Senator from Georgia (Mr. TALMADGE), for not to exceed 15 minutes, to be followed by the distinguished Senator from North Carolina (Mr. ERVIN), for not to exceed 15 minutes.

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

AUTHORIZATION OF EXTENSION OF TIME TO FILE REPORT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Committee on Rules and Administration may have until midnight tonight to file its reports on resolutions.

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

CLARIFICATION OF AN ORDER

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

Mr. BYRD of West Virginia. I yield.

Mr. GRIFFIN. The Senator said there will be no speeches on Wednesday, but he means with the exception, of course, of those for which special orders have been granted.

Mr. BYRD of West Virginia. I was speaking about Wednesday next, April 7, for a Pro Forma session with no speeches and no business.

Mr. GRIFFIN. The speeches will be on the 14th.

Mr. BYRD of West Virginia. Yes. If I failed to make that clear, I am glad the distinguished assistant Republican leader called it to my attention.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON WEDNESDAY APRIL 14, 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Wednesday, April 14, 1971, at the conclusion of the remarks of the distinguished Senator from North Carolina (Mr. ERVIN), there be a period for the transaction of routine morning business not to exceed 30 minutes, with a limitation on speeches made therein of 3 minutes.

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

STAFF BRIEFING CONDUCTED BY MAJORITY AND MINORITY WHIPS ON MARCH 30, 1971

Mr. BYRD of West Virginia. Mr. President, on March 30, 1971, the distinguished assistant Republican leader, the Senator from Michigan (Mr. GRIFFIN), and I, conducted a meeting to which we had invited the administrative and legislative assistants of Senators on both sides of the aisle.

The Senator from Michigan and I conducted that meeting with the approval and authorization of the distinguished majority and minority leaders.

The purpose of the meeting was to acquaint staff members of Senators with the procedures that are being utilized and which, in great measure, had been proposed by the distinguished Senator from California (Mr. CRANSTON), the distinguished Senator from Iowa (Mr. HUGHES), the distinguished Senator from Pennsylvania (Mr. SCHWEIKER), and the distinguished Senator from Ohio (Mr. SAXBE).

The meeting was very well attended. It is my recollection that there were about 200 staff members there. Questions were asked and answers were given. A printed transcript of the statements made during that briefing has been prepared.

Hoping that it will be of interest to all Senators and their staffs—and also helpful to them—I ask unanimous consent that the transcript of that meeting, which occurred on March 30, 1971, be printed in the RECORD.

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

TRANSCRIPT OF STAFF BRIEFING CONDUCTED BY MAJORITY AND MINORITY WHIPS ON MARCH 30, 1971

Senator GRIFFIN. Senator Byrd and I want to welcome you to this meeting. We are starting very close to time because the Senate goes in at 9:45 and our opportunity will be rather limited to cover the area that we would like to cover. This meeting has been called with the cooperation and support of Senators Mansfield and Scott, the Majority and Minority Leaders. I want to indicate that there will be some time for questions after Senator Byrd makes a presentation; and if neither Senator Byrd nor I can answer the question, we are backed up by the very able and distinguished Senate Parliamentarian, Dr. Riddick.

When I first came to Washington about 15 years ago as a new Member of the House of Representatives, a member who had served for some 25 years was leaving and he made a deep impression on me. He was Congressman George Dondero. Congressman George Dondero at the beginning of each new session of the House of Representatives, always gave a lecture on order and decorum in the Chamber of the House and on the importance of maintaining and building respect for the institution.

Over the years, his lectures, like water falling on rocks, gradually made an impression, and he made a lot of progress. Although his lectures were primarily designed and aimed at the newer Congressmen, frankly, the senior members really needed it more than the freshmen in many instances.

He would always make the point, of course, that his colleagues should be addressed in the third person or referred to in the third person. I well rememger that crusty, stubborn Congressman from my State, Clare Hoffman, who came to the House of Representatives when he was 65 and served another 20 years. On one occasion he got up and, referring to his adversary in a very heated debate that was going on, referred to the "very able and distinguished colleague from New York for whom I have a minimum of high regard."

But, nevertheless, George Dondero's efforts were very helpful, and I wonder what the House of Representatives would have been like if he had not taken a special interest in trying to maintain and improve the order and decorum of the House of Representatives. Frankly, we are very fortunate in the Senate to have an outstanding Senator who is not only an able and distinguished leader but who takes a special interest in this matter of maintaining order and decorum and building respect for the Senate as an institution. Through his leadership, and along with the initiative of four newer Senators—I refer to Senators Cranston, Hughes, Saxbe and Schweiker—there have been some rather radical changes, radical in terms of the Senate, changes made in procedures and rules and practices particularly on the Floor of the Senate. Both Senator Byrd and I and the joint leadership want the understanding and cooperation of Senate staff members, not only because some of these regulations and practices directly affect you, but because we realize that if we have your understanding and cooperation then we have a better chance in having the understanding and cooperation of our colleagues in the Senate. So, now at this time it gives me a great deal of pleasure to present a Senator whom you already know, who is a very able and distinguished member of the leadership, doing an outstanding job, Senator Robert Byrd of West Virginia.

Senator BYRD. Good morning ladies and gentlemen, Senator Griffin, Senator Moss. Let me express my appreciation to all of you—and to your Senators—for this very splendid attendance today.

Senator Griffin has laid the proper foundation for this discussion by saying that there are certain new procedures—not necessarily rules, because we have not changed the Standing Rules of the Senate—which have been inaugurated through the suggestion of some of our colleagues whose names he mentioned, and which we think will expedite the business of the Senate. As Senator Griffin stated, it is our feeling that if we have the understanding of the administrative assistants and the legislative assistants and the other people on the staffs of Senators, we will then be able to aid your Senators, and we will better be able to expedite the flow of business in the Senate.

The procedures, of course, are useless unless they are followed by all. And we cannot enforce the rules on one Senator and not enforce the rules on every other Senator. The intent is not to straight-jacket your Senator. The intent is to expedite the business of the Senate and to improve the image of the institution as people in the galleries who visit it from day to day watch it in its operation. The Senate is something that is greater than the composition of all 100 Senators and their staffs, and it is that institution in which we are most interested today.

The first item I wish to discuss: three-minute statements during morning business. If we strictly followed Rule VII of the Standing Rules of the Senate, there would be no three-minute statements during morning business. There would be no speeches. But by unanimous consent, we provide for three-minute statements during morning business. Now there was a time, until just this year, when a Senator, having utilized his three

minutes, would ask for another five minutes and then another ten minutes, and I have seen three minute speeches go on for half an hour, and 15-minute colloquies go for an hour and a half. And so it is for the purpose of expediting and programming the business of the Senate, and scheduling the appearances of your Senators, that we want to acquaint you with the new procedures.

Under the new procedures, a three-minute statement during morning business will be a three-minute statement. Now, there is a difference between morning business and the morning hour. The morning hour is the first two hours after the session begins following an adjournment. But it is morning business that we are talking about—that period in which petitions and memorials are presented, committee reports are submitted, and bills and resolutions are introduced.

During that period for the transaction of routine morning business, statements are to be limited to three minutes with no extensions. Please inform your Senators that there can be no extension of the three-minute statement. In order to help your Senator, therefore, each of you will, I think, want to have someone on the staff underscore the portions of his statement that are to be read. If he has a 10-minute statement and he has given portions of it out to the press, then you will want to underscore those particular lines for him so that he will read on the Floor of the Senate the statement that has actually gone out to the press. You can time it pretty well so that the portions that have been underlined will fit into the three-minute period.

Also, please tell your Senator that once he has consumed the three minutes, and the chair uses the gavel, he should not ask unanimous consent for the remainder of the statement to go into the record. He should simply hand it in at the desk, and it will all go in the record.

Statements also may be submitted by Senators at the desk, and they will be incorporated in the record. Statements have to be delivered at the desk by the Senators themselves.

Now, if you will check your Record each day near the close of the Senate section you will find a "program" for the next day's session. For example, on yesterday, I stated the program—I try to state the program at the end of every day—as follows: "Mr. President, the program for tomorrow is as follows. The Senate will convene at 9:45 a.m. Following the recognition of the two leaders under the standing order"—the Majority Leader and the Minority Leader are recognized under a standing order immediately following the prayer and the disposition of the reading of the Journal—"the distinguished Senator from Maine will be recognized for not to exceed 15 minutes." That would take the time up to about ten o'clock. Then, "following which there will be a period for the transaction of routine morning business for a period not to exceed 30 minutes," and so on.

So, if you will follow that program each day, you will be able to schedule the appearance of your Senator on the Floor in a way first 15 minutes, beginning at 9:45. Then there will be a period for not to exceed 30 the Floor at 9:45 today with a three-minute speech because Senator Muskie will have the first 15 minutes, beginning at 9:45. Then there will be a period for not to exceed 30 minutes with a three-minute limit on statements therein. So, your Senator should show up on the Floor today, for example, with his three-minute statement during that 30-minute period which, according to the program at the rear of the Senate section in yesterday's Record, will occur from ten to ten-thirty a.m.

If a Senator misses the Floor during that period for the transaction of routine morning business and he has a three-minute statement, he should turn it in at the desk and it will appear in the Record, because he cannot get the floor for a three-minute statement that is not germane once the unfinished business comes down. As long as there is business before the Senate, he cannot get the floor for a statement that is not germane, until the Pastore Rule—paragraph 3 of Rule VIII of the Standing Rules of the Senate—has run its course. A privileged matter, of course, such as the submission of a conference report, can be brought up at any time. So much for the three-minute statement to be made during morning business.

If your Senator has a statement which he wishes to make early in the day so as to take advantage of better press coverage perhaps, and if it takes longer than three minutes and he wishes to make that speech in its entirety, and if it is not germane to whatever business may be scheduled for Floor debate, the Leadership will be glad to come in early and arrange for him to have time to make that speech provided it does not exceed 15 minutes. Such an order for recognition of your Senator must be arranged in advance and must be arranged on a day when the Senate is in session.

For example, a Senator's staff should not call up the leadership on Saturday and say, "We would like for our Senator to have 15 minutes before the morning business on Monday," because it is too late to make the arrangements. The leadership will have to be contacted, in such a case, when the Senate is in session on Friday, in order for special recognition of your Senator on Monday next. Moreover, such 15-minute speeches are to be made prior to morning business. I have known a staff member or so who have called to say, "My Senator would like to have 15 minutes at 1:30 tomorrow afternoon." This cannot be arranged in advance because the Senate will likely be debating a matter at 1:30 in the afternoon. The 15-minute speeches have to come before morning business. The noon hour being the normal meeting hour, the 15-minute speech would usually occur before noon. Sometimes the Senate comes in at eleven o'clock or earlier because of a heavy calendar of business. Therefore, the 15 minutes for the speech of your Senator would have to be given before that hour, and the leadership will convene the Senate early accordingly. So arrange in advance by at least one day.

How do you arrange for your Senator to have 15 minutes? Contact the leadership. On the Democratic side you may call my office, 52158, during the day, and in the evening, you may call 52297. You may also call the Democratic leadership on the Floor, and we will be glad to try to arrange for your Senator to have a 15-minute period the following morning in which to make a speech. Or call Mr. Kimmitt's office—the Secretary to the Majority—and his number is 53735. Don't call the Policy Committee. Don't call the cloakroom. This is not their responsibility. Call those of us who are responsible for the proper scheduling of your Senator's speech. If you again need those numbers, my secretary, Mrs. Low, who is here, can give them to you after this meeting.

Those on the Republican side, may call Mr. Mark Trice's office—he is the Secretary to the Minority—on 53835, or you may call Mr. Bill Hildebrand or Mr. Cecil Holland, who are the assistants to Senators Scott and Griffin, respectively. You may also call 52708, Senator Griffin's number.

Now, there can be no extension of the 15-minute speech. If the speech is an hour in length, have someone on the staff underscore the speech so that your Senator can read that speech in 15 minutes, because if he asks to extend the time beyond 15 minutes, someone in the leadership is going to be forced to object. We don't like to object, but we have to do it if the rules are going to work.

Say, two or three Senators wish to conduct a colloquy. Earlier the leadership had decided that a Senator could get unanimous consent to set aside an hour, or 30 minutes, or 45 minutes for a colloquy. This was given a fair trial, but it did not work because, in some instances, Senators would not show on the Floor or a Senator would have 30 minutes or 45 minutes or an hour and no colloquy occurred—the other Senators did not show. The result was, the Senator made an hour long speech, and complaints came from other Senators that this was not in conformity with the procedures agreed upon. So the leadership decided to cut out the pre-morning business colloquies unless Senators wish to conduct such colloquies in the 15-minute period for which a Senator has gotten an order in advance.

Now, let's say that Senator Church and Senator Eagleton, for example, wish to carry on a colloquy prior to morning business, and they want more than 15 minutes. They can arrange to do so in this way. Senator Church can have the leadership set aside 15 minutes for himself and Senator Eagleton can have the leadership set aside the following 15 minutes for himself. Both Senators must be on the Floor to claim the time, and there will be a bona fide colloquy. The procedure regarding colloquies hasn't been altered with the intent of reflecting upon any Senator, but it just developed that the 30 minute, 45 minute, and one hour colloquies didn't work out according to plan.

So keep in mind that each Senator is limited to 15 minutes prior to morning business, and unanimous consent must be arranged in advance. Have your Senator on the Floor on time, or else his order for recognition will have to be vacated. See that he is on the Floor two or three minutes early, please.

Now, we have covered the so-called three-minute rule and the so-called 15-minute rule. But suppose your Senator wants to make an hour long speech, he intends to make an hour long speech, and he is determined to make an hour long speech; or suppose two Senators want very much to engage in a long colloquy—an hour, an hour-and-a half or two hours. When can this lengthy speech or the long colloquy be conducted? It can be done in the afternoon following the disposition of the unfinished business. After the business of the day is disposed of, a Senator may come on the Floor and talk as long as he wants to, and Senators may conduct colloquies as long as they care to, but let the leadership on your side know if your Senator plans to make a long speech in the afternoon or evening. Many of you will recall the lengthy speeches that Senator Wayne Morse used to make in the shank of the afternoon. So that is the time for the long speeches.

The fourth point I would like to make is this. Notify your Senator immediately when the bell sounds for a yea-and-nay vote, because no longer can we hold the vote 30 minutes or 35 minutes or 40 minutes for Senators to get to the Floor. The maximum is 20 minutes, and a five-minute warning bell will sound before the result of the vote is announced by the Chair. When that five-minute bell rings, the vote will be announced just 300 seconds thereafter. Have your Senator on the Floor within that five minutes, or he will miss the vote.

The fifth point I wish to discuss is the regulation which now allows only one person from a Senator's personal staff on the Floor except during a rollcall vote. Through last year, the regulations provided for as many as two persons from a Senator's personal staff to be on the Floor at any one time. The regulations have been changed, and I'll state why. Last year, 26,300 clerks to Senators were admitted to the Floor, and 10,376 committee employees were admitted to the Floor making a total of 36,676 employees who were admitted to the Floor during the second session of the 91st

Congress. Too many people were on the Senate Floor. Consequently, the Senate Rules Committee has now changed the regulation so as to allow only one staff person from a Senator's office to be on the Floor at any one time. A second member of a Senator's staff may come to the Senate lobby—which is the lobby just back of the presiding officer's chair—to take dictation or to confer with his Senator. A card is issued by the Sergeant at Arms of a different color from that which is issued to the clerk who goes on the Floor.

A standing unanimous consent order was agreed to early this year requiring that when a yea-and-nay rollcall vote begins, all staff personnel to Senators must be cleared from the Floor by the Sergeant at Arms. So it is best for those staff employees who do not have actual official business on the Floor to go in the beginning to the Senate gallery which is set aside for Senate staff members and not come on the Floor at all during the debate. Rule XXXIII states that clerks to Senators—and I use the word "clerk" because that is the word used in the rule—may have the privilege of the Floor "when in the actual discharge of their official duties." Therefore, it is urged that staff personnel come to the Floor as sparingly as possible, so as to avoid overcrowding and disorder, but when you do find it necessary to come to the Floor in the actual discharge of official business for your Senator, then you do have the privilege of the Floor. I, for one, will do everything I can to defend the right of any staff personnel who are on the Floor in the actual discharge of official duties.

But there are very controversial issues that come up—for example, the vote on the SST—when many aides to Senators have heretofore come to the Floor just to observe what was going on. There was one occasion during a vote the year before last, when there were 115 staff personnel on the Floor of the Senate. I know you will agree that this is not good for the Senate. It is not conducive to good order and decorum in the Senate. And so the leadership urges that the people in the offices of Senators not come on the Floor except when on official business. There is a gallery that is set aside for staff. Until recently, it was the gallery just behind the clock that faces the presiding officer. The staff gallery has been changed to gallery No. 1. I believe, which is in the northeast corner over here—as though I were now facing the presiding officer, and then to my right and in that direction (pointing). It was thought that staff personnel would then have a better view of the Senate, their Senators could better see them, and the staff would be directly over the Senate reception room so that it would be just a matter of a minute or two if the Senator signaled his staff member to come down and the Senator could meet his staff member in the reception room off the Floor. We thought this would give a better vantage point to the members of the staff.

Moreover, staff members may now take notes while sitting in the gallery set aside for staff. Until recently, this was not allowed, but the regulation has now been changed to accommodate staff members who are in the gallery and wish to take notes.

Additionally, please try to encourage your Senator to use the microphone. This will accommodate staff people who sit in the gallery and who are trying to hear what is being said and who want to advise their Senator, if need be, of what has been said in his absence. If aides can't hear what is being said on the Floor, then they can't advise their Senators of what has developed when they are called to the reception room, or later, to the Floor. Ask your Senators to use those microphones. There are some Senators who perhaps don't need to use the microphones. Senator Pastore, for example, can be heard in all quarters of the Chamber. Senator Stennis can be heard. But if Senators will use the microphones, this insures the visitors in the gallery of a better understanding of what is being said on the Floor, it insures the staff people in the gallery of the same, it accommodates the press in the gallery, it guarantees that other Senators may better hear, and, importantly, when a Senator uess the microphone his voice is piped back into the cloakrooms and the young men who are at the desks in the cloakrooms can hear what is being said on the Floor and can then be in a better position to advise the various offices as to what is going on.

One further note with respect to staff personnel on the Floor. Four staff members of a committee involved in the subject matter under debate are allowed the privileges of the Floor at any one time under the regulations. And under the regulation which provides for clearing of the Floor of a Senator's staff during a rollcall vote, committee staff people involved in the business before the Senate are not required to leave the Floor during the vote.

Now, if your Senator is managing a bill, or if he is leading the fight against it, as say, Senator Proxmire was on the SST, then if that Senator wishes to ask unanimous consent that his personal staff member be allowed to remain on the Floor during the vote, unanimous consent will be granted. It is best that the Senator clear this with the leadership so that there will be no misunderstanding. I say this so that we may avoid a situation in which a half dozen staff members are on the Floor who merely are there to observe, and to avoid having Senators stand and ask unanimous consent for their respective staff members to remain on the Floor during the taking of a roll call vote. The leadership would have to object to this. So it is urged, therefore, that a Senator who wishes his personal staff man to stay on the Floor during a vote—such as, for example, Senator Church, during the debate recently, asked that his staff man be permitted to stay on the Floor because Senator Church was managing the effort to amend Rule XXII, and Mr. Barthelmes was granted permission to do so—get unanimous consent for such. The leadership will be glad to get this for your Senator, but it ought to be gotten in advance because if the rollcall vote starts and a Senator gets up and asks permission for his staff member to remain on the Floor and a half dozen other Senators do the same, the leadership will be forced to object. So, clear this with the leadership in advance, if you can, and when your Senator needs you on the Floor during a rollcall vote, the leadership will try to accommodate him and you. But do it as sparingly as possible.

The next thing I would point out is that bills and resolutions will be received for introduction until ten minutes after the adjournment of the Senate each day. So, if your Senator wishes to introduce a bill and if he is on his way to the Floor, or if you hear the bell ring for adjournment, your Senator still has ten minutes—the Senator does, not the member of the staff—in which to get to the Floor, and Dr. Riddick or someone on his staff will remain there for ten minutes following the adjournment to accept that bill or that resuolution from the Senator.

My eighth suggestion. You will receive whip notices, the envelopes bearing, in red print, the words "Whip Notice." Be sure to place that on your Senator's desk or, you who are the administrative assistant and/or the legislative assistant, open it and note its contents, becaus it is an important message for your Senator.

Finally, let me say, and this is all I have to say, it is the desire of the leadership on both sides to assist you and to assist your Senator. Call on us. Call for me personally if you like. Call my office and Mrs. Low will try to help you with whatever information you want. We cannot predict developments away down the road far in advance, of course. But whatever I can do, I will be glad to do for you. And I know that I speak for Senator Griffin, my counterpart on the other side of the aisle. Don't hesitate to call on us. We want your help. We want your cooperation. And we assure you of our help and our cooperation. I repeat briefly the telephone numbers. My day number is 52158; and in the evening and on Saturday mornings it is 52297. Mr. Kimmitt's number is 53735. Mr. Trice's number is 53835. Senator Griffin's number is 52708.

Thank you very, very much again for your splendid attendance, and I hope this has all been helpful to you. If you wish to have another meeting at another time, let us hear from you. If you wish to ask questions now, ask them. I may have to go to the Floor briefly and perhaps Senator Griffin will also, but Dr. Riddick is here and one of us will be glad to try to accommodate you. We'll come back as soon as we can. If you have a question, please hold up your hand.

QUESTIONS

Q. Will you describe a little better what you think the actual discharge of official duties of a staff member on the Floor. I have in mind a situation where a Senator instructs a staff member to observe the procedure with respect to an amendment or a complicated parliamentary situation where he will not be there himself.

A. Senator GRIFFIN. I think that without doubt that would constitute discharging official duties when you are there observing the proceedings of the Senate for your Senator and be in a position to advise him as to what happened. I think that there has been very little problem in this regard other than during rollcall votes themselves. Now the rule has been changed that aides will not be on the Floor during rollcalls and also that there will be only one aide to a Senator on the Floor at any one time. I don't foresee any more difficulty on this matter and I don't think it will ever be questioned.

Q. Will you publish these rules that have been spelled out this morning?

A. Senator GRIFFIN. I think we will try to get them together in a mimeographed form. At one place or another they have been in the Record but I think it would serve a good purpose if we pulled them together in one document and sent it around to all the offices. We'll do that.

Q. Why should four members of say the Interior Committee be on the Floor at one time when a Commerce Committee bill is being discussed?

A. Senator GRIFFIN. It applies only to staff members of the committee whose bill is on the Floor at that time. It can't be the staff of another committee. That's a good point.

Q. Regarding the program for the next day. Is that going to be carried on the various phones so that we would not have to wait until the following morning to read it in the Record?

A. Senator GRIFFIN. I think that is a very good suggestion. I will take this up with Senator Byrd and we will discuss it with our respective leaders and see if that isn't something that could be done. I believe it is a very good suggestion.

Q. What about a situation where your Senator is gone and you are looking for a pair.

A. Senator BYRD. I think what you should do is contact Senators or the leadership in advance and not wait until the vote occurs to try to line up a pair. If your Senator is not going to be there for a vote, if you will call me or call someone else in the leadership on either side or call a Senator if you have an understanding with a Senator beforehand. Try to arrange the pairs in advance and you won't have to be on the Floor at this critical moment.

Q. (Not clear from the recording.)

A. Senator BYRD. A whip notice is sent out from the Democratic side every Friday. At

the present time there isn't much on the calendar and it is difficult to prognosticate what and when business will come up very far down the road. But when the calendar becomes more glutted, it will be possible, hopefully, to make better predictions for three or four or five days in advance. We will do the very best we can. Senator Griffin would you like to respond to that question from your side.

Senator GRIFFIN. The same holds true on the Republican side. We send out a notice on Friday or Saturday.

Q. Quite often when we get into the session we have a pileup of amendments coming up on legislation and the people in the cloakroom just say that there's a vote on so-and-so's amendment and not give any further description. Is there any way we can have on that tape a brief description?

Senator BYRD. Mr. Kimmitt, the question is whether or not the tape which goes out to the various offices of Senators may carry with it a better description of whatever amendment may be under consideration at that time. Can you respond?

A. Mr. KIMMITT. Yes, we can give an identification of the amendment and the meat of it, but you are going to have to interpret it for your Senator.

Q. With regard to unprinted amendments that are sent to the desk and drawn up and a staff member is in the gallery, it is very difficult to know what that amendment is going to be, particularly when it is not read. Could that be Xeroxed and posted where the staff telephones are so that we could see it?

A. Senator BYRD. I think we ought to look into that, Senator Griffin. We will make a note of that and follow through on it.

Q. Regarding the staff gallery and the Senator signaling a staff member to come down to meet him. In the normal practice when a Senator comes to the Floor and a staff member has been watching for him and it is very necessary for him to confer with the Senator, the procedures do not seem to take this into account. The only instance we had so far was when a large number of staff members had to congregate outside the bank of elevators to catch them. (Question not clear on tape)

A. Senator GRIFFIN. Perhaps this will be a problem; and if it is perhaps there would be some consideration. But at the present time, and the Rules Committee did take the point into account, it is expected that a Senator and his staff member would agree upon a particular point outside the Chamber where they could meet. If they are all grouped up in front of the elevators, I think that by agreement between themselves they could move their meeting place down the hall a little bit and make it more convenient. We hope that it is going to work. If it doesn't, we will have to take another look at it at a later point. Do you want to add something to that, Bob?

Senator BYRD. I really don't see a problem here. I think that if your Senator understands that you are in the gallery and understands what the procedures are—and I know you understand them by virtue of your visiting with us today—you can just have an understanding that you will see him in the reception room. He can go through the reception room on his way to vote. That's what I would have a member of my staff do. I would just say to them, I will come to the reception room and if you have anything you want to say to me about the vote, see me there. And when I went through the reception room I'd look around. But I don't think it should be an insurmountable problem. With reference to staff personnel being on the Floor in the discharge of their official duties, yes, if their Senator tells them to be on the Floor, then they have to do what their Senator says. But, actually, the staff should be in the galleries because that is where they ought to go when it is to observe. And that is why Senators should use the microphones so that staff personnel can be effective in serving their Senators from the galleries.

Q. Senator, has this briefing more or less been given to the Senators?

A. Senator BYRD. No, it has not. It was thought that by discussing it with the distinguished personnel like you who are here that that would suffice. Now, we have had some of the new Senators, the newly elected Senators, from both sides of the aisle to breakfast. Senator Griffin and I have had four or five meetings of that kind in order to try to help them better understand some of the procedures. But it would be a good idea and perhaps at the next caucus on my side we could have some little bit of it, and perhaps on your side, Bob. But don't hold us to that promise. We hope that you will follow through and help us in this regard.

Are there any more questions? We don't want to infringe on your time.

Senator GRIFFIN. Thank you very much for coming. We appreciate it.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

THE CALENDAR IS CLEAR

Mr. BYRD of West Virginia. Mr. President, I invite the attention of the Senate to that fact that the legislative calendar is completely clear. No bills and no resolutions are on the calendar at this time.

It is hoped that committees will continue to meet in an effort to report bills and resolutions for Senate action. Permission was gotten by the majority leader earlier today for committees to submit reports on Tuesday, April 13, 1971, during the adjournment.

PROGRAM FOR WEDNESDAY NEXT—PRO FORMA SESSION; AND FOR WEDNESDAY, APRIL 14, 1971

Mr. BYRD of West Virginia. Mr. President, the program for Wednesday next, April 7, 1971, of course, has already been stated.

The Senate will convene at 10 o'clock Wednesday morning for a pro forma session—with no business, no speeches, and no bills or resolutions to be introduced—and the Senate, in accordance with the provisions of House Concurrent Resolution 257, will adjourn over until Wednesday, April 14, 1971, at 10 a.m.

Immediately following recognition of the majority and minority leaders on April 14, 1971, under the standing order, the distinguished Senator from Oregon (Mr. PACKWOOD) will be recognized for not to exceed 15 minutes; to be followed by the distinguished Senator from Kansas (Mr. DOLE), for not to exceed 15 minutes; to be followed by the distinguished Senator from Mississippi (Mr. STENNIS), for not to exceed 15 minutes; to be followed by the distinguished Senator from Georgia (Mr. TALMADGE) for not to exceed 15 minutes; to be followed by the distinguished Senator from North Carolina (Mr. ERVIN) for not to exceed 15 minutes; at the conclusion of which there will be a period for the transaction of routine business not to exceed 30 minutes, with statements therein limited to 3 minutes.

ADJOURNMENT UNTIL WEDNESDAY, APRIL 7, 1971, AT 10 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 a.m. on Wednesday morning next.

The motion was agreed to; and (at 5 o'clock and 5 minutes p.m.) the Senate adjourned until Wednesday, April 7, 1971, at 10 a.m.

CONFIRMATIONS—APRIL 5, 1971

Executive nominations confirmed by the Senate April 5, 1971:

U.S. AIR FORCE

Maj. Gen. Homer I. Lewis, [redacted] FV, U.S. Air Force Reserve, for appointment as Chief of Air Force Reserve, under the provisions of section 8019, title 10, of the United States Code.

U.S. ARMY

Gen. George Robinson Mather, [redacted], Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of general, under the provisions of title 10, United States Code, section 3962.

The following-named officer for appointment as Chief, Army Reserve, and for appointment as major general, Army of the United States, and major general, U.S. Army Reserve, under the provisions of title 10, United States Code, sections 3019, 3442, and 3447:

To be major general

Brig. Gen. James Milnor Roberts, Jr., [redacted] Army of the United States (colonel, U.S. Army Reserve).

The following officers for appointment in the Regular Army of the United States, to the grades indicated, under the provisions of title 10, United States Code, sections 3284 and 3307:

To be major general

Maj. Gen. Howard Wilson Penney, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Roderick Wetherill, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. David Stuart Parker, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Raymond Leroy Shoemaker, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Lloyd Brinkley Ramsey, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. George Philip Seneff, Jr., [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Edward Harleston deSaussure, Jr., [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Hugh Franklin Foster, Jr., [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Andrew Peach Rollins, Jr., [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. William Robertson Desobry, xxx-... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. George Lafayette Mabry, Jr., xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Herron Nichols Maples, xxx-xx-x... xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Leo Henry Schweiter, xxx-xx-xx... xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Edward Bautz, Jr., xxx-xx-xxxx, Army of the United States (brigadier general, U.S. Army).

Maj. Gen. George Marion Seignious II, xxx-... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Richard Logan Irby, xxx-xx-xxxx xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Franklin Milton Davis, Jr., xxx-... xxx-xx-xxxx Army of the United States (brigadier, U.S. Army).

Maj. Gen. Paul Alfred Feyereisen, xxx-xx-x... xxx-... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Richard George Ciccolella, xxx-... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. James Francis Hollinsworth, xxx... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

To be major general, Medical Corps

Maj. Gen. Kenneth Dew Orr, xxx-xx-xxxx, Army of the United States (brigadier general, Medical Corps, U.S. Army).

Lt. Gen. Hal Bruce Jennings, Jr., xxx-xx-xx... xxx-x... Army of the United States (brigadier general, Medical Corps, U.S. Army).

1. Brig. Gen. George Shipley Prugh, Jr., xxx-xx-xxxx Army of the United States (colonel, Judge Advocate General's Corps, U.S. Army), for appointment as The Judge Advocate General, U.S. Army, as major general, Judge Advocate General's Corps, in the Regular Army of the United States, and as major general, Army of the United States, under the provisions of title 10, United States Code, sections 3037, 3442, and 3447.

2. Brig. Gen. Harold Edward Parker, xxxx xxx-xx-xxxx Army of the United States (colonel, Judge Advocate General's Corps, U.S. Army), for appointment as the Assistant Judge Advocate General, as major general, Judge Advocate General's Corps, in the Regular Army of the United States, and as major general, Army of the United States, under the provisions of title 10, United States Code, sections 3037, 3442, and 3447.

U.S. NAVY

The following-named officers of the Naval Reserve for temporary promotion to the grade of rear admiral subject to qualification therefore as provided by law:

LINE

John H. Pedersen — Graham Tahler
Richard Freundlich — George V. Fliflet
Edwin M. Wilson, Jr. — Eddie H. Ball

MEDICAL CORPS

Ben Eiseman

SUPPLY CORPS

Jack F. Pearse — Robert H. Spiro, Jr.

DENTAL CORPS

George J. Coleman

IN THE AIR FORCE

The nominations beginning Ernest F. Hasselbrink, to be captain, and ending James G. Zody, to be 1st lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on Mar. 10, 1971.

EXTENSIONS OF REMARKS

SENATOR RANDOLPH STRESSES "RESPONSIBILITY AND FREEDOM GO HAND AND HAND" IN ADDRESS AT WEST VIRGINIA KEYETTES CONVENTION

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Monday, April 5, 1971

Mr. RANDOLPH. Mr. President, on Saturday, April 3, more than 400 young women, mostly aged 16 and 17, composed the luncheon-meeting audience at the annual convention of the Keyettes, sponsored by West Virginia clubs in Kiwanis International.

These intelligent, attractive, and concerned youth, were a challenge to me as I discussed "Responsibility and Freedom Go Hand and Hand."

The dining room at Pipestem State Park was over-crowded with representatives from 19 clubs. Present also was Douglas Taylor, of St. Mary's, the newly elected Governor of West Virginia Kiwanis Clubs, and James Neri, of Fairmont, who work with young people in purposeful programs.

Miss Frankie Winfree, of Fairmont High School, presided at the general sessions. Other young women presided over panel discussions on vital subjects. The motto of these fine girls, who are sophomores, juniors, and seniors in high school is "Building to Serve."

Mr. President, I ask unanimous consent to have printed in the RECORD the text of my speech.

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

RESPONSIBILITIES AND FREEDOM GO HAND IN HAND

(By Senator JENNINGS RANDOLPH)

I must tell you that after communicating with your president, Miss Winfree, about your state convention, I looked forward to being with you with even greater anticipation than when we accepted the invitation.

In meeting with groups of young people today, some public officials are prepared for disturbances, even as they speak. So the enjoyment of coming here to talk with several hundred well-behaved young ladies is indeed appealing.

Your adoption of the motto, "Building To Serve," tells much about you as individuals, about your acceptance of responsibility and your desire to work to make the world a better place in which to live.

The prospect of confronting so many alert and eager young minds with all the problems of our society presents a temptation. Here is an opportunity for a speaker to unburden himself of many of the current worries, to recite the weighty woes of poverty, pollution, disease, war, civil unrest and deteriorating values.

I am intrigued with the theme you have for this convention; the words, "We have just begun." It is a modest admission, but it's not entirely accurate. The truth of the matter is that you started some time ago, and you are farther down the road of life than any generation in history.

You are aware, I'm sure, of the great number of articles and studies involving today's American youth. Never has a generation been more analyzed and criticized, more praised and pampered, more coddled and condemned—and yet more misunderstood—than the youth of this nation.

You are told that you are the best-fed, best-read young people in the world. We know that, compared to your predecessors, you are more advanced socially, culturally and intellectually. Now there is firm documentation that the physical development of young people is advancing at an accelerated rate. In other words, you're not only growing bigger, but you are growing bigger faster.

Society—or if you prefer, the Establishment—has been slow to recognize this earlier maturation. Many of our laws, originally designed to protect the young, are used to prolong adolescense. In the nearly three decades since I first introduced the bill providing for a constitutional amendment to permit 18 to 21 year olds to vote, only two states moved to enfranchise their young adults. Last year, Congress passed legislation permitting 18-year-olds to vote but the Supreme Court limited such voting to national elections. The court said, in effect, that states have the constitutional right to set their own voter qualifications. In the coming national referendum, it will be necessary for 38 states to ratify the amendment recently passed by Congress. I am confident that this will be done.

Too often we confuse teenagers with adolescence. Too many of us, the label "teenage" actually represents a certain stereotyped or idealized image of a behavior we have come to associate with the young. For example, teenage behavior is supposed to include the inability to defer gratifications; overindulgence, frivolity, promiscuity, indifference to the wishes and needs of others, concern with the body, forms of hedonism, and a general lack of concern for serious social problems.

I suggest that each of these behaviors exist among teenagers, but they also can be observed among almost every group of adults in one form or another. I think what is most disturbing to many adults today is that too many of our young people are refusing to act like teenagers. Youth is concerned with what is happening; it gets involved in political, social and civil rights issues. Young people are insisting on telling it as they see it, even if it means offending their teachers, their parents or their peers.

Many of the conflicts and confrontations that grab the headlines today are simply unskilled excesses designed to get someone's attention, to promote a message and to force somebody in authority to listen.

We hear much discussion about the various "gaps" that afflict our society; there are cleveages in credibility, in communications and in generations. But I submit that the most serious gap of all exists between members of the same generation—between the 45 million Americans in the age group of 15 to 30 years.

This could probably be labeled a "responsibility gap."

There's something about this under-30 generation that is not generally known. And that is that almost half of them—about 21 million—are neither students nor college graduates. Most of them work. They make up one-fourth of the union membership. They marry young, move to suburbia, and they're being pinched by the economic bind of inflation and high interest rates which