SENATE—*Thursday, April 22, 1971*

The Senate met at 10 a.m. and was called to order by Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota.

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

God of Our Fathers, known of old, Judge of the nations before whom the generations rise and pass away, we pause to offer to Thee the love and loyalty of our lives. Make us one people in our devotion to Thee. Draw together the diverse people of every age, race, and religion. Help us to speak wisely to one another and to hear with understanding what is said. Give strength and wisdom to all who serve in the Government of this Nation.

Bless especially the youth of the Nation wherever they may be, in school, on missions of mercy and service, in the armed services, or in quest of a life's vocation. Keep the ideals and motivations of all the people as pure and good as the best of them. Regenerate and make new those in all generations who need Thy cleansing and transforming grace.

Lead us, O Lord, out of the frustrations of these days into the destiny Thou hast for that nation whose people love and serve Thee. And to Thee shall be the praise and glory now and evermore. 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 22, 1971.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

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

MESSAGE FROM THE PRESIDENT

Messages in writing from the President of the United States, submitting nominations, were communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. BURDICK) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Commerce.

(For nominations received today, see the end of Senate proceedings.)

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, April 21, 1971, be dispensed with.

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.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of unobjected-to items on the calendar, beginning with Calendar No. 66, and also ask unanimous consent that consideration of these measures not apply so far as the rule of germaneness is concerned.

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

ARLINE LOADER AND MAURICE LOADER

The Senate proceeded to consider the bill (S. 341) for the relief of Arline Loader and Maurice Loader, which had been reported from the Committee on the Judiciary with an amendment, on page 2, line 2, after the words "in excess of," to strike out "20" and insert "10", so as to make the bill read:

S. 341

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $20,000 to Arline Loader and Maurice Loader, of Yachats, Oregon, in full settlement of their claims against the United States based upon the deaths of their sons, Maurice G. Loader and Frederic M. Loader, on October 15, 1944, as the result of the explosion of a thirty-seven-millimeter armor-piercing shell which United States military personnel negligently left at an abandoned firing range and which was found by such sons.

SEC. 2. No part of the amount appropriated in this Act in excess of 10 per centum shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same is unlawful, any contract to the contrary notwithstanding. Violation of the provisions of this section is a misdemeanor punishable by a fine not to exceed $1,000.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–64), explaining the purposes of the measure.

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

PURPOSE

The purpose of the bill, as amended, is to pay to Arline and Maurice Loader, of Yachats, Oreg., $20,000 for the death of their sons, Maurice G. Loader and Frederic M. Loader, on October 15, 1944, as the result of the explosion of a 37-millimeter, armor-piercing shell found by the children on a firing range.

STATEMENT

A similar bill for these claimants in the 91st Congress, S. 2514, was passed by the Senate and reported favorably by the Committee on the Judiciary of the House of Representatives, but no action was taken before adjournment.

A similar bill for these claimants in the 90th Congress, H.R. 1971, was passed by the House of Representatives but no action was taken in the Senate. In its favorable report on the bill, the Committee on the Judiciary of the House of Representatives said:

The bill, H.R. 2016, was the subject of a subcommittee hearing on May 5, 1966. The testimony at that hearing and material submitted to the committee in support of the claim indicates that on the afternoon of October 15, 1944, four children, Maurice G. Loader, Jr., age 14; Fredric M. Loader, 13; Eleanor Loader, age 5; and Clifford Harp, age 14, were playing in the Loader's garage located in Montara, Calif., a small coastal town approximately 20 miles south of San Francisco. The children were repairing a toy wagon and took from a tool box a 37-millimeter, armor-piercing shell which had apparently been found by a playmate of the oldest Loader child and brought into the Loader's garage unknown to the parents, Maurice and Arline Loader. The shell exploded, killing Maurice G. Loader, Jr., and Fredric M. and injuring the other two children. The information available to the committee indicates that the shell had been found on the Montara firing range, which had been used by the U.S. Army for anti-invasion maneuvers during World War II. The firing range, although encircled by a three-strand wire fence, was not adequately guarded notwithstanding that, previous to the tragedy, unexploded shells and grenades had been found on the range by children residing in Montara.

As is noted in the Army Department report, a newspaper account of the tragedy outlines with considerable detail the facts of the explosion. That report also notes that the Army recognized the responsibility of the Government by paying $711 for funeral expenses relating to the two children killed in the blast.

The Army has referred to the fact that the Congress has on a number of occasions passed bills granting similar compassionate relief to the parents of children killed or injured in similar accidents. Notwithstanding the outline of the facts in the Army report, that Department states that it did not have the information necessary to confirm or deny the facts of the case. The committee must disagree with this conclusion. The fact that the deaths resulted from an explosion of military ordnance is not controverted in any way. The records of the Army confirm that the Army recognized the claim to the extent then possible under the law by authorizing a payment of the funeral expenses for the dead children. In this connection, it is also clear that a release secured by the Army at that time was a prerequisite to payment of the only amount available and cannot now be taken as a reason for a denial of compas-

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sionate relief by legislative action. It cannot be denied that there has been a long delay in presenting and recognizing this claim but this does not lessen the loss to the parents. Under these circumstances and in the light of the fact that Congress has granted relief previously in similar cases, the committee recommends that the bill be considered favorably.

The committee believes that the bill is meritorious and recommends it favorably.

NICHOLAOS DEMITRIOS APOSTOLAKIS

The bill (S. 672) for the relief of Nicholaos Demitrios Apostolakis, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as folows:

S. 672

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Nicholaos Demitrios Apostolakis may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in his behalf by Mr. and Mrs. Paul N. Apostle, citizens of the United States, pursuant to section 204 of the said Act: *Provided,* That the natural brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–65), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill is to facilitate the entry into the United States as an immediate relative of the alien child to be adopted by citizens of the United States.

MARIA GRAZIA IACCARINO

The bill (S. 566) for the relief of Maria Grazia Iaccarino, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 566

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Maria Grazia Iaccarino may be classified as a child within the meaning of section 101(b)(1)(F) of such Act, upon approval of a petition filed in her behalf by Mr. and Mrs. John F. Newton, citizens of the United States, pursuant to section 204 of the Act: *Provided,* That the brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–66), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bil is to facilitate the entry into the United States in an immediate relative status of the alien child to be adopted by citizens of the United States.

CHEN-PAI MIAO

The bill (S. 629) for the relief of Chen-Pai Miao, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 629

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, Chen-Pai Miao, who was lawfully admitted to the United States for permanent residence on August 30, 1966, shall be held and considered not to be within the classes of persons whose naturalization is prohibited by the provisions of section 313 of the Immigration and Nationality Act.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report—No. 92–67—explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill is to enable Chen-Pai Miao to file a petition for naturalization after August 30, 1971, notwithstanding the provisions of section 313 of the Immigration and Nationality Act relating to one who was formerly a member of a proscribed organization.

ESTHER CATHERINE MILNER

The Senate proceeded to consider the bill (S. 145) for the relief of Esther Catherine Milner, which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert:

That, in the administration of the Immigration and Nationality Act, Esther Catherine Milner may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by Lee W. Milner and Nancy Ross Milner, citizens of the United States, pursuant to section 204 of the Act: *Provided,* That the brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–68), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill as amended is to facilitate the adjustment of status as an immediate relative of the alien child adopted by citizens of the United States. The bill has been amended in accordance with established precedents.

MARIA BADALAMENTI

The Senate proceeded to consider the bill (H.R. 513) for the relief of Maria Badalamenti which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert:

That, notwithstanding the provisions of sections 212(a)(1) and 212(a)(25) of the Immigration and Nationality Act, Maria Badalamenti may be issued a visa and be admitted to the United States for permanent residence if she is found to be otherwise admissible under the provisions of that Act: *Provided,* That a suitable and proper bond or undertaking, approved by the Attorney General, be deposited as prescribed by section 213 of the said Act: And *provided further,* That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–69), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provisions of existing law relating to one who is mentally retarded and consequently illiterate in behalf of the sister of citizens of the United States. The bill has been amended in accordance with established precedents.

PROVISION OF RELIEF IN PATENT AND TRADEMARK CASES

The bill (S. 645) to provide relief in patent and trademark cases affected by the emergency situation in the U.S. Postal Service which began on March 18, 1970, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 645

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) A patent or trademark application shall be considered as having been filed in the United States Patent Office on the date that it would have been received by the Patent Office except for the delay caused by the emergency situation affecting the postal service which began on March 18, 1970, and ended on or about March 30, 1970, if a claim is made for the benefit of an earlier date in accordance with subsections (b) and (c) of this section. Patents issued with earlier filing dates afforded by this section shall not be effective as prior art under subsection 102(e) of title 35 of the United States Code as of such earlier filing dates.

(b) No patent or trademark application, patent, or trademark registration shall be entitled to an earlier filing date under this section unless a verified statement by the appli-

cant or owner of record claiming the filing date to which the application is believed to be entitled is filed in the Patent Office within six months after enactment of this Act. Such statement shall be maintained in the file of the application in the Patent Office and shall be referred to in the patent or trademark registration when practicable.

(c) When a statement filed under subsection (b) of this section appears unreasonable or defective on its face, or when the filing date of the patent or trademark application, patent, or trademark registration is called into question or is material in any inter partes proceeding in the Patent Office or any proceeding in the courts, the applicant or owner of such application, patent, or trademark registration may be required to present evidence establishing the filing date to which the application is entitled. The filing date to which the application is entitled shall be determined on the basis of such evidence and any evidence introduced by an opposing party. The evidence shall be presented as directed by the Commissioner of Patents in proceedings in the Patent Office or as directed by the courts in proceedings in the courts.

SEC. (2) Except for the filing of a patent or trademark application, if any action is taken or any fee is paid in the United States Patent Office later than the end of a time period specified in the statutes set forth in subsection (b) of this section for taking such action or paying such fee, and no provision exists in law for excusing such delay, the delay may be excused if it is determined that it was caused by the emergency situation affecting postal service which began on March 18, 1970 and ended on or about March 30, 1970. Relief under this section must be requested by a verified statement filed in the Patent Office by the patent or trademark applicant or owner within six months after enactment of this Act.

(b) This section is applicable to title 35, United States Code, "Patents"; the Trademark Act of 1946, ch. 540, 60 Stat. 427, as amended; the Atomic Energy Act of 1954, Pub. L. 83–703, 68 Stat. 919, as amended; and the National Aeronautics and Space Act, Pub. L. 85–568, 72 Stat. 426 (1958), as amended. In cases involving the Atomic Energy Act of 1954 or the National Aeronautics and Space Act, determinations of relief shall be made by a Board of Patent Interferences. In other cases determinations shall be made by the Commissioner of Patents.

SEC. 3. The Commissioner of Patents may establish regulations for administering this Act.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–70), explaining the purposes of the measure.

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

PURPOSE

The purpose of the legislation is to afford patent and trademark applicants an opportunity to make a claim for a filing date earlier than the date on which the application was received by the Patent Office. The application would be entitled to the filing date which it would normally have received except for the emergency situation affecting Postal Service which began on March 18, 1970. The applicant would be required to submit within 6 months after enactment of the bill a vertified statement claiming the date to which the application is believed to be entitled.

VIEWS OF GOVERNMENT AGENCY

This legislation was introduced by Senator John L. McClellan at the request of the Department of Commerce.

STATEMENT

The patent and trademark laws contain numerous time periods during which specified actions must be taken by patent and trademark applicants and owners. Failure to take a required action within the statutory time period generally results in a forfeiture of some or all of the patent or trademark rights involved. The statutes allow a failure to comply with the specified time periods to be excused in some situations upon a showing that the delay was unavoidable, however with respect to other time periods, the statutes permit no waiver.

The filing dates of patent and trademark applications may be critically important in determining patent and trademark rights. The committee has been advised that the disruption of the postal system resulting from the failure of certain employees to perform their duties may cause a number of patent and trademark owners to suffer loss of important rights. Other than for legislation, such as S. 645, the only remedy available to such owners would be to seek the passage of a private bill in individual cases.

If a claimed earlier filing were called into question or became material in an inter partes proceeding in the Patent Office or any proceeding in the courts, the applicant or owner could be required to present evidence establishing the filing date to which the application was entitled. Evidence would also be presented when the claim appeared unreasonable or defective on its face. Thus, the sufficiency of claims for earlier filing dates would be examined only in a small percentage of cases. This approach is believed best because a large number of applications may have been affected by the strike and the delay will prove to be material only in a few of the cases. During a 2-week period approximately 4,000 patent applications and 1,200 trademark applications are filed in the Patent Office.

INTERNATIONAL PATENT AND TRADEMARK STUDIES

The bill (S. 1253) to amend sec. 6 of title 35, United States Code, "Patents," to authorize domestic and international studies and programs relating to patents and trademarks was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1253

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of title 35, United States Code, is amended to read as follows:

§ 6. Duties of Commissioner

"(a) The Commissioner, under the direction of the Secretary of Commerce, shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trademarks; shall have the authority to carry on studies and programs regarding domestic and international patent and trademark law; and shall have charge of property belonging to the Patent Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

"(b) The Commissioner, under the direction of the Secretary of Commerce, may, in coordination with the Department of State, carry on programs and studies cooperatively with foreign patent offices and international intergovernmental organizations, or may authorize such programs and studies to be carried on, in connection with the performance of duties stated in subsection (a) of this section.

"(c) The Commissioner, under the direction of the Secretary of Commerce, may, with the concurrence of the Secretary of State, transfer funds appropriated to the Patent Office, not to exceed $100,000 in any year, to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and related matters. These special payments may be in addition to any other payments or contributions to the international organization and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the Government of the United States."

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–71) explaining the purposes of the measure.

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

PURPOSE

This legislation would authorize the United States to make voluntary contributions to such organizations as the United International Bureau for the Protection of Intellectual Property and the Committee for International Cooperation in Information Retrieval Among Patent Offices in order to defray the cost of studies and other projects in connection with international patent and trademark matters.

VIEWS OF GOVERNMENT AGENCY

This legislation was introduced by Senator John L. McClellan at the request of the Department of Commerce.

STATEMENT

U.S. participation in cooperative international efforts in the patent and trademark fields is vitally important to the American business community. Until recent years the international role of the United States in these areas was limited primarily to membership in the Paris Convention of 1883. The United States has now assumed a more active role in the international protection of patents, trademarks, and intellectual property. The United States was instrumental in the establishment of the World Intellectual Property Organization and the drafting and signing of the Patent Cooperation Treaty of 1970. In addition the programs of the Committee for International Cooperation and Information Retrieval Among Patent Offices in coordinating the development of mechanized patent search systems are of great value to those who make use of the patent system.

The United States currently may not make voluntary contributions for the support of the programs of these international agencies because of the lack of any statutory authorization. The committee has been advised by the Department of Commerce that the inability of the United States to contribute to the support of these projects, in whose creation this country was instrumental, is a source of embarrassment at international meetings, particularly in view of the cash contributions made by other countries.

BILL PASSED OVER

The bill, S. 646, to amend title XVII of the United States Code to provide for the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplica-

tion and piracy of sound recording, and for other purposes, was announced as next in order.

Mr. BYRD of West Virginia. Over, Mr. President.

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

AMENDMENT OF TITLE 35, UNITED STATES CODE

The Senate proceeded to consider the bill (S. 1254) to amend title 35, United States Code, "Patents," and for other purposes which had been reported from the Committee on the Judiciary with amendments on page 1, line 9, strike the word "assistant", and insert the word "Assistant"; on page 2, line 7, following the words "of the Senate." insert "The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law, shall appoint all other officers and employees."; after line 19, insert:

SEC. 2. The first paragraph of section 7 of title 35 of the United States Code is amended to read as follows:

"The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed under the classified civil service. The Commissioner, the Deputy Commissioner, the assistant commissioners, and the examiners-in-chief shall constitute a Board of Appeals, which on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal to be designated by the Commissioner. The Board of Appeals has sole power to grant rehearings."

On page 3, line 8, strike out "Sec. 2.", and insert "Sec. 3."; on page 4, line 3, after the words "ment and the", strike out the word "late", and insert the words "delay in"; after line 5, strike out the following:

SEC. 3. (a) There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce for Patents and Trademarks, shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

And insert, in lieu thereof:

SEC. 4. (a) There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce who shall be known as the Assistant Secretary of Commerce for Patents and Trademarks, shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

And on page 5, after line 2, insert the following:

SEC. 5. This Act shall be effective upon enactment. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments.

So as to make the bill read:

S. 1254

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3, title 35 of the United States Code is amended to read as follows:

"§ 3. Officers and employees

"(a) There shall be in the Patent Office a Commissioner of Patents, a deputy commissioner, two assistant commissioners, and not more than fifteen examiners-in-chief. The Assistant Secretary of Commerce for Patents and Trademarks, shall, ex officio, be the Commissioner of Patents. The deputy commissioner, or in the event of a vacancy in that office, the assistant commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed, and takes office. The Commissioner of Patents, the deputy commissioner, and the assistant commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law, shall appoint all other officers and employees.

"(b) The Secretary of Commerce may vest in himself the functions of the Patent Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

"(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended."

SEC. 2. The first paragraph of section 7 of title 35 of the United States Code is amended to read as follows:

"The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed under the classified civil service. The Commissioner, the Deputy Commissioner, the assistant commissioners, and the examiners-in-chief shall constitute a Board of Appeals, which on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal to be designated by the Commissioner. The Board of Appeals has sole power to grant rehearings."

SEC. 3. Section 151 of title 35 of the United States Code is amended to read as follows:

"§ 151. Issue of patent

"(a) If it is determined that an applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid within three months thereafter.

"(b) Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

"(c) Any remaining balance of the issue fee shall be paid within three months from the sending of a notice thereof and, if not paid, the patent shall lapse at the termination of the three-month period. In calculating the amount of a remaining balance, charges for a page or less may be disregarded.

"(d) If any payment required by this section is not timely made, but is submitted with the fee for delayed payment and the delay in payment is shown to have been unavoidable, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred."

SEC. 4. (a) There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce who shall be known as the Assistant Secretary of Commerce for Patents and Trademarks, shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

(b) Section 5315 of title 5, United States Code, is amended by striking "(7)" at the end of item (12) and substituting "(8)".

(c) Section 5316 of title 5, United States Code, is amended by striking item (48).

SEC. 5. This Act shall be effective upon enactment. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–73), explaining the purposes of the measure.

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

PURPOSE OF AMENDMENTS

All of the amendments are of a perfecting or clarifying nature. Most of the amendments provide for necessary revisions in title 35 to conform that title to the provisions of this legislation.

PURPOSE

This bill, as amended, provides for several miscellaneous amendments of title 35, and for an adjustment of the organization of the Patent Office within the Department of Commerce.

STATEMENT

There has been an increase in the number of situations where a patent applicant has failed to make timely payment of the issue fee. Section 151 of title 35 authorizes the Commissioner of Patents to accept a late payment upon a showing of sufficient cause only if the late payment is made within 3 months of the due date. In some situations the failure to make the payment was unavoidable and private bills have been introduced to direct the Commissioner to accept the late payment. The amendment of section 151 contained in this legislation would eliminate the necessity for such bills by giving the Commissioner authority to accept a late payment upon a showing that the delay was unavoidable.

Under the existing section 3 of title 35 there are 19 positions in the Patent Office which require Senate confirmation. No useful public policy purpose is served by this procedure. This bill would eliminate the requirement for the Senate to give its advice and consent to the position of Examiner in Chief of the Patent Office and would require Senate confirmation only of the Commissioner, the Deputy Commissioner, and the two Assistant Commissioners.

The Patent Office currently is confronted with substantial administrative problems. While the Congress had not yet completed action on the legislation for the general revi-

sion of the patent law, it is apparent that no major change will be made in the current patent examining system. Because of the rise in the number of patent applications, the complexity of many inventions, and the long delay in the disposition of many applications, there is an urgent need for the most efficient administration of the Patent Office and clear policy responsibility in the Commissioner of Patents.

The bill provides that the number of assistant secretaries of Commerce shall be increased from seven to eight by the establishment of the position of Assistant Secretary of Commerce for Patents and Trademarks. The Assistant Secretary of Commerce for Patents and Trademarks shall, ex officio, be the Commissioner of Patents. The Patent Office, with 2,701 employees, is one of the largest functioning components of the Department of Commerce. The Congress has previously provided that such other components of the Department, as the Travel Service, with 73 employees, and the Maritime Administration, with 1,708 employees, should be headed by an assistant secretary.

The committee is aware that the President has recommended the abolition of the Department of Commerce and the incorporation of many of its functions, including the Patent Office, in a Department of Economic Affairs. It is currently uncertain what action may be taken by the Congress on this proposal. In any event, the committee believes that the urgent administrative problems confronting the patent system makes it advisable that favorable action be taken at this time on section 4 of S. 1254.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I seek no time on behalf of the distinguished majority leader.

OUR VETERANS AND THE VIETNAM WAR

Mr. SCOTT. Mr. President, it is appropriate this week to address ourselves to the atmosphere in our Capitol, to the veterans who have been meeting with many of our colleagues, and to the future meetings that are planned.

I said the other day that the veterans certainly have a right to be dissatisfied, that they have a right to dissent, and that they have a right to visit their Nation's Capitol to discuss the progress of this war.

Yesterday, I met with a group of young men from Pennsylvania. They had varied backgrounds. In addition to the obvious questions, they wanted to know what are we doing for the returning veteran, what are we doing for them by providing better training and education and employment, what are we doing to rehabilitate them, and what are we doing to attack the drug problem that they claim has been an epidemic in Vietnam because of the war itself and because of the overall atmosphere.

Mr. President, I am quite sympathetic to the plight of many of these men. I am also quite sympathetic to all of those who have fought the war in Southeast Asia.

I would hope that the exchange we had helped each of us who attended this meeting. I am hopeful that these men now have a broader view of what we are trying to do in our irreversible disengagement. I also believe that the President's position of withdrawal is more fully understood.

But, Mr. President, what deeply concerns me is not the marches, not the meetings, not the discussions, but the fact that our Nation's withdrawal from a combat role is not fully recognized.

The fact, of our humane consideration for the more than 400 known prisoners of war and their families apparently is lost in the shuffle.

I do not believe it necessary to go into all the statistics to emphasize our progress of withdrawal—the dramatic cut in casualties and the rate of troops being returned to their loved ones. But, Mr. President, I do think it important that each of us note in this progress. We should make a mental note about this progress and think twice, or three times if necessary, the next time one rises to criticize the President on this matter.

The other day, I was talking to an associate and he suggested that maybe the only way to get across this rapid withdrawal rate was through a sophisticated paid advertising campaign. Certainly, I would not subscribe to this, but one begins to wonder whether we do not do a better job packaging soap, cereal, and automobiles than telling the simple truths of what this administration has done.

On the floor today, Mr. President, I will be joined by a number of my colleagues who will offer their comments on their support of President Nixon during these trying times.

This has been a tragic period. There is no question about it. But this has not been a war started by President Nixon. It has, though, been a war that he pledged to end and is ending. No other person who has been in his position has been this successful.

In simple justice, will not the American people and those who interpret the news to them, recognize the clear, unassailable truth—that the President is ending our involvement in this war at the quickest level of withdrawal consistent with the commitments made by other administrations and with the security which, in common decency we owe to ourselves and to those who called for our help?

Mr. President, I read in the newspaper that one Member of Congress, who yesterday went to the Mall and, obviously, in an effort to please the veterans who were there, made the statement—flatly—that President Nixon is not committed to ending our involvement in this war.

Mr. President, that simply is not a correct statement of fact. I am satisfied that the person who made it knows it to be not a correct statement of fact. When we remember that when President Nixon left office as Vice President, there were no combat soldiers in South Vietnam, that the next administration and the one that followed that did escalate the war, we realize that those Members who were partisan to those administrations and supported those administrations in their actions now count on the short memories of those young men on the Mall who were about 10 or 12 years old when this began. To go down and say that the current President is not committed to the withdrawal of our forces from Vietnam is a cruel hoax and an unfair kind of statement to make in view of the President's pledge and his high moral commitment to the American people.

Mr. TAFT. Mr. President, on Tuesday I met with a group of Ohio Veterans Against the War in Vietnam who were in Washington, as my colleagues know, to protest continued American involvement in Southeast Asia.

The meeting went on for over an hour. It was an emotional and highly charged session. And while we were unable to reach agreement, I believe it was a most worthwhile exchange of ideas.

The message I tried to convey to these sincere young Americans was one of hope and support for what I believe is a responsible and irreversible policy of U.S. withdrawal from Vietnam.

President Nixon is ending U.S. involvement in Southeast Asia. We are committed to that cause.

The figures on troop withdrawals have been repeated time and again. When the President took office, we had over 540,000 U.S. combat troops in Vietnam. Today there are 184,000, with another 100,000 troops to be withdrawn by December 1, 1971.

The troops are coming home. To some, they may not be returning fast enough, but we are on the way out, and that can not be disputed.

I am, Mr. President, somewhat amazed at the continued criticism of President Nixon's policies by the Johnny-come-lately Democratic doves. Their silence during the sixties, when a Democratic President was shipping hundreds of thousands of young American men into combat, is testimony to the pure politics of their current dissent.

As the troops come home, by the thousands each month, these same newly hatched doves suddenly have found their voices.

I believe the American people stand behind the President's program of total withdrawal from Vietnam.

He is not bugging out as some would do, but he is following a carefully planned policy of responsible and irreversible withdrawal.

There is no question that history may judge harshly the wisdom of our involvement in a land war in Asia. But that is irrelevant at this point. The question is how we disengage, President Nixon is doing so, responsibly and in a manner that will not abandon American prisoners of war.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order of the Senate, the Senator from Iowa (Mr. HUGHES) is recoginzed for a period of not to exceed 15 minutes.

SENATE RESOLUTION 102—SUBMISSION OF A RESOLUTION REGARDING THE ORGANIZATION OF WORLD CONFERENCE OF GOVERNMENTS ON PROTECTION OF CIVILIANS DURING ARMED CONFLICTS

Mr. HUGHES. Mr. President, I submit for appropriate reference a resolution expressing the sense of the Senate that the United States should take the initiative in organizing a world conference of governments on the protection of civilians during armed conflict.

Such a world conference should undertake three tasks:

First. Clarify the relationship between existing rules, principles, and procedures of international law and the destructive effects of modern warfare on civilian populations;

Second. Adopt new international rules, principles, and procedures as needed to assure maximum protection of the civilian population from the consequences of warfare in the modern world; and

Third. Confirm and develop appropriate principles, standards, and procedures for assessing national and individual responsibility for violations of protective standards.

Mr. President, the recent conviction of Lieutenant Calley for the killing of helpless civilians in Vietnam and the troubled national reaction to this conviction dramatize the American and indeed worldwide confusion over what standards should apply to the treatment of civilians in situations of armed conflict.

There are existing principles and standards, but they were drawn up in far different eras—at the Hague in 1907 and, in the aftermath of World War II, at Nuremberg and Geneva. Detailed measures for the protection of civilians were not explicitly applied to all instances of armed conflict.

Yet, during the past quarter century we have witnessed hundreds of armed conflicts in which uncounted thousands of people have died or been incapacitated, many of them innocent civilians. No one knows how many innocent noncombatants have been caught in the cross-fire of warring groups. Although the Vietnam war has been the most quantified in history, our Government admits that it has never made a study of noncombatant casualties. Nor do rosters of innocent victims exist for other arenas of recent conflict—Korea, Hungary, Indonesia, Algeria, the Middle East, the Congo, Nigeria, and now, Pakistan.

Modern warfare consists of new weapons and tactics. The most frequent forms of armed conflict today are civil wars with various degrees of international intervention. Civilians are caught in the middle, sometimes as hostages against terror. The traditional distinction between civilians and combatants has been blurred in the midst of revolution and counterrevolution.

Death and destruction go on and the standards for protection of civilians are inadequate and frequently dishonored. It is time for a new world conference to consider these problems and suggest means whereby the civilian populations of the world might be spared for all time another Mylai or other atrocities chronicled in the long history of warfare.

In order to avoid misunderstanding, I want to point out that my resolution is not proposing the creation of an international tribunal for the trial and punishment of alleged war crimes. Our own Nation has assumed the responsibility for the trial and punishment of its own citizens. We must hope that a universal and widely accepted code would clarify the nature of the crimes involved and would force other nations to assume the same responsibility for themselves and their citizens.

The time may come in the affairs of nations when an international tribunal can be given the permanent task of trying individuals and national leaders for violation of humanitarian codes. But realistically speaking, that time is not here and now.

We may ask whether effective rules are possible, and whether they could ever be enforced. I believe the time has come for nations to face these questions.

For many people the answers will be negative, and they will conclude that an effort of the kind I propose would be an exercise in futility. Or worse, that the attempt to improve the rules somehow institutionalizes war and implies resignation to its inevitability.

I am not ready to concede the inevitability of war. Permanent peace, now, more than ever before, is the world's great goal. The search for it must extend along every possible road. While the world conference I am proposing could not be expected to produce a millenium, it would be a constructive way to keep nations working toward peace.

Over the past 25 years, there has been constant conflict in the world, limited, however, in time and in geographical scope. The civilian populations affected have usually been among the world's poorest and weakest, remote from the great powers and beyond the imaginations of the more fortunate. Often their plight has been shrouded in the confusion of limited and conflicting news coverage resulting from censorship and from types of warfare difficult to follow.

We must ask ourselves how different it might have been in terms of human understanding and horror if all of the death and destruction had been combined in a single war fought in North America or in Europe. Would the combined weight of all the motives for these wars seem equal to the total sacrifice of multitudes of innocent human beings?

I believe, Mr. President, that the world conference I am proposing would help awaken the conscience of each nation to the unutterable horror of war. If men fully understood the dimensions of human tragedy inflicted by armed conflicts, they might be more reluctant to support national policies which could add to that horror. And when the pressures for peaceful settlement fail, clearly enunciated international standards might help to save at least some of the innocent victims.

I am less concerned with the formalities of a conference than with a substantive achievement for humanity.

Nations now kill with 20th century ferocity, but they seek peace with 18th century urgency.

In recent years, significant steps have been taken toward the goal of clarifying and improving the principles and standards of international law which are designed to protect civilian populations. The United Nations has been actively studying this question for the past 2 years. Students of international law have held numerous conferences on the subject, with more planned for the near future. Next month, the International Committee of the Red Cross will convene a meeting of government legal experts in Geneva to discuss the international humanitarian law applicable in armed conflict.

The world conference I am proposing, Mr. President, would provide a prestigious and inclusive international forum for the support, coordination, and implementation of proposals advanced by these various groups and agencies.

Indeed a major purpose of this resolution is to encourage these efforts and to urge the next important step—the world conference to implement proposals on which there is general agreement.

In other words, the world conference would work with, and attempt to build upon, the progress already underway relating to the humanitarian treatment of civilians, without needless duplication of effort.

It would make use of the existing resources in the field. For example, the International Law Commission of the United Nations could be brought in to do specialized background studies, to prepare draft conventions, and generally to participate in the preparation and conduct of the conference. It is possible too that the United Nations or the Secretary General might be designated as the convening authority of the world conference.

The central purpose of the resolution is to move mankind ahead toward worldwide agreement on a set of principles on which all men may rely. These principles must apply to the conditions created by modern weapons and conditions of combat. They must be accepted by governments and taught to all military personnel. They must have the full moral support of all peoples, regardless of the issues in any given conflict.

We of the United States, who led the international community in establishing new standards for the protection of humanity after World War II, must now take the initiative to extend protections to the people threatened by armed conflicts.

It is time to try again toward the achievement of man's greatest goal—with a greater sense of urgency than ever before.

Mr. President, I ask unanimous con-

sent that the text of my proposed resolution be printed at the conclusion of my remarks.

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

S. RES. 102

Resolved, That it is the sense of the Senate that the United States should take the initiative in organizing a world conference of governments to—

(1) clarify the relationship between existing rules, principles, and procedures of international law and the destructive effects of warfare on civilian populations;

(2) adopt new international rules, principles, and procedures as needed to assure maximum protection of the civilian population from the consequences of warfare in the modern world; and

(3) confirm and develop appropriate principles, standards, and procedures for assessing national and individual responsibility for violations of protective standards.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Pursuant to the previous order, the Senator from Ohio (Mr. SAXBE) is recognized for not to exceed 15 minutes.

VIETNAM—A CRY FOR REASON

Mr. SAXBE. Mr. President, I listened with interest to the remarks of the junior Senator from Iowa, and I know of his deep sincerity when he makes these remarks—a cry for reason in a mad world. It is exactly this to which we address ourselves this morning: A cry for reason in a world that seems to feel that the nuclear age has arrived and that we can settle our differences by shaking a sort of nuclear sword at each other but at the same time engaging in what is called conventional warfare.

Reason has not been a dominant factor in the conduct of man throughout his history. Reason has always been obscured by emotion. We find ourselves today in a world of conflict in the Middle East, the Southeast Asia regions of Indochina, and in various regions of the world. I saw a list the other day of conflicts that are now continuing, or, like Korea, are at best temporarily abated, and I was amazed to find that there are over 20 major conflicts now going on in this world.

I was impressed a number of years ago to hear one of the early astronauts talk about his trip into outer space. He projected at that time the thought that as we develop our skills some day we are going to have the grand tour of the universe. In other words, we will start off in some kind of projectile and by using the gravitational forces of the planets which are our neighbors, thrust ourselves as far away as Mars, where men could spend at least a year in rotating around that planet, and then again by using that gravitational force proceed to another planet.

He said this would require men to be in a small capsule for perhaps as long as 2 years. They would be confined and would have to live together. He said the problem is not so much the scientific problem of developing the vehicle to travel to outer space, but rather the development of men who could spend that time together so confined.

He said that just as those men confined in that small space would have to get along, how similar it is to what is happening today as we are traveling through space at enormous speeds, through the constellations; and we who are the passengers in this relatively small world are brought to the point we have to get along. In other words, if confusion reigns in that space ship it would be destroyed, and if we on this planet cannot by reason reduce our differences, then we are going to destroy ourselves just as surely as those men in that space ship.

It is a frightening thought, but a thought I continually have as I look at our differences in trying to communicate. Today we are torn apart by a war that has been going on for years and years, a war that has affected many of our elections, a war that has affected the lives of many people, just as it has affected the economy of this country. I feel that my pledge to try to end this war had a great deal to do with my election, just as I feel it did with the election of President Nixon in 1968.

Yet we are faced with a cry, mostly coming from people who gave the previous administration a blank check and permitted a buildup to almost 600,000 men in Vietnam, that now we must end the war day after tomorrow.

If it were possible physically to do that I would go along with the hope that it could be done, preserving to that country that has been fought over for so many years the ability to run its own affairs and not be a conquered nation.

I know there are those who say it is militarily possible to withdraw in a month, or, like Dunkirk, wade off into the sea and be picked up by small boats.

But I think an orderly winding down of this war can be accomplished. I have been extremely critical of the administration in not feeling the urgency I did in starting the wind-down and setting definite goals—not a definite date of pullout, necessarily, but a day where we would start our orderly withdrawal.

That day did come about a year ago and many of us greeted it with some skepticism because of the seeming indifference previous to that time. But that withdrawal has continued and we are down to one-half the number of troops there originally, and the proposed withdrawals are continuing.

I would be the first to criticize the administration and the Department of Defense if the withdrawal could not continue at the present rate or at an accelerated rate; but I think the administration must be given the credit because if this is Nixon's war, it is Nixon's withdrawal. He has responded to the people of this country and the humanitarian feelings of the world in trying to step down the participation of this country in a situation in which we found ourselves thrust, and then ventured further into by the acts of this body.

I recently returned from Vietnam. I was pleasantly surprised to find that the standing down, as it is called, has accelerated over there, that the units are being detached from combat, that there is disengagement, with troops going into relatively safe areas. I was pleased to find the participation of our Air Force has been reduced by some 45 percent, which is in keeping with the overall lessening of our participation. I want this to continue. I have a genuine interest in it, as I have a son over there in a combat unit. I have talked with him, and I got a little different view from his ideas; the feeling he has, and he is working in a combined-operation unit, that the ARVN troops of South Vietnam are reaching a point where they can handle the burdens of fighting for their country.

I am a sponsor, along with other Senators, of a measure to prevent the invasion of North Vietnam, if the situation ever turned to the point they thought they could; and not only the invasion by our troops but also invasion by South Vietnam with our support.

I think it is important that we set ourselves up in the world as a country which believes in reason and peaceful settlement of differences. I cannot complain about our attitude in Paris. I believe we have gone the second mile in trying to reach agreement. I disagree with those who say that all we would have to do is set a definite date and then the prisoners would be released.

No such promise has been made. They simply say, "Disengage all your units, leave the country, and then we will begin to talk about the prisoners." This is a rather discouraging outlook and one which has pervaded all of their talk. They do not just want America out of Vietnam; they want a total dissolution of the South Vietnam Government. This is something, of course, that the South Vietnamese will never agree to. One million people in South Vietnam are there because they fled from the Communist Government of North Vietnam.

So I take the floor at this time, from my observations of a few days over there, to commend the administration for the dedication that it has shown in following its guidelines in withdrawing troops; and I prophecy, again from my personal observation, that it will be speeded up. I think it will be found that the removal of these units from combat zones is going to permit an accelerated rate of return to this country.

There are going to be difficulties. They are going into what they call the wet season over there, the monsoon season, and soon the bottom will drop out of the country, the roads will become impassable, the villages isolated, and there will be no major military activity until probably October.

In October I foresee difficulties, difficulties in our withdrawal, and it is going to take real determination to continue, because when the combat activity steps up there are going to be those who say, "Well, we just cannot afford to withdraw any more people at this time. We

are going to have to save them. We are going to have to stay." At this time those of us who take the floor today to support the President will be the first to criticize that this attitude of withdrawal has changed and one of continuing participation has extended.

I cannot help but feel we have done all we can for South Vietnam. We have stabilized their economy. In the South and in the delta region, the most populated and richest area, they have enjoyed a good agricultural year. Most of the area is free of Communist domination and intimidation. I think the rice crop and the successful economy is reflected in what can be seen, such as outboard motors being used on sampans and the improvement of their homes. I cannot help but feel that this is the most stabilizing thing we have done for their economy. We have given them the opportunity to reestablish their political organization. It is going to be difficult, if they have an election this year, to keep from interfering, but we must keep from interfering in that election.

Then I think we have given them the supplies that enable their own units to become effective field units to defend themselves—not to invade North Vietnam, and that is one of the reasons for my bill, but, rather, to give protection to their communities and to give security to their economy and their government. These things we have done.

We have had adverse effects. Any time we send the number of troops we did into a small, backward nation, we are going to have adverse effects. This we see in Saigon, in the corruption that exists there, and the dependence on an outside economy, and the attitude of the people toward Americans, in the terrible drug problem there, and the VD rates, and all those things that are distasteful in any occupation in any war.

For that reason, the sooner we get out, the better it is for them as it is for us. But I believe we have done these things, and we must recognize that, and we must proceed with all possible speed and all reasonable speed.

There are those who sincerely feel that if we pick a date out of the air and say, "On this day the last man will step out of Vietnam," it will somehow speed up and make more certain our withdrawal. I do not agree with that, and I think it must be proven if this point is going to be sustained.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Pursuant to the previous order of the Senate, the Senator from Ohio (Mr. TAFT) is recognized for not to exceed 15 minutes.

INVESTMENT TAX CREDIT

Mr. TAFT. Mr. President, I believe the American economy today is showing many signs of improvement. There are many optimistic statistics and many optimistic developments which bode well for it. However, there are also many trouble spots. I want to talk for just a few minutes today about what I see as one of the principal trouble spots and what we ought to be doing about it.

Today there are 5 million Americans unemployed—6 percent of our work force.

Inflation continues to rob the working man of his pay increases, the manufacturer of his profits, and the retired individual of the buying power needed to maintain a decent standard of living.

The industrial production index decreased from 107 in January 1969 to 103.7 in December of 1970.

Our international reserves decreased from $26 billion in 1949 to $14.5 billion in 1970.

If the American worker does not have the most modern tools and equipment, he will be less able to compete for exports on the world market, and indeed to compete with imports coming into this country from abroad.

Historically, American industry has been able to overcome the lower wages paid by foreign manufacturers by utilizing more efficient production equipment. This important competitive advantage is now being lost, and may be lost permanently if the American machine tool industry is not able to recover its historic leadership.

For that reason, I have taken this time today to plead for the American machine tool industry. At the very moment when we are faced with the greatest need for more efficient production equipment to recapture world markets, the machine tool industry, which builds such equipment, has incoming orders which are the lowest since the middle 1930's.

For the first time in history, the United States has lost its world leadership in shipments of machine tools.

I have brought along today a few charts that I would like to call to the attention of Senators.

Chart No. 1, which I have in the rear of the Chamber here, indicates that as recently as 1966 the American machine tool industry had shipments which were more than double those of any other nation. Now, in 1971, we will have been surpassed by West Germany, by Japan, and by the Soviet Union.

American exports of machine tools have historically been six to eight times as great as imports. In recent years this margin has narrowed, and narrowed very materially, as shown by chart No. 2, which I have here.

In certain important sectors of this market, imports are actually exceeding exports; for instance, in the area of lathes, which is already true, as shown by Chart No. 3. Also it is true in another important field, that of milling machines, as shown in Chart No. 4.

In the past 4 years, output per man-hour of the American worker rose at an annual rate of 1.7 percent. That is the lowest 4-year average for any period since World War II. At the same time, compensation per man-hour rose at a rate of 7 percent. The result was a 5.3 percent increase per year in the labor cost per unit of output.

These figures do not mean, on the other hand, that American labor is fattening up. On the contrary, the laboring man is caught in the inflationary spiral to the point where he is not increasiing his purchasing power, as he should be entitled to do. Wage increases have not resulted in a higher standard of living in most areas. During the last 4-year period real compensation per man-hour rose only 2.3 percent a year, the lowest 4-year rate of improvement in at least 20 years.

What is the answer to this?

If the American worker is to have a higher standard of living, if the United States is to recapture foreign markets, and if we are to improve our balance of trade, American industry will have to become more efficient. We will have to increase our productivity. This will require more modern equipment and more efficient tools for the American worker. The health of the American machine tool industry in my judgment is basic for fundamental economic recovery in this country.

The productivity growth rate has averaged 3.1 percent since 1950. If it could be accelerated to a 3.5-percent rate for the decade of the seventies, we would experience an additional $250 billion increase in the gross national product during the 1970's, in terms of constant dollars. In other words, an increase of only 0.4 percent in our rate of productivity growth would have a tremendously beneficial impact upon our real economic growth.

To improve the productivity of the American worker and American industry we need to restore the investment tax credit now so that American manufacturing facilities will be modernized.

There is a direct relationship, historically, between the investment tax credit and actual expenditures for modernized tools of production. A dramatic turnaround is needed. The 1971 projected machine tool shipments show that West Germany will more than double U.S. shipments. The Soviet Union will almost double ours. Japan will almost double ours, and we will only be marginally ahead of the United Kingdom, Italy, and France. This is a market which the United States has dominated since before World War I. As to lathes and milling machines we have been a net importer since 1966. Imports of machine tools from Canada have increased 600 percent since 1964, from Italy almost 900 percent since 1964, from Japan almost 800 percent since 1964, from the United Kingdom 300 percent since 1964, and from West Germany 270 percent since 1964.

THE EFFECT ON AMERICAN INDUSTRY

In almost every industry there is a preferred operating rate, which is that percent of capacity at which production should be maintained. My chart No. 5 shows that for the American metalworking industry the preferred rate is 91 percent, but in February of this year it operated at only 66½ percent, and as a matter of fact it has gone down since that time, and there have been layoffs

of thousands of workers. But the layoff of workers in the major tool industry itself, while important, is not nearly so significant as the likely overall range impact, if we do not keep our production facilities up to date, on the employment picture throughout American industry.

For the machinery industry the preferred rate is 94 percent but it operated at 62 percent. The electrical machinery industry's preferred rate is 91 percent, but they were at 59 percent. For aircraft, the preferred rate is 93 percent but they were at 53½ percent. For fabricated metal products the preferred rate is 87 percent but they were at 64½ percent. In the instrument industry the preferred rate is 92 percent, but they were at 60.5 percent. Of all the major metalworking industries, only in the motor vehicle industry, which was recovering from a General Motors strike, were operations in excess of the preferred rate.

Mr. President, I ask unanimous consent that the text of charts Nos. 5, 6, 7, and 8 be printed in the RECORD at this point in my remarks.

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

CHART 5.—OPERATING RATE (PERCENT OF CAPACITY)

	Preferred rate	February preliminary	February, year ago
All metalworking	91	66.5	76.0
Machinery	94	62.0	81.0
Electrical machinery	91	59.0	72.0
Motor vehicles and parts	87	102.5	73.0
Aircraft and other trans	93	53.5	72.0
Fabricated metal pdts	87	64.5	78.5
Instruments	92	60.5	77.0

CHART 6

1969 TOTAL INDUSTRY ESTIMATE

A. METAL CUTTING TYPE MACHINE TOOLS

Date	Net new orders			Order backlog	Shipments		
	Domestic	Foreign	Total		Domestic	Foreign	Total
1969:							
January	$76,000,000	$15,200,000	$91,200,000	$814,300,000	$82,800,000	$3,650,000	$86,450,000
February	83,150,000	10,000,000	93,150,000	809,800,000	90,600,000	7,100,000	97,700,000
March	100,850,000	15,050,000	115,900,000	820,400,000	94,700,000	10,600,000	105,300,000
April	173,600,000	8,750,000	182,350,000	901,600,000	91,950,000	9,150,000	101,100,000
May	99,050,000	14,150,000	113,200,000	916,400,000	88,900,000	9,550,000	98,450,000
June	99,900,000	12,800,000	112,700,000	906,900,000	112,400,000	9,800,000	122,200,000
July	70,000,000	17,350,000	87,350,000	910,400,000	75,050,000	8,800,000	83,850,000
August	56,450,000	10,250,000	66,700,000	903,000,000	63,150,000	10,900,000	74,050,000
September	58,500,000	23,500,000	82,000,000	876,600,000	96,650,000	11,750,000	108,400,000
October	77,400,000	11,600,000	89,000,000	861,000,000	94,000,000	10,600,000	104,600,000
November	67,550,000	11,400,000	78,950,000	847,800,000	83,900,000	8,300,000	92,200,000
December	70,200,000	12,600,000	82,800,000	812,400,000	103,350,000	14,830,000	118,150,000
12 months	1,032,650,000	162,650,000	1,195,300,000		1,077,450,000	115,000,000	1,192,450,000

Date	Gross new orders			Cancellations		
	Domestic	Foreign	Total	Domestic	Foreign	Total
1969:						
January	$90,750,000	$15,550,000	$106,300,000	$14,750,000	$350,000	$15,100,000
February	90,900,000	10,200,000	101,100,000	7,750,000	200,000	7,950,000
March	108,850,000	15,500,000	124,350,000	8,000,000	450,000	8,450,000
April	181,050,000	9,550,000	190,600,000	7,450,000	800,000	8,250,000
May	111,100,000	14,600,000	125,700,000	12,050,000	450,000	12,500,000
June	107,950,000	12,950,000	120,900,000	8,050,000	150,000	8,200,000
July	82,250,000	18,000,000	100,250,000	12,250,000	650,000	12,900,000
August	63,400,000	13,350,000	76,750,000	6,950,000	3,100,000	10,050,000
September	68,900,000	23,900,000	92,800,000	10,400,000	400,000	10,800,000
October	88,850,000	12,900,000	101,750,000	11,450,000	1,300,000	12,750,000
November	79,500,000	12,300,000	91,800,000	11,950,000	900,000	12,850,000
December	86,850,000	13,250,000	100,100,000	16,650,000	650,000	17,300,000
12 months	1,160,350,000	172,050,000	1,332,400,000	127,700,000	9,400,000	137,100,000

Note: This table includes industry estimate figures based on reports submitted to the National Machine Tool Builders Association. These industry estimates have not been adjusted for change in the value of the dollar.

B. METAL FORMING TYPE MACHINE TOOLS

Date	Net new orders			Order backlog	Shipments		
	Domestic	Foreign	Total		Domestic	Foreign	Total
1969:							
January	$32,750,000	$3,550,000	$36,300,000	$262,500,000	$25,850,000	$2,450,000	$28,300,000
February	43,100,000	2,600,000	45,700,000	275,400,000	28,700,000	4,100,000	32,800,000
March	40,700,000	5,050,000	45,750,000	287,600,000	30,850,000	2,700,000	33,550,000
April	86,950,000	3,250,000	90,200,000	348,700,000	25,700,000	3,350,000	29,050,000
May	52,750,000	2,950,000	55,700,000	372,500,000	29,500,000	2,450,000	31,950,000
June	45,600,000	4,100,000	49,700,000	382,200,000	35,850,000	4,150,000	40,000,000
July	37,100,000	3,550,000	40,650,000	394,900,000	26,250,000	1,650,000	27,900,000
August	33,300,000	5,300,000	38,600,000	402,800,000	28,050,000	2,650,000	30,700,000
September	23,950,000	3,750,000	27,700,000	395,700,000	32,800,000	2,050,000	34,850,000
October	36,250,000	8,750,000	45,000,000	397,500,000	40,400,000	2,800,000	43,200,000
November	27,700,000	4,200,000	31,900,000	390,200,000	34,150,000	5,050,000	39,200,000
December	24,200,000	2,050,000	26,250,000	382,800,000	31,200,000	2,400,000	33,600,000
12 months	484,350,000	49,100,000	533,450,000		369,300,000	35,800,000	405,100,000

Date	Gross new orders			Cancellations		
	Domestic	Foreign	Total	Domestic	Foreign	Total
1969:						
January	$34,700,000	$3,600,000	$38,300,000	$1,950,000	$50,000	$2,000,000
February	43,700,000	2,700,000	46,400,000	600,000	100,000	700,000
March	41,800,000	5,050,000	46,850,000	1,100,000	0	1,100,000
April	88,950,000	3,800,000	92,750,000	2,000,000	550,000	2,550,000
May	56,600,000	3,000,000	59,600,000	3,850,000	50,000	3,900,000
June	53,100,000	4,200,000	57,300,000	7,500,000	100,000	7,600,000
July	38,350,000	3,850,000	42,200,000	1,250,000	300,000	1,550,000
August	36,500,000	5,300,000	41,800,000	3,200,000	0	3,200,000
September	31,150,000	3,800,000	34,950,000	7,200,000	50,000	7,250,000
October	46,300,000	8,800,000	55,100,000	10,050,000	50,000	10,100,000
November	28,550,000	4,250,000	32,800,000	850,000	50,000	900,000
December	27,700,000	2,400,000	30,100,000	3,500,000	350,000	3,850,000
12 months	527,400,000	50,750,000	578,150,000	43,050,000	1,650,000	44,700,000

Note: This table includes industry estimate figures based on reports submitted to the National Machine Tool Builders Association. These industry estimates have not been adjusted for change in the value of the dollar.

CHART 7

1970 TOTAL INDUSTRY ESTIMATE

A. METAL CUTTING TYPE MACHINE TOOLS

Date	Net new orders			Order backlog	Shipments		
	Domestic	Foreign	Total		Domestic	Foreign	Total
1970:							
January	$78,600,000	$13,650,000	$92,250,000	$810,800,000	$84,350,000	$9,500,000	$93,850,000
February	52,700,000	10,150,000	62,850,000	786,300,000	74,650,000	12,700,000	87,350,000
March	60,000,000	15,950,000	75,950,000	764,100,000	82,500,000	15,700,000	98,200,000
April	46,300,000	12,900,000	59,200,000	740,200,000	69,150,000	13,900,000	83,050,000
May	41,600,000	11,150,000	52,750,000	695,900,000	82,550,000	14,550,000	97,100,000
June	44,050,000	17,800,000	61,850,000	657,100,000	84,500,000	16,100,000	100,600,000
July	47,700,000	15,000,000	62,700,000	644,900,000	61,300,000	13,600,000	74,900,000
August	23,450,000	10,750,000	34,200,000	616,900,000	47,750,000	14,400,000	62,150,000
September	35,750,000	8,400,000	44,150,000	577,700,000	67,000,000	16,350,000	83,350,000
October	28,650,000	8,050,000	36,700,000	543,400,000	60,400,000	10,550,000	70,950,000
November	21,000,000	8,000,000	29,000,000	516,600,000	45,700,000	10,100,000	55,800,000
December	26,950,000	12,750,000	39,700,000	470,700,000	67,500,000	18,100,000	85,600,000
12 months	506,750,000	144,550,000	651,300,000	----------	827,350,000	165,550,000	992,900,000

Date	Gross new orders			Cancellations		
	Domestic	Foreign	Total	Domestic	Foreign	Total
1970:						
January	$86,450,000	$13,950,000	$100,400,000	$7,850,000	$300,000	$8,150,000
February	62,500,000	10,800,000	73,300,000	9,800,000	650,000	10,450,000
March	70,700,000	16,800,000	87,500,000	10,700,000	850,000	11,550,000
April	54,350,000	13,350,000	67,700,000	8,050,000	450,000	8,500,000
May	48,050,000	11,350,000	59,400,000	6,450,000	200,000	6,650,000
June	50,250,000	18,250,000	68,500,000	6,200,000	450,000	6,650,000
July	52,450,000	15,400,000	67,850,000	4,750,000	400,000	6,150,000
August	41,150,000	11,750,000	52,900,000	17,700,000	1,000,000	18,700,000
September	40,800,000	9,100,000	49,900,000	5,050,000	700,000	5,750,000
October	33,800,000	8,600,000	42,400,000	5,150,000	550,000	5,700,000
November	29,350,000	8,200,000	37,550,000	8,350,000	200,000	8,550,000
December	35,300,000	14,250,000	49,550,000	8,350,000	1,500,000	9,850,000
12 months	605,150,000	151,800,000	756,950,000	98,400,000	7,250,000	105,650,000

Note: This table includes industry estimate figures based on reports submitted to the National Machine Tool Builders Association. These industry estimates have not been adjusted for change in the value of the dollar.

B. METAL FORMING TYPE MACHINE TOOLS

Date	Net new orders			Order backlog [1]	Shipments		
	Domestic	Foreign	Total		Domestic	Foreign	Total
1970:							
January	$18,700,000	$3,600,000	$22,300,000	$405,200,000	$38,650,000	$2,050,000	$40,700,000
February	29,650,000	2,050,000	31,700,000	397,300,000	33,600,000	6,000,000	39,600,000
March	17,000,000	3,350,000	20,350,000	376,700,000	38,200,000	2,750,000	40,950,000
April	25,550,000	1,650,000	27,200,000	369,100,000	32,200,000	2,550,000	34,750,000
May	15,200,000	1,050,000	16,250,000	339,300,000	43,400,000	2,700,000	46,100,000
June	12,850,000	1,550,000	14,400,000	312,500,000	36,200,000	5,000,000	41,200,000
July	12,300,000	2,450,000	14,750,000	288,500,000	36,250,000	2,500,000	38,750,000
August	8,950,000	3,550,000	12,500,000	270,600,000	28,150,000	2,250,000	30,400,000
September	22,250,000	1,600,000	23,850,000	263,100,000	28,900,000	2,500,000	31,400,000
October	36,250,000	2,100,000	38,350,000	266,200,000	33,150,000	2,100,000	35,250,000
November	8,800,000	1,050,000	9,850,000	240,700,000	30,750,000	4,600,000	35,350,000
December	19,100,000	10,650,000	29,750,000	234,800,000	32,150,000	3,550,000	35,700,000
12 months	226,600,000	34,650,000	261,250,000	----------	411,600,000	38,550,000	450,150,000

[1] Revised.

B. METAL FORMING TYPE MACHINE TOOLS—Continued

Date	Gross new orders			Cancellations		
	Domestic	Foreign	Total	Domestic	Foreign	Total
1970:						
January	$20,400,000	$3,650,000	$24,050,000	$1,700,000	$50,000	$1,750,000
February	31,500,000	2,150,000	33,650,000	1,850,000	100,000	1,950,000
March	21,400,000	3,500,000	24,900,000	4,400,000	150,000	4,550,000
April	27,900,000	2,200,000	30,100,000	2,350,000	550,000	2,900,000
May	19,800,000	1,300,000	21,100,000	4,600,000	250,000	4,850,000
June	21,750,000	1,600,000	23,350,000	8,900,000	50,000	8,950,000
July	14,250,000	3,050,000	17,300,000	1,950,000	600,000	2,550,000
August	10,800,000	3,800,000	14,600,000	1,850,000	250,000	2,100,000
September	22,750,000	2,650,000	25,400,000	500,000	1,050,000	1,550,000
October	37,650,000	2,350,000	40,000,000	1,400,000	250,000	1,650,000
November	15,000,000	1,300,000	16,300,000	6,200,000	250,000	6,450,000
December	21,800,000	10,650,000	32,450,000	2,700,000	0	2,700,000
12 months	265,000,000	38,200,000	303,200,000	38,400,000	3,550,000	41,950,000

Note: This table includes industry estimate figures based on reports submitted to the National Machine Tool Builders Association. These industry estimates have not been adjusted for change in the value of the dollar.

CHART 8

1971 TOTAL INDUSTRY ESTIMATE

A. METAL CUTTING TYPE MACHINE TOOLS

Date	Net new orders			Order backlog	Shipments		
	Domestic	Foreign	Total		Domestic	Foreign	Total
1971:							
January	$27,300,000	$9,450,000	$36,750,000	[1] $449,800,000	$43,500,000	$14,150,000	$57,650,000
February [2]	31,600,000	7,400,000	39,000,000	429,000,000	47,850,000	11,950,000	59,800,000
2 months	58,900,000	16,850,000	75,750,000		91,350,000	26,100,000	117,450,000

Date	Gross new orders			Cancellations		
	Domestic	Foreign	Total	Domestic	Foreign	Total
1971:						
January	$29,950,000	$9,700,000	$39,650,000	$2,650,000	$250,000	$2,900,000
February [2]	34,250,000	7,850,000	42,100,000	2,650,000	450,000	3,100,000
2 months	64,200,000	17,550,000	81,750,000	5,300,000	700,000	6,000,000

[1] Revised.
[2] Preliminary.

Note: This table includes industry estimate figures based on reports submitted to the National Machine Tool Builders Association. These industry estimates have not been adjusted for change in the value of the dollar.

B. METAL-FORMING-TYPE MACHINE TOOLS

Date	Net new orders			Order backlog	Shipments		
	Domestic	Foreign	Total		Domestic	Foreign	Total
1971:							
January	$15,900,000	$1,550,000	$17,450,000	[1] $221,100,000	$29,000,000	$2,150,000	$31,150,000
February [2]	17,050,000	3,250,000	20,300,000	209,800,000	28,250,000	3,350,000	31,600,000
2 months	32,950,000	4,800,000	37,750,000		57,250,000	5,500,000	62,750,000

Date	Gross new orders			Cancellations		
	Domestic	Foreign	Total	Domestic	Foreign	Total
1971:						
January	$17,350,000	$2,000,000	$19,350,000	$1,450,000	$450,000	$1,900,000
February [2]	19,700,000	3,450,000	23,150,000	2,650,000	200,000	2,850,000
2 months	37,050,000	5,450,000	42,500,000	4,100,000	650,000	4,750,000

[1] Revised.
[2] Preliminary.

Note: This table includes industry estimate figures based on reports submitted to the National Machine Tool Builders Association. These industry estimates have not been adjusted for change in the value of the dollar.

Mr. TAFT. I also ask unanimous consent, Mr. President, to have printed in the RECORD, at the conclusion of my remarks, a speech by Mr. John C. Renner, Director of International Trade of the Department of State, at a conference of the American Management Association in New York City on March 23, 1971.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1.)

Mr. TAFT. This speech, Mr. President, points out very clearly that, particularly in the case of Japan, there is an industrial policy, and that other nations also, in Europe, have an industrial policy, which is dedicated toward recapturing the high research and high-skilled labor type of product. The United States has no such industrial plan at this time. The enactment, at this point, of a tax credit for industry, I believe, would have the effect of at least starting us in the direction of such plans.

CONCLUSION

From the standpoint of world trade, the efficiency of American industry, the employment of American workers, and the purchasing power of the American family, it is important that the investment tax credit be restored. The major strides which have been made in turning the economy around, as we undertake this transition from the wartime economy to a peacetime economy, need the assistance of the investment tax credit in putting this economy on a solid foundation for a meaningful recovery.

I hope that Members of Congress will study these figures and study this problem in detail until we understand it, and then act accordingly and with dispatch.

EXHIBIT 1

AMERICAN-JAPANESE TRADE PATTERN: IS IT DIFFERENT?

(By John C. Renner)

My purpose today is to look at the pattern of trade between the United States and Japan in an effort to determine whether it has special characteristics and, if so, why.

To this end, I will compare the American-Japanese trade pattern with that between the United States and Europe.

Japan and Europe have enough similar features to warrant following this line of

inquiry. Per capita income in Japan now approaches that of Great Britain. Japanese wages are reaching the levels of Western Europe. Japanese expenditures on research and development are about the same, relative to income, as those of the Common Market countries. The number of Japanese scientists and engineers, compared to population, exceeds the average in the European Community. Educational levels in the Japanese work force are comparable to those in Europe. Japan does have considerably younger plant and equipment than the U.K.—or the U.S.—but the gap is smaller between Japan and Germany. Both Japan and Europe appear to have the benefits and drawbacks of advanced industrial societies in about equal measure.

TRADE PATTERN: GENERAL

Comparing American imports from Japan in 1969 with those from the European OECD countries, we get the following picture:

	Percentage distributions, U.S. imports from—	
	Japan	Europe
Nonmanufactured goods	4	16
Manufactured goods	96	84

As one would expect, manufactured goods constitute by far the largest share of American imports from both Europe and Japan. However, the disparity between imports of manufactured and nonmanufactured goods is significantly greater in the case of Japan.

Let us now look at Japanese and European imports from us in 1969:

	Percentage distribution	
	Japan's imports from United States	Europe's imports from United States
Nonmanufactured goods	58	31
Manufactured goods	42	69

There is a marked difference in the composition of the European and Japanese imports from us. The majority of the European imports from us are made up of manufactured goods. With the Japanese, the reverse is true; they take more nonmanufactured goods than manufactured goods from us.

Putting the two tables together, we see that both Europe and Japan import a considerably smaller percentage of manufactured goods from us than we do from them, with the difference being much greater in the case of Japan. Manufactured goods make up 96 percent of our imports from Japan but only 42 percent of Japan's imports from us.

TRADE PATTERN: MANUFACTURED GOODS

We can get a closer view of the matter by scrutinizing the make up of trade in manufactured goods. The object here is to determine whether there are significant differences in our trade with Japan and Europe in products with greater-than-average inputs of research and development and those with smaller-than-average inputs of research and development. In U.S. manufacturing as a whole, research and development expenditures equalled 4.1 percent of net sales in 1968; this is used as the average in the following analysis.

Breakdown of technology.—U.S. imports from Japan and the European OECD countries of above-average and below-average technology goods in 1960, 1965 and 1969 are portrayed in the following table.

	Percentage distribution					
	U.S. imports from Japan			U.S. imports from Europe		
Type of manufacture	1960	1965	1969	1960	1965	1969
Above average technology	17	22	29	23	22	24
Below average technology	83	78	71	77	78	76

A number of interesting facts emerge: The United States imports substantially more lower technology goods than higher technology goods from both Europe and Japan but the relative amount of lower technology imports is decreasing, rapidly in the case of Japan and almost imperceptibly in the case of Europe. We import comparatively more higher technology goods from Japan than from Europe; this is the reverse of the situation ten years ago when Japan lagged behind Europe.

Turning the coin, we see the composition of Japanese and European imports from us over the same period:

	Percentage distribution					
	Japan's imports from United States			Europe's imports from United States		
Type of manufacture	1960	1965	1969	1960	1965	1969
Above average technology	55	49	57	45	50	57
Below average technology	45	51	43	55	50	43

This table shows that:

Both Europe and Japan now take more higher technology goods from us than lower technology goods.

The technological pattern of our exports to these two destinations is now almost identical.

There is a definite trend in Europe's imports from us: the percentage of higher technology imports has increased steadily and markedly.

The technological characteristics of Japan's imports from us exhibit no trend. Higher technology imports decreased in 1965 and in 1969 climbed slightly above 1960 level.

Putting these tables side by side, we observe that both Japanese and the Europeans import a much higher percentage of higher technology goods from us than we do from them. It is also apparent and significant that, in our trade with Europe, this discrepancy is increasing while, in our trade with Japan, it is decreasing.

TRADE PATTERN: CONCLUSIONS

From this evidence we can conclude that the composition of our trade with Japan is strikingly different from that with Europe. This is true both on an aggregate basis when looking at the problem from the standpoint of manufactured and non-manufactured goods and when observing the breakdown of manufactured goods into above-average and below-average technology categories.

Manufactured products constitute a considerably larger share of our exports to Europe than to Japan. Within the category of manufactured goods, the comparative share of our exports of higher technology products is expanding rapidly to Europe while exhibiting only a very small upward trend with regard to Japan, if in fact any trend is evident at all.

Manufactured products make up a somewhat larger share of our imports from Japan than from Europe. Within the category of manufactured goods, the comparative share of our imports of higher technology products from Japan is increasing sharply while remaining virtually constant with respect to Europe.

The analysis also shows that higher technology products make up a steeply rising proportion of Japanese exports to us while the comparative share of our exports of these products to them have increased only slightly. The reverse is true with respect to Europe. Relatively, our exports to Europe of higher technology products have shot up while our imports from Europe have increased very slowly.

TRADE PATTERN: VERIFICATION AND QUALIFICATION

Up to this point we have been looking at percentages. Now let us examine absolute figures. For this purpose, manufactured products will be divided in three parts: those with high, medium, and low inputs of research and development. The following table shows this breakdown in our trade with Japan and Europe in 1965 and 1969, in millions of dollars.

Year	Imports from Japan	Exports to Japan	Balance	Imports from Europe	Exports to Europe	Balance
High technology:						
1965	168	223	+55	394	1,210	+816
1969	460	518	+58	763	2,946	+2,183
Medium technology:						
1965	493	295	−198	1,537	2,299	+762
1969	1,500	514	−986	3,009	2,420	−589
Low technology:						
1965	1,559	324	−1,235	2,747	1,801	−946
1969	2,689	671	−2,018	4,735	3,229	−1,506

Looking at the problem from this vantage point reinforces our conclusions about the differences in our trade with Japan and Europe. A number of interesting facts are evident:

—We have a large and growing deficit in our trade in low technology products with both Europe and Japan. The deficit with Japan is larger and growing somewhat faster than with Europe.

—Between 1965 and 1969 a surplus in our trade with Europe in medium technology products changed to a deficit. Our deficit with Japan has been increasing.

—We have a large and rapidly increasing surplus in our trade with Europe in high technology products. The surplus with Japan is smaller by a great deal and growing at a much slower pace.

All of the data we have examined are distorted to some extent by the abnormally high level of demand in the United States since 1965. The trade figures for 1970 should show an improvement all along the line. For example, preliminary data for 1970 indicate that there has been a distinct improvement in our trade balance with Japan in high technology items. But it is doubtful that 1970 figures will change the basic pattern we have observed. In any case, demand considerations ought to apply with about equal force to our imports from Europe and Japan.

One is drawn relentlessly to the conclusion

that the pattern of our trade with Japan is impressively different from that with Europe.

REASONS: GENERAL DIFFERENCES

One does not have to go far to find the main reasons for the discrepancy in our general trade pattern with Japan as compared with Europe.

Japan is a small island nation with little arable land, few raw materials, and insignificant fuel resources. Japan must import agricultural and other primary products. The United States has many of these goods in abundance and at relatively low prices.

This phenomenon accounts for most of the general differences but, as we shall see, there are numerous other factors at work.

REASONS: TECHNOLOGY DISPARITY

The reasons for the differences in our trade with Japan and Europe in products with greater-than-average inputs of research and development and those with smaller-than-average inputs of research and development are complex. They arise from many differences in the industrial policies and in the nature of the inducements to exports and barriers to imports of Japan, Europe, and the United States. I propose to examine each briefly.

INDUSTRIAL POLICY: JAPAN

The available evidence indicates that the Japanese Government has adopted as a major aim of policy the shifting of resources toward the production of higher-technology products.

MITI Vice-Minister Ojimi said in June, 1970 that "The Ministry of International Trade and Industry decided to establish in Japan industries which require intensive employment of capital and technology." The projections of the Economic Planning Agency and the activities of MITI confirm that the Japanese Government deliberately and consistently has taken and is taking measures to shift resources from the production of low-growth, less-sophisticated products towards high-growth, more-sophisticated products.

Industries marked for high rates of growth and large expenditures for research and development include, for example, nuclear energy, computers, sophisticated electronics, numerical control machines, space, and oceanography.

The Japanese Government implements its industrial policy in two main ways not explicitly related to exports or imports. We will look at export inducements and import controls later.

Administrative guidance

More than most societies, the Japanese operate on the basis of consensus. It often taken considerable time to arrive at a consensus but, once attained, the public and private sectors tend to work together toward the agreed goal. An inclination to relate individual goals with national objectives, a history of close cooperation between government and business, a tradition of loyalty and discipline facilitate the building of consensus and cooperative action.

Administrative guidance has also been effective because the channels for pointed communication between the public and private sectors are clear and easily used.

For example, Japanese firms usually depend greatly on borrowing as a source of corporate financing rather than equity and retained earnings that dominate corporate financing in the United States and Europe. This puts the banks in an influential position and provides an explicit point of contact between MITI and Japanese companies.

Although, by the nature of things, concrete evidence is lacking, it is probably safe to assume that administrative guidance has been used as one of the means to encourage resource shifting.

Financial and other inducements

The Japanese Government also has more direct means to attain its goals.

Industrial development laws provide for financial assistance to enterprises in industries marked for high growth or large research and development expenditures. Financial assistance may take a number of forms, including tax incentives and long-term loans at low interest rates.

Under the industrial development laws, the Japanese Government can exempt selected growth industries from the legal prohibition against cartels.

Taken together, these are an impressive array of tools to ensure the implementation of Japan's industrial policy.

INDUSTRIAL POLICY: EUROPE

Some European countries, as a matter of conscious policy, have encouraged some shifting of resources toward higher technology production. But these efforts have tended to be limited either in scope or time.

The activities of the Coal and Steel Community and EURATOM had some impact on the nature of resource utilization. Steps have been taken toward the development of a common industrial policy for the European Community. However, it has not arrived at the stage where it has much impact on investment decisions or research and development expenditures.

Considered collectively, the various industrial policies in Europe have not matched th Japanese industrial policy in terms of singleness of purpose, comprehensiveness, or effectiveness.

INDUSTRIAL POLICY: UNITED STATES

We have no industrial policy. Nor is there an overall concept guiding the multiple governmental actions bearing on business decisions. The huge governmental expenditures for space and military research and development have contributed substantially to the growth of our technological capabilities but they were taken for reasons unrelated to resource shifting in the private sector. Many of our tax, regulatory, and other laws have an impact—sometimes considerable—on resource utilization. But few if any American laws have as their principal aim the transfer of resources from low-growth, less-sophisticated industries to high-growth, more-sophisticated industries. If any thing, some of our laws are skewed in the other direction. Our lead in the production of high technology products is a result of private business decisions based on their separate appraisals of cost and demand factors. It has not arisen from a policy developed on a national basis and implemented cooperatively in view of the common objectives.

IMPORT RESTRICTIONS

Japan

A close look at the Japanese tariff indicates that the higher technology sector of industry is especially well protected. Japan's average duty on higher technology items is almost 10 percent higher than on lower technology items.

In addition, most of Japan's remaining industrial quantitative restrictions are on really high technology items, such as aircraft and parts, computers, radar and radio navigation apparatus, and aircraft engines and parts. These items not only have high inputs of research and developments, they are also products with regard to which the United States dominates the world market. There are very few Japanese quantitative restrictions on lower technology manufactured goods.

Whether by plan or fortune—and one suspects the former—the structure of the Japanese import restrictions appears well-suited to give greater protection to the higher technology sector—where world trade is growing fastest and where the United States has a strong comparative advantage.

However, one must note that the Japanese pattern of protection is not entirely consistent with Japan's industrial policy objectives. Japan, like other industrialized nations, has price support programs and import restrictions that retard the movement of farmers off the land. A glaring example is the price support system for the production of rice that, in the post war period, changed Japan from a rice importing to a rice exporting nation even though internal prices are several times the world level and in spite of the cost of retaining resources in low-productivity activity.

United States

The contrast between the American and Japanese import restrictions is sharp. Our average duty on higher technology products is substantially lower than on lower technology products: 6.9 percent compared to 9.0 percent. Our average tariff level on lower technology consumer goods is 12.8 percent.

Our quantitative restrictions and other non-tariff barriers show a similar picture. Not one American quantitative restriction hits a higher technology import. While it is often difficult to identify the product coverage of other non-tariff barriers, where this can be done the same story is revealed.

In other words, the American protective structure shows no sign of differential protection of higher technology products. In fact, the reverse is true. Moreover, most of the additional import restrictions that have been suggested in recent years would fall on lower-technology items, such as textiles and shoes.

Europe

The European structure of protection is similar to ours. The common external tariff of the European Community gives about 10 percent lower protection to higher technology products than to lower technology products. In addition, virtually all European industrial quantitative restrictions hit lower technology items, mainly textiles.

SPECIAL EXPORT INCENTIVES

In the years following the Second World War, Japan developed an elaborate institutional structure to assist in reopening the world market to its trade. Numerous devices were worked out to stimulate exports. While there is no way to measure the precise impact of these measures, some of them clearly would tend to encourage the shift of resources into higher technology industries. Some examples follow.

The amounts of export insurance available to Japanese shippers has varied according to a scale favoring products with a higher technological content. At one point, textiles could be insured for up to 30 percent of the export price and footwear up to 50 percent, while machinery, equipment and ships could be covered up to 80 percent.

Firms producing goods for export have been permitted to accelerate depreciation rates for plant and equipment, a procedure which favors capital-intensive industries.

There is some evidence suggesting that these export incentives may be modified or dropped at the beginning of the Japanese fiscal year on April 1, 1971. Nonetheless they existed during the period under study and may have contributed to some extent in shifting Japanese resources to higher technology industries.

United States and Europe

Neither the United States nor European countries appear to have special export incentives designed to encourage the transfer of resources to industries with higher than average inputs of research and development.

CONCLUSION

The evidence points inexorably to the conclusion that our trade pattern with Japan is different than that with Europe. The difference is one of degree rather than of kind. With regard to higher technology products,

Japan is a stronger export competitor and provides a weaker import market than in the case of Europe.

The evidence also persuades one that this difference is brought about at least in part by Japan's industrial policy, import restrictions, and export incentives—all of which encourage the shift of resources to the production of higher technology manufactured goods.

Mr. TAFT. Mr. President, I yield the floor.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Pursuant to a previous order, the Senator from Wyoming (Mr. HANSEN) is recognized for not to exceed 15 minutes.

HANOI'S GOAL—AN ANNOUNCED DATE FOR U.S. WITHDRAWAL

Mr. HANSEN. Mr. President, the insistence by some that the President of the United States publicly and intentionally announce a date for completion of the withdrawal of U.S. troops from Vietnam is difficult to comprehend.

To begin with, too many, who were either supporting the input of American troops into Vietnam during the previous administration, or else lending support through their silence during the same administration, do not see fit to state publicly the facts about withdrawal of U.S. forces.

Are memories really so short in the United States? Have those who attempt to put the full blame for American involvement in Vietnam on the present administration really forgotten that a little more than 2 years ago, when President Nixon was inaugurated, the level of American troops in Vietnam was on a steady increase? Has anyone forgotten that since the Nixon plan for Vietnamization of the war was implemented, the level of American troops in Vietnam has decreased steadily?

Mr. President, how long are Americans going to let oratory, demonstrations, and biased reporting create a spectacle of gloom and doom in this country that hides the facts?

I think not for long. I think the facts cannot remain hidden. I believe that the truth will out. I believe this especially because the facts of the success of President Nixon's Vietnamization plan are so dramatic.

By the end of this month, there will be less than half the number of American troops in Vietnam that were there when Richard Nixon became President. By the end of this year, under the Nixon plan, the level of troops in Vietnam will be less than one-third of the level when Richard Nixon became President

None can deny this progress. None can deny that there has been great progress in Vietnamization—that the Army of the Republic of South Vietnam is much more capable of bearing this combat load than when President Nixon was inaugurated—and more importantly, is bearing this combat load, and has a good chance under the Vietnamization plan of being able to carry the full combat load after complete American withdrawal.

It is not going to be easy for the South Vietnamese to stand against the enemy from the north following American withdrawal, but under the President's plan, our allies will at least have a chance to survive the Communist attack—a chance to live, and to live, hopefully, as an Asian democracy.

Mr. President, I cannot see what purpose announcement of a firm U.S. withdrawal date will serve, for the United States, for the free world, or for our South Vietnamese allies who are desperately preparing for the withdrawal of U.S. support.

Everyone can see what an advantage such an announcement would be to the enemy—to Hanoi. The enemy could then plan accordingly. The enemy could build up its resources and conserve its forces in anticipation of the announced date.

At that time, or a few weeks before, when America's rear guard is moving out to go aboard transports, the enemy could launch a devastating attack—aimed either at destroying American fighting men out of revenge for the countless thousands of her own people Hanoi has forfeited to American steel in battle, or at toppling the government of South Vietnam and placing that country under the heel of communism, showing the world how futile was the 9-year effort of the United States to give South Vietnam the right of self-determination.

To announce a withdrawal date would be an easy route for President Nixon to take. His political critics would have lost what they have attempted to build into a main issue, and President Nixon could wash his hands of the responsibilities of this Nation to give our allies a fighting chance, and to preserve some credibility of purpose for the free world.

Mr. President, to leave Vietnam in anything but an orderly manner would be more harmful to our people there, to their morale, and to the morale of this Nation and the free world. To withdraw in less than the orderly process that President Nixon has set in motion and kept operating steadily, could risk having America's rear guard pinned down by the enemy and delay the achievement of complete withdrawal.

In the late 1950's and very early 1960's, many observers felt that the significant war which has engulfed South Vietnam would instead take place with Laos as the main battlefield for Indochina—with Laos the scene for determination of which side of the Bamboo Curtain of communism all of Indochina would eventually settle.

President John Kennedy, a little more than 10 years ago, on March 23, 1961, said this about Laos, at a time when I believe most of his advisers felt the Vietnamese war would be in Laos:

> Laos is far away from America, but the world is small. Its own safety runs with the safety of us all.

President Kennedy, for whom I had considerable admiration, did, I understand, alert the military departments to be prepared for introduction of combat troops into South Vietnam. At the same time, this dedicated young President steadily expanded the size of the military assistance mission in Vietnam. This mission was 2,000 at the end of 1961, and 15,500 at the end of 1963. President Kennedy sent in combat support units, air combat and helicopter teams, more military advisers and instructors and special forces to train our allies for antiguerrilla tactics. This President recognized the importance of standing by our allies in the international chess game with communism. President Eisenhower, before Kennedy, recognized this concept, and so did President Johnson, following the Nation's loss of President Kennedy.

Mr. President, I am proud that President Nixon also has kept this commitment to our allies and to the free world, and also his commitment to the American people to end American involvement in the war for Indochina. The task has been difficult, and will continue to be difficult. None would deny that. But it must be recognized that the tasks of this Nation will be more difficult in the future if an orderly withdrawal is not accomplished in Vietnam. This nation should not risk the loss of American lives that a Dunkirk on the beaches of Vietnam could produce. Such a disaster would be a humiliating loss of prestige for the free world, and a severe weakening of America's ability to play the role of peacemaker for the weak and helpless people of the world who are ever threatened by those who gain control of aggressor nations.

Mr. President, I will read briefly from an excellent contemporary history entitled, "Kennedy," by a trusted and important adviser to our late President, Mr. Ted Sorensen. I believe the following passage has significant application to the subject at hand:

> Obviously, then, in November, 1963, no early end to the Vietnam war was in sight. The President, while eager to make clear that our aim was to get out of Vietnam, had always been doubtful about the optimistic reports constantly filed by the military on the progress of the war. In his Senate floor speech of 1954, he had criticized French and American generals for similar "predictions of confidence which have lulled the American people." The Communists, he knew, would have no difficulty recruiting enough guerrillas to prolong the fighting for many years. The struggle could well be, he thought, *this nation's severest test of endurance and patience.* At times, he compared it to the long struggles against Communist guerrillas in Greece, Malaya, and the Philippines. Yet, at least he had a major counter-guerrilla effort under way, with a comparatively small commitment of American manpower. He was simply going to weather it out, a nasty, untidy mess to which there was no other acceptable solution. Talk of abandoning so unstable an ally and so costly a commitment "only makes it easy for the Communists," said the President. "I think we should stay."
>
> He could show little gain in that situation to pass on to his successor, either in the military outlook or the progress toward reform.
>
> His own errors had not helped. But if asked why he had increased this nation's commitment, he might have summed up his stand with the words used by William Pitt when asked in the House of Commons in 1805 what was gained by the war against France: "We have gained everything that we would have lost if we had not fought this war." In this case of Vietnam, that was a lot.

Mr. President, I strongly urge all of our colleagues to reflect upon the long-range goals of this Nation, and to support President Nixon and his effective withdrawal plan.

ORDER OF BUSINESS

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

OUR INVOLVEMENT IN VIETNAM

Mr. BUCKLEY. Mr. President, I must confess to a feeling bordering on despair as I see the abandonment of reason and reality which has crept into much of the antiwar rhetoric.

If Rip Van Winkle were to wake up today and glance through newspaper articles, listen to the television, and read some of the pamphlets being distributed in this capital, he would quickly conclude that the United States had gone beserk and had decided to undertake the conquest of Indochina; that but for our intervention, the inhabitants of Indochina would today be enjoying their pastoral pursuits at peace with one another; that Richard Nixon is embarked on a systematic campaign to increase the size and scope of our involvements; that he is doing so for the sole purpose of keeping in power a pair of despots named Thieu and Ky; that he is engaged in a blind drive for a military victory, and that in the process he has sabotaged chances for a political solution which the Communist delegates in Paris are so anxious to conclude.

The loose rhetoric which we have heard in Congress has done little to condemn, and unfortunately something to appear to justify, the kind of savage attack on America and on our policies which in their extreme form are reflected in one of the pamphlets now being distributed here in Washington. This pamphlet charges the United States with "a vicious and despicable strategy of genocide" in pursuit of a policy of "imperialism"; and that we are engaged in a war of aggression against the peoples of Laos, Cambodia, and Vietnam.

We are supposed to be an educated and well-informed people, Mr. President, which means that we should have the capacity to understand the facts and to accept them. And what are the facts which have been so blithely cast aside in this springtime blooming of emotion?

It is impossible to cite the long historical record in the few minutes at my disposal.

But I should like to cite a portion of it.

First. There has been nothing impulsive about our involvement in Vietnam. We are there, in the first instance, as a signatory to the SEATO Treaty, answering the call to help another signatory, the Government of South Vietnam, in resisting the concerted aggressions which had been planned, supplied, and directed by the Hanoi regime in total disdain of its obligations under the Geneva Treaty.

Second. Three American Presidents before Richard Nixon, with the concurrence and support of large majorities of both Houses of Congress, concluded that involvement in the Vietnam situation was required by our ultimate, strategic self-interest, and this self-interest had to do not so much with the continued independence of a few million South Vietnamese, but with the independence from Communist domination of an immensely important segment of the world, stretching from the Indian subcontinent on the west to Japan on the east—an area called Southeast Asia which incorporates some 250 million persons, with rich resources and one of the world's strategic waterways.

Third. At the time the United States undertook its first major military commitment in Vietnam, it was conceded that South Vietnam was in imminent danger of falling to the Communists; and the "domino" countries, at least, were devout believers in the so-called "domino theory" which held that the loss of South Vietnam would trigger a chain reaction of the most serious proportions.

Fourth. However we may disagree as to our military strategies once the United States undertook to become actively involved, the historical record will establish that we bought—at very high cost, and I think at an unnecessary high cost—the vitally important time during which:

First, the fall of South Vietnam to the Communists was averted, and the long, difficult process of restoring some measure of peace and security to large sections of that country was begun.

Second, the nations of Southeast Asia, most importantly Thailand and Malaysia, have been able to develop their interior communications and to strengthen their economies and defense capabilities to the point where the region has acquired a significant capacity to resist aggression either in the traditional forms or through guerrilla infiltration.

Third, the attempted Communist coup in Indonesia was averted, and that populous and enormously rich country was placed on the slow road to recovery. I would remind my colleagues that most contemporary observers of the countercoup cited the American presence in South Vietnam as a major factor in the determination by key Indonesians to resist the takeover.

Fourth, the capacity of the North Vietnamese for aggressions against Laos, Cambodia, and South Vietnam has been seriously impaired.

Which is another way of saying that as a result of the tremendous sacrifice of life and treasure which the United States has expended, the essential objective as seen in the early 1960's are within sight of achievement. These were objectives, I reiterate, which were not limited to the fate and independence of a few million South Vietnamese; but which recognized the free world's vital interest in the security and independence from Communist domination of an area as large and as populous as western Europe.

Without arguing the merits of our initial decisions, the fact is that when Richard Nixon ascended to the Presidency, we were already involved in a major struggle as a result of the conscious decisions of three prior Presidents, and as a result of the support and approval of previous Congresses. Almost 550,000 men were stationed on South Vietnamese soil engaged in active combat. He saw, however, that we could now work for the orderly withdrawal of American forces from combat in South Vietnam and could do so without jeopardizing all that had been gained at such high cost.

As a result of the policy of Vietnamization which he instituted, the following dramatic progress has been made possible:

First. When President Nixon took office, there was no plan to reduce the level of American Armed Forces in South Vietnam, and forces stood at 542,000. By May of this year, U.S. forces will have been reduced to 284,000 with an invisible combat role.

Second. American combat deaths have been reduced from nearly 300 every week, to less than 40 per week during 1971.

Third. The success of American efforts to provide the South Vietnamese with the military skill and equipment to carry out their own defense has been demonstrated by the fact that there has been higher levels of security in the Vietnamese countryside than have existed for 10 years. Moreover, South Vietnamese military operations against North Vietnamese base camps which have been used against South Vietnam, Cambodia, and Laos, has strengthened the security of South Vietnam while facilitating American troop withdrawal.

Fourth. Despite the fact that the armed forces of North Vietnam have tried to suppress the national independence of South Vietnam, South Vietnam has continued on the path of constitutional development. Last August's Senate elections were marked by the participation and victory of the Buddhist opposition slate, and locally elected councils at the hamlet, village, and province levels are increasingly effective as units of government.

In addition to the formidable number of unilateral efforts to reduce the degree of American involvement in Southeast Asia, no reasonable effort has been spared at Paris. It is only the utter resolve of North Vietnam to settle for no less than the conquest of every national government of Indochina that prevents a political solution to the conflict.

President Nixon pointed out in his February 25 report to the Congress, that the United States has taken several unilateral steps to encourage the North Vietnamese to renounce their goal of conquest of Indochina. Since 1968, the United States has:

First. Halted the bombing and other acts of force against North Vietnam.

Second. Agreed to the participation of the Vietcong at the Paris talks.

Third. Agreed in principle to remove all of our troops, and have removed nearly half of them; and has taken a series of de-escalatory steps such as cutting back B–52 and tactical air strikes.

With the sole exception of the bombing halt in North Vietnam, all of these steps were unilateral. None of them has seen any reaction from North Vietnam.

Mr. President, we are on the verge of achieving the success of our years of effort in blood and treasure. To heed the demands for a precipitate withdrawal at this time would betray the valiant efforts made to date.

By simply continuing our training, lo-

gistics, and air support efforts for but a brief period of time, the South Vietnamese will be capable of bearing the full weight of their own defense.

Mr. President, I believe that this record of accomplishment speaks for itself. Richard Nixon has demonstrated his determination to withdraw Americans from combat in Southeast Asia just as quickly as it can be accomplished without jeopardizing his efforts for peace in other parts of the globe. It is easy for those who do not share his constitutional responsibilities to speak about setting dates, or about our immediate, total withdrawal. But he knows that any such action under existing circumstances would constitute a repudiation of our solemn undertakings, of such a magnitude as to undermine that network of mutual defense treaties, on the basis of which a tenuous world peace has been maintained since the end of World War II.

The President has also demonstrated his determination to meet his constitutional responsibilities rather than capitulate to temporary pressures. For this, I think that all thinking Americans should be eternally grateful.

There used to be a saying that in America, politics stopped at the water's edge. It is time, Mr. President, that we dusted off this fine principle of political responsibility.

Mr. SCOTT. Mr. President, before the Senator yields the floor, will he yield to me?

Mr. BUCKLEY. I am happy to yield to the Senator from Pennsylvania.

Mr. SCOTT. I should like to compliment the distinguished Senator from New York on a very thoughtful and cogent speech, and for pointing out the keeping of promises and the importance of ending the seeking of political advantage in a war which was not a war of this administration.

I think the Senator has served well the cause of this Nation. I hope that world opinion will pay attention to the fact that a number of speakers have here today been stressing the important point above all points, and that is that we are getting out of the war, we are not getting into it. We are getting out as fast as we can and swiftly as we can.

Again I congratulate the distinguished Senator from New York.

Mr. BUCKLEY. Mr. President, I yield back the remainder of my time.

Mr. BYRD of West Virginia. Mr. President, did the Senator from New York have any time remaining?

The PRESIDING OFFICER. The Senator from New York had 3 minutes remaining.

Mr. BYRD of West Virginia. Mr. President, would the Senator from New York retain that time so that we can put in a brief quorum call.

Mr. BUCKLEY. Mr. President, I retain my time.

QUORUM CALLS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum without prejudice to the rights of the next speaker.

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.

Mr. BYRD of West Virginia. Is there any time remaining under the order recognizing the Senator from New York?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged to the time allotted under the order of the Senate to the distinguished senior Senator from Virginia (Mr. BYRD).

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered. 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.

ORDER RECOGNIZING SENATOR ERVIN

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senator from North Carolina (Mr. ERVIN) be recognized on the time allotted to the Senator from Virginia (Mr. BYRD) until such time as the Senator from Virginia reaches the floor.

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

THE DECISION OF THE SUPREME COURT IN THE CHARLOTTE-MECKLENBURG SCHOOL CASE

Mr. ERVIN. Mr. President, on April 20, 1971, the Supreme Court, which spoke through Chief Justice Burger, affirmed the decree originally entered by U.S. District Judge James B. McMillan in Swann against Charlotte-Mecklenburg Board of Education, a school desegregation case.

When the eloquent phrases of the Chief Justice are reduced to their ultimate meaning, they actually say this: No constitutional or legal standards control a Federal district judge in framing his decree in a school desegregation case. As a consequence, the Federal district judge has power to require the public school board to do anything which he deems necessary to mix the races in the public schools under its jurisdiction in proportions pleasing to him.

I respectfully submit that uncontrolled power of this nature is arbitrary, and for that reason is utterly repugnant to the government of laws which the Constitution was ordained to establish.

I further respectfully submit that judicial tyranny is not made sacrosanct by adjudging it to be valid under a Constitution which was drafted and ratified to preserve the blessings of liberty for all Americans.

The equal protection clause of the 14th amendment forbids a State acting through a public school board or any other State agency to treat differently persons similarly situated. In other words, the clause imposes upon a State acting through a school board or other State agency an obligation to treat in like manner all persons in like circumstances.

In every school desegregation case since *Brown* v. *Board of Education*, 347 U.S. 483, it has been uniformly held that a public school board violates the equal protection clause of the 14th amendment whenever it denies any child admission to any school solely on the basis of the child's race. This holding is reaffirmed many times in the Swann case itself.

It necessarily follows that all decrees in school desegregation cases are based upon the predicate that the public school board has violated the equal protection clause, and that the decree is entered to compel it to obey such clause.

For this reason, I respectfully submit that the Supreme Court ought to have held in the Swann case that the Constitution itself imposes upon a Federal district judge at least one constitutional standard which limits his action; that is, that he must not enter a decree in a school desegregation case which requires the public school board to violate the equal protection clause in order to mix the races in its public schools in proportions pleasing to the Federal district judge.

Yet, this is precisely what Judge McMillan did when he entered his decree in the Swann case. This decree commanded the Charlotte-Mecklenburg Board of Education to do two things which clearly offend the equal protection clause. In the first place, the decree commanded the school board to treat differently children similarly situated by allowing thousands of children to attend their neighborhood schools and by excluding thousands of other children from admission to their neighborhood schools; and in the second place, the decree commanded the school board to bus the thousands of children excluded from their neighborhood schools to some other schools in other districts or zones to desegregate both their neighborhood schools and the other schools in numbers or proportions satisfactory to the Federal district judge. No amount of sophistry can erase the plain truth that the second group of children were denied admission to their neighborhood schools on account of their race.

Manifestly, the equal protection clause does not confer upon any Federal district judge jurisdiction to enter a decree to compel a school board to obey the equal protection clause by violating it. Nevertheless, the Supreme Court sanctioned this proposition in its decision in the Swann case.

With due respect to all concerned, I venture to assert that any racial segregation existing in any of the schools under the jurisdiction of the Charlotte-Mecklenburg Board of Education at the time of the final hearing in the district court represented defacto segregation, which resulted from the purely adventitious circumstance that the inhabitants of particular areas in and adjacent to the city of Charlotte were predominately of one race.

To be sure, Charlotte and Mecklenburg County had had a history of State-imposed segregation prior to the decision in Brown against Board of Education. From my knowledge of the city of Charlotte and the record in the Swann case, I am constrained to believe that the Federal district judge and the Supreme Court were prompted to act in the manner they did in the Swann case simply because Charlotte and Mecklenburg County had a history of State-imposed segregation prior to the decision in the Brown case, and did not precede the Supreme Court in discovering that the equal but separate doctrine had ceased to be a part of the law of the land.

The closing paragraphs of the Chief Justice's opinion hold out the uncertain hope that at sometime before the last lingering echo of Gabriel's horn trembles into ultimate silence the Charlotte-Mecklenburg Board of Education may be adjudged to have purged itself of the consequences of history, and be allowed the same freedom to manage its school system which is accorded by the Supreme Court to cities in other areas of the Nation in which de facto segregation exists.

Meanwhile, the Supreme Court has reduced all children of all races in Southern school districts to the status of helpless pawns to be shifted to and fro by Federal district judges upon judicial chessboards. Perhaps my metaphor is inappropriate in that the game of chess is played according to established rules, while Federal courts entering school desegregation decrees are authorized by the decision in the Swann case to emulate the example of Josh Billings' mule which is said to have kicked according to no rule whatsoever.

Mr. President, I had the honor of preparing an amicus curiae brief for the Clasroom Teachers Association of the Charlotte-Mecklenburg school system in the Swann case. I was joined in the filing of such brief by the Honorable CHARLES R. JONAS, a Representative from North Carolina, and the Honorable ERNEST F. HOLLINGS, a Senator from the State of South Carolina. This brief sets forth the facts of this case in detail. It states the law that was applicable to the case under decisions of the Supreme Court up to the time of the decision in the Swann case. For this reason I think it sheds some light on both the facts and the law before we had this decision handed down to the effect that the law is whatever a Federal district judge decrees.

Mr. President, for these reasons, I ask unanimous consent that the brief may be printed in the RECORD at this point.

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

[In the Supreme Court of the United States, October term, 1970]

No. 281—JAMES E. SWANN, ET AL., PETITIONERS, V. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, ET AL.,

No. 349—CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, ET AL., PETITIONERS, V. JAMES E. SWANN, ET AL.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

(Amicus Curiae Brief for the Classroom Teachers Association of the Charlotte-Mecklenburg School System, Incorporated)

INTEREST OF THE AMICUS CURIAE

The Classroom Teachers Association of the Charlotte-Mecklenburg School System, Incorporated, is a non-profit membership organization in corporate form, which includes in its membership a substantial part of the 3,553 classroom teachers in the Charlotte-Mecklenburg School System and which devotes itself to the advancement of public education. The specific objectives of the organization and its members are to promote the interests of classroom teachers in the Charlotte-Mecklenburg School System, and to secure to the students attending the schools of the System opportunities to achieve by quality education their highest potentialities.

The Classroom Teachers Association of the Charlotte-Mecklenburg School System and its members believe that the execution of the order of the United States District Court for the Western District of North Carolina and the judgment of the United States Circuit Court for the Fourth Circuit affirming such order in part seriously impair the educational opportunities offered by the Charlotte-Mecklenburg School System to the students in its schools, and for this reason the organization files this amicus curiae brief in support of the position of the Charlotte-Mecklenburg Board of Education, which harmonizes with this view.

The parties to the proceedings in Nos. 281 and 349 have consented in writing to the filing of this brief, and the writings evidencing such consent have been filed with the Clerk.

The members of the Supreme Court bar who submit this brief in behalf of the organization do so without compensation in the hope that they may aid the Supreme Court to reach a decision which will restore tranquility to much troubled areas of our land and enable the public schools operating in them to function economically and efficiently as educational institutions.

OPINIONS BELOW

The opinion of the Court below consists of the opinion and judgment of the United States Court of Appeals filed May 26, 1970, which are not yet reported and which appear in the Appendix (Volume 3, pages 1262a to 1304a).

In its opinion and judgment, the Court of Appeals reviewed and approved in part and remanded in part for further consideration the rulings and findings made by the United States District Court in the following orders and documents:

1. Order dated February 5, 1970 (819a–839a), as amended, corrected, and clarified on March 3, 1970 (921a).

2. Supplementary Findings of Fact dated March 21, 1970 (1198a–1220a).

3. Supplemental Memorandum dated March 21, 1970 (1221a–1238a).

JURISDICTION

The Supreme Court has jurisdiction to review this case by writ of certiorari under 28 U.S.C. 1254(1), and has accepted it for such purpose by granting writs to the petitioners in No. 281 and the petitioners in No. 349.

QUESTIONS PRESENTED FOR REVIEW

This case presents the following questions for review:

1. Does a public school board comply with the Equal Protection Clause of the Fourteenth Amendment when it creates non-discriminatory attendance districts or zones and assigns all children, black and white, to neighborhood schools in the district or zone in which they reside without regard to their race?

2. Does the Equal Protection Clause of the Fourteenth Amendment empower a federal court to order a public school board to assign children to the schools it operates to balance the student bodies in such schools racially or to bus children outside of non-discriminatory attendance districts or zones to effect such purpose?

3. Does Title IV of the Civil Rights Act of 1964, which prohibits the assignment of students to public schools to balance the student bodies in such schools racially and to bus them from some schools to other schools or from some school districts to other school districts to effect such purpose, constitute appropriate legislation to enforce the Equal Protection Clause within the purview of the Fifth Section of the Fourteenth Amendment?

4. Does the order entered by the District Court and affirmed in part by the Circuit Court usurp and exercise the authority of the Charlotte-Mecklenburg Board of Education to devise and implement a non-discriminatory assignment plan conforming to the Equal Protection Clause, and require the Charlotte-Mecklenburg Board of Education to violate the Equal Protection Clause by treating in a different manner students similarly situated and by denying students admission to their neighborhood schools because of their race?

The amicus curiae insist that the first, third and fourth questions must be answered in the affirmative and that the second question must be answered in the negative.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The case involves the first and second sections of the Fourteenth Amendment; the first and second sections of Article III of the Constitution; and Title IV of the Civil Rights Act of 1964. These constitutional and statutory provisions are printed in the Appendix.

STATEMENT OF THE CASE

A. The Charlotte-Mecklenburg Public School System

The writ in No. 281 and the writ in No. 349 present to the Supreme Court for review the judgment entered by the United States Court of Appeals for the Fourth Circuit on May 26, 1970, in the civil action entitled James E. Swann and others, Plaintiffs, v. Charlotte-Mecklenburg Board of Education and others, Defendants. For ease of narration and understanding, James E. Swann and his associates in this litigation are hereafter called the plaintiffs, and the Charlotte-Mecklenburg Board of Education is hereafter designated as the School Board.

The School Board operates the Charlotte-Mecklenburg Public School System in Charlotte and Mecklenburg County, North Carolina, political subdivisions of North Carolina. Charlotte, which is the county seat of Mecklenburg County, is inhabited by 239,056 persons who are concentrated within the 64 square miles embraced by its city limits, an area larger than the District of Columbia. Mecklenburg County embraces 550 square miles, has an east-west span of 26 miles, a north-south span of 36 miles, and has a population of 352,006, exclusive of those residing within the area embraced by Charlotte.

In the discharge of its state-assigned duties, the School Board operates 10 high schools, 21 junior high schools, and 72 elementary schools to house and instruct the

84,500 school children residing in Charlotte and Mecklenburg County. Of these school children, 24,000, or 29 percent, are black, and 60,500, or 71 percent, are white. Approximately 95 percent of all the black children who reside within the limits of the City of Charlotte live in predominately black residential sections in northwest Charlotte, and a substantial portion of the other black children in Mecklenburg County reside in predominately black residential areas adjacent to it. (293a-298a).

Prior to *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954), the School Board operated the public schools of Charlotte and Mecklenburg County as racially segregated schools in conformity with the interpretation then placed upon the Equal Protection Clause of the Fourteenth Amendment. Subsequent to the *Brown Case* and prior to 1965, the School Board established an effective system of determining admission to its public schools on a non-racial basis. It did this, and thus converted its formerly dual system into a unitary system by establishing non-discriminatory attendance districts or zones, and assigning the school children subject to its jurisdiction to their neighborhood schools irrespective of race.

Inasmuch as some of the attendance districts or zones in rural Mecklenburg County and some of its suburban residential districts or zones in or adjacent to Charlotte are extremely large, the School Board voluntarily established a transportation system for the sole purpose of carrying children residing in these geographically large districts or zones to the nearest available schools. As a consequence, it now uses 280 buses to bus some 23,000 school children to rural and suburban schools. (864a)

In 1965 the plaintiffs brought the instant action against the School Board in the United States District Court for the Western District of North Carolina seeking to obtain a compulsory desegregation decree. After hearing the evidence in the case, the District Court found that the School board had complied with the requirement of the Equal Protection Clause and denied the decree sought by them. *Swann v. Charlotte-Mecklenburg Board of Education*, 243 F.Supp. 667 (1965). This ruling was affirmed by the Circuit Court. *Swann v. Charlotte-Mecklenburg Board of Education*, 369 F.2d 29 (1966).

B. The Plan Submitted by the Charlotte-Mecklenburg Board of Education

Subsequent to the decision in *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968), the plaintiffs filed a motion in the cause seeking further desegregation. (2a)

Although it found as a fact that the "location of schools in Charlotte has followed the local pattern of residential development, including its de facto patterns of segregation" (305a), and that the School Board members "have achieved a degree and volume of desegregation of schools apparently unsurpassed in these parts and have exceeded the performance of any school boards whose actions have been reviewed in the appellate court decisions" (311a–312a), the District Court resumed hearings in the case on the ground that the *Green Case* had changed "the rules of the game." (312a)

It is to be noted that subsequently the District Court on its own motion reversed its previous findings that any racial imbalance in the Charlotte-Mecklenburg public schools was the result of de facto segregation by asserting that "there is so much State action imbedded in and shaping these events that the resulting segregation is not innocent or 'de facto' and the resulting schools are not 'unitary' or 'desegregated'." (662a) The amicus curiae submits with all due deference that there is no testimony in the record to sustain this particular finding.

Pursuant to the orders entered by the District Court on April 23, 1969 (285a), June 20, 1969 (448a), August 15, 1969 (579a), and December 1, 1969 (698a), the School Board filed desegregation plans (330a, 480a, 670a) which were rejected by the District Court.

Meanwhile on December 2, 1969, the Court appointed Dr. John Finger, a resident of Rhode Island, as a special consultant to devise a desegregation plan for the guidance of the Court. (819a) Dr. Finger had originally entered the case as a partisan witness for the plaintiffs, and for this reason a good case can be made for the proposition that he lacked the impartiality which is desirable in one selected for the task of assisting a judge in keeping the scales of justice evenly balanced between adverse litigants. (1279a)

While the District Court orders and the School Board plans mentioned above shed light on the School Board's devotion to the neighborhood school concept, and its reluctance as an elected public body to engage in excessive and expensive busing of school children, the subsequent School Board plan of February 5, 1970, and the subsequent District Court order of February 5, 1970, relating to it really illuminate the issues which now confront the Supreme Court. (726a–748a, 819a–839a)

By this plan, the School Board proposed that attendance districts or zones should be drastically gerrymandered in such a manner as to include as many blacks as possible in each district or zone, and that all school children subject to its jurisdiction should be required to attend the school appropriate to their educational standings in the district or zone of their residence. The plan would have accomplished a racial mixture of school children in all of the 103 schools in the system, except three elementary white schools located in neighborhoods inhabited exclusively by members of the white race. (726a–748a)

The School Board plan contemplated that from 17 percent to 36 percent of the student body in nine of the ten senior high schools in the system would be black; that not more than 38 percent of the student body in 20 of the 21 junior high schools in the system would be black; and that not more than 40 percent of the student body in 60 of the 72 elementary schools in the system would be black.

Under the School Board plan, the remaining high school, Independence High, would be 2 percent black and 98 percent white; the remaining junior high school, Piedmont Junior High, would be 90 percent black and 10 percent white; and all of the 12 remaining elementary schools, except the three white elementary schools, would be 83 percent to 1 percent black (726a–748a)

The School Board judged it to be impossible to desegregate the three white elementary schools, and to further desegregate the nine predominately black elementary schools by geographic districting or zoning because of the de facto segregation prevailing in the residential areas in which the children assigned to these 12 elementary schools lived. (730a–732a) The District Court made a specific finding in its Supplemental Findings of Fact of March 21, 1970, which establishes the validity of the School Board's conclusion concerning Independence High, Piedmont Junior High, and the 9 predominately black elementary schools, all of which are located in northwest Charlotte or its environs.

The District Court expressly found that "both Dr. Finger and the School Board staff appear to have agreed, and the Court finds as a fact that for the present at least there is no way to desegregate the all-black schools in northwest Charlotte without providing (or continuing to provide) bus or other transportation for thousands of children. All plans and all variation of plans considered for this purpose lead in one fashion or another to that conclusion." (1208a)

The amicus curiae submits that it beggars imagination to conjecture how any plan could have obtained a greater degree of racial integration by gerrymandering attendance districts or zones in a political subdivision where white children outnumber black children 71 to 29, and where most of the black children are concentrated residentially in an area inhabited exclusively by members of their race.

The School Board plan did not stop with proposing such a high degree of racial integration among the student bodies in the schools subject to its jurisdiction. It made these three additional proposals:

1. That the faculty of each school should be assigned in such a manner that the ratio of black teachers to white teachers in each school would be approximately 1 to 3 in accordance with the ratios in the entire faculty of the system (737a);

2. That the School Board should furnish 4,935 additional students in-district or in-zone transportation to the schools in the proposed gerrymandered attendance districts or zones in accordance with the North Carolina law which forbids such transportation within one and one-half mile distances (736a); and

3. That any black child in any school having more than 30 percent of his race in its student body should be allowed to transfer to any school having less than 30 percent of his race; whereas a white child should be permitted to transfer to another school only if the school he is attending has more than 70 percent of his race and the school to which he seeks transfer is less than 70 percent white. (734a-735a)

At the same time, Dr. Finger submitted to the District Court his plan of desegregation which contemplated that the School Board should be required by the Court to deny approximately 23,000 additional children admission to the neighborhood schools in the districts or zones of their residence, and to transport them by bus or otherwise substantial distances in order to produce a greater racial mixture in student bodies. (819a, 825a-827a, 829a-839a, 1198a, 1208a-1214a, 1231a-1234a, 1268a-1269a)

C. The Order of the District Court

On February 5, 1970, the District Court entered an order approving the School Board plan, subject to certain drastic conditions and revisions recommended by Dr. Finger. (819a-839a) By adopting these conditions and revisions, the District Court commanded the School Board to do these things:

1. To deny hundreds of black high school students admission to a nearby high school which would have had a racial composition of 36 percent black and 64 percent white under the School Board plan, and to bus them from their residences in northwest Charlotte through center-city traffic a distance of some 12 or 13 miles to Independence High School, which is located in a white suburban residential area;

2. To deny several thousands of black junior high school students admission to their neighborhood junior high schools in the inner city, and to bus them substantial distances to nine predominately white suburban schools located in other attendance districts or zones; and

3. To deny thousands of black and thousands of white elementary school children admission to 31 elementary schools located within their respective attendance districts or zones, and to bus them distances approximating 15 miles to elementary schools situated in other attendance districts or zones.

The sole purpose of the District Court in ordering the School Board to dislocate and bus the hundreds of black high school students to Independence High School was to make Independence High less white, and the sole purpose of the District Court in ordering the School Board to dislocate and bus several thousands of junior high school

students was to reduce the percentage of blacks in Piedmont Junior High from 90 percent to 32 percent. (825a–826a)

The sole purpose of the order of the Court commanding the School Board to dislocate and bus thousands of elementary school children was to alter the racial composition of the student body in 9 predominately black inner-city schools and in 24 predominately white suburban schools. To accomplish this purpose, the District Court commanded the School Board to dislocate and bus thousands of black first, second, third, and fourth grade students from 9 predominately black inner-city schools to 24 predominately white suburban schools, and to dislocate and bus thousands of white fifth and sixth grade students from the 24 predominately white suburban schools to the 9 predominately black inner-city schools. (826a)

The order of the District Court did not stop with these things. It further ordered the School Board to establish and implement a continuing program of assigning students throughout the school year "for the conscious purpose of maintaining each school * * * in a condition of desegregation." (824a)

The record clearly discloses the reasoning which prompted the District Court to seek to achieve the purposes of its order.

Prior to its order of February 5, 1970, namely, on April 24, 1969, the District Court manifested its disapproval of the School Board's adherence to the neighborhood school concept by this statement: "Today people drive as much as 40 to 50 miles to work; 5 to 10 miles to church; several hours to football games; all over the country for civic affairs of various types. The automobile has exploded the old-fashioned neighborhood * * * If this Court were writing the philosophy of education, he would suggest that educators should concentrate on planning schools as educational institutions rather than as neighborhood proprietorships." (306a)

When it entered its order of February 5, 1970, the District Court justified adding the conditions and revisions recommended by Dr. Finger on the ground that the School Board plan "relies almost entirely on geographical attendance zones," while "the Finger plan goes further and produces desegregation of all the schools in the system." (819a)

What has been said makes it manifest that the District Court entertained the opinion that the Equal Protection Clause of the Fourteenth Amendment makes it obligatory for a school board to mix student bodies racially in every school subject to its jurisdiction if children are available for mixing, and that a school board must deny a sufficient number of school children admission to their neighborhood schools and bus them to schools elsewhere either to overcome racial imbalances in their neighborhood schools or in the schools elsewhere, regardless of whether such racial imbalances are produced by arbitrary or invidious discrimination on the part of the school board or simply result from adventitious de facto residential segregation or other cause.

The amicus curiae has not undertaken to state with exactitude the number of additional school children which the District Court ordered the School Board to deny admission to their neighborhood schools and to bus from one school to another or from one school district to another, or the additional cost which the carrying out of the District Court's order in this respect will impose upon the School Board.

This action of the amicus cruiae has been deliberate because these matters are in serious dispute between the School Board and the District Court.

When the District Court entered its order of February 5, 1970, and thereby adopted the Finger plan in virtually its entirety, the School Board estimated that the order required it to bus 23,384 additional students an average round trip of 30 miles each school day, and that to do this the School Board would have to acquire 526 additional buses and additional parking spaces at an original capital outlay of $3,284,448.94; and thereafter expend each year an additional $1,065,391.98 in employing additional personnel and defraying other operating costs. (853a, 866a)

On March 3, 1970, the District Court modified its order of February 5, 1970. (921a) The School Board then calculated that the order as modified will require it to transport 19,285 additional students and to purchase for such purpose 422 additional buses and additional parking spaces at an original capital outlay of $2,369,100.00; and thereafter to expend each year for additional personnel and operating expenses of such buses $284,800.00. (1269a–1270a)

The Court estimated that the execution of its order as modified would require the School Board to bus 13,300 additional students and to purchase for such use 138 additional buses at an original capital outlay of $745,200.00; and to expend thereafter annually $266,000.00 for operating costs of such additional buses, exclusive of what it will have to expend to compensate any additional personnel necessary for their operation. (1259a–1261a, 1269a)

The Court arrived at its figures by suggesting that the School Board could reduce its estimate of the expenses incident to busing the thousands of children affected by its order by drastically staggering school openings and closings. The School Board replied to this suggestion by asserting that the suggested staggering of school openings and closings would require some children to leave home as early as 6:30 a.m. and prevent some of them from returning home before 5:00 p.m. (864a–865a)

D. The Judgment of the United States Court of Appeals for the Fourth Circuit

At the instance of the School Board, the United States Court of Appeals for the Fourth Circuit reviewed the orders of the District Court. On May 26, 1970, the Circuit Court rendered its judgment affirming the orders of the District Court insofar as they related to the assignment and busing of senior high school and junior high school students, and remanding to the District Court for further consideration the provisions of the order of the District Court relating to the assignment and busing of elementary school students. (1262a–1304a)

In making this remand, the Circuit Court adjudged that "not every school in a unitary system need be integrated," and adopted a "test of reasonableness—instead of one that calls for absolutes." (1267a)

The writ of certiorari granted to the School Board presents for review the validity of the Circuit Court ruling approving the orders of the District Court relating to the assignment and busing of senior high school and junior high school students and the writ of certiorari granted to the original plaintiffs presents for review the question of the validity of the ruling of the Circuit Court vacating the order of the District Court relating to the assignment and busing of elementary school students.

Subsequent to these events, namely, on August 3, 1970, the District Court reinstated and reaffirmed its order of February 5, 1970, in respect to the assignment and busing of the elementary school students. (1320a) While the validity of this particular order may not be before the Supreme Court, the question which it raises is involved in the matter to be reviewed under the writ granted to James E. Swann and those associated with him in this litigation.

The amicus curiae understands that the School Board has filed an yet unprinted motion with the Supreme Court for a stay of the order entered by the District Court on August 3, 1970, after the hearing of the case in the Circuit Court.

SUMMARY OF ARGUMENT

In the final analysis, the questions presented for review in this case do not arise out of any real controversy in respect to the testimony. They arise out of a fundamental disagreement between the School Board, on the one hand, and the District Court and some of the Circuit Court Judges, on the other, with respect to how the Equal Protection Clause applies to the assignment of students to public schools.

The view of the School Board may be epitomized in this fashion:

The Equal Protection Clause applies only to State action which is arbitrary or invidious, and, hence, it leaves a public school board, acting as a State agency, entirely free to assign students to its schools by any method satisfactory to itself if such method is not arbitrary or invidious. A public school board acts arbitrarily or invidiously if it assigns students to its schools for racial reasons, but a public school board does not act arbitrarily or invidiously if it assigns students to its schools for non-racial reasons, such as the promotion of the efficiency of school administration, the economy of school administration, or the convenience of the students or their parents. This being true, the Equal Protection Clause does not impair in any way the power of a public school board to create fairly drawn geographic attendance districts or zones, and to assign all students without regard to their race to neighborhood schools in the respective districts or zones in which they reside even though such action may result in some racial imbalances in the schools serving areas predominately inhabited by members of one race.

The view of the District Court and some of the Circuit Court Judges may be summarized in this way:

It is highly desirable from an educational viewpoint to mix students in public schools racially in the highest possible degree. Hence, the Equal Protection Clause imposes upon a public school board the positive duty to balance racially all the schools it operates if black and white children are available for this purpose; and to deny school children admission to their neighborhood schools and bus them to other schools in other areas, no matter how distant, in sufficient numbers to effect such racial balancing.

The School Board refutes this proposition by saying that the Equal Protection Clause does not require action which may be desirable; it merely prohibits action which is arbitrary or invidious.

When it is stripped of irrelevancies and surmises, the record discloses a surprisingly simple state of facts which are relatively free of conflict insofar as they relate to the crucial issues.

After the first *Brown Case*, 347 U.S. 483 (1954), the School Board converted its previously dual system of schools into a unitary system of schools within which no child was excluded because of the child's race. The School Board did this by a geographic assignment plan applicable in like manner to all children without regard to their race. Its action in this regard was adjudged to be in compliance with the Equal Protection Clause by both the District Court and the Court of Appeals.

Subsequent to the *Green Case*, 391 U.S. 430 (1968), the District Court ordered the School Board to submit another plan for the desegregation of its schools. Pursuant to this order, the School Board proposed a plan which was reasonably designed to secure the maximum amount of racial mixture obtainable in the student bodies in its schools without abandonment of the neighborhood school concept by restructuring its geographic at-

tendance districts or zones, and assigning all of the children subject to its jurisdiction without regard to their race to their respective neighborhood schools in the districts or zones in which they reside.

The Court rejected the School Board plan simply because it did not racially balance one senior high school out of the system's ten senior high schools, one junior high school out of the system's 21 junior high schools, and nine predominately black and three predominately white elementary schools out of the system's 72 elementary schools.

Instead of approving the reasonable plan submitted by the School Board, the District Court, in essence, adopted the Finger Plan which requires the School Board to deny thousands of children admission to the neighborhood schools, and to bus them to other schools in other areas merely to eliminate the racial imbalances in these particular schools. The School Board insists that the action of the District Court was not only inconsistent with the Equal Protection Clause, but violates Title IV of the Civil Rights Act of 1964, and that the Circuit Court erred insofar as it approved the action of the District Court.

ARGUMENT

I

The Charlotte-Mecklenburg Board of Education has complied with the Equal Protection Clause of the Fourteenth Amendment and the Supreme Court decisions interpreting it by establishing and operating a unitary public school system, which receives and teaches students without discrimination on the basis of their race or color. Any racial imbalance remaining in any of the schools under the jurisdiction of the Board represents de facto segregation, which results from the purely adventitious circumstance that the inhabitants of particular areas in and adjacent to the city of Charlotte are predominantly of one race.

The Equal Protection Clause of the Fourteenth Amendment, which was certified to be a part of the Constitution on July 28, 1868, forbids a state to "deny to any person within its jurisdiction the equal protection of the laws."

By these words, the Equal Protection Clause requires a state to treat in like manner all persons similarly situated. *State Board of Tax Commissioners of Indiana v. Jackson*, 283 U.S. 527 (1931); *Maxwell v. Bugbee*, 250 U.S. 525 (1919). The clause does not require identity of treatment. *Walters v. St. Louis*, 347 U.S. 231 (1934). It permits a state to make distinctions between persons subject to its jurisdiction if the distinctions are based on some reasonable classification, and all persons embraced within the classification are treated alike. It merely outlaws arbitrary or invidious discrimination. *Avery v. Midland County*, 390 U.S. 474 (1968); *Missouri Pacific Railway Co. v. Mackey*, 127 U.S. 205 (1888).

From July 28, 1868, until May 17, 1954, the Equal Protection Clause of the Fourteenth Amendment was interpreted to sanction the "separate but equal doctrine," which permitted a state to segregate school children in its public schools on the basis of race when it furnished equal facilities for the education of the children of each race. *Gong Lum v. Rice*, 275 U.S. 78 (1927); *Cumming v. Richmond County Board of Education*, 175 U.S. 528 (1899); *Plessy v. Ferguson*, 163 U.S. 537 (1896).

On May 17, 1954, the Supreme Court handed down its historic decision in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), adjudging "that in the field of public education the doctrine of 'separate but equal' has no place" and holding that a state violates the Equal Protection Clause if it denies any child admission to any of its public schools on account of the child's race.

On the same day the Supreme Court handed down *Bolling* v. *Sharpe*, 347 U.S. 497 (1954), ruling that the Due Process Clause of the Fifth Amendment imposes the same inhibition on the public schools of the District of Columbia that the Equal Protection Clause does on the public schools of a state, and one year later the Supreme Court announced its implementing decision in second *Brown*, which is reported as *Brown* v. *Board of Education of Topeka*, 349 U.S. 294 (1955).

Since these decisions the Supreme Court has applied the Equal Protection Clause to varying factual situations arising in various Southern public school districts in the following cases: *Cooper* v. *Aaron*, 358 U.S. 1, 20 (1958); *Shuttlesworth* v. *Birmingham Board of Education*, 358 U.S. 101 (1958); *Bush* v. *Orleans Parish School Board*, 364 U.S. 500 (1960); *Watson* v. *City of Memphis*, 373 U.S. 526 (1963); *Goss* v. *Board of Education of Knoxville*, 373 U.S. 683 (1963); *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964); *Bradley* v. *School Board of City of Richmond*, 382 U.S. 103 (1965); *Rogers* v. *Paul*, 382 U.S. 198 (1965); *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968); *Raney* v. *Board of Education of the Gould School District*, 391 U.S. 443 (1968); *Monroe* v. *Board of Commissioners of the City of Jackson*, 391 U.S. 450 (1968); *United States* v. *Montgomery County Board of Education*, 395 U.S. 225 (1969); *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969); *Dowell* v. *Board of Education of the Oklahoma City Public Schools*, 396 U.S. 269 (1969); *Carter* v. *West Felicana Parish School Board*, 396 U.S. 226 (1969); *Carter* v. *West Felicana Parish School Board*, 396 U.S. 290 (1970); and *Northcross* v. *Board of Education of the Memphis City Schools*, 397 U.S. 232 (1970).

Besides, individual Supreme Court Justices, acting as Circuit Justices, have expressed opinions on the subject in these cases: *Board of School Commissioners of Mobile County* v. *Davis*, 11 L. ed. 2d 26 (1963); *Keyes* v. *School District No. 1, Denver*, 396 U.S. 1215 (1970); and *Alexander* v. *Holmes County Board of Education*, 396 U.S. 1218 (1969).

The record in the instant case embraces hundreds of pages of evidence, orders, and judgments, and for that reason, the case lends itself to much writing. But the issues arising in the case are simple, and it would complicate that simplicity to analyze the cited decisions in detail. In their ultimate analysis, they interpret the Equal Protection Clause as follows:

1. The Equal Protection Clause makes it unconstitutional for a state to deny any child admission to any public school it operates on account of the child's race.

2. In consequence, the Equal Protection Clause imposes upon a state, acting through its appropriate agencies, the responsibility to establish a system of determining admission to its public schools on a non-racial basis.

3. A state, which operated a racially segregated system of public schools on May 17, 1954, fulfills this responsibility by converting its dual public school system into a unitary public school system.

4. A unitary public school system is one "within which no person is to be effectively excluded from any school because of race or color."

When the Equal Protection Clause as thus interpreted is applied to the facts in this case, it is obvious that the School Board has fully converted its *Pre-Brown* dual school system into a unitary school system within which no child is actually excluded from any school because of race or color. The School Board has done this by creating nondiscriminatory attendance districts or zones and assigning all children, black and white, to neighborhood schools in the district or zone in which they reside without regard to their race.

These conclusions are explicit in the rulings made by the District Court and the Circuit Court in 1965 and 1966. *Swann v. Charlotte-Mecklenburg Board of Education*, 243 F.Supp. 667 (1965); *Swann v. Charlotte-Mecklenburg Board of Education*, 369 F.2d 29 (1966). They are implicit in the findings made by the District Court in its order of April 23, 1969, that the School Board had "achieved a degree of desegregation of schools apparently unsurpassed in these parts" and had "exceeded the performance of any school board whose actions have been reviewed in the appellate court decisions," (311a–312a) and that the Schools of Charlotte, in essence, conform to de facto patterns of residential segregation. (305a)

To be sure, the District Court, acting *sua sponte*, undertook to recall these findings in its Memorandum Opinion of November 7, 1969, and to assert that racial imbalances in the Schools of Charlotte are "not innocent or *de facto*." (662a)

The amicus curiae submits in all earnestness that there is no evidence in the record to sustain the District Court's assertion in this respect. Be this as it may, the Supreme Court is empowered in cases of an equitable nature and cases involving constitutional questions to review the evidence and make its own findings. If it follows this course in this case, the Supreme Court will be impelled to the conclusion that there is not a vestige of state-imposed segregation in the Charlotte-Mecklenburg School System.

Besides, the District Court's assertion that racial imbalances in the schools of Charlotte are "not innocent or *de facto*" is totally repudiated by its subsequent finding that there is no way to desegregate the black schools in northwest Charlotte without transporting thousands of children by bus or other means. (1208a)

When all is said, the School Board went far beyond the call of any duty imposed upon it by the Equal Protection Clause when it proposed in its plan of February 2, 1970, to gerrymander attendance districts or zones in order to achieve the highest degree of desegregation obtainable without virtual abandonment of the neighborhood school concept. The amicus curiae expresses no opinion as to whether this proposal is repugnant to the constitutional or legal rights of any child.

II

The Equal Protection Clause of the Fourteenth Amendment does not require or empower a Federal Court to order a public school board to assign children to the schools it operates merely to balance the student bodies in such schools racially, or to bus children outside reasonable geographic attendance districts or zones to effect such purpose. The District Court ordered the Charlotte-Mecklenburg School Board to do both of these things, and the Circuit Court erred insofar as it affirmed the District Court order.

The facts make it clear that the order entered by the District Court on February 5, 1970, requires racial balancing in the Charlotte-Mecklenburg School System and the busing of thousands of children outside their geographic attendance districts or zones to effect such balancing.

Indeed, the District Court virtually admits this to be true by setting forth in its Supplemental Findings of Fact of March 21, 1970, a specific finding that there is no other way to desegregate the black schools in northwest Charlotte. (1208a)

Upon the entire record, the conclusion is inescapable that the District Court fell into error because it honestly believed that the Equal Protection Clause and certain deci-

sions interpreting it impose upon a public school board an absolute duty to do these things:

1. To balance racially to the highest degree possible all the schools subject to its control if black and white children are available for that purpose anywhere within the territory subject to its jurisdiction, no matter how vast such territory may be; and

2. To effect such racial balancing by denying both black and white children admission to their neighborhood schools and busing them to other schools in other areas in sufficient numbers to overcome racial imbalances either in their neighborhood schools or in the other schools, regardless of whether the racial imbalances result from de facto residential segregation or other cause, and regardless of these other factors: the distances the children are to be bused, the time required for their busing, the impact of their exclusion from their neighborhood schools and their busing upon their minds and hearts, the effect of these things upon the management of the homes which must nurture them, the traffic hazards involved, and the additional expense foisted upon heavily burdened taxpayers.

There is no other rational explanation for the court order which disrupts the lives of thousands of school children and the management of the thousands of homes from which they come, and diverts tremendous sums of tax-raised moneys from the enlightenment of their minds to the busing of their bodies.

The Equal Protection Clause does not require any court to enter any such order. It does not empower any court to enter any such order. Indeed, it forbids any court to do so.

As interpreted in the first *Brown Case*, 347 U.S. 483 (1954), and all subsequent Supreme Court decisions relevant to the subject, the Equal Protection Clause forbids a public school board, which acts as a state agency, to deny any child admission to any school it operates on account of the child's race. A public school board obeys the Clause by maintaining a unitary school system, i.e., a school system "within which no person is to be effectively excluded from any school because of race or color." *Northcross v. Board of Education of the Memphis City Schools*, 397 U.S. 232 (1970); *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969). See also the opinion of Mr. Justice Black, acting as Circuit Justice, in *Alexander v. Holmes County Board of Education*, 396 U.S. 1218 (1969).

The power to assign children to state supported schools belongs to the public school board which operates them. The Equal Protection Clause does not undertake to transfer this power to the Federal Courts. It merely subjects the exercise of the power by the public school board to this limitation: The board must not exclude any child from any school it operates because of the child's race.

If it faithfully observes this limitation upon its power, a public school board has the right to assign children to the schools it operates in any non-discriminatory fashion satisfactory to itself.

The School Board exercised this right when it created nondiscriminatory attendance districts or zones and assigned all children, whether black or white, to neighborhood schools in the districts or zones of their residence without regard to race.

Since the children are similarly situated and the School Board treats them exactly alike, its action is in complete harmony with the Equal Protection Clause. It accords, moreover, with the implementing decision in the second *Brown Case*, 349 U.S. 294 (1955), which expressly recognizes that a school board may employ non-discriminatory geographic zoning of school districts "to achieve a system of determining admission to the public schools on a non-racial basis."

As is true in respect to virtually every city of any size in our land, the different races are concentrated to a substantial degree in separate residential areas in Charlotte, and for this reason the School Board's non-discriminatory geographic zoning and assignment program necessarily results in some racial imbalances in some schools.

Notwithstanding this, the order of the District Court commanding the School Board to exclude thousands of children from their neighborhood schools and to bus them long distances to other schools to overcome these racial imbalances is without support in the Equal Protection Clause.

This is true for an exceedingly plain reason. The Equal Protection Clause does not prohibit any discrimination except that which is arbitrary or invidious.

It inevitably follows that where school attendance areas are not arbitrarily or invidiously fixed so as to include or exclude children of a particular race, the Equal Protection Clause does not prohibit a state or local school board from requiring that the children living in each attendance area attend the school in that area, even though the effect of such a requirement, in a locality where the different races are concentrated in separate residential areas, is racial imbalance or de facto segregation in the schools.

The conclusion that the Equal Protection Clause does not impose upon a public school board any mandate to remove any racial imbalance in its schools occasioned by de facto residential segregation or non-discriminatory geographic assignments is expressly supported in *Bell* v. *School City of Gary, Ind.* (7 CA-1963), 324 F. 2d 209, and *Downs* v. *Board of Education of Kansas City, Kansas* (10 CA-1964), 336 F. 2d 998. Moreover, it is compelled by first *Brown*, 347 U.S. 483 (1954), and all the subsequent Supreme Court cases applying its holding, as well as by the language of the Equal Protection Clause itself.[1]

Despite the fact that the Charlotte-Mecklenburg School System is in the South, racial imbalances produced in its schools by de facto residential segregation are just as innocent as racial imbalances produced in the public schools of the North by the same cause, and are equally exempt from federal interference, whether legislative, executive, or judicial, under the Equal Protection Clause, which, as already pointed out, condemns no discrimination except that which is arbitrary or invidious.

The amicus curiae is confident that the Supreme Court will so adjudge. Indeed, it must do so if the United States is truly one nation under one flag and one Constitution.

It no longer comports with intellectual integrity to call all racial imbalances in the public schools of the South de jure, and all racial imbalances in the public schools of the North de facto.

There is now no de jure school segregation anywhere in our land. Racial imbalances in public schools are either arbitrary or invidious and, hence, constitutionally impermissible, both North and South, or innocent and, hence, constitutionally permissible, both North and South. Racial imbalances resulting from de facto residential segregation or non-discriminatory districting or zoning, whether in the North or in the South, are clearly innocent and constitutionally permissible.

Moreover, it no longer comports with reality, common sense, or justice to apply one rule to the North and another to the South because the South did not precede the Supreme Court in discovering that the "separate, but equal doctrine" had ceased to be the law of the land.

III

The Fifth Section of the Fourteenth Amendment Empowers Congress to Enforce the Equal Protection Clause by Appropriate Legislation, the First Section of Article III of the Constitution Empowers Congress to Regulate the Jurisdiction of United States District Courts and United States Circuit Courts of Appeals, and the Second Section of Article III of the Constitution Empowers Congress to Regulate the Appellate Jurisdiction of the Supreme Court. Congress Exercised all of These Powers in an Appropriate Fashion When it Enacted Title IV of the Civil Rights Act of 1964, Which Prohibits the Assignment of Students to Public Schools to Balance the Student Bodies in Such Schools Racially, and to bus Them From Some Schools to Other Schools, or From Some School Districts to Other School Districts to Effect Such Purpose. The Act's Prohibition on Busing is Absolute and Deprives Federal Courts of Jurisdiction to Compel School Boards to Bus Students to Overcome Racial Imbalances in Schools, Even if Such Imbalances Result From Discriminatory School Board Action. The District Court Order Violated This Act by Commanding the Charlotte-Mecklenburg School Board to do the Things Prohibited by it, and the Circuit Court Joined in Such Violation Insofar as it Affirmed the District Court Order.

The Equal Protection Clause is limited in objective and operation. It imposes this duty and this duty only on a state, i.e., to treat in like manner all persons similarly situated.

In consequence, it forbids a public school board, acting as a state agency, to exclude any child from any school because of the child's race.

Further than that it does not go. It does not rob any public school board of its inherent authority to assign children of any race to their neighborhood school if the school board acts for reasons other than racial reasons, such as a purpose to promote ease of school administration, convenience of the children and the homes from which they come, or economy of operation.

Hence, it does not empower federal courts to deny children of any race admission to their neighborhood schools and to bus them to other schools in other areas to remedy racial imbalances in their neighborhood schools or the other schools arising out of the residential patterns of their neighborhoods or of the other areas.

And, above all things, the Equal Protection Clause does not intend that little children, black or white, shall be treated as pawns on a bureaucratic or judicial chess board.

When it enacted Title IV of the Civil Rights Act of 1964 to enforce the Equal Protection Clause, Congress recognized the validity of these observations concerning the meaning of the Equal Protection Clause, Moreover, it was not oblivious to the inescapable reality that the different races are concentrated to substantial degrees in separate residential areas throughout the nation, and that it would be virtually impossible to keep the public schools of the country racially balanced, even if the Equal Protection Clause did not prohibit such action.

For these reasons, Congress vested in the Commissioner of Education, the Attorney General, and the Federal Courts certain responsibilities regarding what it called the desegregation of public education, but limited the powers of the Commissioner of Education and the Attorney General, and the

[1] While such action may not be customary in briefs, the amicus curiae wishes to note that this conclusion is supported by the text writer in 15 Am. Jur. 2d, Civil Rights, Section 39, Page 433, and by one of the most recent commentaries on the Constitution of the United States, i.e., Bernard Schwartz's "Rights of the Person," Volume II, Section 501, Page 593–596.

jurisdiction of the Federal Courts to keep them within constitutional bounds.

Congress was authorized to do these things by the Fifth Section of the Fourteenth Amendment, which expressly empowers Congress to "enforce, by appropriate legislation" the Equal Protection Clause; the First Section of Article III of the Constitution, which authorizes Congress to prescribe the jurisdiction of the inferior courts created by it, *Chisholm v. Georgia*, 2 Dall. (U.S.) 419, 432 (1793); *Turner v. Bank of North America*, 4 Dall. (U.S.) 8 (1799); *Ex Parte Bollman*, 4 Cranch (U.S.) 75, 93 (1807); *Cary v. Curtis*, 3 How. (U.S.) 236, 245 (1845); *Sheldon v. Still*, 8 How. (U.S.) 441 (1850); *Kline v. Burke Construction Co.*, 260 U.S. 226, 234 (1922); *Lauf v. E. G. Skinner & Co.*, 303 U.S. 323, 330 (1938); *Lockerty v. Phillips*, 319 U.S. 182 (1943); and *Yakus v. United States*, 321 U.S. 414 (1944); and the Second Section of Article III of the Constitution, which vests Congress with legal power to regulate the appellate jurisdiction of the Supreme Court, *Wiscart v. D'Auchy*, 3 Dall. (U.S.) 321, (1796); *Durousseau v. United States*, 6 Cranch 309 (1810); *Barry v. Mercein*, 5 How. (U.S.) 103, 119 (1847); *Daniels v. Railroad Co.*, 3 Wall. (U.S.) 250, 254 (1866); *Ex Parte McCardle*, 6 Wall. (U.S.) 318 (1868); *The Francis Wright*, 105 U.S. 381, 386 (1882); *Kuntz v. Moffitt*, 115 U.S. 487, 497 (1885); *Cross v. Burke*, 146 U.S. 82, 86 (1892); *Missouri v. Pacific Railway Co.*, 292 U.S. 13, 15 (1934); and *Stephan v. United States*, 319 U.S. 423, 426 (1943).

The conclusion that Title IV of the Civil Rights Act of 1964 is designed to enforce the Supreme Court rulings that the Equal Protection Clause forbids a school board, acting as a state agency, to deny any child admission to any school it operates because of the child's race is vindicated by the legislative history of the Act, as well as by its language.

During the course of the debate on the bill which became the Civil Rights Act of 1964, Senator Byrd of West Virginia addressed this question to Senator Humphrey, the floor manager of the bill, and received this reply from Senator Humphrey:

"Mr. BYRD, of West Virginia. Can the Senator from Minnesota assure the Senator from West Virginia that under Title VI school children may not be bused from one end of the community to another end of the community at the taxpayers' expense to relieve so-called racial imbalance in the schools?" [1]

"Mr. HUMPHREY. I do." [2]

Senator Humphrey made these further statements relating to the purposes of the bill:

"Mr. HUMPHREY. Mr. President, the Constitution declares segregation by law to be unconstitutional, but it does not require integration in all situations. I believe this point has been made very well in the courts, and I understand that other Senators will cite the particular cases.

"I shall quote from the case of Bell against School City of Gary, Ind., in which the Federal court of appeals cited the following language from a special three judge district court in Kansas: 'Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color.' *Brown v. Board of Education*, D. C. 139 F. Supp. 468, 470.

"In *Briggs v. Elliott* (EDSC), 132 Supp. 776, 777, the Court said: 'The Constitution, in other words, does not require integration. It merely forbids discrimination.' In other words, an overt act by law which demands segregation is unconstitutional. That was the ruling of the historic *Brown* case of 1954." [3]

The language of the Act discloses this twofold Congressional intent:

1. To enforce the Supreme Court rulings that the Equal Protection Clause prohibits the State from denying to any child admission to any school it operates because of the child's race; and

2. To keep overzealous bureaucrats and federal judges from straying beyond constitutional limits in cases involving the desegregation of public schools.

Since no action of his is involved in this case, the amicus curiae pretermits discussion of the provisions of the Civil Rights Act of 1964 relating to the Commissioner of Education.

In phrasing the Act, Congress uses the terms "desegregation" and "discrimination" interchangeably to express the concept made familiar by the prevalent use of the word "discrimination" to mean state action denying persons admission to public colleges or public schools because of their race.

This observation is made indisputable by Section 401(b) which expressly declares that "desegregation" merely means "the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin"; Section 407(a) (1) and (2) which refer to children who "are being deprived by a school board of the equal protection of the laws" and individuals who have "been denied admission" to a public college or permission "to continue at a public college by reason of race, color, religion, or national origin"; Section 409 which directs its attention to "discrimination in public education"; and Section 410 which stipulates that "nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, or national origin.

There is not a single syllable in Title IV of the Civil Rights Act of 1964 giving any support to a different interpretation.

Section 401(b) merits further consideration because it specifies not only what Congress means by the term "desegregation", but also what Congress does not mean by that term.

Section 401(b) consists of two clauses. The first clause provides that "desegregation" as used in Title IV "means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin," and the second clause provides that "desegregation" as used in Title IV "shall not mean the assignment of students to public schools in order to overcome racial imbalance."

As a law made by Congress, Title IV is binding on federal judges, and defines their jurisdiction in respect to public schools operated by public school boards acting as state agencies.

The first clause of Section 401(b) commands school boards to ignore race, color, religion, and national origin as factors in assigning students to public schools. Since federal judges have no power to add anything to the laws they enforce, this clause merely confers upon federal judges the limited jurisdiction to enforce its command by decrees which prevent recalcitrant school boards from denying otherwise eligible children admission to schools on account of their race, color, religion, or national origin.

Since federal judges do not have power to subtract anything from laws they enforce, the second clause of Section 401(b) denies to federal judges jurisdiction to compel school boards to assign "students to public schools in order to overcome racial imbalance." By this clause, Congress forbids federal judges to make decrees compelling school boards to take affirmative steps to commingle black and white children in public schools in proportions satisfactory to themselves to remedy racial imbalances occasioned by de facto residential segregation or non-discriminatory action on the part of school boards.

This interpretation of Section 401(b) is completely confirmed by Sections 407, 409, and 410 of Title IV.

Before the enactment of Title IV of the Civil Rights Act of 1964, only the individuals aggrieved thereby had legal standing to make complaint in federal courts concerning state-imposed segregation in public education. They were restricted to seeking relief for themselves and their children and other persons similarly situated. They did not have the right to demand that federal courts should substitute federally coerced integration for state-imposed segregation.

When it drafted Title IV, Congress decided to extend to the Attorney General standing to sue for "such relief as may be appropriate" in behalf of two groups of people if he believes their complaints to be "meritorious" and concludes that they are "unable * * * to initiate and maintain appropriate legal proceedings for" their own "relief." These groups of people are described, in essence, as children who "are being deprived by a school board of the equal protection of the laws" and individuals who have been "denied admission" to a public college or "permission to continue in attendance at a public college by reason of race, color, religion or national origin." To this end, Congress inserted Section 407(a) in Title IV.

At the same time, however, Congress decided to preserve intact the existing rights of individuals to sue in their own behalf for relief against state-imposed segregation. To accomplish this purpose, Congress stipulated in Section 409 that nothing in Title IV "shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education."

Congress was determined, however, not to increase the powers of federal judges when it gave the Attorney General standing to seek relief against discrimination in public education in behalf of the aggrieved persons designated in Section 409(a). Moreover, Congress was equally as determined that federal judges should not have jurisdiciton to compel school boards to deny children admission to their neighborhood schools and transport them hither and yon to achieve racial balances in public schools, regardless of whether the racial imbalances sought to be removed to accomplish such purpose arise out of innocent causes or discriminatory action on the part of school boards.

Congress made these purposes manifest by inserting in Section 409(a) language expressly providing "that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards."

By so doing, Congress deprived all federal courts of the jurisdiction to order public school boards to bus children from one school to another or from one school district to another to remedy racial imbalances in public schools regardless of whether such imbalances arise out of innocent causes or discriminatory school board action. As appears from the cases which the amicus curiae has previously cited, Congress had undoubted power to do this under the First Section of Article III of the Constitution, which empowers it to define the jurisdiction of inferior federal courts, and under the Second Section of Article III of the Constitution, which expressly provides that "the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and

[1] Senator Byrd was evidently referring to Title IV, instead of Title VI.

[2] Congressional Record, Volume 110, Part 10, Page 12,714, June 4, 1964.

[3] Congressional Record, Volume 110, Part 10, Page 13,821, June 15, 1964.

under such regulations as the Congress shall make."

It necessarily follows that the District Court violated the provisions of the Civil Rights Act of 1964 when it ordered the Charlotte-Mecklenburg School Board to bus thousands of children from some schools to other schools and from some school districts to other school districts to overcome racial imbalances in any of its schools regardless of the origin of such racial imbalances; and that the Circuit Court erred in affirming the provisions of the District Court order relating to the transportation of senior high school and junior high school students.

While such statutes apply to the Executive Department of the Federal Government only, and for that reason are not controlling in this case, it seems not amiss to direct the attention of the Supreme Court to congressional hostility to the busing of children to achieve racial balancing in public schools. Congress manifested its hostility to such action by the Elementary and Secondary Education Act of 1965, as amended in 1966, which forbids "any department, agency, officer, or employee of the United States * * * to require the assignment or transportation of students or teachers in order to overcome racial imbalance," (P.L. 89–10, Title VIII, Section 804; 20 U.S.C. Section 884); the Department of Labor, and Health, Education, and Welfare Appropriation Act of 1969, which provides that "no part of the funds contained in this Act shall be used to force busing of students * * * in order to overcome racial imbalance as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school", (P.L. 90–557, Title IV, Section 410); and the Office of Education Appropriation Act of 1971, which provides that "no part of the funds contained in this Act shall be used to force any school or school district which is desegregated as that term is defined in Title IV of the Civil Rights Act of 1964, Public Law 88–352, to take any action to force the busing of students" (P.L. 91–380, Title II, Section 210).

IV

A School Board has the Power to Devise and Implement any Non-discriminatory Plan for the Assignment of Children to the Public Schools it Operates. The District Court not Only Rejected a Non-discriminatory Assignment Plan Submitted by the Charlotte-Mecklenburg School Board, but it Usurped and Exercised the Authority of the School Board in this Respect by Devising a Plan of its Own Which Commands the School Board to Deny Thousands of Children Admission to Their Neighborhood Schools, and to bus Them to Other Schools to Mix the Races in the Various Schools in Numbers or Proportions Satisfactory to the District Court. By so Doing, the District Court Ordered the School Board to Deny to the Thousands of Children Affected by its Order Admission to Their Neighborhood Schools in Violation of the Equal Protection Clause, and to Bus Them to Other Schools or Other School Districts in Violation of Section 407(a)(2) of the Civil Rights Act of 1964. The Circuit Court Concurred in These Violations, and Erred Insofar as it Affirmed the Order of the District Court.

A school board, acting as a state agency, has the power to assign children to the public schools it operates free from interference by the Federal Judiciary as long as it obeys the Equal Protection Clause and does not exclude any child from any school because of the child's race.

When a school board violates the Equal Protection Clause, a Federal Court has jurisdiction to order the school board to devise and implement a plan sufficient to remedy its discriminatory assignment of children to its schools, and to punish the members of the school board for contempt of court if they fail to obey the order. Nevertheless, the power to devise and implement a plan to remedy the discriminatory assignment continues to reside in the school board, and the Federal Court is without power to reject a non-discriminatory plan submitted by the school board because such non-discriminatory plan will not mix the races in the schools in numbers or proportions satisfactory to the Federal Court.

Besides the Federal Court cannot usurp and exercise the power of the School Board to devise a non-discriminatory assignment plan because the Federal Court wishes to mix the races in the schools in greater numbers or proportions than the non-discriminatory plan of the School Board envisages.

The District Court violated all of these principles when it made its order of February 5, 1970 (819a–839a), its supplemental findings of fact of March 21, 1970 (1198a–1220a), and its supplemental memorandum of March 21, 1970 (1221a–1238a).

Pursuant to the order which the District Court had entered on December 1, 1969, the Charlotte-Mecklenburg School Board submitted to the District Court on February 2, 1970 its plan for desegregation of schools (726a–742a). By this plan the School Board undertook to restructure its geographical attendance districts or zones in such a manner as to promote the highest degree of racial integration obtainable by geographical districting or zoning, and to assign all school children, black or white, to the neighborhood schools in the district or zone of their residence, regardless of race. The plan undertook to further augment desegregation by a transfer system heavily weighted in favor of permitting black children to transfer from predominantly black schools to predominately white schools.

Inasmuch as it treated all children similarly situated exactly alike and did not exclude any child from any school on account of the child's race, the plan submitted by the School Board on February 2, 1970, was in complete harmony with the Equal Protection Clause and it was obligatory for this reason for the District Court to approve it and permit the School Board to implement it.

Instead of doing so, the District Court rejected the non-discriminatory plan submitted by the School Board, and usurped and exercised the power vested in the School Board by adopting a plan of its own. The District Court accomplished this purpose by engrafting upon the plans of the School Board drastic alterations and revisions recommended by Dr. Finger, which commanded the School Board to deny thousands of children admission to their neighborhood schools, and to bus them long distances from some schools to other schools, and from some school districts or zones to other school districts or zones.

When all is said, the District Court commanded the School Board to take this action to remedy racial imbalances in black schools in northwest Charlotte arising out of de facto residential segregation in that area, and to produce racial commingling in these schools of northwest Charlotte and other schools in other areas in numbers or proportions greater than those envisaged by the plan of the School Board.

The District Court virtually confesses that its order was designed to effect these purposes by this recital which appears in its supplemental findings of fact of March 21, 1970:

"Both Dr. Finger and the school board staff appear to have agreed, and the court finds as a fact, that for the present at least, there is no way to desegregate the all-black schools in Northwest Charlotte without providing (or continuing to provide) bus or other transportation for thousands of children. All plans and all variations of plans considered for this purpose lead in one fashion or another to that conclusion." (1208a)

In addition to usurping and exercising power vested by law in the School Board, the District Court order commands the School Board to violate rights vested in thousands of school children by the Equal Protection Clause and the Civil Rights Act of 1964.

Since the power to assign children to public schools belongs to the school board administering such schools, no child has the constitutional or legal right in the first instance to attend any particular school, but when a school board adopts a non-discriminatory system for assigning children to neighborhood schools in the attendance district or zone of their residence, children acquire, as against every governmental agency except the school board, the legal right to attend the schools to which they have been so assigned. This right is additional to their right not to be excluded from such schools because of their race.

By its previous practices and its plan of February 2, 1970, the School Board had assigned thousands of senior high school, junior high school, and elementary school children to their neighborhood schools in a wholly non-discriminatory fashion.

By its order of February 5, 1970, the District Court commanded the School Board to do two things which clearly offend the Equal Protection Clause. In the first place, the District Court commanded the School Board to treat differently children similarly situated by allowing thousands of children to attend their neighborhood schools, and by excluding thousands of other children from admission to their neighborhood schools; and in the second place, the District Court commanded the School Board to bus the thousands of children excluded from their neighborhood schools to some other schools in other districts or zones to desegregate both their neighborhood schools and the other schools in numbers or proportions satisfactory to the District Court.

No amount of sophistry can erase the plain truth that the second groups of children were denied admission to their neighborhood schools on account of their race.

Manifestly, the Equal Protection Clause does not confer upon any Federal Court jurisdiction to enter a wondrous order to compel a school board to obey the Equal Protection Clause by violating it. Congress apparently realized this bizarre result of busing children from one school to another, or from one school district or zone to another district or zone, when it prohibited any officer or Court of the United States to require such action to achieve the racial balancing of schools.

The Circuit Court erred in affirming the order of the District Court rejecting the plan submitted by the School Board, and in affirming, in part, the order of the District Court excluding children from their neighborhood schools and requiring them to be bused to other schools and other school districts in other areas.

CONCLUSION

For the reasons stated, the Court should reverse the provisions of the judgment of the Circuit Court insofar as they relate to the assignment and busing of senior high school and junior high school students; approve the provisions of the judgment of the Circuit Court insofar as they vacate the order of the District Court relating to the assignment and busing of elementary school children; and grant the motion of the School Board to stay the order of the District Court reinstating its previous orders relating to the assignment and busing of elementary school students.

Respectfully submitted.

SAM J. ERVIN, JR.
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APPENDIX

Constitutional provisions involved

1. The First Section of the Fourteenth Amendment, which reads, in pertinent part, as follows: "nor (shall any State) deny to any person within its jurisdiction the equal protection of the laws."

2. The Fifth Section of the Fourteenth Amendment, which specifies that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article."

3. The First Section of Article III, which states, in pertinent part, that "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

4. The Second Section of Article III of the Constitution, which reads, in pertinent part, as follows:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of Admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

"In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

Statutory Provisions Involved

1. Title IV of the Civil Rights Act of 1964 which originally appeared in Title IV of Public Law 88-352 of the 88th Congress and is now codified as 42 USC 2000c-2000c-9. This statute reads as follows:

"Title IV—Desegregation of Public Education

Definitions

"Sec. 401. As used in this title—

"(a) 'Commissioner' means the Commissioner of Education.

"(b) 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance.

"(c) 'Public school' means any elementary or secondary educational institution, and 'public college' means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

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

Survey and Report of Educational Opportunities

"Sec. 402. The Commissioner shall conduct a survey and make a report to the President and the Congress, within two years of the enactment of this title, concerning the lack of availability of equal educational opportunities for individuals by reason of race, color, religion, or national origin in public educational institutions at all levels in the United States, its territories and possessions, and the District of Columbia.

Technical Assistance

"Sec. 403. The Commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Office of Education or other persons specially equipped to advise and assist them in coping with such problems.

Training Institutes

"Sec. 404. The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute on a full-time basis may be paid stipends for the period of their attendance at such institute in amounts specified by the Commissioner in regulations, including allowances for travel to attend such institute.

Grants

"Sec. 405. (a) The Commissioner is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

"(1) giving to teachers and other school personnel in-service training in dealing with problems incident to desegregation, and

"(2) employing specialists to advise in problems incident to desegregation.

"(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available for grants under this section and the other applications which are pending before him, the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

Payments

"Sec. 406. Payments pursuant to a grant or contract under this title may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Commissioner may determine.

Suits by the Attorney General

"Sec. 407. (a) Whenever the Attorney General receives a complaint in writing—

"(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

"(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

"(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

"(c) The term 'parent', as used in this section includes any person standing in loco parentis. A 'complaint' as used in this section is a writing or document within the meaning of section 1001, title 18, United States Code.

"Sec. 408. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

"Sec. 409. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

"Sec. 410. Nothing in this title shall prohibit classfication and assignment for reasons other than race, color, religion, or national origin."

ORDER FOR RECOGNITION OF SENATOR BYRD OF VIRGINIA VACATED

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the remaining portion of the order previously entered, recognizing the able Senator from Virginia (Mr. BYRD), be vacated. I have been informed that he is in a meeting of the Committee on Armed Services at this time and that important amendments are pending. He has notified the leadership to vacate his order.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Pursuant to the previous order, the Senate will proceed to the transaction of routine morning business, with statements therein limited to 3 minutes, and with the time to expire at 12 o'clock noon.

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.

ORDER FOR RECOGNITION OF SENATOR PROXMIRE ON MONDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday next, following the recognition of the two leaders under the standing order, the distinguished Senator from Wisconsin (Mr. PROXMIRE) be recognized for not to exceed 15 minutes.

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

ORDER FOR ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business, it stand in adjournment until 10 o'clock tomorrow morning.

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

(Subsequently, this order was modified to provide for an adjournment until 11 a.m. tomorrow.)

Mr. BYRD of West Virginia. Mr. President, I am authorized by the majority leader to announce that if the Senate completes action today on S. 1557, the unfinished business, there is a good likelihood that the Senate will go over until Monday next, in which case the order which has just been entered will be vacated.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will please call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR PRINTING AS A SENATE DOCUMENT: "FEDERALISM '76—A SYSTEMATIC EVALUATION OF OUR AMERICAN FEDERALISM"

Mr. GRIFFIN. Mr. President, as part of the bicentennial commemoration, the American Revolution Bicentennial Commission, appointed by the President, has approved a project to provide for a comprehensive, systematic review of federalism. As envisioned, the project would involve wide participation by citizens, experts, and public officials.

This endeavor would emphasize the American heritage, and the importance of shared responsibilities of all levels of Government—national, State, and local.

The distinguished majority leader, Mr. MANSFIELD, has said that—

A project of this nature can be very worthwhile to re-establish and re-identify the basic precepts upon which our nation was founded, including the most cherished freedoms and liberties of the individual, in the current framework of a highly advanced and technological society.

In addition, Senator MANSFIELD and the distinguished minority leader, Mr. SCOTT, have authorized me to state that these objectives have the support of the joint leadership in the Senate.

Mr. President, I ask unanimous consent that a staff paper explaining the project entitled "Federalism '76—A Systematic Evaluation of Our American Federalism" be printed as a Senate document in accordance with the usual procedure.

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

QUORUM CALL

Mr. GRIFFIN. 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. GURNEY. 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 remarks of Mr. GURNEY when he introduced S. 1613 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

Mr. GURNEY. 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. JAVITS. Mr. President, I ask unanimuos consent that the order for the quorum call be rescinded.

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

(The remarks of Mr. JAVITS when he introduced S. 1614 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

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 OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 92–97)

The ACTING PRESIDENT pro tempore (Mr. BURDICK) laid before the Senate the following message from the President of the United States, which was referred to the Committee on Banking, Housing and Urban Affairs:

To the Congress of the United States:

I transmit herewith the Fifth Annual Report of the Department of Housing and Urban Development for the calendar year 1969.

RICHARD NIXON.

THE WHITE HOUSE, *April 22, 1971.*

EXECUTIVE COMMUNICATIONS, ETC.

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

PROPOSED LEGISLATION IN COMMEMORATION OF THE BICENTENNIAL OF THE AMERICAN REVOLUTION

A letter from the Chairman, American Revolution Bicentennial Commission, submitting a draft of proposed legislation to provide for the striking of medals in commemoration of the Bicentennial of the American Revolution (with accompanying papers); to the Committee on Banking, Housing, and Urban Affairs.

PROPOSED CUSTOMS PORT SECURITY ACT OF 1971

A letter from the Secretary of the Treasury, submitting a draft of proposed legislation to increase the security and protection of imported merchandise and merchandise for export at ports of entry in the United States from loss or damage as a result of criminal and corrupt practices, and for other purposes (with accompanying papers); to the Committee on Finance.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A resolution of the House of Representatives of the State of Oklahoma; to the Committee on Commerce:

"HOUSE RESOLUTION NO. 1025

"A resolution relating to the new driver regulations of the Department of Transportation of the United States; pertaining to the qualifications for operators of motor vehicles used in and for farm and ranch operations; petitioning the Secretary of the Department of Transportation to retract and recede such oppressive regulations; and directing distribution

"Whereas, the economy of the State of Oklahoma is dependent to a large extent upon agriculture; and

"Whereas, transportation is vital to agricultural production, and more specifically the operation of trucks and other motor vehicles is an indispensable part of today's mechanized system of farming and ranching; and

"Whereas, the agriculture segment of the economy continues to face a diminishing labor supply and it is difficult for the employing farmer and rancher to hire individuals, let alone those possessing certain age and physical qualifications as required by the new driver regulations for farm truck operators; and

"Whereas, part 391 of the Motor Carrier Safety Regulations of the United States, Title 49, would prove to be an intolerable and oppressive burden upon the farming and ranching industry and these regulations are far beyond what is necessary and proper.

"Now, therefore, be it resolved by the House of Representatives of the 1st Session of the 33rd Oklahoma legislature:

"Section 1. The Secretary of the Department of Transportation is respectfully urged to retract and recede those regulations which require farmers, ranchers and custom farm operators to employ within their respective businesses individuals who are twenty-one years of age or over and who are otherwise qualified to operate motor vehicles in accordance to said regulations.

"Section 2. Duly authenticated copies of this Resolution shall be distributed to:

"1. Each member of the Oklahoma Congressional Delegation;

"2. The Presiding Officers of the United States Senate and House of Representatives; and

"3. The Secretary of the Department of Transportation."

A joint resolution of the General Assembly of the State of Connecticut; to the Committee on the Judiciary:

"SENATE JOINT RESOLUTION 66

"Resolution ratifying the proposed amendment to the Constitution of the United States relating to extending the right to vote to citizens eighteen years of age or older

"Resolved by this Assembly:

"Whereas, the Ninety-second Congress of the United States of America at its First Session, in both houses, by a constitutional majority of two-thirds thereof, has made the following proposition to amend the Constitution of the United States in the following words, to wit:

"Resolved by the Senate and House of Representatives of the United States of America 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 —

" 'SECTION 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.'

"BE IT RESOLVED BY THE GENERAL ASSEMBLY OF THE STATE OF CONNECTICUT:

"That the said proposed amendment to the Constitution of the United States be and the same is hereby ratified; and be it further

"RESOLVED:

"That certified copies of this resolution be forwarded by the Governor of the State of Connecticut to the President of the United States, the President Pro Tempore of the Senate and the Speaker of the House of Representatives of the United States and the Administrator of General Services of the United States."

USDA VETERINARY BIOLOGICS LABORATORY, AMES, IOWA

Mr. MILLER. Mr. President, I present for printing in the RECORD and appropriate reference a concurrent resolution of the Iowa Legislature relating to the USDA Veterinary Biologics Laboratory at Ames, Iowa.

The concurrent resolution, which was referred to the Committee on Agriculture and Forestry, reads as follows:

SENATE CONCURRENT RESOLUTION 34

Whereas, the United States Department of Agriculture Veterinary Biologics Division Laboratory situated at Ames, Iowa, is ideally located in the feed grains and livestock center of the United States and adjacent to the National Animal Disease Laboratory and the Veterinary College of Iowa State University; and

Whereas, the successful continuation and coordination of its work is vitally important to the basic industry of Iowa, and the loss of the employment of some one hundred persons with a payroll of one million dollars annually would be a severe economic depressant to the city of Ames and the state of Iowa; and

Whereas, recent news articles have reported on the possibility of transferring the laboratory from Ames, Iowa, to Fort Detrick, Maryland, which follows by only two years a proposal to move this facility to Lincoln, Nebraska, now therefore,

Be it resolved by the Senate, the House concurring, That the General Assembly deplores and opposes any plan or proposal to move the United States Department of Agriculture Veterinary Biologics Division Laboratory from its present location in Ames, Iowa; and

Be it further resolved, That copies of this Resolution be directed to the President and Vice President of the United States, the Secretary of Agriculture of the United States; and that copies of this Resolution combined with the General Assembly's expression of appreciation for efforts in this regard be directed to the Iowa delegation in the United States Congress, and to the Governor of Iowa.

REPORTS OF A COMMITTEE

The following reports of committees were submitted:

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

S. 1399. A bill to establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior (Rept. No. 92–75).

By Mr. BURDICK, from the Committee on Interior and Insular Affairs, with amendments:

S. 860. A bill relating to the Trust Territory of the Pacific Islands (Rept. No. 92–76).

EXECUTIVE REPORTS OF A COMMITTEE

Mr. BENTSEN. Mr. President, as in executive session, from the Committee on Armed Services I report favorably the nominations of 16 flag and general officers in the Army, Navy, Marine Corps, and Air Force. I ask that these names be placed on the Executive Calendar.

In addition, I report favorably 2,750 appointments and promotions in the Army in the grade of colonel and below and 818 appointments in the Navy in grade of lieutenant commander and below. Since these names have already been printed in the CONGRESSIONAL RECORD, in order to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

(The nominations, ordered to be placed on the Executive Calendar, are as follows):

IN THE AIR FORCE

Lt. Gen. Joseph H. Moore, when retired, to lieutenant general;

Maj. General George J. Eade, to be assigned to positions of importance and responsibility designated by the President, to the grade of lieutenant general;

IN THE ARMY

Maj. Gen. Berton Everett Spivy, Jr., when retired, to general;

Maj. Gen. Vernon Price Mock, when retired, to lieutenant general;

Maj. Gen. Harry Jacob Lemley, Jr., when retired, to lieutenant general;

Maj. Gen. William Pelham Yarborough, when retired, to lieutenant general;

Maj. Gen. Beverley Evans Powell, when retired, to lieutenant general;

Brig. Gen. Robert Clinton Taber, to be assigned to a position of importance and responsibility designated by the President, to lieutenant general;

Maj. Gen. Richard Thomas Cassidy, to be assigned to a position of importance and responsibility designated by the President, to lieutenant general;

Maj. Gen. Robert Edmondston Coffin, to be assigned to a position of importance and responsibility designated by the President, to lieutenant general;

IN THE NAVY

Vice Adm. Turner F. Caldwell, Jr., when retired to vice admiral;

Vice Adm. Isaac C. Kidd, Jr., while serving in commands and other duties of great importance and responsibility determined by the President, to admiral;

IN THE MARINE CORPS

Lt. Gen. Louis B. Robertshaw, when retired, to lieutenant general;

Lt. Gen. Frederick E. Leek, when retired, to lieutenant general;

Maj. Gen. Ormond R. Simpson, while serving in commands and other duties determined by the President, to lieutenant general; and

Maj. Gen. Earl E. Anderson, while serving in commands and other duties determined by the President, to lieutenant general.

(For nominations ordered to lie on the Secretary's desk, see the end of Senate proceedings on March 29, 1971, and April 14, 1971.)

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. GURNEY:

S. 1613. A bill to amend the National Labor Relations Act to achieve certain reforms, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. JAVITS (for himself, Mr. PROUTY, Mr. BEALL, Mr. BENNETT, Mr. BROOKE, Mr. HOLLINGS, Mr. MCGEE, Mr. PASTORE, Mr. PERCY, Mr. MOSS, Mr. METCALF, Mr. SCHWEIKER, Mr. STEVENS, and Mr. YOUNG):

S. 1614. A bill to amend the Public Health Service Act to extend and broaden existing programs to provide financial assistance in the construction and expansion of schools of nursing, to improve the quality of such schools, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. BIBLE (for himself, Mr. BURDICK, Mr. DOLE, Mr. EASTLAND, Mr. GRAVEL, Mr. GURNEY, Mr. HUMPHREY, Mr. KENNEDY, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MOSS, Mr. NELSON, Mr. RANDOLPH, Mr. SPARKMAN, and Mr. STEVENS):

S. 1615. A bill to amend the Internal Revenue Code of 1954 to provide income tax simplification, reform, and relief for small business. Referred to the Committee on Finance.

By Mr. RIBICOFF:

S. 1616. A bill for the relief of Robert and Alice Martin. Referred to the Committee on the Judiciary.

By Mr. MILLER:

S. 1617. A bill to amend section 2771 of title 10, United States Code, relating to final settlement of accounts of deceased members of the armed forces. Referred to the Committee on Armed Services.

By Mr. SPARKMAN (for himself and Mr. TOWER) (by request):

S. 1618. A bill to provide Federal revenue to State and local governments and afford them broad discretion in carrying out community development activities and to help States and localities to improve their decisionmaking and management capabilities.

Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. BENTSEN:

S. 1619. A bill authorizing the Secretary of Agriculture to carry out a program for flood prevention and other purposes in the lower Rio Grande Basin, Texas, to enhance and stabilize the agricultural economy of the area. Referred to the Committee on Agriculture and Forestry.

By Mr. McGOVERN:

S. 1620. A bill to amend part II of the Interstate Commerce Act in order to completely exempt certain farm vehicles from the provisions thereof. Referred to the Committee on Commerce; and

S. 1621. A bill for the relief of Zenaida Magtibay. Referred to the Committee on the Judiciary.

By Mr. TOWER:

S. 1622. A bill for the relief of Cruz Sanchez-Garcia, his wife, Maria Benilda Leal de Sanchez, and their children, Daniel Sanchez-Leal and Adela Sanchez-Leal. Referred to the Committee on the Judiciary.

By Mr. BENNETT (for himself, Mr. JORDAN of Idaho, Mr. HRUSKA, Mr. HANSEN, Mr. FANNIN, Mr. GRIFFIN, and Mr. SCOTT):

S. 1623. A bill to amend the Social Security Act to require employers to make an approved basic health care plan available to their employees, to provide a family health insurance plan for low-income families not covered by an employer's basic health care plan, to facilitate provision of health services to beneficiaries of the family health insurance plan by health maintenance organizations, by prohibiting State law interference with such organizations providing such services, and for other purposes. Referred to the Committee on Finance.

By Mr. MATHIAS:

S. 1624. A bill for the relief of Lawson W. Koch; and

S. 1625. A bill for the relief of Maria Salvacion Olmedo. Referred to the Committee on the Judiciary.

By Mr. MATHIAS (for himself and Mr. WEICKER):

S. 1626. A bill to provide an elected Mayor and City Council for the District of Columbia, and for other purposes. Referred to the Committee on the District of Columbia.

By Mr. CANNON:

S. 1627. A bill to amend title II of the Social Security Act to increase the annual amount individuals are permitted to earn without suffering deductions from the insurance benefits payable to them under such title; and

S. 1628. A bill to amend title II of the Social Security Act to increase from $70.40 to $100 the minimum monthly insurance benefit payable thereunder. Referred to the Committee on Finance.

By Mr. INOUYE:

S. 1629. A bill to amend the Airport and Airways Development Act of 1970 in order to make American Samoa and the Trust Territory of the Pacific Islands eligible for certain assistance under such Act. Referred to the Committee on Commerce; and

S. 1630. A bill to restore the wartime recognition of certain Filipino veterans of World War II to entitle them to those benefits, rights, and privileges which result from such recognition. Referred to the Committee on Veterans Affairs.

By Mr. McGOVERN and Mr. HATFIELD (for themselves, Mr. EAGLETON, and Mr. HART):

S. 1631. A bill to provide assistance to defense workers whose employment has been adversely affected by the transition to a peace-time economy. Referred to the Committee on Finance.

By Mr. THURMOND:

S. 1632. A bill to amend the Internal Revenue Code of 1954 to increase, in certain cases, the deduction allowable for expenses incurred in providing care for certain dependents. Referred to the Committee on Finance.

By Mr. MOSS:

S. 1633. A bill to provide back pay to Federal employees whose positions are incorrectly classified. Referred to the Committee on Post Office and Civil Service.

S. 1634. A bill to designate a certain route on the National System of Interstate and Defense Highways between Omaha, Nebr., and Sacramento, Calif., as the Golden Spike Highway. Referred to the Committee on Public Works; and

S. 1635. A bill to amend section 4107 of title 38, United States Code, to provide for the payment of pay differentials for evening, night, weekend, and holiday work performed by nurses employed by the Veterans' Administration, and for other purposes. Referred to the Committee on Veterans' Affairs.

By Mr. McGEE (by request):

S. 1636. A bill to establish a Federal wage system for fixing and adjusting the pay of certain employees of the Government. Referred to the Committee on Post Office and Civil Service.

By Mr. METCALF:

S. 1637. A bill to establish uniform standards and procedures for Government advisory committees. Referred to the Committee on Government Operations.

By Mr. THURMOND:

S. 1638. A bill for the relief of Erich Hess. Referred to the Committee on the Judiciary.

By Mr. McGEE:

S. 1639. A bill to provide an additional period of time for review of the basic national rail passenger system; to postpone for 6 months the date on which the National Railroad Passenger Corporation is authorized to contract for provision of intercity rail passenger service; to postpone for 6 months the date on which the Corporation is required to begin providing intercity rail passenger service, and for other purposes. Referred to the Committee on Commerce.

By Mr. BYRD of Virginia:

S. 1640. A bill to extend the period within which members of the Armed Forces serving on extended active duty may acquire a new principal residence. Referred to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GURNEY:

S. 1613. A bill to amend the National Labor Relations Act to achieve certain reforms, and for other purposes. Referred to the Committee on Labor and Public Welfare.

Mr. GURNEY. Mr. President, I introduce today a bill to correct several of the most flagrant abuses of union power now prevalent on the American industrial scene.

My bill is aimed at reaching these abuses by redirecting the course of decisions by the National Labor Relations Board and the courts on secondary boycotts, recognition picketing and jurisdictional strikes.

As we review the history of the provisions of present law covered by this bill, we see a very familiar pattern. It is a pattern which has marked the National Labor Relations Board since its earliest days in the 1930's. It is the inability, the unwillingness, the refusal—call it what you will—of the NLRB to follow the law as it is written, to honor the intent of Congress, to resist the temptation to legislate.

When Congress amended the Wagner Act by passing the Taft-Hartley law in 1947, history shows that few concerns demanded more attention than boycotts, picketing and jurisdictional disputes. Twelve years later, when Congress again amended the law by passing the Landrum-Griffin Act, it was substantially a response to a public outcry against abuses in the areas of secondary boycotts and blackmail picketing. Now here we are, Mr. President, 12 more years after Congress thought it had spoken to the Labor Board in plain and direct terms. And what do we find? We find that the NLRB has again proven its long-established capacity to write the law rather than read it, its capacity—indeed, it would seem at times, its purpose—to evade the intent of Congress.

Mr. President, the terms of this legislation speak for themselves, and I will not undertake here any exhaustive analysis of its provisions, nor any lengthy recital of the cases that call for the corrective steps it prescribes. I will, however, cite just a few of the developments and conditions that commend this legislation to the early attention of the Senate.

When Congress passed the Taft-Hartley law in 1947, it banned the secondary boycott outright. Very quickly, however, the NLRB carved out some major loopholes in the congressional directive.

These were exploited and expanded in a long series of decisions that virtually nullified the boycott prohibition. The public, and Congress, responded to these abuses by closing the major loopholes with passage of the Landrum-Griffin Act in 1959.

But the NLRB would not be denied: since 1959 it has been busy devising new loopholes in the boycott ban. To illustrate, even though Congress outlawed all secondary coercion, the Board permits boycott pressure against managerial personnel. It has created a new loophole for consumer picketing. It has gone so far as a holding that a retailer who sells another's product may be boycotted on the odd theory that he is somehow the producer of that product. The so-called common situs loophole has also been refined and expanded by the Board. Recently, the Board brought to fruition another novel theory under which boycotting is sanctioned where a union object is said to be the "preservation" of work for a particular bargaining unit. Thus, despite the law's ban on boycotts and "hot-cargo" restrictions, Board rulings now permit secondary pressure to prevent such practices as the installation of prefabricated materials at construction sites.

The legislation introduced today, Mr. President, is designed to correct all these abuses and restore the boycott ban to its full effect.

As to recognition picketing, I think it is fair to say that the NLRB has carved out two major loopholes in the 1959 law. That statute made it an unfair labor practice to picket for recognition instead of using the law's elections procedures. The Board has repeatedly failed to honor the law's requirement that an election petition be filed within 30 days after picketing begins at a plant which is not

unionized. Also, where picketing of an unorganized plant is clearly designed to force recognition of a union the employees have not chosen, the Board nevertheless permits such conduct—on the threadbare theory that the pickets are merely "publicizing" the absence of a union contract.

This legislation corrects these misconstructions, Mr. President, and restores full effectiveness to the congressional ban on blackmail picketing.

In commenting on this legislation, Mr. President, I want to emphasize that criticism of NLRB decisions in these and a wide variety of other areas of the law must also be shared by the courts. I shall have more to say to the Senate on that subject at another time, when I shall comment on Supreme Court decisions in this field. However, the NLRB is the trier of the case and the finder of the facts. It is the agency to whose so-called expertise the courts invariably defer. It is the agency to which Congress gives direct instructions in the statute. It is obviously the agency to which we should address our corrective measures first.

The third area encompassed by this legislation, Mr. President—jurisdictional strikes—touches upon statutory interpretations by the Supreme Court and a statutory assignment given to the NLRB. The law makes it an unfair labor practice to strike over a work assignment, unless the assignment defies an NLRB order of certification. The Supreme Court has directed the Board to decide whether the striking union is entitled to do the disputed work. This undertaking by the Board is invariably a protracted matter, and the strike is allowed to continue while the Board tries to resolve the question of who should do the work.

The amendment presented today would resolve this conflict. The Board would no longer try to decide which union was entitled to disputed work but would concentrate instead on whether the work assignment violated any outstanding NLRB order or certification. Unions fearing incursions on their jurisdictions would be able to use the act's peaceful elections procedures to answer such concerns. And the amendment permits the same prompt injunctive relief against jurisdictional strikes as is now available in cases of secondary boycotts and recognition picketing.

Mr. President, all these amendments merit the early attention of the Senate, and I ask unanimous consent that the bill may 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. 1613

A bill to amend the National Labor Relations Act to achieve certain reforms, 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 Labor Relations Amendments of 1971".

SEC. 2. (a) Section 8(b)(4) of the National Labor Relations Act (29 U.S.C. 158(b)(4)) is amended by—

(1) inserting after the word "employed" in clause (i) thereof the following: "as an officer, manager, supervisor, agent or employee";

(2) inserting the words "directly or indirectly" and a comma immediately after the clause designation "(ii)";

(3) striking out the words "or restrain" in clause (ii) of such section and inserting in lieu thereof the words "restrain, or picket";

(4) striking out the semicolon at the end of clause (ii)(B) and inserting in lieu thereof a colon and the following: *"Provided further,* That any strike, picketing or refusal to perform services or any inducement or threat thereof, causing or intended to cause any employer to cease or refrain from using, installing, handling, purchasing, leasing, or selling materials, machinery, products, or services from other persons, or to impose, or refrain from imposing, upon customers, shippers, or suppliers particular methods of delivery or distribution, shall not constitute in any circumstances a primary strike or primary picketing, irrespective of any collective bargaining agreement or asserted work jurisdiction claims, but shall constitute a violation of this subsection;";

(5) inserting immediately after the word "picketing" in the last proviso of such paragraph (4) the following: ", irrespective of whether such picketing appears to be addressed only to consumers, solely"; and

(6) striking the semicolon at the end of such section 8(b)(4) and inserting in lieu thereof a colon and the following new proviso: *"Provided further,* That when employees of the employer with whom the labor organization has a dispute perform services at the same premises as employees of one or more other employers, picketing of the common situs shall be deemed lawful only if (1) such picketing is limited to times when employees of the employer with whom the labor organization has a dispute, are present; (2) such picketing is limited to places reasonably close to the work station of such employer's employees; (3) such picketing clearly discloses that the dispute is with such employer; (4) such picketing is not carried on at an entrance reserved for employees of persons, other than such employer; and (5) the employer does not maintain separate premises where the employees involved in the dispute regularly report and at which picketing may lawfully be conducted;".

(b) Section 8(b) of such Act is amended by adding at the end thereof the following new sentence: "For the purposes of the second proviso of paragraph (4) of this subsection the term 'produced' shall not include handling, packaging, advertising, or distributing the original product."

SEC. 3. Section 8(b)(7) of the National Labor Relations Act (29 U.S.C. 158(b)(7)) is amended to read as follows:

"(7) to strike or picket, or to cause to be struck or picketed, or to threaten any such action against any establishment where such labor organization is not the currently certified or lawfully recognized representative of the persons employed therein if an object thereof is forcing or requiring an employer to recognize or deal with a labor organization, or to change or affect wages, hours, or other working conditions in such establishment or elsewhere or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative. Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b)."

Sec. 4. (a) Section 10(k) of the National Labor Relations Act (29 U.S.C. 160(k)) is amended to read as follows:

"(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph 4(D) of section 8(b), the Board, the General Counsel, or the regional officer to whom the charge has been referred, as the case may be, is empowered and directed to suspend any proceedings begun under section 10(1) or section 10(b), if the parties submit satisfactory evidence that the matter has been settled, or that the person charged has discontinued the conduct upon which the charge was based, and is pursuing whatever remedy may be available to him under a method or agreement for settling the matter which has been accepted by the affected employers and the employees (or their representatives) to whom the work has been assigned."

(b) The first sentence of section 10(l) of such Act is amended by striking out "or (C)" and inserting in lieu thereof "(C) or (D)" and by striking out the last sentence of such section.

By Mr. JAVITS (for himself, Mr. PROUTY, Mr. BEALL, Mr. BENNETT, Mr. BROOKE, Mr. HOLLINGS, Mr. MCGEE, Mr. PASTORE, Mr. PERCY, Mr. MOSS, Mr. METCALF, Mr. SCHWEIKER, Mr. STEVENS, and Mr. YOUNG):

S. 1614. A bill to amend the Public Health Service Act to extend and broaden existing programs to provide financial assistance in the construction and expansion of schools of nursing, to improve the quality of such schools, and for other purposes. Referred to the Committee on Labor and Public Welfare.

NURSING EDUCATION ACT OF 1971

Mr. JAVITS. Mr. President, I am introducing for myself and Senator PROUTY and Senators J. GLENN BEALL, WALLACE F. BENNETT, EDWARD W. BROOKE, ERNEST F. HOLLINGS, GALE W. MCGEE, FRANK E. MOSS, LEE METCALF, JOHN O. PASTORE, CHARLES H. PERCY, RICHARD S. SCHWEIKER, TED STEVENS, and MILTON R. YOUNG, the "Nursing Education Act of 1971." A companion measure is being introduced in the House of Representatives by Representative OGDEN REID. This bill is designed to help overcome the severe—perhaps catastrophic—shortage of nurses in the Nation.

If we are to fulfill the goal of providing quality health care to the American people, we need a balanced program of support to nursing schools and nursing students. If we require them only to share in the block funding available to all health professional schools, we will not have enough nurses to meet the growing demands essential for quality health care. For this reason, I expressed grave concern about the lack of separate nurse training funding authorities when I introduced the administration's Health Manpower Assistance Act of 1971 (S. 1183).

Health care systems cannot operate—let alone expand and improve—unless the supply of such key well-prepared "manpower" is increased. It is well recognized that critical shortages exist in all categories of health personnel. But the situation is particularly grave in the category of nursing personnel. There is an estimated present shortage of 150,000 among the total of 850,000 nurses now needed and in 1980 it is projected we will need 220,000 more nurses than are available according to the statistics furnished Congress by the Health Manpower Bureau of NIH. This compares with comparable shortage figures for doctors of 48,000 presently and a projected need in 1980 of 26,000.

There is a positive relationship be-

tween the availability of Federal financial support and maintaining enrollments in schools of nursing. When the Cadet Nurse Corps program phased out after World War II, enrollments in schools of nursing declined, and it was not until the Nurse Training Act of 1964 that the trend was markedly reversed. Prior to its enactment, 129,269 students were enrolled in schools of nursing. In 1970—6 years after implementation of the Nurse Training Act—there were 163,743 enrolled students in schools of nursing, a 26.6-percent increase. Nurses are a national resource and although existing programs of Federal financial assistance have demonstrated effectiveness, it is clear that much remains to be done to meet the estimated need by 1980 of 1.1 million registered nurses; 650,000 licensed practical nurses; and 550,000 nurses aides.

The Nurse Training Act of 1964 has done much to increase the nurse supply and to improve and expand our nursing schools, but more needs to be done. If we are to improve America's health care and make it equally available to all Americans, we must have an adequate supply of nursing personnel.

To achieve these goals, the Nursing Education Act of 1971 provides:

First, the Secretary of Health, Education, and Welfare is authorized to make capitation formula grants to schools of nursing for institutional support on the basis of a stipulated sum for each nursing graduate. This would be in lieu of existing authority by which there is a single appropriation authorization for special project and institutional—formula—grants and a requirement that funds must first be spent by HEW on special projects before institutional support, in this way failing effectively to implement the institutional support program.

The two types of grants serve different purposes, are awarded different institutions, and therefore require separate consideration and authorizations in establishing funding levels.

The nursing capitation institutional formula grant on the basis of graduates is patterned upon that provided in the administration's Health Manpower Assistance Act, which I introduced to permit medical schools to formulate long-range plans and to reward output rather than subsidize input.

The stipulated sum per graduate is left open in the bill. The precise dollar amount would be determined by the Senate upon the basis of the expert testimony received and the recommendations of the Committee on Labor and Public Welfare at legislative hearings. It is important to note that the exact capitation amount would have a varied impact upon the percentage of operating costs that would be covered for each of the different schools—diploma, baccalaureate, and associate degree—and this factor would also be seriously considered.

Second, the Secretary of Health, Education, and Welfare is authorized to make special project grants to nonprofit agencies, organizations, and institutions to achieve national priority goals, such as increasing education opportunities for disadvantaged students or increasing the availability of personal health services in an effort to promote preventive health care.

The present priority requirement requiring increased enrollment curtails the potential of special project grants to achieve desired objectives among competing projects, it prevents flexibility essential to balancing enrollment increases with assistance to sound program projects of schools in transition, in financial straits, or in other difficulties which make it extremely difficult for them to increase their enrollment. The bill deletes that requirement. Priority is given to applications for special project grants solely on the basis of the merit of the proposed project. This is in accord with the original recommendations of the report to the President and the Congress on the "Progress in Nurse Training—1970."

Third, the Secretary of Health, Education, and Welfare is authorized to make financial disaster relief grants to schools of nursing, with appropriate safeguards, including provision for full financial disclosure.

Fourth, the present program of traineeships for advanced training of professional nursing is extended without change. This is in accord with the original recommendation of the report to the President and the Congress on the "Progress of Nurse Training—1970."

Fifth, the present construction grant authorities are extended to include additional authority for guaranteed loans and 3 percent interest subsidies—not only to schools of nursing but also to other nonprofit agencies, organizations, and institutions—and also to provide separate funding authorizations. This broadened authority is also patterned upon S. 1183, the administration's "Health Manpower Assistance Act."

Also, to meet the original recommendations of the report to the President and the Congress on the "Progress of Nurse Training—1970," support is extended to assist associate degree schools of nursing and grants are allowed of up to 75 percent of construction cost in lieu of the present 66⅔ percent ceiling.

Sixth, the existing nursing student scholarship program is extended for 3 years with the grant amount increased from $2,000 to $3,000 each.

Seventh, the existing nursing student assistance programs are liberalized with respect to maximum loan amounts and repayment terms.

Forgiveness for nursing student loans is now authorized at a rate of 20 percent per year up to the maximum amount of the loan for full-time employment in a public or nonprofit private agency or institution, including neighborhood health centers. The forgiveness rate is increased by the bill to 33⅓ percent per year for full-time employment in an area defined by the Secretary of Health, Education, and Welfare as a health care shortage area. The bill also authorizes Federal repayment of guaranteed loans to nursing students in exceptional financial need who are unable to complete their studies.

It is most important to note that where nursing students are unable to secure a guaranteed loan, provision for direct loans are authorized. I would hope that guaranteed loans become available, but if not, direct loans will assure that no deserving student cannot achieve his or her nursing education.

Eighth, the present nurse talent search program, which I authored and was enacted in 1966 as an amendment to the Nurse Training Act, is broadened to include potential nursing candidates regardless of age, experience, education, or financial need.

I understand that contracts awarded thus far under the program I initiated have demonstrated the effectiveness of this kind of effort and support in identifying potential nursing candidates among disadvantaged youth, a previously untapped source, and enrolling them in nursing education programs. I believe this type of recruitment could be equally successful with other groups to broaden the nurse population and this provision is similar to a bill I introduced in the 91st Congress, S. 1540; among them older people, other cultural, educational, and occupational groups—including inactive or retired nursing personnel totaling 282,000 under 65—should be encouraged and assisted to undertake a second career in nursing. Such activities require substantial financial assistance for both students and institutions to provide the necessary support and program flexibility.

Quality health care is a right for all Americans and this bill seeks to recognize the crucial role played by nursing personnel to make that right a reality.

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

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

SUMMARY OF MAJOR PROVISIONS NURSING EDUCATION ACT OF 1971

1. Authorizes a new 3-year program (FY '72 thru FY '74) of institutional support grants to schools of nursing on a capitation formula of a stipulated amount per graduate—the exact dollar figure to be determined by Committee upon legislative hearing testimony. The formula, on the basis of graduates, is patterned upon the "Health Manpower Assistance Act of 1971."

2. Special project grants are authorized to schools of nursing and non-profit agencies, organizations and institutions to achieve priority goals such as increased educational opportunities for disadvantaged nursing students, increased supply or improved geographic distribution of trained nursing personnel or promote preventive health care.

3. Financial disaster relief grants are authorized for schools of nursing, where necessary, with appropriate safeguards, including provision for full financial disclosure.

4. Extends for 3 years the present program of traineeships for advanced training of professional nursing.

5. Extends for 3 years present construction grant authorities; broadened to include authority for guaranteed loans and 3% interest subsidies, patterned upon the "Health Manpower Assistance Act of 1971." Support extended to assist associate degree schools of nursing; and present grant ceiling of up to 66⅔% of construction costs increased to 75%.

6. The existing nursing student scholarship program is extended for three years with the grant amount increased from $2,000 to $3,000.

(a) Existing nurse student assistance programs liberalized with respect to maximum

loan amounts ($1,500 to $2,500); and repayment terms.

(b) Forgiveness for nursing student loans is authorized at a rate of 20 percent per year up to the maximum amount of the loan for full-time employment in a public or nonprofit private agency or institution, including neighborhood health centers. The forgiveness rate is increased to 33⅓ percent per year for full-time employment in an area defined by the secretary of HEW as a health care shortage area.

(c) The bill also authorizes Federal repayment of guaranteed loans for nursing students in exceptional financial need who are unable to complete their studies.

(d) Where nursing students are unable to secure a guaranteed loan, provision for direct loans is authorized.

8. Expands present Nurse Talent Search program from disadvantaged youth to potential nursing candidates regardless of age, experience, education, or financial need and eliminates contract limitation.

9. Such sums as may be necessary are authorized to be appropriated for carrying out the provisions of this Act.

S. 1614

A bill to amend the Public Health Service Act to extend and broaden existing programs to provide financial assistance in the construction and expansion of schools of nursing, to improve the quality of such schools, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Nurse Education Act of 1971".

TITLE I—AMENDMENTS TO THE NURSE TRAINING ACT OF 1964, AS AMENDED

GRANTS FOR CONSTRUCTION OF SCHOOLS OF NURSING

SEC. 101. (a) The heading to part A of title VIII of the Public Health Service Act is amended to read as follows:

"PART A—GRANTS, LOANS, AND INTEREST SUBSIDY PAYMENTS FOR SCHOOLS OF NURSING

"Subpart I—Construction Grants to Schools of Nursing"

(b) Section 801(a) of such Act is amended (A) by striking out "and $35,000,000" and inserting in lieu thereof "$35,000,000", and (B) by inserting immediately before the period at the end thereof the following: ", and for each of the next three fiscal years such sums as may be necessary".

(c)(1) Section 802(a) of such Act is amended—

(A) by striking out "Surgeon General" and inserting in lieu thereof "Secretary"; and

(B) by striking out "1970" and inserting in lieu thereof "1973".

(2) Subsections (b) and (c) of section 802 of such Act are each amended by striking out "Surgeon General" wherever it appears therein and inserting in lieu thereof "Secretary".

(3) Section 802 of such Act is further amended by striking out "this part" wherever it appears therein and inserting in lieu thereof "this subpart".

(d) Subsection (a) of section 803 of such Act is amended by striking out "66⅔ per centum" wherever it appears therein and inserting in lieu thereof "75 per centum".

(e) Sections 803 and 804 of such Act are each amended—

(1) by striking out "this part" wherever it appears therein and inserting in lieu thereof "this subpart"; and

(2) by striking out "Surgeon General" wherever it appears therein and inserting in lieu thereof "Secretary".

CONSTRUCTION LOAN GUARANTEES AND INTEREST SUBSIDY PAYMENTS

SEC. 102. Part A of title VIII of such Act is further amended by inserting immediately after section 804 the following:

"Subpart II—Construction Loan Guarantees and Interest Subsidy Payments

"SEC. 805. (a)(1) In order to assist public and nonprofit private schools of nursing to carry out needed projects for the modernization or construction of facilities for such schools, the Secretary, during the period commencing July 1, 1971, and ending June 30, 1974, may, in accordance with the provisions of this subpart, guarantee to non-Federal lenders making loans to such schools for such projects, payment of principal of and interest on loans, made by such lenders, which are approved under this subpart.

"(b)(1) No loan guarantee under this subpart, with respect to any modernization or construction project may apply to so much of the principal amount thereof as, when added to the amount of any grant under subpart I with respect to such project, exceeds 90 per centum of the cost of such project.

"(c) The Secretary, with the consent of the Secretary of Housing and Urban Development, shall obtain from the Department of Housing and Urban Development such assistance with respect to the administration of this subpart as will promote efficiency and economy thereof.

"SEC. 806. (a) For each project for which a guarantee of a loan to a public or nonprofit private school of nursing is sought under this subpart, there shall be submitted to the Secretary an application by such school. Such application shall (1) set forth all of the data and information and contain or be supported by all the assurances required under section 802 with respect to applications for grants under subpart I of this part, and (2) contain such other information as the Secretary may require to carry out the purposes of this subpart.

"(b) The Secretary may approve such application only if—

"(1) he makes the findings which are required by clauses (1) through (5) of section 802(b) for the approval of projects under subpart I of this part;

"(2) he obtains assurances that the applicant will keep such records, and afford such access thereto, and make such reports, in such form and containing such information, as the Secretary may reasonably require; and

"(3) he also determines that the terms, conditions, maturity, security (if any), and schedule and amounts of repayments with respect to the loan for which a guarantee is sought are sufficient to protect the financial interests of the United States and are otherwise reasonable and in accord with regulations, including a determination that the rate of interest does not exceed such percentum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rate prevailing in the private market for similar loans and the risks assumed by the United States.

"(c) Amendment of an approved application shall be subject to approval in the same manner as an original application.

"(d)(1) In the case of any loan to a school of nursing under this subpart, the United States shall be entitled to recover from the applicant the amount of any payments made pursuant to any guarantee of such loan under this subpart, unless the Secretary for good cause waives its right of recovery, and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

"(2) Guarantees of loans to schools of nursing under this subpart shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this subpart will be achieved, and, to the extent permitted by subsection (e), any of such terms and conditions may be modified by the Secretary to the extent determined by him to be necessary or proper by him for the protection of the financial interests of the United States.

"(e) Any guarantee of a loan to a school of nursing made by the Secretary pursuant to this subpart shall be incontestable in the hands of the applicant on whose behalf such guarantee is made, and as to any person who makes or contracts to make a loan to such applicant in reliance thereon, except for fraud or misrepresentation on the part of such applicant or such other person.

"PAYMENT OF INTEREST ON GUARANTEED LOANS

"SEC. 807. (a) Subject to the provisions of subsection (b), in the case of a guarantee of any loan to a school of nursing under this subpart with respect to any project, the Secretary shall pay, to the holder of such loan and for and on behalf of such school amounts sufficient to reduce by 3 per centum per annum the net effective interest rate otherwise payable on such loan. Each holder of a loan, to a school of nursing, which is guaranteed under this subpart shall have a contractual right to receive from the United States interest payments required by the preceding sentence.

"(b) Contracts to make the payments provided for in this section shall not carry an aggregate amount greater than such amount as may be provided in appropriation Acts.

"LIMITATION ON AMOUNT OF LOANS GUARANTEED

"SEC. 808. The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued under this part may not exceed such limitations as may be specified in appropriation Acts.

"LOAN GUARANTEE FUND

"SEC. 809. (a) There is hereby established in the Treasury a loan guarantee fund (hereinafter in this section referred to as the 'fund') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, (i) to enable him to discharge his responsibilities under guarantees issued by him under this subpart, and (ii) for payment of interest on loans which are guaranteed under this subpart. There are authorized to be appropriated to the fund from time to time such amounts as may be necessary to provide capital required for the fund. To the extent authorized from time to time in appropriation Acts, there shall be deposited in the fund amounts received by the Secretary any moneys, property, or assets derived by him from his operations under this subpart, including any moneys derived from the sale of assets.

"(b) If at any time the moneys in the fund are insufficient to enable the Secretary to discharge his responsibilities under this subpart—

"(i) to make payments of interest on loans to schools of nursing which he has guaranteed under this subpart; and

"(ii) othewise to comply with guarantees issued by him under this subpart;

he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, but only in such amounts as may be specified from time to time in appropriation Acts. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable

marketable securities during the month preceding the month of the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from such fund."

SPECIAL PROJECT GRANTS

SEC. 103. (a) Part A of title VIII of the Public Health Service Act (as amended by the preceding sections of this Act) is further amended—

(1) by striking out section 805 of such Act;

(2) by adding after section 809 of such Act (as added by section 102 of this Act) the following:

"Subpart III—Special Project Grants: Capitation Grants; and Financial Distress Grants

"SPECIAL PROJECT GRANTS

"SEC. 810. Grants may be made from sums available therefor from appropriations under subsection (e), to assist schools of nursing or other nonprofit agencies, organizations, and institutions in meeting the cost of special projects to plan, develop, or establish new programs or modifications of existing programs of education in such health professions or to effect significant improvements in curriculums of any such schools or for research in the various fields related to nursing education, or to develop training for new levels or types of nursing personnel, or to assist such schools of nursing which have special need for financial assistance to meet accreditation requirements, or to assist any such schools to meet the costs of planning experimental teaching facilities or experimental design thereof, or to increase educational opportunities for disadvantaged students, or which will otherwise strengthen, improve or expand programs to train nursing personnel or help to increase the supply or improve the distribution by geographic area or by specialty group of adequately trained nursing personnel needed to meet the health needs of the Nation, including the need to increase the availability of personal health services and the need to promote preventive health care. In determining eligibility of any such school to receive a grant under this section and the amount of such grant, the Secretary shall consider the individual needs of such school, the nature and scope of the Nation's health manpower needs and the relative capability of alternative programs for helping to fill these needs.

"(b) 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 this section for any fiscal year must be filed.

"(c) A grant under this section may be made only if the application therefor—

"(1) is approved by the Secretary upon his determination that the applicant meets the eligibility conditions set forth in subsection (c) of this section;

"(2) contains or is supported by assurances satisfactory to the Secretary that the applicant will expend in carrying out its functions as a school of nursing during the fiscal year for which such grant is sought, an amount of funds (other than funds for construction as determined by the Secretary) from non-Federal sources which are at least as great as the average amount of funds expended by such applicant for such purpose (excluding expenditures of a nonrecurring nature) in the three fiscal years immediately preceding the fiscal year for which such grant is sought;

"(3) contains such additional information as the Secretary may require to make the determination required of him under this section and such assurances as he may find necessary to carry out the purposes of this section; and

"(4) provides for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may reasonably require to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section.

"(d) There are authorized to be appropriated such sums as may be necessary for the fiscal year ending June 30, 1972, and for each of the next two fiscal years, for special project grants under this section."

(b) The amendments made by subsection (a) of this section shall be effective with respect to grants from appropriations for fiscal years ending after June 30, 1971.

CAPITATION GRANTS

SEC. 104. (a) Part A of title VIII of the Public Health Service Act (as amended by the preceding sections of this Act) is further amended—

(1) by striking out sections 806, 807, and 808;

(2) by adding after section 810 (as added by section 103 of this Act) the following:

"CAPITATION GRANTS

"SEC. 811. (a)(1) Except as provided in paragraph (4), each school of nursing with an application approved under subsection (d) shall be entitled for any fiscal year ending prior to July 1, 1974, to an amount equal to $——— for each student of such school who will graduate (as determined by the Secretary in accordance with the provisions of subsection (b)(1) of this section) from such school in the year for which the grant is made.

"(2) Any such school with such an application which will not graduate any students in such year shall be entitled for any fiscal year ending prior to July 1, 1974, to an amount equal to (A) $ for each full-time student in the first or second year class pursuing a course of study leading to a degree in three years, or (B) $ for each full-time student in the first, second, or third year class pursuing a course of study leading to a degree in four years or longer.

"(3) In no event shall any school be entitled under this paragraph to an amount which exceeds $ for any student during his entire course of study in such school.

"(4) The amount specified in paragraph (1), (2), or (3) shall be increased (or further increased as the case may be) for any year after fiscal year 1972, by such percentage (if any) as the Secretary determines is appropriate in the light of increases in the cost of living and other factors affecting educational costs at such schools.

"(b)(1) For the purposes of this section regulations of the Secretary shall include provision relating to determination of the number of students enrolled in a school, or in a particular year-class in a school, or the number of graduates particular year-class in a school, or the number of graduates from a school, as the case may be, on the basis of estimates, or on the basis of the number of students who were enrolled in a school, or in a particular year-class in a school, or were graduates from a school in earlier years, as the case may be, or on such basis as he deems appropriate for making such determination, and shall include methods of making such determination when a school or a year-class was not in existence in an earlier year at a school.

"(2) For purposes of this section, the term 'full-time students' (whether such term is used by itself or in connection with a particular year-class) means students pursuing a full-time course of study in an accredited program in a school of nursing.

"(c) Any new school of nursing with an approved application under subsection (d) for the fiscal year preceding the fiscal year in which it will admit its first class, shall be entitled to be paid an amount equal to $ for every full-time student who the Secretary determines, on the basis of assurances provided by the school, will be enrolled in the school in the fiscal year after the fiscal year for which the grant is made.

"(d)(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 under this section for any fiscal year must be filed.

"(2) The Secretary shall not approve or disapprove any application for a grant under this section except after consultation with the National Advisory Council on Nurse Training.

"(3) A grant under this section may be made only if the application therefor—

"(A) is from a public or nonprofit private school of nursing, or a public or nonprofit private agency organization or institution;

"(B) contains or is supported by assurances satisfactory to the Secretary that the applicant will expend in carrying out its functions as a school of nursing, during the fiscal year for which such grant is sought, an amount of funds (other than funds for construction as determined by the Secretary) from non-Federal sources which are at least as great as the average amount of funds expended by such applicant for such purpose (excluding expenditures of a nonrecurring nature) in the three fiscal years immediately preceding the fiscal year for which such grant is sought;

"(C) contains such additional information as the Secretary may require to make the determinations required of him under this section and such assurances as he may find necessary to carry out the purposes of this section; and

"(D) provides for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may reasonably require to assure the proper disbursement of and accounting for Federal funds paid to the applicant under this section.

"(e) There are authorized to be appropriated such sums as may be necessary to carry out this section for the fiscal year ending June 30, 1972, and for each of the next two fiscal years."

(b) The amendments made by subsection (a) of this section shall be effective with respect to grants from appropriations for fiscal years ending after June 30, 1971.

FINANCIAL DISTRESS GRANTS

SEC. 105. Part A of title VIII of the Public Health Service Act (as amended by the preceding sections of this Act) is further amended by adding after section 811 (as added by section 104 of this Act) the following new section:

"FINANCIAL DISTRESS GRANTS

"SEC. 812. (a) There are authorized to be appropriated such sums as may be necessary for grants under this section to assist any schools of nursing which are in serious financial straits to meet their costs of operation.

"(b) Any such grant may be made upon such terms and conditions as the Secretary determines to be reasonable and necessary, including requirements that the school agree (1) to disclose any financial information or data deemed by the Secretary to be necessary to determine the sources or causes of that school's financial distress and to conduct a comprehensive cost analysis study in

cooperation with the Department of Health, Education, and Welfare, and (2) to implement such operational and financial reforms as are recommended by the Secretary on the basis of information obtained in the course of the comprehensive cost analysis study or other relevant information."

TRAINEESHIPS FOR ADVANCED TRAINING OF PROFESSIONAL NURSES

SEC. 106. (a) Section 821(a) of the Public Health Service Act is amended to read as follows:

"(a) There are authorized to be appropriated for the fiscal year ending June 30, 1972, and for the succeeding two fiscal years, such sums as may be necessary to cover the cost of traineeships for the training of professional nurses to teach in the various fields of nurse training (including practical nurse training), to serve in administrative or supervisory capacities, or to serve in other professional nursing specialities as determined by the Secretary to require advanced training."

(b) Subsections (b) and (c) of section 821 of the Public Health Service Act are amended by striking out the words "Surgeon General" wherever they appear and inserting in lieu thereof the word "Secretary".

NURSING STUDENT LOANS

SEC. 107. (a)(1) Effective with respect to academic years (or their equivalent as determined under regulations of the Secretary of Health, Education, and Welfare under section 823 of the Public Health Service Act) beginning after the date of enactment of this Act, subsection (a) of such section is amended by striking out "$1,500" and inserting in lieu thereof "$2,500".

(2) Section 823(a) of such Act is amended by striking out "$6,000" and inserting in lieu thereof "$10,000".

(b) Effective with respect to any year of service ending after the date of the enactment of this Act for which cancellation of all or part of a loan made under part B of title VIII of the Public Health Service Act is authorized under section 823(b)(3) of such Act, such section is amended to read as follows:

"(3) an amount up to 100 per centum of any such loan (plus interest thereon) 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 neighborhood health centers) at the rate of 20 per centum of the amount of such loan (plus interest) unpaid on the first day of such service, for each complete year of such service, except that the rate shall be 33⅓ per centum for each complete year of service for any person who engages in the practice of nursing or any specialized aspect thereof in an area in a State determined, in accordance with regulations of the Secretary prescribing criteria for such determinations by such agency or organization as the Secretary may designate, to have a shortage of and need for the practice in which he engages and such designated agency or organization certifies in such manner and at such time or times as the Secretary may prescribe that such practice helps to meet the shortage of and need for such practice in the area where the practice occurs.

(c) Section 824 of such Act is amended (1) by striking out "and" immediately after "1970", (2) by striking out "and" immediately after "1970,", (2) striking and inserting in lieu thereof "$25,000,000 for the fiscal year ending June 30, 1972, $30,000,000 for the fiscal year ending June 30, 1973, and $35,000,000 for the fiscal year ending June 30, 1974, and such sums for the fiscal year ending June 30, 1975," and (3) by striking out "before July 1, 1971" and inserting in lieu thereof "before July 1, 1974."

(d) Section 826 of such Act is amended by striking out "1974" each place it occurs and inserting in lieu thereof "1977".

(e) The first sentence of section 827(a)(1) of such Act is amended by striking out "next three fiscal years" and inserting in lieu thereof "next six fiscal years".

NURSING SCHOLARSHIP GRANTS

SEC. 108. (a) Effective with respect to scholarship grants made under subsection (a) of section 860 of the Public Health Service Act for fiscal years beginning after June 30, 1971, subsection (b) of such section is amended to read as follows:

"(b) The amount of the grant under subsection (a) for the fiscal year ending June 30, 1972, and for each of the next two fiscal years to each such school shall be equal to $3,000 multiplied by one-tenth of the number of full-time students of such school. For the fiscal year ending June 30, 1975, and for each of the two succeeding fiscal years, the grant under subsection (a) shall be such amount as may be necessary to enable such school to continue making payments under scholarship awards to students who initially received such awards out of grants made to the school for fiscal years ending before July 1, 1974."

(b) Effective with respect to scholarship grants made under subsection (a) of section 869 of the Public Health Service Act for fiscal years beginning after June 30, 1971, subsection (c)(1) of such section is amended (A) by striking out "1970, and the next fiscal year" in clause (A) and inserting in lieu thereof "1972 and the next two fiscal years", (B) by striking out "1971" in clause (B) and inserting in lieu thereof "1974", and (C) by striking out "1972; and each of the three" in such clause and inserting in lieu thereof "1975, and each of the two."

MISCELLANEOUS PROVISIONS

SEC. 109. Section 868(a) of the Public Health Service Act is amended to read as follows:

"(a) To assist in achieving the purposes of this part the Secretary is authorized (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5)) to enter into contracts with State and local educational agencies and other public or nonprofit organizations and institutions for the purpose of—

"(1) identifying qualified youths (with emphasis given to identifying those youths of exceptional financial need) and encouraging them to complete secondary school and undertake post-secondary educational training in the field of nursing, or

"(2) publicing existing forms of financial aid for nursing students, including aid furnished under this section."

TITLE II—AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965

INCREASE IN MAXIMUM AMOUNTS OF INDIVIDUAL INSURED LOANS TO NURSING STUDENTS

SEC. 201. (a) Section 425(a) of the Higher Education Act of 1965 is amended (1) by inserting "(1)" after "(a)", (2) by inserting "(other than a student at a public or other nonprofit collegiate or associate degree school of nursing)" after the word "student" where it appears in the first and second sentences of such subsection, and (3) by adding at the end thereof the following new paragraph:

"(2) The total of the loans made to a student at a public or other nonprofit collegiate or associate degree school of nursing in the academic year or its equivalent (as determined under regulations of the Commissioner) which may be covered by Federal loan insurance under this part may not exceed $2,500. Amounts so covered shall be included in computing the aggregate insured unpaid principal amount of insured loans to a student for purposes of the preceding paragraph, but the limitation upon such aggregate imposed by that paragraph shall not apply to a nursing student."

(b) Clause (A) of section 428(b)(1) of such Act is amended by inserting after "loans to any individual student" the following: "(other than a student at a public or other nonprofit collegiate or associate degree school of nursing), and not less than $1,000 nor more than $2,500 in loans to any individual student at a public or other nonprofit collegiate or associate degree school of nursing,".

(c) Clause (A) of section 428(b)(1) of such Act is amended (1) by inserting after "insured loans made to any student" the following: "(other than a student at a public or other nonprofit collegiate or associate degree school of nursing)", and (2) by inserting before the semicolon at the end thereof the following: ", in the computation of which there shall be included any amount loaned to such student while he was a student at a public or other nonprofit collegiate or associate degree school of nursing."

EXTENSION OF REPAYMENT PERIOD FOR NURSING STUDENTS

SEC. 202. (a) Clause (B) of section 427(a)(2) of the Higher Education Act of 1965 is amended (1) by inserting after "nor more than ten years" the following: "(or, in the case of a student at a public or other nonprofit collegiate or associate degree school of nursing nor more than twenty years)"; and (2) by inserting after "the period of the loan may not exceed fifteen years" the following: "(or, in the case of a student at a public or other nonprofit collegiate or associated degree school of nursing, may not exceed twenty-five years)".

(b)(1) Clause (B) of section 428(b)(1) of such Act is amended by inserting after "at least six academic years of "study" the following: "(or, in the case of a student at a public or other nonprofit collegiate or associate degree school of nursing, at least eight academic years of study)".

(2) Clause (D) of section 428(b)(1) of such Act is amended by inserting after "nor more than ten years" the following: "(or, in the case of a student at a public or other nonprofit collegiate or associate degree school of nursing, nor more than twenty years)".

FEDERAL ASSUMPTION OF REPAYMENT OBLIGATION OF NURSING STUDENTS WHO PRACTICE IN HEALTH CARE SHORTAGE AREAS

SEC. 203. (a) Part B of title V of the Higher Education Act of 1965 is amended by adding at the end thereof the following new section:

"REPAYMENT BY COMMISSIONER OF LOANS TO NURSING STUDENTS WHO PRACTICE IN HEALTH CARE SHORTAGE AREAS

"SEC. 438. (a) If any person who, after June 30, 1971, received any loan insured under this part—

"(1) engages in the practice of nursing, or any specialized aspect thereof, in an area in a State determined, in accordance with regulations of the Secretary prescribing criteria for such determinations by such agency or organization as the Secretary may designate, to have a shortage of and need for the practice in which he engages; and

"(2) such designated agency or organization certifies in such manner and at such time or times as the Secretary may prescribe that such practice helps to meet the shortage of and need for such practice in the area where the practice occurs;

then 33⅓ per centum of the total of such loan or loans, plus accrued interest on such amount, which are unpaid as of the date that such practice begins, shall be paid thereafter by the Commissioner for each year of such practice, up to a total of 100 per centum of such total, plus accrued interest thereon.

"(b) If any person who, after June 30, 1971, received a loan insured under this part, engages in 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 neighborhood health centers)

then 100 per centum of the total of such loan or loans, plus accrued interest on such amount, which are unpaid as of the date such employment begins, shall be paid thereafter by the Commissioner for each year of such employment, not to exceed a total of 20 per centum of such principal, plus accrued interest thereon.

"(c) The Commissioner shall, on or before the due date thereof, pay any loan or loan installment which may fall due within any year for which the borrower, at the completion of such borrower, at such times and loan or installment paid under subsection (a) or (b) of this section, upon the declaration of such borrower, at such times and in such manner as the Commissioner may prescribe (and supported by such other evidence as the Commissioner may reasonably require), that the borrower is then engaged as described in paragraphs (1) and (2) of subsection (a) or by subsection (b), and that he will continue to be so engaged for the period required (in the absence of this subsection) to entitle him to have made the payments provided by subsection (a) or (b) for such year. A borrower who fails to become eligible to have made the payments provided by subsection (a) or (b) for such year shall be liable to reimburse the Commissioner for any payments made pursuant to this subsection".

(b) Clause (2) of section 421(b) of such Act is amended by inserting "and section 438" after "section 437".

(c) Clause (E) of section 427(a)(2) of such Act is amended (A) by striking out "portion of the interest on the note which is payable by the Commissioner" and inserting in lieu thereof, "portion of the principal or interest on the note which is payable by the Commissioner"; and (B) by inserting before the comma at the end of the clause "or section 438".

(d) Clause (B) of section 428(b)(2) of such Act is amended by striking out "for the purpose of section 437" and inserting in lieu thereof "for the purpose of section 437 or section 438".

FEDERAL ASSUMPTION OF REPAYMENT OBLIGATION OF NURSING STUDENTS IN EXCEPTIONAL NEED WHO ARE UNABLE TO COMPLETE THEIR STUDIES

SEC. 204. (a) Part B of title IV of the Higher Education Act of 1965, as amended by this Act, is further amended by adding at the end thereof the following new section:

"REPAYMENT BY COMMISSIONER OF LOANS TO NURSING STUDENTS IN EXCEPTIONAL NEED WHO ARE UNABLE TO COMPLETE THEIR STUDIES

"SEC. 439. Upon application by a person who received, and is under an obligation to repay, any loan insured under this part, which loan was made to such person as a student at a public or other nonprofit collegiate or associate degree school of nursing to enable him to study nursing, the Commissioner shall undertake to repay (without liability to the applicant) all or any part of such loan and any interest or portion thereof outstanding thereon, upon his determination, pursuant to regulations of the Secretary establishing criteria therefor, that the applicant—

"(1) failed to complete such studies;

"(2) is in exceptionally needy circumstances;

"(3) is from a low-income or disadvantaged family as those terms may be defined by such regulations; and

"(4) has not resumed, or cannot reasonably be expected to resume the study of nursing within one year following the date upon which he terminated such study."

(b) Clause (2) of section 421(b) of such Act, as amended by this Act, is further amended by striking out "and section 438" and inserting in lieu thereof a comma and "section 438, and section 439".

(c) Clause (E) of section 427(a)(2) of such Act as amended by the foregoing provisions of this Act, is further amended by striking out "or section 438" and inserting in lieu thereof a comma and "section 438 or section 439".

(d) Clause (B) of section 428(b)(3) of such Act as amended by this Act, is further amended by striking out "section 438" and inserting in lieu thereof a comma and "section 438 or section 439".

DIRECT LOANS TO NURSING STUDENTS

SEC. 205. Part B of title IV of the Higher Education Act of 1965 as amended by this Act, is further amended by adding at the end thereof the following new section:

"DIRECT LOANS TO NURSING STUDENTS

"SEC. 440. (a) The Commissioner may make a direct loan to any student who would be eligible for an insured loan for study at a public or other nonprofit collegiate or associate degree school of nursing under this section if (1) in the particular area in which such student resides loans which are insurable under this Act are not available at the rate of interest prescribed by the Secretary pursuant to clause (D) of section 427(a)(2) for such area, or (2) the particular student has been unable to obtain an insured loan at a rate of interest which does not exceed such rate prescribed by the Secretary.

"(b) Loans made under this section shall bear interest at the rate prescribed by the Secretary under clause (D) of section 427(a)(2) for the area where the student resides, and shall be made on such other terms and conditions as the Secretary shall prescribe, which shall conform as nearly as practicable to the terms and conditions of loans insured under this Act.

"(c) There is authorized to be appropriated such sums as may be necessary for the fiscal year ending June 30, 1972, and for the two succeeding fiscal years, to carry out this section."

Mr. PROUTY. Mr. President, I am pleased to join with Senator JAVITS in introducing the Nursing Education Act of 1971.

On March 10, I cosponsored S. 1183, the administration's "Health Manpower Assistance Act of 1971," which embodies a significant expansion of Federal support for the training of health personnel.

The excellence of S. 1183 is diminished only in its failure to extend funding concepts it contains for schools of medicine, dentistry, or osteopathy to schools of nursing.

Health care is a team effort, and we cannot expand our training efforts for one player on the team without an equal effort for the other players. To vastly expand our support for medical schools without a similar emphasis on our nursing schools is like training a team of pitchers with no catchers. This bill seeks to develop a team with depth.

In this bill, Senator JAVITS and I have extended the provisions of S. 1183 which provide formula capitation grants for schools of medicine, dentistry, and osteopathy, to schools of nursing. Our bill thus rounds out Federal support for the training of health personnel.

Our bill proposes that the capitation payment per graduate of a school of nursing be separate appropriation authorization. Under existing law, special project grants and institutional formula grants are contained in one appropriation authorization, with the proviso that the funds must first be spent on separate project grants.

Due to fiscal restraints and the combination authorization, no funds have ever been appropriated for formula grants to our schools of nursing. All the funds appropriated under this authorization have been applied to special project grants.

By providing separate appropriation authorizations for formula and special project grants, this measure seeks to remedy this frustrating shortcoming.

Senators should note that while this bill we introduce establishes the capitation payment mechanism, it does not now set a capitation figure. This figure should be determined by the Senate based on the recommendations of the Committee on Labor and Public Welfare pursuant to the testimony in legislative hearings.

Senators should also note the other provisions of the bill which respond to the need for Federal assistance to the schools of nursing and nursing students.

The measure follows the recommendations of the report to the President and Congress on the "Progress in Nurse Training—1970" by deleting the priority requirement requiring increased enrollment as a condition for a special project grant. This requirement has been restrictive in its impact on schools for which increased enrollment has not been the top priority.

Unfortunately for many of our schools of nursing, financial survival is the top priority, and this bill authorizes financial disaster relief grants to such schools with appropriate safeguards, including provision for full financial disclosure.

Under this measure, schools of nursing are further assisted by an extension of existing construction grant authorities and the inclusion of additional authority for guaranteed loans and 3 percent interest subsidies. In addition, this bill extends construction support to assist associate degree schools of nursing and increases the present grant ceiling of 66⅔ percent of construction costs to 75 percent.

It is not enough to assist the schools of nursing. It is imperative that we provide potential nurses the resources they need to obtain their education as the costs of nursing education soar.

This measure responds to the increasing cost of a nursing education by increasing the nursing student scholarship grant amount from $2,000 to $3,000 and raising the maximum loan amount from $1,500 to $2,000.

Loan forgiveness for nursing student loans is provided to encourage graduates to serve in public or nonprofit private agencies or institutions, including community health centers. A rate of forgiveness of 20 percent per year up to the maximum amount of the loan is authorized with a provision for a special forgiveness rate of 33⅓ percent per year for full-time employment in an area defined by the Secretary of Health, Education, and Welfare as a health care shortage area.

For nursing students in exceptional financial need, the bill authorizes Federal repayment of guaranteed loans to enable students to complete their studies.

The bill also responds to the difficulties some students encounter in obtaining guaranteed loans. For such students, the bill authorizes direct loans.

To seek more nursing students, the bill broadens the nurse talent search program to all potential candidates.

From the search for potential nurses through student assistance to direct support for schools of nursing, the measure we introduce responds with provisions based on the successes and shortcoming of past Federal programs and the irrefutable need for more nurses.

The future of our Nation's health care depends on the availability of qualified health personnel. It is clear that the duties and responsibilities of our nurses will increase in the future, and we must move now to insure that nurses are available and they are trained to assume their new roles and responsibilities.

Health care requires teamwork and we must be sure we have all the players we need.

I commend to Senators the administration's "Health Manpower Assistance Act of 1971" and this bill as a package which responds to the training needs for the full health care team.

By Mr. BIBLE (for himself, Mr. BURDICK, Mr. DOLE, Mr. EASTLAND, Mr. GRAVEL, Mr. GURNEY, Mr. HUMPHREY, Mr. KENNEDY, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MOSS, Mr. NELSON, Mr. RANDOLPH, Mr. SPARKMAN, and Mr. STEVENS):

S. 1615. A bill to amend the Internal Revenue Code of 1954 to provide income tax simplification, reform, and relief for small business. Referred to the Committee on Finance.

SMALL BUSINESS TAX SIMPLIFICATION AND REFORM ACT OF 1971

Mr. BIBLE. Mr. President, as chairman of the Select Committee on Small Business, I introduce a bill entitled "The Small Business Tax Simplification and Reform Act of 1971."

As a key phase of a cooperative effort to improve the tax climate surrounding the hard-pressed small business community nationally, my distinguished colleague from Tennessee (Mr. JOE EVINS), the chairman of the House Select Committee on Small Business, has graciously offered to serve as the chief sponsor of this legislation in the other body in accordance with the constitutional requirement that all revenue measures originate in the House of Representatives. I am advised that his introduction with representative cosponsorship will take place today as we launch this dual effort to help the small businessman where he is hurting the most—in his taxpaying pocketbook.

Likewise, we are particularly pleased to have bipartisan support in this body for this bill as reflected by the 15 distinguished Senators from both sides of the aisle who have joined as cosponsors of this bill—Mr. BURDICK, Mr. DOLE, Mr. EASTLAND, Mr. GRAVEL, Mr. GURNEY, Mr. HUMPHREY, Mr. KENNEDY, Mr. MCGOVERN, Mr. MCINTYRE, Mr. METCALF, Mr. MOSS, Mr. NELSON, Mr. RANDOLPH, Mr. SPARKMAN, and Mr. STEVENS.

May I invite as cosponsors of this bill all other Members of the Senate who are interested in the small businessmen's tax problems.

NEED FOR A SMALL BUSINESS TAX BILL

The case for small business tax legislation, I believe, grows stronger each year and has become especially graphic during the past 2 years.

As a statistical matter, small businesses in this country account for 99 percent of the number of firms, 40 percent of the jobs, and upwards of one-third of the gross national product. In reality, they count for much more in terms of keeping our economy flexible, receptive to improvement, and competitive in such areas as prices and services. They are invaluable in making economic democracy a reality, and thus preserving the foundation of our political democracy. We need to be reminded of this periodically.

We should also realize in 1971 that the American business community has been going through perhaps the most vexing set of problems in memory, and the smaller and newer enterprises have naturally felt the pain most keenly. Interest rates for most of this period have been at the highest peaks in a century. Other business costs have continued to rise with inflationary speed. The liquidity of corporations and banks went through a period of near-crisis in 1970. Even as prime bank interest rates have come down, it is still difficult for less-well-rated borrowers to obtain loans, particularly in parts of the country remote from money centers. Consumers, their confidence sapped by unemployment, have been putting their money in thrift institutions rather than spending it out in the economy.

However, at the same time, there has been a flood of new technology that has proved most difficult for small firms to obtain at a time of tight money, especially in the absence of the investment credit.

On top of this, we have seen a series of new statutory standards in the environmental, pollution, health, and consumer fields. Federal, State, and regional governmental bodies are all insisting that smaller businesses comply with these laws and regulations.

The consequences of these conditions for small business are far more serious than mere reductions of profits. They affect the very life and death of thousands of firms as well as whole segments of industry which have traditionally been in the realm of small business. For instance, the deadlines contained in the environmental and consumer legislation, as commendable as their purposes are, could force a mass exodus of small firms which cannot, under current conditions, purchase the necessary pollution-control equipment.

The totality of these pressures took their toll in 1970. Failure rates for businesses rose 25 percent, and failures of companies with liabilities of $1 million increased a startling 95 percent.[1]

In the midst of the multiple credit squeeze, the monumental Tax Reform Act of 1969, which could have provided some relief for small firms, turned out to be a setback for the small business community. Small business was disadvantaged in at least five instances, tightening the financial straitjacket even further.[2]

During the course of this trying period, the President and his administration advocated several major tax programs.

First, in September 1969, the administration proposed a 2-percent reduction in the corporate tax rate. It is clear that the original intention was to make the reductions in the surtax alone.[3] By definition, the surtax applies only to companies earning more than $25,000 a year in net income. Thus, at the outset, this benefit would have been limited to only about 9 percent of U.S. corporations, leaving the other 91 percent of the corporations—that is, small business—completely out in the cold.

After the Senate Finance Committee gave this idea a rather critical reception, the Treasury proposal was changed to a 1-percent cut in the surtax and a 1-percent cut in the normal tax rate. The estimate of revenue loss put forward was about $1.6 billion after 2 years, with the lion's share of benefits still going to the largest business corporations.

Second, in May 1970, the administration proposed a so-called "Disc" device for eliminating export income from taxation. The Joint Committee on Internal Revenue Taxation estimated that the revenue loss from this bill would reach nearly $1 billion within 5 years, and it appeared that some 50 to 90 percent of this benefit was earmarked for perhaps fewer than 125 of the Nation's largest corporations.

Third, on January 11, 1971, the administration again proposed a tax reduction in the form of a depreciation package, accelerating the depreciation deduction by about 20 percent. It was apparent that about 55 percent of this benefit will be conferred upon the 103 largest corporations in the country, while 80 percent will go to the largest 2,500 or one-twentieth of 1 percent of U.S. businesses. This seems to leave the remaining 20 percent to the other 99 19/20 percent of the Nation's business.

This proposal initially was to involve a revenue loss of $2 billion in the first year, rising to somewhere around $4 billion within 3 years and tapering off slightly thereafter. However, I understand the first year loss is now estimated

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[1] See letter to President Nixon from Senators Bible and Sparkman of Dec. 26, 1970, *Congressional Record, vol. 116, pt. 33, p. 44027.*

[2] Reprint from *Daily Congressional Record,* June 30, 1970.

"First. The investment tax credit was repealed, without an exception for small business, which needs it most.

"Second. Multiple surtax exemptions were eliminated, without consideration for small business, for whose benefit this mechanism was originally placed in the law as a reform.

"Third. Pension and retirement benefits were curtailed for owners of approximately 200,000 subchapter S small business corporations.

"Fourth. Certain accelerated depreciation methods applying to real estate were eliminated or restricted, likewise without an exemption for small enterprise.

"Fifth. State and local development companies, which help to finance new business enterprise, were unfavorably classified in the tax code with particular reference to bad-debt reserves."

[3] Hearings on H.R. 13270, Senate Committee on Finance, Sept. 4–5, 1969, Part I, p. 645.

at closer to $3 billion because of later modifications.

This program was presented as an administrative change rather than a legislative proposal, so that its disproportionate benefit to large corporations is intended to take effect without any opportunity for consideration of it or its alternatives by the Congress.

To fill out this picture, it must be remembered that the Administration also advocated abolition of the 7-percent investment tax credit which carried a revenue gain of $3.3 billion. The bulk of investment credit benefits also went to large corporations. But it was Administration policy to oppose a small business exemption—which passed the Senate but did not survive the House-Senate conference. The administration did send to Congress this year a modest business tax bill, which I will shortly describe in more detail.

However, I feel it is fair to say that now, smaller and medium-sized businesses, which have had the most trouble, have not received in recent years the tax consideration to which they are entitled. In my mind, there is a strong claim, in all equity, for Congress to redress the balance by at least inquiring into the field of business taxation from the viewpoint of the great majority of smaller and less-advantaged firms in this country.

HISTORY OF THIS BILL

One such vehicle for congressional attention would be the bill which is being reintroduced today. As the Senate will recall, the predecessor of this proposal was filed in the Senate on June 30, 1970.[4] It is my understanding that S. 4039 became the first general small business tax relief bill since 1958 and only the second bill of its kind to come before the Congress.

The legislative history of our Committee study and developments which brought the small business tax bill—S. 4039 of 1970—to the point of introduction is set forth in my remarks of June 30, 1970, to the Senate[5] and need not be repeated now. Suffice it to say, we have been at this work since early in 1967. During that time a businessmen's advisory council submitted detailed recommendations in the corporate tax field.[6]

As I have also noted, on February 2, 1971, the distinguished senior Senator from Utah (Mr. BENNETT), introduced a bill entitled "The Small Business Taxation Act of 1971,"—numbered S. 544—as President Nixon's small business tax proposal. I understand that a similar bill was submitted by letter to the Finance and Ways and Means Committee in April 1970, but was not introduced as a bill in either the Senate or the House during the 91st Congress. However, any such initiative in behalf of small business by the administration is very welcome. S. 544 does give us an additional impetus for coming to grips with the tax needs of small business. It is indeed gratifying that we have a bipartisan approach to the tax problems of the small businessman, because the operation of the tax system is too serious to be a partisan matter. There will undoubtedly be other bills making worthwhile suggestions in the small business field.

As I have said before, I view my small business tax revision proposal as a framework from which to build, a seed from which meaningful and overdue small business tax reforms can emerge. It attempts to be comprehensive in scope because I believe such an approach is called for in behalf of the free enterprise system. This bill marks out some new directions and will, I hope, open up other areas for serious discussion. I am not wedded to any of its specifics but I believe it provides a vehicle to move forward the ultimate goals of small business tax reform and simplification.

WIDE CONSULTATION PRECEDING REINTRODUCTION

Following the first presentation of our bill, S. 4039, last year, the Small Business Committee made an intensive second effort to obtain the counsel of tax and economic experts in the Government and in private life. We sought the advice of the Commerce Department, the Small Business Administration and especially the Treasury Department and the tax-writing committees of Congress. Our aim was to determine what improvements might be made in the text of both our bill and the Administration's 1970 proposal. We searched for avenues of common action which might be pursued to improve the prospects for the consideration and passage of small business tax relief in meaningful form and at the earliest possible time.

As a result of these consultations, we did adopt the 10-year loss carryover provision of last year's administration's submission and attempted to relate the small business studies included in our bill to the broader studies under way and otherwise contemplated within the Government.

There are also suggestions in both bills that the permissible number of subchapter S shareholders be raised—to 30 in the administration's bill and 15 in our bill—rising to 25 after five years. However, the two proposals are not similar in any other particular.

During the Autumn of 1970, we also distributed copies of S. 4039 as widely as possible to additional organizations and individuals who might have an interest, with an invitation for suggestions as to how the bill could be improved. Each of the ensuing recommendations was given close attention and study. The bill we present today reflects these many recommendations as well as our own continued research.

Accordingly, I am glad to say that there are both congressional and executive branch proposals before us. It is therefore hoped that there will be a basis for serious consideration of these small business tax issues, and a favorable possibility for tax reform and relief for the beleaguered small business community during the 92d Congress.

NATURE OF THIS BILL

The 1971 version of the small business tax reform and relief bill allows the Congress to look, within a single comprehensive framework, into many of the basic questions relating to the successive phases in the life of a small business—beginning with the founding of an enterprise, through the early growth, to needs for capital accumulation, certain special aspects, and culminating with the need to preserve independence as firms mature, and when their founders wish or are required to bow out of active management.[7]

Our original bill, S. 4039, and this successor bill result from 3½ years of study by the Small Business Committee. This bill thus emerges as a composite of recommendations from many quarters. It is as comprehensive as our Committee study could make it.

HIGHLIGHTS OF THE BILL

The small business tax reform and relief bill contains more than 3 dozen sections, with upwards of 40 proposals for change. These sections are grouped in eight chapters, logically related to each other as well as the life cycle of a small and growing business. Together these provisions constitute what we feel is a systematic approach to fostering the free enterprise system and to encouraging continued independence of businesses. In these ways, we can strengthen our commercial system in order to bring our people better goods, improved services, lower prices, and a greater variety of career choices.

When we introduced our bill last year, some criticism followed concerning the 5-year tax moratorium provision for new businesses. These objections came from other small businessmen who felt the keen edge of competition would be honed too much by this idea designed to help small businesses in those first high-risk years. We have not changed our mind about this concept. But we have reduced the 5-year exemption to 3 years as a compromise. If there were no other reason, we believe this proposal permits a real focus for discussion of both the positive and negative sides of the question and that debate of the matter is appropriate at this time.

A 3-year incentive provision would tend to offset some of the extra hazards a businessman must endure in risking his capital, his labor and his career in

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[4] Co-sponsors of the measure were: Senators Burdick (original), Moss, Dole, Sparkman, Randolph, Williams (N.J.), Nelson, Montoya, Harris, McIntyre, Gravel, Stevens, and Metcalf.

[5] "S. 4039—Introduction of the Small Business Tax Simplification and Reform Act of 1970"—*Congressional Record*, vol. 116, pt. 16, pp. 22206–22210.

[6] "Report of the Small Business Advisory Council to the Senate Small Business Committee," Dec. 17, 1968, Chapter on "Corporate Income Tax," pp. 10–18.

For purposes of clarification, the current Administration's study of business taxation entitled "Improving the Prospects of Small Business" consisted of eleven pages, just under one page of which was devoted to business taxation. The Administration's tax bill (S. 544) is based on this report. A further study on business taxation dated Sept. 1970, examines cost recovery for machinery and equipment, foreign business income, conformity of taxable with financial income and the value-added tax. However, the report does not discuss or mention the particular tax needs of smaller firms.

[7] Treasury officials have been kind enough to acknowledge the value of the bill in raising the issues in this manner. See "Tax Relief for Small Business," remarks to the Senate by Sen. Moss, *Congressional Record*, vol. 116, pt. 25, p. 34368.

starting a new enterprise. It would also serve as a better equalizer against the tax-free resources built up in the older small businesses. Certainly, in the face of the massed capital of giant firms, there is room for encouragement for more young people and middle-level executives to get into their own business in order to keep up a viable, healthy small business community nationwide. Our increasing population, with its increasing consumer product needs, requires more enterprise in the future; not less.

A cardinal point in these days of continuing inflation and looming deficits which concern many of our citizens, is that this small business tax bill is designed not to result in the loss of Government revenue. Its intention is to merely shift 1 percent of the income paid by corporate taxpayers from new and growing companies to the most established and wealthiest corporations which can well afford to absorb such a minimal increase.

Such a revenue shift would enable a tax reduction for all companies earning less than $1 million a year, with proportionately greater advantages to new firms, some family business units, companies required to add machinery and equipment to expand their markets, and others facing modernization or forced compliance with environmental and consumer laws.

We feel that the bill also makes some headway in the area of preserving independence of firms during growth phases, when such a firm can be an effective innovator and competitor and also when the factors must or wish to withdraw from the active conduct of the company which they founded.

By no means do we feel that this process is finished. It would be surprising if a proposal of this complexity could not be improved at many points. We surely recognize this, just as we are aware that tax improvements will not solve all business problems. We expect that the congressional committees with long experience and wide expertise will be able to substantially improve this bill in form, content, and detail. Our committees will be a willing participant in this legislative process. It should also be remembered that Treasury Department brainpower will be brought to bear upon these matters considered by our committees, and that Treasury's process of developing regulations would follow any enactment. These excellent reviews would be expected to provide additional safeguards against possible abuses.

A detailed overall analysis as well as a section-by-section description of the bill in its modified 1971 form is set forth below.

At an appropriate time in the legislative calendar of the 92d Congress, I and my colleagues hope that we shall be ready to move forward toward a thorough consideration of the questions raised by this bill. These are questions of basic equity to small business and the health of our free enterprise system. We hope that such an effort can bring a realistic measure of relief and reform for the small businesses of this country. We shall be glad to help in any way we can to advance this cause.

Mr. President, I ask unanimous consent that an analysis of the bill and a description of its individual provisions, together with the full text be printed in the RECORD at the conclusion of my remarks, so that it will be accessible to the many business organizations and individual firms which have an interest, as well as those who must consider the measure.

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

S. 1615

A bill to amend the Internal Revenue Code of 1954 to provide income tax simplification, reform, and relief for small business

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Tax Simplification and Reform Act of 1971".

(b) TABLE OF CONTENTS.—

TITLE I—TAX SIMPLIFICATION RELATING TO SMALL BUSINESS

Sec. 101. Intragovernmental committee on tax simplification for small business.
Sec. 102. Treasury Department small business tax analyst.
Sec. 103. New Internal Revenue Code chapter on small business.
Sec. 104. Revision of depreciation policy.
Sec. 105. Equalization of treatment of fringe benefits as between incorporated and unincorporated small businesses.
Sec. 106. Special study of differential effect of tax law changes on businesses of varying sizes.
Sec. 107. Frequency of collection of certain employment and excise taxes.

TITLE II—ADJUSTMENT OF CORPORATE NORMAL TAX

Sec. 201. Corporate normal tax rates

TITLE III—SPECIAL PROVISIONS TO ENCOURAGE ESTABLISHMENT OF NEW SMALL BUSINESS ENTERPRISES

Sec. 301. Exemption of net operating income of new small business corporations for first 5 years.
Sec. 302. Deduction of organizational expenses of partnership.
Sec. 303. Bad debt deduction for guarantors of obligations of, and lenders to, small business corporations.
Sec. 304. Losses on small business stock.
Sec. 305. Patronage benefits for qualified new community development cooperatives.

TITLE IV—PROVISIONS TO ASSIST SMALL BUSINESS GROWTH

Sec. 401. Increase in additional first-year depreciation allowance.
Sec. 402. Regulatory status for depreciation guidelines and elimination of reserve ratio test for small business.
Sec.403. Partial restoration of investment credit for small business.
Sec. 404. 10-year carryover of small business net operating losses.
Sec. 405. Accumulated earnings tax.
Sec. 406. Amortization of expenditures incident to issuance of stock.
Sec. 407. Period for amortization of research and experimental expenditures.
Sec. 408. Multiple surtax exemptions for certain small business corporations under single family control.

TITLE V—PROVISIONS RELATING TO PARTNERSHIPS

Sec. 501. Guaranteed payments from partnership to partner.
Sec. 502. Closing of taxable year of partnership on death of partner.
Sec. 503. Termination of partnership.
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TITLE VI—PROVISIONS RELATING TO SUBCHAPTER S CORPORATIONS

Sec. 601. Increasing number of permissible shareholders.
Sec. 602. Broadening classes of permissible shareholders.
Sec. 603. Termination of election by majority.
Sec. 604. Termination of election—passive investment income.
Sec. 605. Termination of election—inadvertence.
Sec. 606. Carryover of disallowed deductions for corporation's net operating loss.

TITLE VII—BUSINESS DEVELOPMENT CORPORATIONS

Sec. 701. Reserves for losses on loans of business development corporations.
Sec. 702. Nonrecurring income of nonprofit local business development corporations.

TITLE VIII—PRESERVATION OF SMALL BUSINESS INDEPENDENCE

Sec. 801. Refunds of overpayments of estimated income tax before end of taxable year.
Sec. 802. Debt-financed corporate acquisitions.
Sec. 803. Valuation of unlisted securities for estate tax purposes.
Sec. 804. Extensions of time for paying estate tax.
Sec. 805. Amalgamation of interests in closely held businesses for estate tax purposes.
Sec. 806. Study and recommendations by Treasury Department with respect to preservation of independent small business.

(c) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision, of the Internal Revenue Code of 1954.

(d) EFFECTIVE DATE.—Except as otherwise specified, the amendments to the Internal Revenue Code of 1954 made by this Act shall apply to taxable years beginning after the date of the enactment of this Act.

TITLE I—TAX SIMPLIFICATION RELATING TO SMALL BUSINESS

SEC. 101. INTRAGOVERNMENTAL COMMITTEE ON TAX SIMPLIFICATION FOR SMALL BUSINESS.

(a) There is hereby established a Committee on Tax Simplification for Small Business (hereafter in this section referred to as the "Committee"). The Committee shall be composed of—

(1) an officer of the Treasury Department designated by the Secretary of the Treasury,

(2) an officer of the Office of Management and Budget designated by the Director of the Office of Management and Budget,

(3) an officer of the Small Business Administration designated by the Administrator of the Small Business Administration, and

(4) an officer of the Internal Revenue Service designated by the Commissioner of Internal Revenue.

(b) It shall be the function and duty of the Committee—

(1) to make a continuing study and review of the provisions of the Internal Revenue Code of 1954 and, from time to time, recommend to the Congress such changes in the Code as it considers will be helpful in simplifying the application of the Code to small business, and

(2) to make a continuing study and review of the administration of the Internal

Revenue Code of 1954 and, from time to time, recommend to the Secretary of the Treasury and the Commissioner of Internal Revenue such changes in the regulations and procedures, and in the forms, instructions, guidelines, and other publications, prescribed in the administration of the Code as it considers will be helpful in simplifying the administration of the Code for small business.

In making the study and review under paragraph (2), the Committee shall give particular attention to the burden on small business resulting from requirements of frequent reporting and payment of the taxes imposed by subtitle C of the Internal Revenue Code of 1954. To the extent practicable, the Secretary and the Commissioner shall seek the advice of the Committee before proposing major changes in such regulations, procedures, forms, instructions, guidelines, and other publications.

(c) The Committee shall appoint an advisory committee to assist it in carrying out its functions and duties. The advisory committee shall consist of 12 members, all of whom shall be appointed from private life. The member of the Committee designated by the Administrator of the Small Business Administration shall appoint 6 members of the advisory committee. Each other member of the Committee shall appoint 2 members of the advisory committee.

(d) The Committee and the advisory committee shall each select a chairman from among its members.

(e) Members of the Committee and advisory committee shall receive no compensation for their service as such members, but shall be entitled to reimbursement for traveling expenses, and to per diem in lieu of subsistence, while away from their homes in attendance at meetings of the Committee or advisory committee.

(f) The Committee and the advisory committee shall meet, at the call of their respective chairmen, as often as may be necessary but not less often than once each quarter.

SEC. 102. Treasury Department Small Business Tax Analyst.

There is hereby established within the Office of the Secretary of the Treasury an Office of Small Business Tax Analysis which shall be headed by a Small Business Tax Analyst appointed by the Secretary. It shall be the duty of the Small Business Tax Analyst—

(1) to make a continuing study of the effect of Federal taxes on small business, and of the problems caused to small business in complying with the reporting and other procedural requirements of the Federal tax laws,

(2) to make a continuing study of the total effect of Federal, State, and local taxes on small business, and of the problems caused to small business in complying with the reporting and other procedural requirements of Federal, State, and local tax laws,

(3) to assist the Secretary in carrying out the duties and functions imposed by sections 103, 104, 105, 106, and 806 of this Act, and

(4) to perform such other duties and functions in the interest of small business as the Secretary may prescribe.

SEC. 103. NEW INTERNAL REVENUE CODE CHAPTER ON SMALL BUSINESS.

(a) The Secretary of the Treasury, with the assistance of the Small Business Tax Analyst, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate recommendations for structural changes in the Internal Revenue Code of 1954 so as to consolidate into one chapter, or other appropriate subdivision, the text of, or reference to, those provisions which relate primarily to new and small business enterprises.

(b) The recommendations required by subsection (a) shall be submitted as soon as practicable, but not later than one year after the date of the enactment of this Act.

SEC. 104. REVISION OF DEPRECIATION POLICY.

(a) The Secretary of the Treasury, with the assistance of the Small Business Analyst, shall study, and report thereon to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, the effect on small business of those provisions of the Internal Revenue Code of 1954 relating to the depreciation of property and the desirability of providing special treatment for small business under such provisions. In making such study, the Secretary shall take into consideration—

(1) the effect on small business of the withdrawal (except as restored by section 403 of this Act) of the credit for investment in depreciable property,

(2) the need of small business to be able to take advantage of rapid technological advances,

(3) the necessity for simplicity in the application of the depreciation provisions to small business, and

(4) the desirability of providing treatment for small business in the United States comparable to the treatment provided under the tax laws of other advanced countries for small business in those countries.

(b) The report required by subsection (a) shall be submitted as soon as practicable, but not later than one year after the date of the enactment of this Act.

SEC. 105. EQUALIZATION OF TREATMENT OF FRINGE BENEFITS AS BETWEEN INCORPORATED AND UNINCORPORATED SMALL BUSINESSES.

(a) The Secretary of the Treasury, with the assistance of the Small Business Tax Analyst, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate recommendations for changes in the Internal Revenue Code of 1954 so as to provide equal tax benefits for all small business enterprises, whether incorporated or unincorporated, resulting from the application of the provisions of the Code relating to qualified pension, profit-sharing, and stock bonus plans, health and accident plans, and wage continuation plans.

(b) The recommendations required by subsection (a) shall be submitted as soon as practicable, but not later than one year after the date of the enactment of this Act.

SEC. 106. SPECIAL STUDY OF DIFFERENTIAL EFFECT OF TAX LAW CHANGES ON BUSINESSES OF VARYING SIZES.

(a) The Secretary of the Treasury, with the assistance of the Small Business Tax Analyst, shall make a special study, and report thereon to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, of the differential effect on businesses of varying sizes of significant changes in Federal tax laws and regulations from 1958 through 1970.

(b) The report required by subsection (a) shall be submitted as soon as practicable, but not later than two years after the date of the enactment of this Act.

(c) There is authorized to be appropriated the sum of $300,000 to carry out the provisions of this section.

SEC. 107. FREQUENCY OF COLLECTION OF CERTAIN EMPLOYMENT AND EXCISE TAXES.

(a) SMALL TAXPAYERS NOT TO BE REQUIRED TO MAKE PAYMENTS MORE OFTEN THAN MONTHLY.—Section 6302 (relating to mode or time of collection) is amended by adding at the end thereof the following new subsection:

"(d) COLLECTION OF CERTAIN EMPLOYMENT AND EXCISE TAXES.—If, during a calendar month, the aggregate of the amount of—

"(1) taxes deducted under section 3112 from wages by a person,

"(2) taxes imposed under section 3102 on wages paid by such person,

"(3) taxes deducted and withheld under section 3402 upon wages paid by such person, and

"(4) taxes imposed under chapters 31 and 32 with respect to sales by such person,

does not exceed $7,000, such person shall be not required to pay or deposit such taxes more than one time for such month."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the first day of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act.

TITLE II—ADJUSTMENT OF CORPORATE NORMAL TAX

SEC. 201. CORPORATE NORMAL TAX RATES.

Section 11(b) (relating to corporate normal tax) is amended to read as follows:

"(b) NORMAL TAX.—The normal tax is the amount determined in accordance with the following table:

"If the taxable income is:	The normal tax is:
Not over $50,000	20% of the taxable income.
Over $50,000 but not over $250,000.	$10,000, plus 21% of excess over $50,000.
Over $250,000 but not over $500,000.	$52,000, plus 21½% of excess over $250,000.
Over $500,000 but not over $1,000,000.	$105,750, plus 22% of excess over $500,000.
Over $1,000,000 but not over $10,000,000.	$215,750, plus 23% of excess over $1,000,000.
Over $10,000,000 but not over $100,000,000.	$2,285,750, plus 23½% of excess over $10,000,000.
Over $100,000,000 but not over $1,000,000,000.	$23,435,750, plus 23¾% of excess over $100,000,000.
Over $1,000,000,000	$237,185,750, plus 24% of excess over $1,000,000,000.

For purposes of applying the percentages and amounts of tax set forth in the preceding table in the case of a corporation which is a component member of a controlled group of corporations (within the meaning of section 1563), the taxable income of the other component members of such group shall, under regulations prescribed by the Secretary or his delegate, be taken into account."

TITLE III—SPECIAL PROVISIONS TO ENCOURAGE ESTABLISHMENT OF NEW SMALL BUSINESS ENTERPRISES

SEC. 301. EXEMPTION OF NET OPERATING INCOME OF NEW SMALL BUSINESS CORPORATIONS FOR FIRST 3 YEARS.

(a) SPECIAL DEDUCTION.—Part VIII of subchapter B of chapter 1 (relating to special deductions for corporations) is amended by adding at the end thereof the following new section:

"SEC. 251. NET OPERATING INCOME OF NEW SMALL BUSINESS CORPORATIONS.

"(a) GENERAL RULE.—If an election under subsection (d) by an eligible new small business corporation is in effect for the taxable year, there shall be allowed as a deduction an amount equal to so much of the corporation's net operating income for the taxable year as does not exceed $83,333, mul-

tiplied by the number of months in such year within the eligibility period of such corporation. For purposes of this section, a corporation's net operating income for a taxable year is its taxable income for such year determind without regard to—

"(1) income which is (or is treated as) gain from the sale or exchange of capital assets, and

"(2) deductions attributable to income described in paragraph (1).

"(b) ELIGIBLE CORPORATIONS.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible new small business corporation' means, with respect to a taxable year wholly or partially within its eligibility period, a small business corporation (as defined in section 1371(a), determined with the application of sections 1371(c) and (d)) which—

"(A) is engaged in the active conduct of a trade or business,

"(B) is not an electing small business corporation (as defined in section 1371(b)) for the taxable year, has not been an electing small business corporation for any prior taxable year, and is not the successor of such a corporation, and

"(C) does not have, at any time during the portion of its eligibility period within such taxable year, a disqualifying shareholder (as defined in paragraph (4)) who is an employee of such corporation.

"(2) PROFESSIONAL SERVICE CORPORATIONS.—The term 'eligible new small business corporation' does not include a corporation beneficial ownership in which, or control of which, is limited under State or local law, applicable regulations, or rules of professional ethics to—

"(A) individuals who are required to be licensed or otherwise authorized under State or local law to perform the professional services necessary to carry on the trade or business in which such corporation is engaged, and

"(B) the executor or administrator of the estate of an individual described in subparagraph (A).

"(3) PRIOR BENEFIT OF THIS SECTION.—The term 'eligible new small business corporation' does not include a corporation more than 50 percent of the voting stock of which is owned at the close of the taxable year by persons who are also owners of voting stock in another corporation which makes an election under subsection (d) which is in effect for the taxable year, or who were the owners of voting stock in another corporation which made an election under subsection (d) which was in effect for any prior taxable year.

"(4) Disqualifying shareholder.—The term 'disqualifying shareholder' means an individual who for a period or periods aggregating 5 or more years has been engaged in the active conduct of a trade or business as—

"(A) the proprietor of a sole proprietorship,

"(B) a partner in a partnership in which he owned more than 5 percent of the capital interest or profits interest,

"(C) an employee of a corporation in which he owned more than 5 percent of the voting stock or more than 5 percent in value of all stock, or

"(D) any combination of the foregoing.

"(c) ELIGIBILITY PERIOD.—For purposes of this section, the eligibility period of a small business corporation is the 36-month period beginning with the first day of the first month in which such corporation (or any predecessor in interest) first engages in the active conduct of a trade or business.

"(d) ELECTION.—

"(1) IN GENERAL.—An election to have the provisions of subsection (a) apply may be made by an eligible small business corporation for any taxable year wholly or partially within its eligibility period for which it has net operating income.

"(2) WHEN AND HOW MADE.—An election under paragraph (1) may be made for any taxable year on or before the time prescribed by law (including extensions thereof) for filing a return for such year. Such election shall be made in such manner as the Secretary or his delegate prescribes by regulations.

"(3) REVOCATION.—An election under paragraph (1) may be revoked only with consent of the Secretary or his delegate.

"(e) EFFECT OF SUBCHAPTER S STATUS.—A small business corporation which makes an election under subsection (d) which is in effect for any taxable year shall not be eligible to make an election under section 1372.

"(f) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for such part VIII is amended by adding at the end thereof the following new item:

"Sec. 251. Net operating income of new small business corporations."

SEC. 302. DEDUCTION OF ORGANIZATIONAL EXPENSES OF PARTNERSHIP

Section 703 (relating to the computation of the taxable income of a partnership) is amended by adding at the end thereof the following new subsection:

"(c) ORGANIZATIONAL EXPENSES.—

"(1) GENERAL RULE.—A deduction shall be allowed to the partnership for organizational expenses (as defined in paragraph (2)) ratably over a period of 60 months beginning in the month in which such expenses were paid or accrued, except that in the event the partnership is considered as terminated under section 708(b) any organizational expenses not previously allowed shall be allowed for the taxable year in which it is so considered to be terminated.

"(2) DEFINITION.—For purposes of this subsection, the term 'organizational expenses' means any expense of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life and which is incident to—

"(A) the creation of a new partnership;

"(B) the preparation of a partnership agreement for a partnership;

"(C) the amendment of an existing partnership agreement; or

"(D) the preparation or amendment of any agreement relating to the transfer or retirement of an interest in a partnership."

SEC. 303. BAD DEBT DEDUCTION FOR GUARANTORS OF OBLIGATIONS OF, AND LENDERS TO, SMALL BUSINESS CORPORATIONS

(a) GUARANTORS OF OBLIGATIONS OF SMALL BUSINESS CORPORATIONS.—Section 166(f) (relating to guarantors of certain noncorporate obligations) is amended to read as follows:

"(f) GUARANTOR OF CERTAIN NONCORPORATE OBLIGATIONS AND OBLIGATIONS OF SMALL BUSINESS CORPORATIONS.—

"(1) IN GENERAL.—A payment during the taxable year by the taxpayer (other than a corporation) in discharge of part or all of his obligation as a guarantor, endorser, or indemnitor of—

"(A) a noncorporate obligation, or

"(B) an obligation of a corporation which (at the time such obligation is incurred) is a small business corporation,

the proceeds of which were used in the trade or business of the borrower shall be treated as a debt becoming worthless within such taxable year for purposes of this section (except that subsection (d) shall not apply), but only if the obligation of the borrower to the person to whom such payment was made was worthless (without regard to such guaranty, endorsement, or indemnity) at the time of such payment.

"(2) SMALL BUSINESS CORPORATION.—For purposes of paragraph (1), the term 'small business corporation' means a corporation the equity capital of which does not exceed $1,500,000. For purposes of the preceding sentence, the equity capital of a corporation is the sum of its money and other property (in an amount equal to the adjusted basis of such property for determining gain), less the amount of its indebtedness (other than indebtedness to shareholders)."

(b) DEFINITION OF NONBUSINESS DEBT.—Section 166(d)(2) (relating to definition of nonbusiness debt) is amended—

(1) by striking out "or" at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new subparagraph:

"(C) a debt arising from a loan to—

"(i) one or more individuals, or

"(ii) a corporation which at the time such loan is made is a small business corporation (as defined in subsection (f)(2)),

the proceeds of which are used in the trade or business of the borrower or borrowers."

SEC. 304. LOSSES ON SMALL BUSINESS STOCK.

(a) INCREASE IN MAXIMUM AMOUNT OF LOSSES.—Section 1244(b) (relating to limitation on application of section 1244) is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) $50,000 (not more than $25,000 of which is attributable to stock acquired before the date of the enactment of the Small Business Tax Simplification and Reform Act of 1971), or

"(2) in the case of a husband and wife filing a joint return for such year under section 6013, $100,000 (not more than $50,000 of which is attributable to stock acquired before such date)."

(b) DEFINITION OF SECTION 1244 STOCK.—Section 1244 (relating to losses on small business stock) is amended by redesignating subsection (e) as (g) and by inserting after subsection (d) the following new subsections:

"(e) PLANS ADOPTED AFTER ENACTMENT OF SMALL BUSINESS TAX SIMPLIFICATION AND REFORM ACT OF 1970.—In the case of a plan adopted after the date of the enactment of the Small Business Tax Simplification and Reform Act of 1971—

"(1) paragraph (2) of subsection (c) shall be applied by substituting—

"(A) $750,000 for $500,000 in subparagraph (A), and

"(B) $1,500,000 for $1,000,000 in subparagraph (B);

"(2) paragraph (1)(A) of subsection (c) shall be applied by substituting 5 years for two years;

"(3) paragraph (1)(C) of subsection (c) shall not apply with respect to a prior offering of section 1244 stock under a plan adopted on or before such date, but in applying paragraphs (2)(A)(i) and (2)(B)(i) of subsection (c) there shall be taken into account the amount of such prior offering which is outstanding on the date of the adoption of the plan; and

"(4) for purposes of paragraph (1)(C) of subsection (c), options to acquire stock held by employees of the corporation (and unissued stock necessary in case of the exercise of such options) shall not be considered to be part of a prior offering which is outstanding.

"(g) Notice of Offering and Adoption of

Plan.—A corporation which during the taxable year makes an offering of its stock which it believes to fulfill the requirements of subparagraphs (A), (B), and (C) of subsection (c)(1) may—

"(1) include, on its return for such year, a statement that such offering has been made and the date on which the plan for such offering was adopted, and

"(2) include a copy of such plan with such return."

SEC. 305. PATRONAGE BENEFITS FOR QUALIFIED NEW COMMUNITY DEVELOPMENT COOPERATIVES

Section 1388 (relating to definitions and special rules for subchapter T of chapter 1) is amended—

(1) by adding at the end of subsection (c)(1) the following new sentence: "The preceding sentence shall not apply with respect to a patronage dividend paid by a qualified community development cooperative with respect to patronage during any of its first 5 taxable years."; and

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

"(j) QUALIFIED COMMUNITY DEVELOPMENT COOPERATIVE.—For purposes of this subchapter, the term 'qualified community development cooperative' means an organization—

"(1) which is engaged primarily in selling goods of providing services at retail, and

"(2) substantially all of the members and patrons of which—

"(A) are individuals of low or moderate income (as prescribed by the Secretary or his delegate by regulations), and

"(B) are residents of the community in which its place of business is located."

TITLE IV—PROVISIONS TO ASSIST SMALL BUSINESS GROWTH

SEC. 401. INCREASE IN ADDITIONAL FIRST-YEAR DEPRECIATION ALLOWANCE.

Section 179(b) (relating to dollar limitation on property eligible for additional first-year allowance) is amended—

(1) by striking out "$10,000" each place it appears and inserting in lieu thereof "$20,000"; and

(2) by striking out "$20,000" and inserting in lieu thereof "$40,000".

SEC. 402. REGULATORY STATUS FOR DEPRECIATION GUIDELINES AND ELIMINATION OF RESERVE RATIO TEST FOR SMALL BUSINESS.

(a) REGULATIONS.—Section 167 (relating to depreciation) is amended by redesignating subsection (m) as (n) and by inserting after subsection (l) the following new subsection:

"(m) USEFUL LIFE OF PROPERTY.—

"(1) REGULATIONS.—The Secretary or his delegate shall prescribe regulations which—

"(A) specify classes of property (including special purpose structures, but not including general purpose buildings) used in the trade or business or held for the production of income, and

"(B) specify the useful life of property in each class.

The useful lives so specified shall not be longer than those specified in Revenue Procedure 62-21, as modified before January 1, 1971.

"(2) USE OF USEFUL LIVES BY SMALL BUSINESSES.—In the case of property placed in service by a taxpayer which is a small business concern (within the meaning of the Small Business Act), if the taxpayer so elects—

"(A) the taxpayer may, for the purposes of this section, use the useful life specified for such property under the regulations prescribed under paragraph (1), without regard to the practice of the taxpayer in replacing such property or other property within the same class as such property;

"(B) property which is fully depreciated shall not be taken into account in computing the deduction allowed by subsection (a) with respect to any other property; and

"(C) property shall be treated as fully depreciated at the close of the useful life specified for it under the regulations prescribed under paragraph (1).

This paragraph shall not apply with respect to property in a class in which 25 percent or more of the property in such class used or held by the taxpayer is leased by him, unless the taxpayer establishes that average period of use of property of such class not leased by him is not substantially different from the average period of use of property of such class which is leased by him.

"(3) ELECTION.—An election under paragraph (2) shall be made with respect to any property at such time and in such manner as the Secretary or his delegate prescribes by regulations."

(b) EFFECTIVE DATE.—Regulations required by section 167(m) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall be issued not later than 90 days after the date of the enactment of this Act. The amendment made by subsection (a) shall apply to taxable years ending on or after the date on which such regulations are issued.

SEC. 403. PARTIAL RESTORATION OF INVESTMENT CREDIT FOR SMALL BUSINESS.

(a) EXEMPTION FROM TERMINATION PROVISIONS.—Section 49 (relating to termination of investment credit) is amended—

(1) by inserting after "pre-termination property" in subsection (a) the following: "and property to which subsection (e) applies", and

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

"(e) SMALL BUSINESS EXEMPTION.—

"(1) IN GENERAL.—In the case of section 38 property (other than pre-termination property)—

"(A) the physical construction, reconstruction, or erection of which is completed on or after the date of the enactment of the Small Business Tax Simplification and Reform Act of 1971, or

"(B) which is acquired by the taxpayer on or after such date,

and which is constructed, reconstructed, erected, or acquired for use in a trade or business (including use to meet requirements or standards imposed by or under authority of, Federal, State, or local law), the taxpayer may select items to which this subsection applies to the extent that the qualified investment for the taxpayer attributable to such items does not exceed the small business exemption limitation (as determined under paragraph (2)). In the case of any item so selected (to the extent of the qualified investment attributable to such item taken into account under the preceding sentence), subsections (c) and (d) of this section, paragraphs (5) and (6) of section 46(b), and the last sentence of section 47(a)(4) shall not apply. In applying section 46(c)(1)(A) in the case of property described in subparagraph (A), there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection on or after the date of the enactment of the Small Business Tax Simplification and Reform Act of 1971.

"(2) LIMITATIONS.—For purposes of paragraph (1), a taxpayer's small business exemption limitation for any taxable year is—

"(A) in the case of a corporation primarily engaged in the manufacture or production of property, $50,000, reduced by the sum of—

"(i) the amount of the taxpayer's qualified investment for the taxable year, determined before the application of this subsection, and

"(ii) the amount by which the taxpayer's taxable income for the taxable year exceeds $450,000;

"(B) in the case of any other corporation, $10,000, reduced by the sum of—

"(i) the amount described in subparagraph (A)(i), and

"(ii) the amount by which the taxpayer's taxable income of the taxable year exceeds $90,000; and

"(C) in the case of an individual, $5,000, reduced by the sum of—

"(i) the amount described in subparagraph (A)(i), and

"(ii) the amount by which the taxpayer's taxable income for the taxable year exceeds $45,000.

"(3) SPECIAL RULES.—

"(A) MARRIED INDIVIDUALS.—In the case of a husband or wife who files a separate return, the $5,000 amount specified in paragraph (2) shall be $2,500, and the $45,000 amount specified in such paragraph shall be $22,500. This subparagraph shall not apply if the spouse of the taxpayer has no qualified investment for, and no unused credit carryback or carryover to, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

"(B) CONTROLLED GROUPS.—In the case of a controlled group, the amounts specified in paragraph (2) shall be reduced for each component of such group by apportioning such amounts among the component members of such group in such manner as the Secretary or his delegate shall by regulations prescribe. For purposes of the preceding sentence, the term 'controlled group' has the meaning assigned to each term by section 1563(a), except that the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in section 1563(a)(1).

"(C) OTHER TAXPAYERS.—Under regulations prescribed by the Secretary or his delegate, rules similar to the rules provided by sections 46(d), 48(e), and 48(f) shall be applied for purposes of this subsection."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years ending on or after the date of this enactment of this Act.

SEC. 404. 10-YEAR CARRYOVER OF SMALL BUSINESS NET OPERATING LOSSES.

(a) 10-YEAR CARRYOVER PERIOD.—Section 172(b)(1) (relating to years to which loss may be carried is amended—

(1) by striking out "and (E)" in subparagraph (B) and inserting in lieu thereof "(E), and (H)";

(2) by adding at the end thereof the following new subparagraph:

"(II) In the case of a taxpayer which is carrying on a trade or business as a small business concern (within the meaning of the Small Business Act) determined as of the close of the taxable year, the portion of a net operating loss sustained in such trade or business shall be a net operating loss carryover to each of the 10 taxable years following the taxable year of such loss."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to losses sustained in taxable years beginning after the date of the enactment of this Act.

SEC. 405. ACCUMULATED EARNINGS TAX.

(a) RATE OF TAX.—Section 531 (relating to imposition of accumulated earnings tax) is amended by striking out all after "equal to" and inserting in lieu thereof "22 percent of the accumulated taxable income."

(b) MINIMUM ACCUMULATED EARNINGS CREDIT.—Section 535(c) (relating to accumulated earnings credit) is amended—

(1) by striking out "$100,000" in paragraphs (2) and (3) and inserting in lieu thereof "$150,000";

(2) by inserting before the period in para-

graph (2) a comma and the following: "or, in the case of a small business concern, such higher amount as may be prescribed under paragraph (5) of this subsection"; and

(3) by redesignating paragraph (5) as (6), and by inserting after paragraph (4) the following new paragraph:

"(5) Increased minimum credit for growing small businesses.—The Secretary or his delegate is authorized to prescribe by regulations a minimum credit (in lieu of the $150,000 amount specified in paragraph (2)) of not more than $250,000 for any corporation which—

"(A) is a small business concern (within the meaning of the Small Business Act), and

"(B) establishes a reasonable intention of future expansion which would require retaining earnings and profits for the taxable year in excess of $150,000."

(c) DIVIDEND DISTRIBUTIONS TO REDUCE TAX LIABILITY.—Part I of subchapter G of chapter 1 (relating to corporations improperly accumulating surplus) is amended by adding at the end thereof the following new section:

"SEC. 538. PAYMENTS OF DIVIDENDS TO REDUCE TAX LIABILITY

"(a) Dividends Paid after Determination of Tax Liability.—Whenever a final determination has been made that a corporation is liable for the tax imposed by section 531 for a taxable year, such corporation may designate any dividends paid by it within 90 days after the date of such final determination as dividends paid to obtain the benefit of this section. In determining such corporation's final liability for the tax imposed by section 531 for such taxable year, the amount of its accumulated taxable income shall be reduced by an amount equal to the dividends paid and so designated.

"(b) SPECIAL RULES.—

"(1) Dividends to which applicable.—Subsection (a) shall apply only to a dividend which meets the requirements of section 562.

"(2) Section 561 not to apply.—Any dividend designated under subsection (a) as a dividend paid to obtain the benefits of this section shall not be treated as dividend for purposes of section 561.

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter G of chapter 1 is amended by adding at the end thereof the following new item:

"SEC. 538. PAYMENTS OF DIVIDENDS TO REDUCE TAX LIABILITY."

(e) BURDEN OF PROOF.—

(1) APPLICATION OF SECTION 534 IN OTHER COURT CASES.—

Section 534(a) (relating to burden of proof) is amended by adding at the end thereof the following:

"In any action by a taxpayer before any other court of the United States involving in whole or in part a claim for credit or refund of overpayment of the tax imposed by section 531, the burden of proof with respect to whether all or any part of the earnings and profits have been permitted to accumulate beyond the reasonable needs of the business shall—

"(3) if notification was not sent in accordance with subsection (b), be on the United States, or

"(4) if the taxpayer submitted the statement described in subsection (c), be on the United States with respect to the grounds set forth in such statement in accordance with provisions of such subsection."

(2) TECHNICAL AMENDMENT.—Section 534 (d) (relating to jeopardy assessment) is amended by inserting before the period at the end thereof ", or, if the taxpayer did not file such a petition, may be submitted by him to the court in which he brings action for credit or refund of overpayment of such tax."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to actions trial of which on the merits commences after the date of the enactment of this Act.

SEC. 406. AMORTIZATION OF EXPENDITURES INCIDENT TO ISSUANCE OF STOCK.

Section 248(b) (relating to definition of organizational expenditures) is amended by adding at the end thereof the following new sentence: "In the case of a corporation which is a small business corporation (as defined in section 166(f)(2)), such term also means any expenditure incident to the issuance or registration of stock or to the listing of stock on a regional exchange."

SEC. 407. PERIOD FOR AMORTIZATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

Section 174(b) (relating to amortization of certain research and experimental expenditures) is amended by striking out "(beginning with the month in which the taxpayer first realizes benefits from such expenditures)" in the second sentence of paragraph (1).

SEC. 408. MULTIPLE SURTAX EXEMPTIONS FOR CERTAIN SMALL BUSINESS CORPORATIONS UNDER SINGLE FAMILY CONTROL.

(a) EXCEPTION TO INCLUSION AS COMPONENT MEMBERS OF CONTROLLED GROUPS.—Section 1563 (relating to definitions and special rules) is amended by adding at the end thereof the following new subsection:

"(g) CERTAIN FAMILY-CONTROLLED SMALL BUSINESS CORPORATIONS.—

"(1) EXCEPTION.—For purposes of this part, a corporation described in paragraph (2) shall, except as provided in paragraph (5), not be treated, as a component member of a controlled group of corporations.

"(2) CORPORATIONS EXCEPTED.—Paragraph (1) shall apply only to a corporation—

"(A) which is a small business concern (within the meaning of the Small Business Act), determined as of the close of the taxable year,

"(B) with respect to which at least 50 percent of the total combined voting power of all classes of its stock entitled to vote or at least 50 percent of the total value of shares of all classes of its stock is owned directly by the individual who manages its business affairs and his spouse, and

"(C) with respect to which at least 80 percent of the total combined voting power of all classes of its stock entitled to vote or at least 80 percent of the total value of shares of all classes of its stock is owned directly by the individual described in subparagraph (A), his spouse, the members of his family, and the members of his spouse's family.

"(3) LIMITATION.—In any case in which (but for this paragraph) paragraph (1) would apply to more than five corporations all of the stock of each of which is owned by the members of a single family, paragraph (1) shall apply only to the five corporations specified in writing by all the members of the family who own directly any of such stock.

"(4) MEMBERS OF FAMILY.—For purposes of this subsection, an individual's family consists of his parents, grandparents, children, grandchildren, brothers, and sisters, and the estates of any of such individuals who are deceased.

"(5) APPLICATION WITH OTHER PROVISIONS.—For purposes of determining whether any other corporation is (or would, but for the application of this subsection, be) a component member of a controlled group of corporations, this part shall be applied without regard to this subsection."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to taxable years ending after the date of the enactment of this Act.

TITLE V—PROVISIONS RELATING TO PARTNERSHIPS

SEC. 501. GUARANTEED PAYMENTS FROM PARTNERSHIP TO PARTNER

Section 702(c) (relating to gross income of a partner) is amended to read as follows:

"(c) GROSS INCOME OF A PARTNER.—In any case where it is necessary to determine the gross income of a partner for purposes of this title, such amount shall include the excess of his distributive share of the gross income of the partnership over any payments from the partnership that are included in the partner's gross income under section 707(c)."

SEC. 502. CLOSING OF TAXABLE YEAR OF PARTNERSHIP ON DEATH OF PARTNER.

Section 706(c) (relating to the closing of the partnership year) is amended—

(1) by striking out "paragraph (2)" in paragraph (1) and inserting in lieu thereof "paragraphs (2) and (3)";

(2) by renumbering paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) DEATH OF A PARTNER.—Except as provided in this paragraph, the taxable year of a partnership shall close with respect to a deceased partner as of the date of death of such partner. The successor in interest of a deceased partner may elect, in accordance with regulations prescribed by the Secretary or his delegate, not to close the taxable year of the partnership with respect to such deceased partner as of the date of his death, in which event the taxable year of the partnership shall close with respect to such deceased partner—

"(A) at the close of the partnership taxable year if the interest of such deceased partner is not sold, exchanged, or liquidated prior to that date, or

"(B) at the later of—

"(i) the date of sale, exchange, or liquidation of the interest of such deceased partner, or

"(ii) the day following the death of such deceased partner."; and

(3) by amending the first sentence of subparagraph (A) of paragraph (3) (as renumbered) to read as follows: "The taxable year of a partnership shall close (except as provided in paragraph (2) in the case of a deceased partner)—

"(i) with respect to a partner who sells or exchanges his entire interest in a partnership, and

"(ii) with respect to a partner whose entire interest is liquidated."

SEC. 503. TERMINATION OF PARTNERSHIP.

(a) SALE OF INTEREST OF 50 PERCENT OR MORE.—Section 708(b)(1) (relating to the general rule for the termination of a partnership) is amended—

(1) by inserting after "a partnership shall" in paragraph (1) ", except as provided in paragraph (2),"; and

(2) by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) within a 12-month period there are sales or exchanges to persons other than partners who have been members of the partnership for a period of at least 12 months prior to such sales or exchanges, totaling 50 percent or more of the total interest in partnership capital and profits."

(b) DEATH OR RETIREMENT OF ONE MEMBER OF TWO-MAN PARTNERSHIP.—Section 708(b)(2) (relating to special rules for the termination of a partnership) is amended by adding at the end thereof the following new subparagraph:

"(C) TWO-MEMBER PARTNERSHIP.—If a retiring or deceased partner is a member of a partnership composed of two partners, the business, financial operation, or venture of the partnership shall be considered to be carried on in a partnership, for purposes of

paragraph (1)(A), following his death or retirement, for such period of time as payments that qualify under section 736 are made to the retiring partner or to the successor in interest of the deceased partner."

SEC. 504. LIMITATION ON PARTNER'S DISTRIBUTIVE SHARE OF LOSSES

(a) INCREASE IN PARTNER'S LIABILITIES.—Section 752(a) (relating to increase in a partner's liabilities) is amended by inserting "or any increase in a partner's liabilities to the partnership," after "partnership liabilities,".

(b) DECREASE IN PARTNER'S LIABILITIES.—Section 752(b) (relating to decrease in a partner's liabilities) is amended by inserting "or any decrease in a partner's liability to the partnership," after "such individual liabilities,".

TITLE VI—PROVISIONS RELATING TO SUBCHAPTER S CORPORATIONS

SEC. 601. INCREASING NUMBER OF PERMISSIBLE SHAREHOLDERS

(a) INCREASE IN NUMBER.—Section 1371(a) (relating to definition of small business corporation) is amended by striking out "10 shareholders" in paragraph (1) and inserting in lieu thereof "15 shareholders (25 shareholders, in the case of a corporation which has been in existence for 5 or more years)"

(b) STOCK RECEIVED UPON DEATH OF SHAREHOLDERS.—Section 1371 (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(e) STOCK HELD BY INDIVIDUALS BY REASON OF DEATH OF ORIGINAL SHAREHOLDERS.—Stock owned by an individual which was received by him by reason of the death of an original shareholder shall, for purposes of applying subsection (a)(1), be treated as if it were still owned by such original shareholder. For purposes of this subsection, the term 'original shareholder' means a shareholder described in section 1372(a) who is required to consent to an election under such section."

SEC. 602. BROADENING CLASSES OF PERMISSIBLE SHAREHOLDERS.

(a) SMALL BUSINESS INVESTMENT COMPANIES AND CERTAIN TRUSTS.—Section 1372 (relating to definition of small business corporation) is amended by striking out "(other than an estate)" in paragraph (2) and inserting in lieu thereof "(other than an estate, a trust described in subsection (f), or a small business investment company operating under the Small Business Investment Act of 1958)".

(b) CERTAIN TRUSTS.—Section 1371 (relating to definitions) is amended by adding after subsection (e) (as added by section 601 (b) of this Act) the following new subsection:

"(f) CERTAIN TRUSTS PERMITTED AS SHAREHOLDERS.—For purposes of subsection (a), the following trusts may be shareholders:

"(1) A trust all of which is treated as owned by the grantor under subpart E of part I of subchapter J of this chapter.

"(2) A trust created primarily to exercise the voting power of stock transferred to it.

"(3) Any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it.

In the case of a trust described in paragraph (2), each beneficiary of the trust shall, for purposes of subsection (a)(1), be treated as a shareholder."

(c) TECHNICAL AMENDMENT.—Section 243(c) (relating to special rules for certain distributions) is amended by adding at the end thereof the following new paragraph:

"(5) Any dividend received by a small business investment company operating under the Small Business Investment Act of 1958 from an electing small business corporation (and any amount included in the gross income of such company which is treated as a dividend under section 1373) shall not be treated as a dividend."

SEC. 603. TERMINATION OF ELECTION BY MAJORITY.

Section 1372(e) (relating to termination of election) is amended—

(1) by striking out paragraph (1), and

(2) by striking out the second sentence of paragraph (2) and inserting in lieu thereof the following: "An election may be revoked only if shareholders owning more than 50 percent of the stock of the corporation on the day on which the revocation is made consent to the revocation."

SEC. 604. TERMINATION OF ELECTION—PASSIVE INVESTMENT INCOME.

Section 1372(e)(5) (relating to passive investment income) is amended by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) Except as provided in subparagraph (B), an election under subsection (a) made by a small business corporation shall terminate if—

"(i) for any taxable year of the corporation for which the election is in effect, the corporation has gross receipts more than 20 percent of which is passive investment income, and

"(ii) for any of the 3 immediately preceding taxable years of the corporation for which the election is in effect, the corporation had gross receipts more than 20 percent of which was passive investment income.

Such termination shall be effective for the taxable year of the corporation described in clause (i), and for all succeeding taxable years of the corporation."

SEC. 605. TERMINATION OF ELECTION—INADVERTENCE.

Section 1372 (relating to election by small business corporation) is amended—

(1) by striking out "An election" in the first sentence of subsection (e)(3) and inserting in lieu thereof "Except as provided in subsection (h), an election"; and

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

"(h) CEASING TO BE SMALL BUSINESS CORPORATION THROUGH INADVERTANCE.—An election under subsection (a) made by a small business corporation shall not terminate if, after notification by the Secretary or his delegate that it has failed to meet the requirements of section 1371(a), the corporation—

"(1) establishes that such failure was inadvertent, and

"(2) within 90 days after the date on which it is so notified, completes action so as again to meet such requirements."

SEC. 606. CARRYOVER OF DISALLOWED DEDUCTIONS FOR CORPORATION'S NET OPERATING LOSS

Section 1374(c) (relating to determination of shareholder's portion of net operating loss) is amended by adding at the end thereof the following new paragraph:

"(3) CARRYOVER OF DISALLOWED PART.—If, by reason of the application of paragraph (2), any part of a shareholder's portion of the net operating loss of an electing small business corporation for any taxable year (as determined under paragraph (1)) is not allowable as a deduction under subsection (b) for such taxable year, such part shall, subject to the limitation contained in paragraph (2), be treated as (or be added to, as the case may be) his portion of the corporation's net operating loss for the succeeding taxable year."

TITLE VII—BUSINESS DEVELOPMENT CORPORATIONS

SEC. 701. RESERVES FOR LOSSES ON LOANS OF BUSINESS DEVELOPMENT CORPORATIONS.

(a) PERCENTAGE OF LOANS OUTSTANDING METHOD.—Section 586(b)(1) (relating to addition to reserves for bad debts) is amended by redesignating subparagraph (B) as (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) in the case of a business development corporation, the amount equal to 10 percent of the loans outstanding at the close of the taxable year (not including any portions of such loans (i) repayment of which is guaranteed by the United States or any agency or instrumentality thereof, or (ii) which are owned by other persons through participation arrangements), or".

(b) EFFECTIVE DATE.—The Amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 702. NONRECURRING INCOME OF NONPROFIT LOCAL BUSINESS DEVELOPMENT CORPORATIONS.

(a) NONRECOGNITION OF GAIN.—Part III of subchapter O of chapter 1 (relating to common nontaxable exchanges) is amended by adding at the end thereof the following new section:

"SEC. 1040. CERTAIN DISPOSITIONS BY NONPROFIT LOCAL BUSINESS DEVELOPMENT CORPORATIONS.

"(a) NONRECOGNITION OF GAIN.—If a nonprofit local business development corporation—

"(1) disposes of a qualifying investment, and

"(2) within the reinvestment period makes or acquires another qualifying investment,

then, at the election of the taxpayer, the gain from such disposition shall be recognized only to the extent that the amount realized on such disposition exceeds the amount of such other qualifying investment.

"(b) NONPROFIT LOCAL BUSINESS DEVELOPMENT CORPORATION.—For purposes of this section, the term 'nonprofit local business development corporation' means a business development corporation (as defined in section 586)—

"(1) not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual,

"(2) which was established for purposes of promoting, maintaining, and assisting the economy and industry within a particular locality or region of a State, and

"(3) which does not pay any compensation, directly or indirectly, for personal services performed for it."

"(c) QUALIFYING INVESTMENT.—For purposes of this section, the term 'qualifying investment' means—

"(1) a loan to a business enterprise,

"(2) stock of a business corporation or equity interest in an unincorporated business enterprise, and

"(3) property acquired in repayment of a loan described in paragraph (1) or in redemption of stock or an interest described in paragraph (2) (including property acquired pursuant to the conversion privilege of convertible debentures).

"(d) REINVESTMENT PERIOD.—For purposes of this section, the reinvestment period, with respect to a disposition of qualifying property, is—

"(1) the 3-year period beginning on the day of such disposition, or

"(2) the 5-year period beginning on such day, but only with respect to another qualifying investment for the making or acquisition of which a binding commitment is entered into during the 3-year period beginning on such day.

"(e) CHARITABLE CONTRIBUTION TREATED AS QUALIFYING INVESTMENT.—A nonprofit local business development corporation may, with respect to a disposition of a qualifying investment, elect to treat as another qualifying investment a charitable contribution (as defined in section 170(c) (1) or (2)) made by such corporation within the reinvestment period for use within the locality

or region for which such corporation was established. Any such election shall be made at such time and in such manner as the Secretary or his delegate prescribes by regulations. Any charitable contribution with respect to which such an election is made shall not be taken into account for purposes of determining the deduction allowable by section 170.

"(f) TREATMENT OF LOAN REPAYMENTS.—For purposes of this section, amounts received by a nonprofit local business development corporation in repayment, or partial repayment, of a loan shall be treated as a disposition of such loan (or of a part thereof) by such corporation.

"(g) BASIS OF OTHER QUALIFYING INVESTMENT.—If the taxpayer makes an election under subsection (a) with respect to a disposition of a qualifying investment, the basis of the qualifying investment described in subsection (a)(2) shall be reduced by an amount equal to the amount of gain not recognized by reason of the application of subsection (a).

"(h) ASSESSMENT OF DEFICIENCIES.—If the taxpayer has made an election under subsection (a) with respect to a disposition of a qualifying investment—

"(1) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such disposition is realized, attributable to the gain on such disposition shall not expire prior to the expiration of three years from the date the Secretary or his delegate is notified by the taxpayer (in such manner as the Secretary or his delegate may by regulations prescribe) of the making or acquisition of another qualifying investment or the failure to make or acquire another qualifying investment, and

"(2) such deficiency may be assessed before the expiration of such three-year period notwithstanding the provisions of section 6212(c) or the provision of any other law or rule of law which would otherwise prevent such assessment."

(b) CLERICAL AMENDMENT.—The table of sections for such part III is amended by adding at the end thereof the following new item:

"Sec. 1040. Certain dispositions by nonprofit local business development corporations."

TITLE VIII—PRESERVATION OF SMALL BUSINESS INDEPENDENCE

SEC. 801. REFUNDS OF OVERPAYMENTS OF ESTIMATED INCOME TAX BEFORE END OF TAXABLE YEAR.

Section 6425(a)(1) (relating to time for filing application for adjustment of overpayment of estimated income tax by corporations) is amended by inserting after the first sentence thereof the following new sentence: "In the case of a corporation which is a small business concern (within the meaning of the Small Business Act), an application under this subsection may be filed at any time after a payment of estimated income tax for the taxable year has been made by it and on or before the 15th day of the third month following the close of the taxable year."

SEC. 802. DEBT-FINANCED CORPORATE ACQUISITIONS.

(a) REDUCTION IN PERMISSIBLE AMOUNT.—Section 279(a) (relating to interest on indebtedness incurred by a corporation to acquire stock or assets of another corporation) is amended by striking out "$5,000,000" and inserting in lieu thereof "$500,000".

(b) CORPORATE ACQUISITION INDEBTEDNESS.—Section 279(b) (relating to definition of corporate acquisition indebtedness) is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, an obligation of a corporation to repay loans made by a bank or other financial institution under a line of credit or similar financing arrangement shall be treated as an obligation evidenced by an evidence of indebtedness issued by such corporation."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the determination of the allowability of the deduction of interest paid or incurred with respect to indebtedness incurred after the date of the enactment of this Act.

SEC. 803. VALUATION OF UNLISTED SECURITIES FOR ESTATE TAX PURPOSES.

(a) VALUATION OF UNLISTED STOCK AND SECURITIES.—Section 2031(b) (relating to the valuation of unlisted stock and securities) is amended by striking out "which are listed on an exchange" and inserting in lieu thereof "whether or not listed on an exchange".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only with respect to estates of decedents dying after the date of the enactment of this Act.

SEC. 804. EXTENSIONS OF TIME FOR PAYING ESTATE TAX.

(a) Elimination of Requirement of Undue Hardship.—Section 6161(a)(2) (relating to extension of time for paying estate tax) is amended by striking out "undue" before "hardship".

(b) Effective Date.—The amendment made by subsection (a) shall apply only with respect to estates of decedents dying after the date of the enactment of this Act.

SEC. 805. AMALGAMATION OF INTERESTS IN CLOSELY HELD BUSINESSES FOR ESTATE TAX PURPOSES.

(a) INTEREST IN TWO OR MORE BUSINESSES.—Section 6166(d) (relating to special rule for interests in two or more closely held businesses) is amended by striking out "50 percent" each place it appears and inserting in lieu thereof "33⅓ percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only with respect to estates of decedents dying after the date of the enactment of this Act.

SEC. 806. STUDY AND RECOMMENDATIONS BY TREASURY DEPARTMENT WITH RESPECT TO PRESERVATION OF INDEPENDENT SMALL BUSINESS.

(a) The Secretary of the Treasury, with the assistance of the Small Business Analyst, shall study, and report thereon to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, the overall effect on the continuance and preservation of independent small businesses resulting from the application of the Federal income tax (including tax on income derived from the sale of capital assets and property used in a trade or business) and the Federal estate and gift taxes. Such report shall include recommendations for the elimination or modification of those provisions of the Internal Revenue Code of 1954 which assist, or provide an incentive for, the acquisition of independent small businesses by large corporations and which otherwise impede the continued independence of small business enterprises as an important segment of our economy.

(b) The report required by subsection (a) shall be submitted as soon as practicable, but not later than one year after the date of the enactment of this Act.

SECTION-BY-SECTION ANALYSIS OF THE SMALL BUSINESS TAX SIMPLIFICATION AND REFORM BILL

OVERALL ANALYSIS

The Small Business Tax Simplification and Reform Act of 1971 is the successor bill to S. 4039, introduced in the 91st Congress on June 30, 1970.

It is designed to present a comprehensive set of proposals for tax relief, affecting each stage of the life cycle of new, small, and growing and matured businesses.

REVENUE BALANCE

Extensive efforts have been made to present this legislation as balanced in the revenue sense, with slight, immediate, and long-term increases of tax revenues through minimally higher normal tax rates on giant corporations, and the cultivation of vigorous new small enterprises which will enlarge the tax base in the future.

Even for the largest corporations, the rates under this proposal would remain below the recent surtaxed corporate rates.

The revenue gains made possible by the rescaling of normal rates would make it possible to shift a small fraction of the corporate tax (about 1 percent) on the basis of the ability to pay. Corporations with earnings in excess of $1 million per year would be yielding commensurate benefits to new enterprise, small existing family and independent business, and firms willing to modernize to meet the terms of national and international competition.

TAX SIMPLIFICATION AND REFORM

To focus continuing professional attention on tax simplification, the bill also proposes institutional arrangements by way of 1) a standing intergovernmental committee on tax simplification, 2) a Business Advisory Council on which the small business community would be assured a significant voice, and 3) creation of an Office of Small Business Tax Analyst within the Treasury Department.

Several major studies of small business tax issues are requested so as to lay a basis for orderly simplification of the total internal revenue system as it applies to smaller firms.

ORGANIZATION OF THE BILL

This bill consists of 39 substantive sections grouped into 8 chapters, as follows:

TITLE I—TAX SIMPLIFICATION RELATING TO SMALL BUSINESS

Sec. 101. Intragovernmental committee on tax simplification for small business.

Sec. 102. Treasury Department small business tax analyst.

Sec. 103. New Internal Revenue Code chapter on small business.

Sec. 104. Revision of depreciation policy.

Sec. 105—Equalization of treatment of fringe benefits as between incorporated and unincorporated small businesses.

Sec. 106. Special study of differential effect of tax law changes on businesses of varying sizes.

Sec. 107. Frequency of collection of certain employment and excise taxes.

TITLE II—ADJUSTMENT OF CORPORATE NORMAL TAX

Sec. 201. Corporate normal tax rates

TITLE III—SPECIAL PROVISIONS TO ENCOURAGE ESTABLISHMENT OF NEW SMALL BUSINESS ENTERPRISES

Sec. 301. Exemption of net operating income of new small business corporations for first 5 years.

Sec. 302. Deduction of organizational expenses of partnership.

Sec. 303. Bad debt deduction for guarantors of obligations of, and lenders to, small business corporations.

Sec. 304. Losses on small business stock.

Sec. 305. Patronage benefits for qualified new community development cooperatives.

TITLE IV—PROVISIONS TO ASSIST SMALL BUSINESS GROWTH

Sec. 401. Increase in additional first-year depreciation allowance.

Sec. 402. Regulatory status for depreciation guidelines and elimination of reserve ratio test for small business.

Sec. 403. Partial restoration of investment credit for small business.

Sec. 404. 10-year carryover of small business net operating losses.

Sec. 405. Accumulated earnings tax.
Sec. 406. Amortization of expenditures incident to issuance of stock.
Sec. 407. Period for amortization of research and experimental expenditures.
Sec. 408. Multiple surtax exemptions for certain small business corporations under single family control.

TITLE V—PROVISIONS RELATING TO PARTNERSHIPS

Sec. 501. Guaranteed payments from partnership to partner.
Sec. 502. Closing of taxable year of partnership on death of partner.
Sec. 503. Termination of partnership.
Sec. 504. Limitation on partner's distributive share of losses.

TITLE VI—PROVISIONS RELATING TO SUBCHAPTER CORPORATIONS

Sec. 601. Increasing number of permissible shareholders.
Sec. 602. Broadening classes of permissible shareholders.
Sec. 603. Termination of election by majority.
Sec. 604. Termination of election—passive investment income.
Sec. 605. Termination of election—inadvertence.
Sec. 606. Carryover of disallowed deductions for corporation's net operating loss.

TITLE VII—BUSINESS DEVELOPMENT CORPORATIONS

Sec. 701. Reserves for losses on loans of business development corporations.
Sec. 702. Nonrecurring income of nonprofit local business development corporations.

TITLE VIII—PRESERVATION OF SMALL BUSINESS INDEPENDENCE

Sec. 801. Refunds of overpayments of estimated income tax before end of taxable year.
Sec. 802. Debt-financed corporate acquisitions.
Sec. 803. Valuation of unlisted securities for estate tax purposes.
Sec. 804. Extensions of time for paying estate tax.
Sec. 805. Amalgamation of interests in closely held businesses for estate tax purposes.
Sec. 806. Study and recommendations by Treasury Department with respect to preservation of independent small business.

SECTION-BY-SECTION ANALYSIS

TITLE I—TAX SIMPLIFICATION

SEC. 101. Intragovernmental Committee on Tax Simplification for Small Business.—The first substantive section creates a permanent standing committee of the Federal Government for the purpose of devoting continued attention to the simplification of the internal revenue system—including the Code, the regulations, instructions, procedures, and other publications relating to business taxation.

The membership of the Committee would include: representatives of the Secretary of the Treasury (for policy matters); Internal Revenue Service (for technical matters); Bureau of the Budget (for coordinating the paperwork aspects of IRS forms, in view of the Federal Reports Act) and the Small Business Administration to express the interests of the small business community.

The Committee would provide a forum for regular and periodic contact between the various Federal agencies concerned and the businessmen affected with sufficient formality to engage the attention of the press, the public, and the Congress. The proposed Advisory Council is intended to provide for an effective voice for small business by containing a delegation large enough to reflect the diversity of interests of small enterprise.

SEC. 102. Office of Small Business Tax Analysis at the Treasury Department.—S. 4039 proposed a position of Small Business Tax Analyst, which would be one official in the Treasury Department responsible for looking at tax problems primarily from the view of small business and the free enterprise system rather than the Government's interest in raising revenue. The 1971 bill would enhance this concept by constituting this function as an "Office of Small Business Tax Analysis" of which the Small Business Tax Analyst would be a part.

Such an office could provide a focus for assisting in the studies and reports proposed in this Act. Beyond this, a small business tax analyst could supply a continuity of effort required to assess the difficult and multifaceted problems raised by the impact of Federal, State, and local taxation on small business, competition, and the free enterprise system.

SEC. 103. Internal Revenue Code Chapter on New and Small Business.—The present Internal Revenue Code of 1954, organized mainly by subject matter, does contain subchapter S on one type of small business corporation. This section would have the Treasury consider a special title or chapter of the Code which consolidated and referenced those tax provisions relating particularly to new and small enterprise. This should be helpful to both non-tax-specialist attorneys and others counseling small firms, as well as to small businessmen, and prospective entrepreneurs. The 1971 section strengthens the emphasis on references to material contained elsewhere in the Code.

SEC. 104. Revision of Depreciation Policy.—Recent developments, such as abolition of the investment credit, call for a re-evaluation of the nation's depreciation policy from the viewpoint of the 90+% of firms which are small businesses. In addition to the specific proposals embodied in sections 401 and 402 of S. 4039, the bill called upon the Treasury Department for a comprehensive study of depreciation policies with particular attention to: the impact of recent legislation, including the Tax Reform Act of 1969 and such provisions of this legislation which may be enacted; the rapid advances in technology to which small business must adapt; and the practices of other industrialized nations. The Administration's task force study entitled "Business Taxation" of Sept., 1970, did not fulfill this need, since it did not contain any reference to the particular problems of small firms. The same small business problems remain, as well as others raised in the 1970 study, such as the possibility of eliminating salvage value from the computation for small firms.

The 1971 bill restates the request that the matter be reexamined in this context and that there be an early return of the results of this study to the Congress.

SEC. 105. Equalization of Benefits Among Incorporated and Unincorporated Businesses.—The Tax Reform Act of 1969 restricted retirement and pension benefits for small firms based upon comparability with unincorporated business. This section calls upon the Treasury to study the entire range of pension, retirement, health, medical, and insurance benefits in the larger context of what both corporations (including large corporate enterprise) and other forms of business are providing for their employees and executives.

TITLE II—ADJUSTMENT OF CORPORATE NORMAL TAX

SEC. 201. Corporate Normal Tax Rate.—The Tax Reduction Act of 1964 lowered tax rates for unincorporated business by approximately 20 percent; but for corporations where the bulk of the business is done, the reduction was only 10 percent. Although there was material relief for small business by reversal of the application of corporate normal and surtax rates, the same 2-step graduated structure was retained.

This title would effect a progressive reform in the entire corporate tax structure by providing for reductions in normal corporate tax rates for corporations earning less than $500,000 a year. From income of $500,000 to $1 million, the base rate of 22 percent would remain the same, but the effective rate of taxation would drop due to the reduced percentages in the lower brackets. As corporate earnings rose above $1 million per year the normal tax would incline slightly upward to a maximum of 24 percent for corporations earning over $1 billion annually.

In all, an 8-step graduated scale would bring corporate taxation more nearly into accordance with the principle of the ability to pay which has long been in effect for individual income taxes. The suggested rate schedule is as follows:

"(b) NORMAL TAX.—The normal tax is the amount determined in accordance with the following table:

"If the taxable income is:	The normal tax is:
Not over $50,000	20% of the taxable income.
Over $50,000 but not over $250,000.	$10,000, plus 21% of excess over $50,000.
Over $250,000 but not over $500,000.	$52,000, plus 21½% of excess over $250,000.
Over $500,000 but not over $1,000,000.	$105,750, plus 22% of excess over $500,000.
Over $1,000,000 but not over $10,000,000.	$215,750, plus 23% of excess over $1,000,000.
Over $10,000,000 but not over $100,000,000.	$2,285,750, plus 23½% of excess over $10,000,000.
Over $100,000,000 but not over $1,000,000,000.	$23,435,750, plus 23¾% of excess over $100,000,000.
Over $1,000,000,000	$237,185,750, plus 24% of excess over $1,000,000,000."

TITLE III—SPECIAL PROVISIONS TO ENCOURAGE ESTABLISHMENT OF NEW SMALL BUSINESS ENTERPRISES

SEC. 301. Exemption of Operating Income for three-year Period.—This section of S. 4039 introduced the concept that new enterprise should be encouraged by allowing freedom from Federal income taxation for a period of five years. The proposal was put forward as a partial equalizer for small firms which must compete with companies which have not only been established for many years, but which may have built up substantial financial resources during the period when there was little or no corporate taxation in this country. In S. 4039, the benefits of this section would have been restricted to persons entering a business for the first time, and who would be spending full time in the capacity of an owner-manager of an active trade or commercial business. A further limitation was to benefit only the operating income of the enterprise, excluding gains from security and real estate transactions, which would be subject to taxation in the regular manner.

The 1971 proposal repeats and strengthens these constraints in three ways: 1) a $1 million ceiling on exempt income; 2) a ban on "successor" businesses of any kind; and 3) a disqualification based on prior ownership of more than 5 percent of any business.

SEC. 302. [old]. In S. 4039, this provision offered new enterprises, as defined in section 301, a loss carry forward from the sixth to the fifteenth year. This section has been deleted in favor of a proposal for a uniform 10-year loss carry forward to be found in section 404 of the 1971 bill. Accordingly, sections 303–306 of S. 4039 have been renumbered sections 302–305, as follows:

SEC. 302. Amortization of Organization Expenses of Partnership.—This would extend to partnerships the option now enjoyed by

corporations, to amortize their organization expenses over 60 months, if they so desire.

SEC. 303. Bad Debt Deduction for Lenders to or Guarantors of Corporate Obligations.—This provision would equate the tax treatment of lenders to or guarantors of business obligations, whether the businesses are incorporated or not, by extending the ordinary loss rule presently applicable to unincorporated business lending.

SEC. 304. Losses on Small Business Stock—To update incentives to invest, directly in small business which are presently contained in the Code, this section would increase from $25,000 to $50,000 the amount of allowable losses resulting from the purchase of section 1244 stock.

A second provision of his section would expand the definition of a "small business corporation" authorized to issue such stock from $1 million to $1,500,000 in "equity capital" as defined by the section.

This subsection would have the effect of allowing previously ineligible corporations with equity capital of between $1 million and $1,500,000 to issue 1244 stock in the amount of $750,000 (compared with $500,000 under the present section) and to permit previously eligibile small business corporations to issue stock up to the $750,000 amount, if they are otherwise in compliance with the applicable rules.

Further provisions of section 305 would enlarge from 2 years to 5 the time within which a section 1244 plan must be executed and would preclude stock options to employees from disqualifying such a stock issue.

A new 1971 subsection would promote awareness of sec. 1244 benefits by newer firms by encouraging an entry on the tax return to bring the matter to the level of attention. Filing a copy of the plan with the return as optionally provided would have additional benefits of stabilizing its timing and content.

SEC. 305. Patronage Benefits for Certain New Cooperative Enterprise.—To encourage the formation of cooperatives which have so well enriched rural American life, this section would permit such a new cooperative to retain 100 percent of declared patronage refunds (rather than the current 90 percent) for the first 5 years of its existence on the condition that substantially all of the membership and patrons are persons of low income and reside within a limited geographic area.

TITLE IV—PROVISIONS TO ASSIST SMALL BUSINESS GROWTH

The eight sections of Title IV are designed to provide encouragement for modernization, efficiency, and cost reduction. It has been estimated that from ⅔ to ⅘ of all capital used in business is internally generated. There is wide agreement that small businesses must rely most heavily on retained earnings since it becomes progressively easier to employ sophisticated methods to attract external capital as a business increases in size and experience.

It is contemplated that these sections will be reviewed as more becomes known about the relative impact of the January 11, 1971, proposed depreciation revisions upon small business.

SEC. 401. Additional First-Year Depreciation Allowance.—This section would increase additional first-year depreciation from $10,000 to $20,000 in accordance with in-There is wide agreement that small business since the section was previously revised in 1958.

SEC. 402. Regulatory Status for Depreciation Guidelines and Elimination of Reserve Ratio Test for Small Business.—For the same purposes, this section of S. 4039 proposed that the liberalized depreciation guidelines contained in Revenue Procedure 62-61 more fully available to small businesses by elevating the status of that publication to a regulation pursuant to statute. This part of the section would not be affected when the January 11 proposal becomes effective, although the language initially fixing the length of guideline lives as those contained in the Revenue Procedure would be affected. The elimination of the reserve ratio test for firms designated as "small business" by the Small Business Administration would survive since the January 11 proposal carries an effective date of January 1, 1972, and this section would extinguish liability previous to that date.

SEC. 403. Partial Restoration of Investment Credit.—Every advanced industrialized nation has both a modernized depreciation system and investment incentive device. All of the 91 percent of small corporations accounted for less than ¼ of the investment tax credit, but its use by small business contributed greatly to the forward progress of the American economy through innovative investment.

The S. 4039 section would partially reinstate the 7 percent investment credit which was totally abolished in the Tax Reform Act of 1969, but would do so in a manner which would be highly tailored to reduce its cost and concentrate its benefits in areas which can do the maximum good for the economy. Corporate manufacturing would be allowed $50,000 worth of qualified investment. However, permissible investment for other corporations and individuals would be scaled down to $10,000 and $5,000 respectively. In each case there would be an appropriate income ceiling of $500,000, $100,000, and $50,-000, above which such high-income taxpayers would receive no benefits from the section.

The 1971 section eliminates any retroactive benefit from this section. It also adds a specific reference to equipment required by law such as pollution controls, which do not add to a firm's profits.

SEC. 404. 10-year Carryover of Small Business Net Operating Losses.—The section would extend the period and flexibility in use of loss carryover provisions for small business by allowing existing corporations to carry losses forward up to 10 years at their option. This 1971 formulation extends the S. 4039 section and is derived from the Administration's 1970 proposal, but with a more established definition of small businesses which are eligible.

SEC. 405. Accumulated Earnings.—In S. 4039 the first subsection would have raised the earnings credit in accordance with the costs of doing business, to a more realistic $150,000. This has been retained. The second subsection would have extended the Congressional intention of section 534, so that the burden of proof in all accumulation of earnings proceedings would be on the Commissioner of Internal Revenue after the taxpayer has filed an appropriate written statement.

A major change has been made to this provision. In accordance with the emphasis of this bill on growing businesses, this section adds a proposal that the Commissioner of Internal Revenue be given discretion to formulate standards by which expanding firms might quality for a credit of up to $250,000.

The subsection of S. 4039 on burden of proof has been retained so far as the application of subchapter G, Part I procedure to proceedings in any court, not just the Tax Court. The portion of subsection 405(b) of S. 4039 relating to ultimate burden of proof has been omitted.

SEC. 406. Amortization of Certain Securities Expenditures.—One of the most critical hurdles for a growing small business is selling its securities to the public. This section would allow the expenses of certain types of small business stock flotations, such as those under Regulation A and section 1244 of the Code, which are not otherwise deductible, to be amortized over a period of 60 months. A further helping provision in this vein would accord the same treatment for the expenses of an initial registration of a company's securities on a regional stock exchange. The 1971 bill specifies that this benefit would be available only to small businesses.

SEC. 407. Amortization of Research and Development Activities.—This provision would allow research and development expenses to be amortized beginning at the time they are made, rather than waiting until the taxpayer "first realizes benefits" from these expenditures.

SEC. 408. Multiple Surtax Exemptions Under Single Family Control.—In order to encourage opportunities for family ownership of business and eliminate discrimination presently in the law, this section would permit a limited number of surtax exemptions (up to 5) in the event members of a family are placed in proprietary positions where they have ownership of at least 50 percent of the stock (or other interest) and full time management of a separately incorporated unit of a family business.

TITLE V—PROVISIONS RELATING TO PARTNERSHIPS

SEC. 501. Guaranteed Payment to Partner.—This section is designed to avoid double taxation of guaranteed payments from a partnership to a deceased partner. At present a partnership interest is includable in gross estate in full, and payments from these same assets may now be taxed as distributive income of a person not considered a partner under section 707(c).

SEC. 502. Closing of Taxable Year at Death of Partner.—Additional flexibility in the affairs of the deceased partner would follow from this section, which would allow the closing of the partnership year for such a decedent at any of the following times: (1) normal close of the partnership year if there has been no prior sale, exchange, or liquidation of the partnership interest; (2) the date of any of the above described transactions; or (3) the day after the partner's death.

SEC. 503. Termination of Partnership.—This section would modify present section 708(b)(1)(B) which provides that a partnership will be considered terminated if there is a sale or exchange of 50 percent of the total partnership interest within a 12-month period. An exception would be provided for transactions among the partners themselves provided they have been members of the firm for at least 1 year.

SEC. 504. Limitation of Distributive Share of Losses.—This section would amend section 752 to permit a partner to deduct currently his share of partnership losses in excess of the adjusted basis of his partnership interests, in the event that the partner is unconditionally obligated for his share of such partnership losses.

TITLE VI—PROVISIONS RELATING TO SUBCHAPTER S CORPORATIONS

SEC. 601. Increase in Number of Permissible Shareholders.—This section would allow enlargement of the Subchapter S "tax-option" small business corporations in the following 3 ways: (1) initial shareholders could number 15, rather than the present 10; (2) shareholders in excess of this ceiling who take their stock by reason of heirship would not disqualify election; and (3) after 5 years, the number of permissible shareholders would increase to 25, broadening possibilities for motivating employees by way of stock options and for infusion of fresh capital for the expansion. The S. 4039 language has been clarified to limit the heirship exemption to the first generation of original share holders.

SEC. 602. Broadening Classes of Permissible Shareholders.—The classes of shareholders would also be expanded by this section to include: (a) trusts where stock passes pursuant to a will, and where the trust is used merely to convey the stock to a long-term eligible holder within 60 days; (b)

trusts where the entire income is taxable to the grantor; and (c) small business investment companies, subject to the elimination of the dividends-payed credit on such income.

SEC. 603. Termination by Majority of Shareholders.—Under the present law, a new shareholder can void the Subchapter S election for himself, the corporation, and all other shareholders. Under the rule proposed by this section, a new shareholder would stand on the same footing as all other shareholders, and any 51 percent of the stock ownership could revoke the election.

SEC. 604. Termination of Election—Passive Income.—This section provides additionally for nondisqualification of a Subchapter S corporation by reason of exceeding the limit of 20 percent passive income in a single year. The election privilege could still be lost pursuant to this proposal if the limit is exceeded in any 2 of 4 consecutive years.

SEC. 605. Termination of Election—Inadvertence.—This section would relieve considerable pressure on small business corporations in the event there has been a termination of status because of events beyond its control. If the corporation is able to establish that the termination was, in fact, inadvertent and can gain full compliance within 90 days of notification, its Subchapter S status would be preserved for future years. The S. 4039 language has also been clarified in this section.

SEC. 606. Carryover of Losses.—This section would equate carryover treatment of Subchapter S loans in excess of basis under section 1374(c) with those of partnerships under section 704(d). Thus, if the basis was rebuilt in a future year, the excess loss would become available as a current deduction.

TITLE VII—BUSINESS DEVELOPMENT CORPORATIONS

SEC. 701. Bad Debt Reserves of Business Development Corporation.—To encourage State and local development companies to extend long-term financing to non-bankable new enterprises, such companies would be permitted a bad-debt reserve deduction up to 10 percent of outstanding loans.

SEC. 702. Non-recurring Income of Business Development Corporations.—Since these institutions are in a unique position to foster community development by taking long-term risks with private capital, non-recurring income of certain types would be insulated from tax upon the condition that the proceeds from such unusual transactions are re-invested within the area of service and no part of these proceeds inures to the benefit of any individual or private institution.

The S. 4039 section was tightened by the additional requirement that the companies to be benefited must not compensate any person performing services for it. The original section has also been liberalized to allow a period of three, rather than two, years for reinvestment in accordance with the long lead time in transactions of this kind.

TITLE VIII—PRESERVATION OF SMALL BUSINESS INDEPENDENCE

SEC. 801. Quarterly Adjustment of Estimated Tax.—In the event corporations suffer financial reverses in 1 or 2 quarters, they cannot now recover amounts paid to the Federal Government in estimated taxes. This section would allow recovery of such amounts to the extent the newly estimated tax for the year is less than the amount already paid in. These readjustments could occur at each quarter.

SEC. 802. Debt-Financed Corporate Acquisitions.—The objective of this section is to afford a practical means of discouraging mergers by disallowing interest deductions beyond $500,000 on any loan for acquisition purposes. It would be clear that financing through banks and other financial institutions, whether by a line of credit or otherwise, would be covered by this section, as well as debenture financing.

SEC. 803. Valuation of Stock of Closely-Held Corporations.—A problem of disposition of any interest in a close-held business has been valuation. The present law provides for comparison only with companies listed on a stock exchange which are often more established than those which are not. This proposal would permit valuation comparisons with any similar company whether or not it is listed on an exchange.

SEC. 804. Extensions of Time for Paying Estate Tax.—A new section 804 aims at administration of the estate tax which is more congenial to allowing closely-held businesses to remain in family hands following death of a major stockholder. To this end, it changes the standard of "undue hardship" (required to qualify for 10-year estate tax installments) to "hardship," which should be easier to meet.

SEC. 805. Amalgamation of Interests in Closely-Held Businesses.—At present, under section 6161(d) it is required that a decedent own at least 50 percent of a business in order that its value be eligible for aggregation to meet the tests allowing installment payment of estate tax attributable to such business interests. This provision would make it easier for businessmen to qualify for aggregation by permitting addition of interests exceeding 33⅓ percent of a business toward the totals.

SEC. 806. Recommendations as to Preservation of Independent Small Business.—The final provision would have the Treasury conduct a comprehensive examination of the converging pressures of income taxes, capital gains tax, reorganization rules, and estate and gift taxes which are causing so many small businesses to sell or merge out of existence rather than continue in independent form. The section calls for a report and recommendations which would improve the tax climate at this stage of the business life cycle for preservation of independent enterprises.

Technical changes.—In sections 405, 406, 701, and 802 effective dates have been changed to transactions after the date on which the the provision may be enacted into law.

The title of the bill has been changed to reflect the current year, and references to the Bureau of the Budget in Title I have been changed to "Office of Budget and Management" to reflect executive reorganization to date.

SENATOR RANDOLPH ADVOCATES TAX RELIEF FOR SMALL BUSINESS—JOINS SENATOR BIBLE ON TAX REFORM BILL

Mr. RANDOLPH. Mr. President, it is my privilege to again cosponsor the small business tax reform bill reintroduced today by Senator BIBLE.

I believe the sponsors of this measure, which was originally offered June 30, 1970, have been doing what we promised to do. The original bill provided the most comprehensive framework for small business tax relief that has come before Congress. As we indicated, the intervening months have been used to explain the legislation to dozens of organizations and thousands of small businesses. This has allowed us to revise the legislation and make suggested improvements. As a result, I feel the proposal has been strengthened.

Also, after better understanding has come increased support. I believe that it is a good sign in that a companion bill will be offered today in the House of Representatives by the chairman of the House Small Business Committee, Mr. EVINS, and more than a dozen of his colleagues.

Mr. President, more than 90 percent of the businesses in my own State of West Virginia are small businesses. Perhaps we in Appalachia are even more in need of new enterprise to take up the slack left by the downturn we have been experiencing in our economy.

This bill offers the prospect of reenforcing our entire economic system by giving a needed break to the small businessman. I strongly support this principle and hope the merits of this bill will be considered by the 92d Congress.

By Mr. MILLER:

S. 1617. A bill to amend section 2771 of title 10, United States Code, relating to final settlement of accounts of deceased members of the Armed Forces. Referred to the Committee on Armed Services.

Mr. MILLER. Mr. President, I introduce for printing and appropriate reference a bill to cancel any indebtedness for excess leave of a serviceman who is killed in action. I introduced the same bill as S. 4099 on July 17 of last year, and my introductory statement appears on page 24821 of the CONGRESSIONAL RECORD of that day. The situation which prompted the bill is one which I believe needs legislative correction. It involves an Iowa serviceman who had used 9 days more leave than he was entitled to. When he was subsequently killed in action in Vietnam, his final paycheck was reduced to recoup the excess leave. The money involved is not really important; it is the principle of the matter. To make such a deduction amounts almost to an insult to the surviving family of the serviceman.

Under the present law, the Secretary of the Army has the authority to cancel an enlisted member's indebtedness to the United States. However, the Comptroller General has ruled that this authority may be exercised only as to a member who is on active duty and it may not be used for the remission or cancellation of an enlisted man's indebtedness to the Government after his status as an enlisted man has terminated upon his death.

The bill I am introducing would simply provide that a setoff may not be made against an amount for pay and allowances due a serviceman who is killed by enemy action. This bill would be retroactive to January 1, 1964, which reflects Executive Order 11216 by which President Johnson designated Vietnam and the waters adjacent thereto as a combat zone for the purposes of section 112 of the Internal Revenue Code.

The bill covers only servicemen killed by "hostile action." It has been suggested that it ought to be expanded to cover those deaths by nonhostile action also. I have considered this point but have decided to leave the bill as originally introduced. There might be some situations where it would seem equitable to cover a serviceman who dies by nonhostile means. I can also think of situations where this would not be equitable.

I do believe, however, that the Armed Services Committee might wish to explore this particular point.

I urge that prompt consideration be given to this measure.

By Mr. SPARKMAN (for himself and Mr. TOWER) (by request):

S. 1618. A bill to provide Federal revenue to State and local governments and afford them broad discretion in carrying out community development activities and to help States and localities to improve their decisionmaking and management capabilities. Referred to the Committee on Banking, Housing and Urban Affairs.

COMMUNITY DEVELOPMENT ACT OF 1971

Mr. SPARKMAN. Mr. President, I introduce for myself and the distinguished senior Senator from Texas (Mr. TOWER) the administration's proposed Community Development Act of 1971 transmitted to the Senate on April 14, 1971, by Hon. George Romney, Secretary of the Department of Housing and Urban Development.

This bill has two titles. Title I would carry out the President's proposed special revenue sharing plan for urban community development and title II would establish a new program of Federal assistance to State and local governments to help improve local planning and management capabilities.

The plan for community development revenue sharing is part of the President's overall plan to shift Federal assistance away from narrow categorical grant programs into broad revenue-sharing areas within which local governments would have maximum flexibility for spending stipulated Federal funds distributed according to a set formula.

Community development is one of six broad areas which have been designated by the President for special revenue-sharing assistance. The other five are rural community development, education, manpower training, law enforcement, and transportation. According to the President's message, the total for the first full year in special revenue sharing would be $11 billion—of which urban community development would get $2 billion. The bill, however, provides no set amount but merely requests authorization to appropriate such sums as may be necessary. It provides a formula for distributing the appropriated sum among local government units.

Under the bill I am introducing today, four existing categorical grant urban programs would be consolidated into a single program. Cities would be authorized to spend their alloted money as they see fit, provided it is used for community development. Community development activities would be basically limited to those now under the existing four categories to be eliminated. These are urban renewal, model cities, water and sewer grants, and rehabilitation loan programs. The bill lays down the terms for phasing out these existing programs.

The effective date for the new program would be January 1, 1972. In the meantime existing programs would continue at current funding levels, according to the President's plan.

The second part of the bill I am introducing would establish an expanded Federal program of planning assistance to States and local governments. The 701 comprehensive planning grant program of 1954 would be replaced with an expanded grant program with a new emphasis on the creation of a comprehensive management process for State, county and other local governmental units. The purpose would be to develop more efficient local government units, linking together planning and action not just in the community development field but in all fields of local governmental responsibility. As in title I of the bill, maximum discretion would be given to local officials in determining how this planning and management assistance would be utilized.

I am introducing this bill to carry out the President's request to Congress. I have not had time to study it in detail and have not made up my mind about supporting each of its various provisions.

I am in sympathy with the consolidation of the many narrow categorical grant programs proposed by the bill and I believe the Congress will support the elimination of the many detailed supervisory practices now used by HUD in the administration of urban development programs. However, considered attention must be given to the abandonment proposed by the bill of many Federal statutory requirements which were written into the existing law because localities, being subject to narrow local pressures, failed to use Federal funds as intended by the programs.

I also have some qualms about the formula for distribution of Federal funds to local governments. I fear that many cities now actively moving ahead with urban development programs will find themselves shortchanged by an arbitrary formula which puts deserving cities whose leaders have acted to solve their problems with initiative and perseverance on the same par with other units of government which, up to now, have shown little interest in these programs. The administration has promised to a "hold harmless" procedure to eliminate possible reductions in Federal funds for active cities now in the program but the administration bill, which I am introducing, has no such requirement.

I am also disturbed about the failure of the bill before us to provide adequately for small cities outside metropolitan areas. The bill seems to imply such cities would only receive assistance at the discretion of the HUD Secretary to the extent there are funds left over after distributions to the larger cities.

There are other items that have come to my attention that the committee will need to work on both for clarification and to insure equity so that Federal funds will be fairly distributed to all interested communities throughout the Nation.

I have reservations also on title II of the bill which would repeal the very popular 701 planning assistance program. I have no objection to consolidating the many existing provisions now in section 701 but I am concerned that the new substitute has failed to include several important provisions added by congressional initiative in recent years. Furthermore, as desirable as management programs may be, the new title gives such decided emphasis to management assistance that I am fearful that the traditional grant program for land-use and physical planning may be seriously neglected.

I understand that the administration intends to send the Congress other housing proposals at a later date. Once these are received and with a reasonable period allowed for public digestion of the legislative proposals, the committee will proceed to have hearings.

By the time hearings are completed, the committee should have the information it needs to recommend to the Senate the adoption of a new urban development program such as the President's revenue sharing plan or the amending of existing programs with new funding provisions.

The common fault of our Federal efforts to help cities is the lack of a sustained and dependable level of funding. The off again, on again, stop and go Federal funding experience has done more harm and wasted more Federal funds than we will ever know. It seems we are constantly changing the rules in the middle of the game. Some have accused the Federal Government of intentionally changing laws and regulations to take the pressure off funding shortages.

Whatever we do this year, I hope that we try to solve this one deficiency. Once Federal policy is developed to provide Federal funds to aid cities, the Government should stick to its promises and cities should be able to plan in advance.

I ask unanimous consent that the bill and section-by-section summary thereof be printed at this point in my remarks.

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

S. 1618

A bill to provide Federal revenues to State and local governments and afford them broad discretion in carrying out community development activities and to help States and localities to improve their decision-making and management capabilities

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 "Community Development Act of 1971".

TITLE I—URBAN COMMUNITY DEVELOPMENT

SHORT TITLE

SEC. 101. This title may be cited as the "Urban Community Development Revenue Sharing Act of 1971".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 102. The Congress finds and declares that—

(1) The Nation's welfare requires an improved system of Federal assistance for community development which will preserve and enhance the physical and social environment and improve the quality of life in the Nation.

(2) The delivery of effective community development programs and activities is essentially a local responsibility and there is a need to strengthen the capacity of units of general local government and States to deal with community problems relating to development, revitalization, and growth.

(3) The effectiveness of community development would be improved by making re-

sources for such purposes available to units of general local government and States to use with broad discretion in evaluating their community development needs and allocating resources to meet those needs.

(4) The Federal Government should make available to units of general local government and States a wide range of assistance and support to improve the effectiveness of community development activities.

It is therefore the purpose of this title to establish a flexible and improved system of Federal assistance by sharing Federal revenues, designed to promote sound and equitable community development, revitalization, and growth. The Federal assistance is intended to be provided in support of community development activities which contribute to—

(1) improving the quality, organization, and accessibility of public services for all citizens;

(2) the elimination and prevention of urban slums, blight, and deterioration;

(3) economic and desirable land uses;

(4) the provision of housing, partciularly for low and moderate income individuals and families, sufficient to meet community needs and appropriately located in relation to community and commercial facilities and job opportunities;

(5) the development of properly planned community facilities and public improvements;

(6) the preservation or restoration of properties and areas of special value for historic reasons;

(7) the conservation and enhancement of both the natural and urban environment;

(8) the provision of adequate recreational opportunities; and

(9) increased order and efficiency in community development and revitalization through the application of well-considered priorities to the investment of Federal, State, and local resources.

DEFINITIONS

SEC. 103. (a) As used in this title—

(1) The term "unit of general local government" means any city, municipality, county, town, township, parish, village, or other general purpose political subdivision of a State; a consortium of such units of general local government recognized by the Secretary; and the District of Columbia.

(2) The term "State" means any State of the United States; the Commonwealth of Puerto Rico; Guam; and the Virgin Islands.

(3) The term "metropolitan areas" means the standard metropolitan statistical areas, as established by the Office of Management and Budget.

(4) The term "metropolitan cities" means cities within metropolitan areas which are central cities of metropolitan areas, as defined and used by the Office of Management and Budget, or which are cities having a population of 50,000 or more.

(5) The term "population" means the total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(6) The term "amount of poverty" means the number of persons (or alternatively, the number of families and unrelated individuals) whose incomes are below the poverty level, as determined pursuant to criteria provided by the Office of Management and Budget, and based on data referable to the same point or period in time.

(7) The term "amount of overcrowding" means the number of housing units with 1.01 or more persons per room based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(8) The term "extent of housing deficiencies" means the number of housing units lacking some or all plumbing facilities based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(9) The term "Secretary" means the Secretary of Housing and Urban Development.

(b) Where appropriate, the definitions in subsection (a) shall be based on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget on the date of enactment of this Act and 90 days prior to the beginning of each subsequent fiscal year. The Secretary may by regulation change or otherwise modify the definitions in subsection (a) in order to reflect any change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

COMMUNITY DEVELOPMENT ACTIVITIES ELIGIBLE FOR ASSISTANCE

SEC. 104. (a) Community development activities assisted under this title may include—

(1) acquisition of real property (including air rights, water rights, and other interests therein) which is (i) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth, (ii) necessary for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources and scenic areas, the provision of recreational opportunities, or the guidance of urban development, (iii) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title, or (iv) for other public purposes;

(2) relocation payments and assistance for individuals, families, businesses, and farm operations displaced by community development activities;

(3) clearance, demolition, removal, and rehabilitation of buildings and improvements (including financing rehabilitation of privately owned properties when incidental to other activities);

(4) acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements—including water and sewer facilities, neighborhood facilities, historic properties, utilities, streets, street lights, foundations and platforms for air right sites, pedestrian malls and walkways, parks, and playgrounds;

(5) elimination, by code enforcement and other means, of harmful physical conditions constituting a danger to public health and safety; and

(6) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes.

(b) In addition to any other authority provided under subsection (a) or otherwise, community development activities may include the types of activities for which supplemental grants are authorized under title I of the Demonstration Cities and Metropolitan Development Act of 1966.

AUTHORIZATION OF APPROPRIATIONS

SEC. 105. For the purpose of carrying out this title, there are authorized to be appropriated without fiscal year limitation such sums as may be necessary for each fiscal year.

ALLOCATION AND DISTRIBUTION OF FUNDS

SEC. 106. (a) Of the amounts provided from appropriations authorized by section 105 for any fiscal year, at least 80 per centum shall be allocated by the Secretary for special revenue sharing payments for all metropolitan areas, as provided by subsection (b).

(b) (1) The Secretary shall allocate for each metropolitan area an amount which bears the same ratio to the allocation for all metropolitan areas as the average of the ratios between—

(A) the population of the metropolitan area and that of all metropolitan areas;

(B) the amount of poverty in the metropolitan area and that in all metropolitan areas;

(C) the amount of overcrowding in the metropolitan area and that in all metropolitan areas; and

(D) the extent of housing deficiencies in the metropolitan area and that in all metropolitan areas.

(2) From the amount allocated to each metropolitan area, the Secretary shall distribute to each metropolitan city within that area special revenue sharing payments, in an amount which bears the same ratio to the allocation for all metropolitan areas as the average of the ratios between—

(A) the population for the metropolitan city and that of all metropolitan areas;

(B) the amount of poverty in the metropolitan city and that in all metropolitan areas;

(C) the amount of overcrowding in the metropolitan city and that in all metropolitan areas; and

(D) the extent of housing deficiencies in the metropolitan city and that in all metropolitan areas.

(3) The remainder of the allocation for each metropolitan area shall be distributed by the Secretary as special revenue sharing payments to units of general local government within that metropolitan area, taking into consideration such factors as population, amount of poverty, amount of overcrowding, extent of housing deficiencies, and other social and fiscal conditions prevailing in the metropolitan area. Any portion of the remainder of the allocation for each metropolitan area undistributed at the end of the fiscal year in which it was allocated shall remain available for use within that metropolitan area.

(c) Any other funds available for any fiscal year to carry out this title may be distributed by the Secretary as special revenue sharing payments to units of general local government and States for community development activities, subject to such terms and conditions as he may prescribe. Until such time as a metropolitan city is eligible to receive funds and carry out activities as provided by this title or in the event that such a city refuses to accept such funds, the special revenue sharing payments which it would have received under subsection (b) (2) shall be added to the funds available for distribution by the Secretary under this subsection.

(d) In addition to appropriations authorized by section 105, there are authorized to be appropriated without fiscal year limitation such sums as may be necessary for distribution by the Secretary under subsection (c) to cities having a population of less than 50,000.

(e) All computations and determinations by the Secretary under this section shall be final and conclusive.

PAYMENTS TO RECIPIENTS

SEC. 107. The amounts appropriated and allocated pursuant to this title shall be paid to the recipients at such intervals and in such installments as the Secretary may determine, taking account of the objective that the time elapsing between the transfer of funds from the United States Treasury and the disbursement thereof by a recipient shall be minimized: *Provided*, That the Secretary shall, with the concurrence of the Director of the Office of Management and Budget, prescribe regulations for the purpose of avoiding an inordinate rise in Federal outlays in fiscal years 1972, 1973, and 1974 resulting from concurrent disbursements pur-

suant to (a) obligations incurred under the statutory provisions replaced by this title, and (b) revenue shared under this title.

STATEMENT OF COMMUNITY DEVELOPMENT ACTIVITIES

SEC. 10.8 Prior to the receipt of any funds under this title for any fiscal year commencing with fiscal year 1973 (and at least two months prior to the beginning of the appropriate fiscal year), each recipient of funds under this title shall publish and make available to the Secretary (and, in the case of recipient units of general local government, to the Governor of the State in which they are located, as well) a statement of community development objectives and projected uses of funds. The purpose of such statement shall be to permit public examination and appraisal of community development activities carried out under this title, to enhance the public accountability of recipients of shared Federal revenues, and to facilitate coordination of activities at different levels of government. The statement shall reflect the degree to which activities assisted under this title relate to State and areawide programs and activities for community development.

RECORDS, AUDIT AND REPORTS

SEC. 109. (a) All revenue shared with recipients under this title shall be properly accounted for as Federal funds in the accounts of such recipients.

(b) In order to assure that revenue shared under this title is used in accordance with the provisions of this title, each recipient shall—

(1) use such fiscal and accounting procedures as may be necessary to assure (i) proper accounting for payments received by it and (ii) proper disbursement of such amounts;

(2) provide to the Secretary, on reasonable notice, access to, and the right to examine any books, documents, papers, or records as he may reasonably require; and

(3) make such reports to the Secretary as he may reasonably require.

RECOVERY OF FUNDS

SEC. 110. (a) If the Secretary determines after giving reasonable notice and opportunity for hearing that a recipient has failed to comply substantially with the provisions of this title, he shall—

(1) refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; or

(2) notify the recipient that if corrective action is not taken within 60 days from the date of such notification, revenues shared with it will be reduced in the same or succeeding fiscal year by an amount equal to the amount of funds which were not expended in accordance with the provisions of this title; or

(3) take such other action as may be provided by law.

(b) When a matter is referred to the Attorney General pursuant to subsection (a)(1), the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(c)(1) Any recipient which receives notice of reduction of revenues shared, under subsection (a)(2) may, within 60 days after receiving notice of such reduction, file with the United States Court of Appeals for the Circuit in which such recipient is located or in the United States Court of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in litigation.

(2) The Secretary shall file in the Court the record of the proceeding on which he based his action, as provided in section 2112 of title 28 of the United States Code. No objection to the action of the Secretary shall be considered by the Court unless such objections has been urged before the Secretary.

(3) The Court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record. The Secretary may modify his findings of fact, or make new findings, by reason of the new evidence so taken and filed with the Court, and he shall also file such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole, and shall also file his recommendations, if any, for the modification or setting aside of his original action.

(4) Upon the filing of the record with it, the jurisdiction of the Court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28 of the United States Code.

NONDISCRIMINATION

SEC. 111. Shared revenues under this title shall be considered as Federal financial assistance within the meaning of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

RELOCATION COSTS

SEC. 112. Notwithstanding section 211 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601), no Federal contribution in addition to shared revenues under this title shall be made to recipients for costs incurred in providing relocation payments and assistance for those displaced by community development activities assisted under this title.

LABOR STANDARDS

SEC. 113. All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with revenues shared under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5): *Provided*, That this section shall apply to the construction of residential property only if such residential property is designed for residential use for twelve or more families. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c)).

INTERSTATE AGREEMENTS

SEC. 114. The consent of the Congress is hereby given to any two or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative effort and mutual assistance in support of community development activities assisted under this title as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

MATCHING GRANTS

SEC. 115. Shared revenues under this title may be used by a recipient as matching shares for Federal grant programs which provide assistance for community development activities.

GENERAL PROVISIONS

SEC. 116. (a) The Secretary shall prescribe such rules, regulations, and standards as may be necessary to carry out the purposes and conditions of this title.

(b) The Secretary shall include an evaluation of the effectiveness of this title in his annual report to the President on Departmental activities required by section 8 of the Department of Housing and Urban Development Act.

EFFECT DATE

SEC. 117. The provisions of this title shall be effective on January 1, 1972. After such effective date, no new grants or loans may be made pursuant to title I of the Housing Act of 1949, section 312 of the Housing Act of 1964, section 702 of the Housing and Urban Development Act of 1965, and title I of the Demonstration Cities and Metropolitan Development Act of 1966, except with respect to projects or programs for which funds have been committed on or before December 31, 1971.

APPROPRIATION FOR LIQUIDATION OF URBAN RENEWAL CONTRACTS

SEC. 118. Section 3689 of the Revised Statutes, as amended (31 U.S.C. 711), is further amended by adding the following new paragraph at the end thereof: "(22) For payments required from time to time under contracts entered into pursuant to section 103 (b) of the Housing Act of 1949, as amended, with respect to projects or programs for which funds have been committed on or before December 31, 1971 and for which funds have not previously been appropriated."

CONFORMING AND TECHNICAL AMENDMENTS

SEC. 119. (a) Section 217 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) is amended—

(1) by striking out "or" after "Housing Act of 1949, as amended," and

(2) by adding after "Demonstration Cities and Metropolitan Development Act of 1966" the following: ", or as a direct result of any community development activity assisted under the Urban Community Development Revenue Sharing Act of 1971".

(b) The Secretary is authorized to transfer the assets and liabilities of any superseded or nonactive program of housing or urban development to the revolving fund for liquidating programs established pursuant to title II of the Independent Offices Appropriation Act of 1955 (Public Law 81–428; 68 Stat. 272, 295).

TITLE II—STATE AND LOCAL PLANNING AND MANAGEMENT PROGRAMS

STATEMENT OF FINDINGS AND PURPOSE

SEC. 201. The Congress hereby finds and declares—

(1) that the ability of our Federal system of government to respond effectively to the needs of all citizens depends upon the strength and capabilities of Federal, State and local governments;

(2) that the Federal aid system has not given sufficient recognition to the need to work through and to strengthen elected officials of State and local general purpose governments and regional combinations thereof;

(3) that State and local governments must be aided in developing their planning and management capabilities if they are to assume their proper responsibilities in the Federal system and if the fullest effectiveness of Federal funds expanded through revenue sharing is to be achieved;

(4) that previous Federal programs to improve State and local government capabilities have tended to be limited to specific functional areas and individual agencies and have not been directed at strengthening the overall capability of State and

local officials to plan and make decisions and to manage their affairs; and

(5) that basic reliance should be placed on State and local resources to support the improvement of State and local planning, decision making, and management capabilities, but the Federal government should provide additional assistance in order to strengthen the Federal system and promote the welfare of all citizens.

It is therefore the purpose of this title to strengthen general purpose units of government and regional combinations thereof at the State and local levels to enable them to use their own and shared revenues more effectively to cope with complex problems in a manner responsive to the economic and social needs and desires of all affected citizens. To promote this purpose Federal assistance will be provided to States and localities undertaking planning and management programs which lead to more effective resource allocation.

DEFINITIONS

SEC. 202. As used in this title—

(1) "Secretary" means the Secretary of Housing and Urban Development;

(2) "State" means any State of the United States, the Commonwealth of Puerto Rico, Guam and the Virgin Islands;

(3) "Locality" includes any city, county or other unit of general local government, the District of Columbia, any territory or possession of the United States, or metropolitan or other multi-jurisdictional area which the Secretary, guided by any criteria in an applicable State planning and management program, determines forms an economic and socially related development region, taking into account such factors as present and future population trends and patterns of urban growth, location of transportation corridors, facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities; and

(4) "Governmental agency" means (1) an Indian tribe or organization determined by the Secretary to have governmental characteristics and (2) an organization, including a nonprofit organization composed or predominantly composed of elected public officials, which meets State standards and criteria, prescribed pursuant to section 204 or, in the absence of such standards and criteria, an areawide agency designated pursuant to title II of the Demonstration Cities and Metropolitan Development Act of 1966 or title IV of the Intergovernmental Cooperation Act of 1968, which is organized to deal with matters of governmental concern to two or more public bodies or units of government.

PLANNING AND MANAGEMENT PROGRAMS GENERALLY

SEC. 203. (a) Planning and management programs assisted under this title shall be designed by the State or locality to meet its own particular needs and to improve capabilities of elected officials for developing, implementing, and evaluating policies, programs, and projects in a balanced manner that will further the purpose of this title. Activities which may be supported under this title are those which (1) will aid in the attainment of specified State or local objectives relating to governmental operation, land use, housing, development, resource management or areawide and intergovernmental coordination and (2) are carried out in a manner which assures periodic examination by States or localities of methods and objectives as information becomes available on the social, economic and environmental consequences of program activities.

(b) The authorities provided in this title shall be administered in such a manner as (1) to recognize fully the rights, powers, and responsibilities of State and local governments, and (2) to allow for innovation and diversity on the part of State and local governments in the design and implementation of their planning and management programs.

STATE PLANNING AND MANAGEMENT PROGRAMS

SEC. 204. (a) State planning and management programs shall be consistent with the provisions of sections 203 and, in addition to the activities specified in section 205 may include (1) a Statewide development plan which seeks to integrate all important elements of community development (including land use) and which may include designation of potential growth areas and new community development sites, and (2) standards for determining which communities, or groups of communities, should be considered together as a single locality for purposes of establishing and carrying out local and areawide programs in support of purpose of this title together with criteria and procedures for measuring the adequacy of those programs and for determining whether they, and other significant local actions and projects, are consistent with the State program as developed pursuant to this section;

(b) States may undertake the activities set forth in Section 205 with respect to State governments or on behalf of localities or groups of localities, including areawide agencies, within the State. States also may make grants to localities or groups of localities, including areawide agencies, to support activities set forth in Section 203, using funds received under this title.

PROGRAM ACTIVITIES

SEC. 205. Activities carried on in formulating, or as part of, a planning and management program, and which may qualify for assistance as provided in this title, include the following:

(1) improving governmental systems and operations including revenue and resource allocation systems and methods for obtaining effective public participation in policy decisions;

(2) improving governmental structures, authorities, and coordinating mechanisms for dealing with the economic, social, and environmental complexities of modern society, including expansion of the role of elected executive officials and general units of government;

(3) establishing objectives, evaluating programs for achieving these objectives, and providing for program balance and coordination in response to State and local needs and priorities;

(4) formulating policies and plans governing the use, development, and conservation of land, and developing and carrying out supporting or implementing procedures;

(5) identifying and evaluating needs for housing, facilities and services, and formulating specific programs for meeting the needs so identified;

(6) providing (directly or through grants or contracts) planning, technical assistance, information or advisory services to communities and agencies needing such assistance or services in connection with activities related to the purpose of this title;

(7) participating in organizations for joint or common governmental or governmental and private action, in solving problems of community revitalization and growth; and

(8) other activities or projects, consistent with the purpose of this title which pertain to the coordination, regulation, modernization or improved implementation, management or control of governmental functions.

AUTHORITY TO MAKE GRANTS

SEC. 206. (a) The Secretary may make grants, as provided in this section, to assist States and localities in formulating, and carrying out the activities set forth in section 205. In making the initial distribution of funds among States and localities, the Secretary should take into consideration such factors as the applicant's population, social and economic conditions, special opportunities to improve the workings of government, unique developmental problems, and other factors consistent with the purposes of this title. In determining whether and on what conditions to continue assistance to any program initially approved, the Secretary shall consider the degree to which previous assistance has been effectively used by the applicant State or local government.

(b) Grants may be made under this title to States, cities and, where consistent with the provisions of State planning and management programs or where the Secretary finds it necessary for carrying out the purposes of this title, to other governmental subdivisions, and to metropolitan, regional, or other governmental agencies.

(c) The Secretary shall not require any matching or other expenditure of State or local funds as a condition to making grants under this title.

CONDITIONS AND ADMINISTRATION OF GRANTS

SEC. 207. Grants made under this title may be used, subject to regulations and conditions prescribed by the Secretary, for any activities made eligible by the provisions of this title; but such regulations shall provide that grant assistance not be used to defray the cost of the acquisition, construction, repair or rehabilitation of, or the preparation of engineering drawings or similar detailed specifications for, specific housing, capital facilities or public works projects.

INTERSTATE AGREEMENTS

SEC. 208. The consent of the Congress is hereby given to any two or more States to enter into agreement or compacts, not in conflict with any law of the United States, for cooperative effort and mutual assistance in support of planning and management programs adopted under this title as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreement and compacts effective.

FEDERAL CONSULTATION AND COOPERATION

SEC. 209. (a) The Secretary shall consult with the heads of other Federal departments and agencies having responsibilities related to the purpose of this title, including responsibilities connected with the economic development of rural and depressed areas, and the protection and enhancement of the Nation's natural environment, with respect to (1) general standards, policies and procedures to be followed in its administration; and (2) particular grant actions or approvals which the Secretary believes to be of special interest or concern to one or more of such departments and agencies.

(b) Funds made available under any Federal assistance program for projects or activities approved as part of, or in furtherance of, a planning and management program assisted under this title may be used jointly with funds made available for such projects or activities under any other Federal assistance program, subject to regulations prescribed by the President. Such regulations may include provisions for common technical or administrative requirements where varying or conflicting provisions of law or regulations would otherwise apply, for establishing joint management funds and common non-Federal shares, and for special agreements, or delegations of authority, among different Federal agencies in connection with the supervision or administration of assistance. Such regulations shall in any case include appropriate criteria and procedures to assure that any special authorities conferred, which are not otherwise provided for by law, shall be employed only as necessary to promote effective and efficient administration and in a manner consistent with the protection of the Federal interest and program purposes or statutory require-

ments of a substantive nature. For purposes of this section, the term "Federal assistance program" shall have the same meaning as under the Intergovernmental Cooperation Act of 1968.

(c) The Secretary may, as necessary or appropriate and with the approval of the President, delegate any of his powers under this Act to the heads of other Federal agencies and authorize the redelegation thereof, subject to such conditions or provisions as may be appropriate to assure effective coordination between the powers so delegated and other powers or functions retained by the Secretary.

TECHNICAL ASSISTANCE

SEC. 210. (a) The Secretary may provide, directly or through contracts, grants or other arrangements, technical assistance in the formulation or implementation of planning and management programs.

(b) Grant funds made available under this title may be used, subject to such limitations as the Secretary may prescribe, for the purpose of procuring specialized or technical services available pursuant to section 302 of the Intergovernmental Cooperation Act of 1968, and the Secretary is authorized directly to procure such services on behalf of any State or political subdivision which could receive or participate in assistance provided under this title, and the heads of other Federal agencies are authorized to provide such services.

APPROPRIATIONS

SEC. 211. For the purpose of carrying out this title, there are hereby authorized to be appropriated without fiscal year limitation such sums as may be necessary.

REPEALING AND TRANSITION PROVISIONS

SEC. 212. (a) In addition to amounts authorized and appropriated under section 211, appropriations available for carrying out section 701 of the Housing Act of 1954 shall be available until expended for the purpose of carrying out this title. The provisions of this title shall be effective, in whole or in part, at such date or dates as the Secretary of Housing and Urban Development shall prescribe and the Secretary shall establish procedures for the orderly transfer of Federal assistance activities from the authority of section 701 of the Housing Act of 1954.

(b) Title IX of the Demonstration Cities and Metropolitan Development Act of 1966 is hereby repealed.

STATE LIMITATION

SEC. 213. Not more than 15 per centum of the funds used for grants under this title in any fiscal year shall be so used in any one State.

SECTION-BY-SECTION SUMMARY, COMMUNITY DEVELOPMENT ACT OF 1971

The first section of the bill would provide that upon enactment it may be cited as the Community Development Act of 1971.

TITLE I—URBAN COMMUNITY DEVELOPMENT

Section 101. Short Title

This section would provide that this title may be cited as the "Urban Community Development Revenue Sharing Act of 1971".

Section 102. Statement of Findings and Purpose

This section would set forth the following Congressional findings:

(1) The Nation's welfare requires an improved system of Federal assistance for community development which will preserve and enhance the physical and social environment and improve the quality of life in the Nation.

(2) The delivery of effective community development programs and activities is essentially a local responsibility and there is a need to strengthen the capacity of units of general local government and States to deal with community problems relating to development, revitalization, and growth.

(3) The effectiveness of community development would be improved by making resources for such purposes available to units of general local government and States to use with broad discretion in evaluating their community development needs and allocating resources to meet those needs.

(4) The Federal Government should make available to units of general local government and States a wide range of assistance and support to improve the effectiveness of community development activities.

The section would declare the purpose of this title to be the establishment of a system of sharing Federal revenues, designed to promote sound and equitable community development, revitalization, and growth. The Federal assistance would be provided in support of community development activities which contribute to:

(1) Improving the quality, organization, and accessibility of public services for all citizens;

(2) The elimination and prevention of urban slums, blight, and deterioration;

(3) Economic and desirable land uses;

(4) The provision of housing, particularly for low and moderate income individuals and families, sufficient to meet community needs and appropriately located in relation to community and commercial facilities and job opportunities;

(5) The development of properly planned community facilities and public improvements;

(6) The preservation or restoration of properties and areas of special value for historic reasons;

(7) The conservation and enhancement of both that natural and urban environment;

(8) The provision of adequate recreational opportunities; and

(9) Increased order and efficiency in community development and revitalization through the application of well-considered priorities to the investment of Federal, State, and local resources.

Section 103. Definitions

Subsection (a) would define certain terms as follows:

(1) "Unit of general local government" would mean any city, municipality, county, town, township, parish, village, or other general purpose political subdivision of a State; a consortium of such units of general local government recognized by the Secretary; and the District of Columbia;

(2) "State" would mean any State of the United States; the Commonwealth of Puerto Rico; Guam; and the Virgin Islands;

(3) "Metropolitan areas" would mean the standard metropolitan statistical areas, as established by the Office of Management and Budget;

(4) "Metropolitan cities" would mean cities within metropolitan areas which are central cities of metropolitan areas, as defined and used by the Office of Management and Budget, or which are cities having a population of 50,000 or more;

(5) "population" would mean the total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period in time;

(6) "amount of poverty" would mean the number of persons (or alternatively, the number of families and unrelated individuals) whose incomes are below the poverty level, as determined pursuant to criteria provided by the Office of Management and Budget, and based on data referable to the same point or period in time;

(7) "amount of overcrowding" would mean the number of housing units with 1.01 or more persons per room based on data compiled by the United States Bureau of the Census and referable to the same point or period in time;

(8) "extent of housing deficiencies" would mean the number of housing units lacking some or all plumbing facilities based on data compiled by the United States Bureau of the Census and referable to the same point or period in time; and

(9) "Secretary" would mean the Secretary of Housing and Urban Development.

Subsection (b) would provide that where appropriate, the definitions in subsection (a) shall be based on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget on the date of enactment of this Act and 90 days prior to the beginning of each subsequent fiscal year. The Secretary would be authorized to change or otherwise modify the definitions in order to reflect any change or modification made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

Section 104. Community Development Activities Eligible for Assistance

This section would set forth the activities for which special revenue sharing payments may be used.

Subsection (a) would provide that community development activities may include:

(1) acquisition of real property (including interests therein) which is blighted or inappropriately developed, needed for public facilities, historic preservation, beautification, conservation, recreation, the guidance of urban development, or for other public purposes;

(2) relocation payments and assistance for those displaced by community development activities;

(3) clearance, demolition, removal, and rehabilitation of buildings and improvements (including financing rehabilitation of privately owned properties when incidental to other activities);

(4) provision of public works, facilities, and site or other improvements;

(5) elimination, by code enforcement and other means, of harmful physical conditions constituting a danger to public health and safety; and

(6) disposition (by sale, lease, donation, or otherwise) of acquired real property or its retention for public purposes.

Subsection (b) would provide that community development activities may also include the types of activities for which Model Cities supplemental grants are authorized.

Section 105. Authorization of Appropriations

This section would authorize to be appropriated without fiscal year limitation such sums as may be necessary for each fiscal year to carry out this title.

Section 106. Allocation and Distribution of Funds

Subsection (a) would provide that at least 80 percent of the amounts provided from appropriations authorized by section 105 for any fiscal year shall be allocated by the Secretary for special revenue sharing for all metropolitan areas, as provided by subsection (b).

Subsection (b) (1) would provide that each metropolitan area shall be allocated an amount which bears the same ratio to the allocation for all metropolitan areas as the average of the ratios between:

(1) the population of the metropolitan area and that of all metropolitan areas;

(2) the amount of poverty in the metropolitan area and that in all metropolitan areas;

(3) the amount of overcrowding in the metropolitan area and that in all metropolitan areas; and

(4) the extent of housing deficiencies in the metropolitan area and that in all metropolitan areas.

Subsection (b) (2) would provide that from the amount allocated to each metropolitan area, each metropolitan city within that area

shall be distributed special revenue sharing payments, in an amount which bears the same ratio to the allocation for all metropolitan areas as the average of the ratios between:

(1) the population of the metropolitan city and that of all metropolitan areas;

(2) the amount of poverty in the metropolitan city and that in all metropolitan areas;

(3) the amount of overcrowding in the metropolitan city and that in all metropolitan areas; and

(4) the extent of housing deficiencies in the metropolitan city and that in all metropolitan areas.

Subsection (b)(3) would provide that the remainder of the allocation for each metropolitan area shall be distributed by the Secretary as special revenue sharing payments to units of general local government within that metropolitan area, taking into consideration such factors as population, amount of poverty, amount of overcrowding, extent of housing deficiencies, and other social and fiscal factors prevailing in the metropolitan area. Any portion of the remainder of the allocation for each metropolitan area undistributed at the end of the fiscal year in which it was allocated would remain available for use within that metropolitan area.

Subsection (c) would provide that any other funds available for any fiscal year to carry out this title shall be available for distribution by the Secretary as special revenue sharing payments to units of general local government and States for community development activities subject to such terms and conditions as he may prescribe. It would also provide that until such time as a metropolitan city is eligible to receive funds and carry out community development activities, or in the event that a metropolitan city refuses to accept such funds, the revenue sharing payments which it would have received would be added to the funds available for distribution by the Secretary under this subsection.

Subsection (d) would authorize without fiscal year limitation (in addition to appropriations authorized by section 105) such sums as may be necessary for distribution by the Secretary under subsection (c) to cities having a population of less than 50,000.

Subsection (e) would provide that all computations and determination by the Secretary under this section shall be final and conclusive.

Section 107. Payments to Recipients

This section would provide that community development special revenue sharing payments shall be made to the recipients at such intervals and in such installments as the Secretary may determine, taking account of the objective that the time elapsing between the transfer of funds from the United States Treasury and the disbursement thereof by a recipient be minimized. The Secretary would be required to prescribe regulations, with the concurrence of the Director of the Office of Management and Budget, for the purpose of avoiding an inordinate rise in Federal outlays in fiscal years 1972, 1973, and 1974 resulting from concurrent disbursements pursuant to (a) obligations incurred under the statutory provisions replaced by this title, and (b) revenue shared under this title.

Section 108. Statements of Community Development Activities

This section would provide that prior to the receipt of any community development funds for any fiscal year commencing with fiscal year 1973 (and at least two months prior to the beginning of the appropriate fiscal year), each recipient of funds under this title must publish and make available to the Secretary (and, in the case of recipient units of general local government, to the Governor of the State in which they are located, as well) a statement of community development objectives and projected uses of funds. The purpose of such statement would be to permit public examination and appraisal of community development activities carried out under this title, to enhance the public accountability of recipients of shared Federal revenues, and to facilitate coordination of activities at different levels of government. The statement would have to reflect the degree to which activities assisted under this title relate to State and areawide programs and activities for community dvelopment.

Section 109. Records, Audit and Reports

Subsection (a) would provide that all revenue shared with recipients for community development activities must be properly accounted for as Federal funds.

Subsection (b) would require each recipient to (1) use such fiscal and accounting procedures as may be necessary to assure (i) proper accounting for payments received by it and (ii) proper disbursement of such amounts; (2) provide to the Secretary, on reasonable notice, access to, and the right to examine any books, documents, papers, or records as he may reasonably require; and (3) make such reports to the Secretary as he may reasonably require.

Section 110. Recovery of Funds

Subsection (a) would provide that if the Secretary determines after giving reasonable notice and opportunity for hearing that a recipient has failed to comply substantially with the provisions of this title, he shall refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; or notify the recipient that if corrective action is not taken within 60 days from the date of such notification, revenues shared with it will be reduced in the same or succeeding fiscal year by an amount equal to the amount of funds which were not expended in accordance with the provisions of this title; or take such other action as may be provided by law.

Subsection (b) would provide that when a matter is referred to the Attorney General, he may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

Subsection (c)(1) would provide that any recipient which receives notice of reduction of revenues shared may, within 60 days after receiving such notice, file with the United States Court of Appeals for the Circuit in which such recipient is located or in the United States Court of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner would be required to transmit copies of the petition to the Secretary and to the Attorney General of the United States, who would represent the Secretary in litigation.

Subsection (c)(2) would provide that no objection to the action of the Secretary may be considered by the Court unless such objection has been urged before the Secretary.

Subsection (c)(3) would provide that the Court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, would be conclusive. The Court could order additional evidence to be taken by the Secretary, and to be made part of the record. The Secretary could modify his findings of fact or make new findings by reason of the new evidence and file with the Court his recommendations, if any, for the modification or setting aside of his original action.

Subsection (c)(4) would provide that the jurisdiction of the Court shall be exclusive and that its judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification.

Section 111. Nondiscrimination

This section would provide that shared revenues under this title shall be considered as Federal financial assistance within the meaning of title VI of the Civil Rights Act of 1964.

Section 112. Relocation Costs

This section would provide that notwithstanding section 211 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (which makes the cost of relocation payments and assistance a project expense and authorizes a Federal payment for the first $25,000 of relocation costs for each displacement which occurs prior to July 1, 1972) no Federal contribution in addition to shared revenues shall be made to recipients for costs incurred in providing relocation payments and assistance for those displaced by community development activities assisted with community development special revenue sharing funds.

Section 113. Labor Standards

This section would require that all laborers and mechanics employed by contractors or subcontractors for construction work financed in whole or in part with community development special revenue sharing funds be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. Such requirements, however, would apply to residential property only if such property is designed for twelve or more families. The Secretary of Labor would have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and other Federal laws.

Section 114. Interstate Agreements

This section would give Congressional consent to compacts and agreements among any two or more States in support of community development activities assisted under this title.

Section 115. Matching Grants

This section would provide that community development special revenue sharing funds may be used as matching shares for Federal grant programs which provide assistance for community development activities.

Section 116. General Provisions

Subsection (a) would authorize the Secretary to prescribe such rules, regulations, and standards as may be necessary to carry out the purposes and conditions of this title.

Subsection (b) would require the Secretary to include an evaluation of the effectiveness of community development special revenue sharing in his annual report to the President on Departmental activities.

Section 117. Effective Date

This section would provide that this title shall be effective on January 1, 1972. After such effective date, no new grants or loans could be made under the urban renewal programs, the rehabilitation loan program, the grant program for water and sewer facilities, and the Model Cities program, except with respect to projects or programs for which funds have been reserved prior to January 1, 1972.

Section 118. Appropriation for Liquidation of Urban Renewal Contracts

This section would include payments required under urban renewal contracts with respect to projects or programs for which funds have been reserved prior to January 1, 1972 and for which funds have not previously been appropriated among the purposes for which annual appropriations are authorized by section 3689 of the Revised Statutes, as amended (31 U.S.C. 711). In conjunction with the transition to the community development legislation, this authority would

be used to liquidate over $3 billion of urban renewal contracts, but only in such amounts as are necessary to meet annual cash disbursement requirements.

Section 119. Conforming and Technical Amendments

Subsection (a) would amend section 217 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to make those who move as a direct result of any community development activities displaced persons within the meaning of that Act.

Subsection (b) would authorize the Secretary to transfer the assets and liabilities of any superseded or nonactive program of housing or urban development to the revolving fund for liquidating programs.

TITLE II—STATE AND LOCAL PLANNING AND MANAGEMENT PROGRAMS FINDINGS AND DECLARATION OF PURPOSE

Section 201. Statement of Findings and Purpose

This section would set forth the following Congressional findings:

(1) that the ability of our Federal system of government to respond effectively to the needs of all citizens depends upon the strength and capabilities of Federal, State and local governments;

(2) that the Federal aid system has not given sufficient recognition to the need to work through and to strengthen elected officials of State and local general purpose governments and regional combinations thereof.

(3) that State and local governments must be aided in developing their planning and management capabilities if they are to assume their proper responsibilities in the Federal system and if the fullest effectiveness of Federal funds expended through revenue sharing is to be achieved;

(4) that previous Federal programs to improve State and local government capabilities have tended to be limited to specific functional areas and individual agencies and have not been directed at strengthening the overall capability of State and local officials to plan and make decisions and to manage their affairs; and

(5) that basic reliance should be placed on State and local resources to support the improvement of State and local planning, decision making, and management capabilities, but the Federal government should provide additional assistance in order to strengthen the Federal system and promote the welfare of all citizens.

The section would declare the purpose of this title to be the strengthening of general purpose units of government at the State and local levels to enable them to use their own and shared revenues more effectively to cope with complex problems in a manner responsible to the economic and social needs and desires of all affected citizens. To promote this purpose Federal assistance would be provided to States and localities undertaking planning and management programs which lead to more effective resource allocation.

Section 202. Definitions

This section would define certain terms as follows:

(1) "Secretary" would mean the Secretary of Housing and Urban Development;

(2) "State" would mean any State of the United States, the Commonwealth of Puerto Rico, Guam and the Virgin Islands;

(3) "Locality" would include any city, county or other unit of general local government, the District of Columbia, or any territory or possession of the United States, or metropolitan or other multi-jurisdictional area which the Secretary guided by any criteria in an applicable State planning and management program, determines forms an economic and socially related development region, taking into account such factors as present and future population trends and patterns of urban growth, location of transportation corridors, facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities; and

(4) "Governmental agency" would mean (1) an Indian tribe or organization determined by the Secretary to have governmental characteristics and (2) an organization (including a nonprofit organization composed or predominantly composed of elected public officials) which meets State standards and criteria prescribed pursuant to section 204 or, in the absence of such standards and criteria, an areawide agency, designated pursuant to title II of the Demonstration Cities and Metropolitan Development Act of 1966 or title IV of the Intergovernmental Cooperation Act of 1968, which is organized to deal with matters of governmental concern to two or more public bodies or units of government.

Section 203. Planning and Management Programs Generally

Subsection (a) would require a planning and management program assisted under this title to be designed by the State or locality to meet its own particular needs and to improve the capabilities of elected officials for developing, implementing, and evaluating policies, programs, and projects in a balanced manner that will further the purpose of the title. Activities which may be supported under this title are those which (1) will aid in the attainment of specified State or local objectives relating to governmental operation, land use, housing, development, resource management or areawide and intergovernmental coordination and (2) are carried out in a manner which assures periodic examination by States or localities of methods and objectives as information becomes available on the social, economic and environmental consequences of program activities.

Subsection (b) would require the authorities provided in this title to be administered in such a manner as (1) to recognize fully the rights, powers, and responsibilities of State and local governments, and (2) to allow for innovation and diversity on the part of State and local governments in the design and implementation of their planning and management programs.

Section 204. State Planning and Management Programs.

Subsection (a) would require State planning and management programs to be consistent with the provisions of section 203 and authorize such programs, in addition to the activities specified in section 205, to include (1) a Statewide development plan which seeks to integrate all important elements of community development (including land use) and which may include designation of potential growth areas and new community development sites, and (2) standards for determining which communities, or groups of communities, should be considered together as a single locality for purposes of establishing and carrying out local and areawide programs in support of purpose of this title, together with criteria and procedures for measuring the adequacy of those programs and for determining whether they, and other significant local actions and projects, are consistent with the State programs as developed pursuant to this section.

Subsection (b) would authorize States to undertake the activities set forth in section 203 with respect to State governments or on behalf of localities or groups of localities, including areawide agencies, within the State. States would also be authorized to make grants to localities or groups of localities, including areawide agencies, to support activities set forth in section 205, using funds received under this title.

Section 205. Program Activities

This section would include as eligible planning and management activities the following:

(1) improving governmental systems and operations including revenue and resource allocation systems and methods for obtaining effective public participation in policy decisions;

(2) improving governmental structures, authorities, and coordinating mechanism for dealing with the economic, social, and environmental complexities of modern society, including expansion of the role of elected executive officials and general units of government;

(3) establishing objectives, evaluating programs for achieving these objectives and providing for program balance and coordination in response to State and local needs and priorities;

(4) formulating policies and plans governing the use, development, and conservation of land, and developing and carrying out supporting or implementing procedures;

(5) identifying and evaluating needs for housing, facilities and services, and formulating specific programs for meeting the needs so identified;

(6) providing (directly or through grants or contracts) planning, technical assistance, information or advisory services to communities and agencies needing such assistance or services in connection with activities related to the purpose of this title;

(7) participating in organizations for joint or common governmental or governmental and private action, in solving problems of community revitalization and growth; and

(8) other activities or projects, consistent with the objectives of this title which pertain to the coordination, regulation, modernization or improved implementation, management or control of governmental functions.

Section 206. Authority To Make Grants

Subsection (a) would authorize the Secretary to make grants, as provided in this section, to assist States and localities in formulating and carrying out the activities set forth in sections 204 and 205. In making the initial distribution of funds among States and localities, the Secretary would take into consideration such factors as the applicant's population, social and economic conditions, special opportunities to improve the workings of government, unique developmental problems, and other factors consistent with the purpose of this title. In determining whether and on what conditions to continue assistance to any program initially approved, the Secretary would consider the degree to which previous assistance has been effectively used by the applicant State or local government.

(b) Grants may be made under this title to States, cities and, where consistent with the provisions of State planning and management programs or where the Secretary finds it necessary for carrying out the purposes of this title, to other governmental subdivisions, and to metropolitan, regional, or other governmental agencies.

Subsection (c) would prohibit the Secretary from requiring any matching or other expenditure of State or local funds as a condition to making grants under this title.

Section 207. Conditions and Administration of Grants

This section would provide that, while grants otherwise may be used for any planning and management program activity, they would be subject to conditions and regulations established by the Secretary. It would be specifically required that the Secretary's regulations preclude grant assistance to defray the cost of acquisition, construction, repair or rehabilitation of, or preparation of engineering or similar detailed specifications

for, specific housing capital facilities or public works projects.

Section 208. Interstate Agreements

This section would give Congressional consent to compacts or agreements among any two or more States in support of planning and management programs. Generally, such compacts or agreements would be needed for localities which extend into more than one State.

Section 209. Federal Consultation and Cooperation

This section would contain various provisions designed to provide for coordination and cooperation among the various Federal agencies that may have an interest in, or programs related to, community development planning and management programs.

Subsection (a) would require the Secretary to consult with the heads of other Federal agencies having responsibilities related to the purposes of this title, including those connected with the economic development of rural and depressed areas and the protection of the natural environment. This consultation would cover (1) general standards, policies and procedures; and (2) particular grant actions which the Secretary believes to be of special interest to such agencies.

Subsection (b) would provide that funds under any Federal assistance program for approved projects or activities in furtherance of a planning and management program may be used jointly with funds for such projects or activities under any other Federal assistance program, subject to regulations prescribed by the President. These regulations may include provisions for common technical or administrative requirements, joint management funds and common non-Federal shares; and delegations of administrative responsibility among Federal agencies. They must also include appropriate criteria and procedures to assure that any special authorities conferred are employed only as necessary for effective and efficient administration and in a manner consistent with the protection of the Federal interest and with program purposes or statutory requirements of a substantive nature.

Subsection (c) would authorize the Secretary, with the approval of the President, to delegate any of his powers under this title to the head of other Federal agencies, subject to appropriate conditions or provisions.

Section 210. Technical Assistance

Subsection (a) would authorize the Secretary to provide, directly or through contracts or otherwise, technical assistance in the formulation or implementation of planning and management programs.

Subsection (b) would provide that grant funds made available under this title may be used for procuring specialized or technical services available pursuant to section 302 of the Intergovernmental Cooperation Act of 1968. The Secretary is authorized directly to procure, and the heads of Federal agencies are authorized to provide, such services on behalf of any State or political subdivision which could receive or participate in assistance provided under this title.

Section 211. Appropriations

This section would authorize the appropriation, without fiscal year limitation, of such sums as may be needed for carrying out this title.

Section 212. Repealing and Transition Provisions

Subsection (a) would authorize the Secretary to establish procedures for the orderly transfer of Federal assistance activities under section 701 of the Housing Act of 1954 to this title. In addition to amounts authorized and appropriated under section 211 of this title, any appropriations available for carrying out section 701 of the Housing Act of 1954 would be available until expended for the purpose of carrying out this title.

Subsection (b) would repeal title IX of the Demonstration Cities and Metropolitan Development Act of 1966.

Section 213. State Limitation

This section would prohibit use of more than 15 percent of the title I grant funds in any one fiscal year in any one State.

By Mr. McGOVERN:

S. 1620. A bill to amend part II of the Interstate Commerce Act in order to completely exempt certain farm vehicles from the provisions thereof. Referred to the Committee on Commerce.

EXEMPTION OF CERTAIN FARM VEHICLES

Mr. McGOVERN. Mr. President, I introduce today, for appropriate reference, a bill to amend Part II of the Interstate Commerce Act in order to completely exempt certain farm vehicles from its provisions.

There has been an historic exemption for farm vehicle operators in the Motor Carrier Safety Regulations, Part 391, dealing with the qualifications of drivers. A revision to the rules, eliminating this exemption, was first instituted by a Notice of Proposed Rule Making which was published in the Federal Register on June 7, 1969. The final rules, which were published in the Federal Register on April 22, 1970, eliminated the farm vehicle operator exemption, and was scheduled to be effective on January 1, 1971.

Prior to the effective date of the regulations, considerable opposition to the elimination of the farm vehicle operator exemption was expressed by respected farm organizations and individual farmers across the country. It was, thereafter agreed that the effective date for the implementation of the regulations would be postponed until July 1, 1971.

If the farm vehicle operator exemption is terminated it would mean that all drivers of farm trucks in interstate commerce must be at least 21 years of age, carry a certificate executed by a physician during the preceding 24 months, evidencing fitness to drive a truck, pass a road test in truck operation, and taken an examination on the Federal motor vehicle safety regulations. If the driver is an employee of a farmer, he would have to supply the farmer with evidence of compliance with the regulations, plus reflect on his application for employment any traffic violations and their disposition, together with an annual supplementary statement relating to traffic violation.

While there regulations would be applicable only to interstate commerce, it is the present trend to characterize a traffic movement within one State as interstate commerce, if the product subsequently moves in interstate or foreign commerce. Such an interpretation would effect every farmer in the country.

The use of trucks in agriculture is a major part of farm production and marketing operations. The 2.8 million farm operators use some 3.7 million trucks of all sizes, which are driven regularly or occasionally by at least 4 million persons, mostly members of farm families, supplemented by neighbors and hired employees.

Most farm trucks are used primarily for short trips, for local hauling, on an intermittent basis, including the transportation of farm supplies from one farm to another, the hauling of produce from the farm to shipping points, elevators and processing plants and the movement of equipment, fuels, feeds, and related items from the local supplier to the farm. A regulation designed to fit large-scale transportation is not going to fit these various kinds of transportation services in agriculture.

The structure of agriculture is fundamentally different than the structure of large-scale common contract and private carriers. A regulatory pattern which may fit the comparatively large operations of these carriers, operating an average of about 50 trucks per company, simply does not fit an industry consisting of hundreds of thousands of small, relatively independent, farming units.

The safety record of farm truck operators is dramatically better than that of nonfleet carriers now moving in interstate commerce.

It does not seem to me that there is a need for the inclusion of farm truck operators under the provisions of the Motor Carrier Safety Regulations. To pursue the elimination of the farm truck operator exemption will work a material hardship on the farm people of this country.

My bill is designed to provide permanent protection for those who work the land from the imposition of this regulation. I urge my colleagues to give speedy and favorable consideration to this legislation.

By Mr. BENNETT (for himself, Mr. JORDAN of Idaho, Mr. HRUSKA, Mr. HANSEN, Mr. FANNIN, Mr. GRIFFIN, and Mr. SCOTT):

S. 1623. A bill to amend the Social Security Act to require employers to make an approved basic health care plan available to their employees, to provide a family health insurance plan for low-income families not covered by an employer's basic health care plan, to facilitate provision of health services to beneficiaries of the family health insurance plan by health maintenance organizations, by prohibiting State law interference with such organizations providing such services, and for other purposes. Referred to the Committee on Finance.

NATIONAL HEALTH INSURANCE PARTNERSHIP ACT OF 1971

Mr. BENNETT. Mr. President, on behalf of the administration, I introduce the National Insurance Health Partnership Act of 1971, a legislative proposal designed to fulfill the President's desire to build a national health strategy and to enable the Government, the American people, business and labor, the insurance industry, and the health profession to work together in a national partnership to assure that all Americans who are unable to protect themselves against the cost of medical care are able to do so.

Joining me today in introducing this proposal are the Senator from Idaho (Mr. JORDAN); the Senator from Nebraska (Mr. HRUSKA); the Senator from Wyoming (Mr. HANSEN); the Senator from Arizona (Mr. FANNIN); the Senator

from Michigan (Mr. GRIFFIN); and the Senator from Pennsylvania (Mr. SCOTT).

Few people today in the United States would disagree that we face a major health care crisis in our country. What there is little agreement on so far, however, is what should be done about it. On the one hand, we hear that our people have a right to health care but that the evidence is overwhelming that we are confronted with a crisis in the availability and the delivery of essential health services, that the cost of health care simply overwhelms the vast majority of our people, and that if we are to avoid the collapse of our health care system we must take drastic action, and we must take it soon.

On the other hand, Mr. President, we hear that while health care is a right, there is much that is right today with American medicine. We have developed startling new medical techniques, discovered powerful new drugs, and designed and constructed a dazzling array of medical facilities—to the betterment of us all. Clearly, the American health care system has reached new heights. Health care expenditures have been expanding at a rapid rate, our resources have been growing spectacularly, and there has been a marked rise in health insurance coverage for all members of our population.

EFFORTS OF THE PUBLIC SECTOR

I maintain, Mr. President, that these two views are not incompatible. There is a massive crisis facing America's medical system, and that crisis is deepening. But behind all of the rhetoric is the fact that much good has been accomplished in health care by both the public and private sectors. For example, in the last decade, our spending on health care has risen from $26 billion a year to $70 billion. In 1960, we devoted 5.3 percent of our gross national product on health; today, we are spending almost 7 percent of our gross national product on health care. This growing expenditure in health care costs has been led by the Federal Government. Ten years ago, Federal health expenditures were $3.5 billion, or 13 percent of the total; this year, the Federal Government will spend $21 billion—or about 30 percent of the Nation's health care spending. I hardly need to point out that the medicare programs alone has eased the financial burden of health care for millions of older people and their families, so that today it is the Nation's largest health insurance program.

EFFORTS OF THE PRIVATE SECTOR

The private sector has not lagged behind. In the last 20 years, the private insurance industry has made coverage more readily available so that the segment of our population owning health insurance has grown from 50 percent to 87 percent and the portion of medical bills paid for by insurance has gone from 35 percent to 60 percent. In 1950, about one-half of employed workers were covered for hospitalization; today, some 80 percent are so covered. In 1950 also, only a third of all employees were covered for surgical benefits—over 70 percent are today; 16.4 percent were covered for regular medical benefits—over 60 percent are today; and none had major medical expense insurance, while almost one-third have this type of protection today.

PROBLEMS IN OUR HEALTH CARE SYSTEM

Despite the impressive growth of both the public and private sectors, there are serious problems in our Nation's health care system that merit immediate attention and action by the Congress.

In his Health Message to the Congress last month, the President suggested that four of these problems, which this legislation is designed to solve, exist in our present system of providing health insurance protection:

First, many private health insurance policies today cover hospital and surgical costs and leave critical outpatient services uncovered. Although some 80 percent of our people have some hospitalization insurance, only about half are covered for outpatient and laboratory services and less than half are insured for treatment in the physician's office or the home. Because money is available for hospital care people will demand such care rather than less costly noninstitutional care. The result is unnecessary and expensive overutilization of acute health care facilities. The average hospital stay today is a full day longer than it was 8 years ago. Studies show that over one-fourth of the hospital beds in some areas are occupied by patients who do not really need them and could have received equivalent or better care outside the hospital.

A second problem is the failure of most private health insurance policies to protect beneficiaries against the costs of major illnesses and accidents—what is generally referred to as catastrophic costs. Only 40 percent of our people have catastrophic cost insurance of any sort and most of that insurance has upper limits of $10,000 or $15,000. This means that insurance often runs out while expenses are still mounting. For many American families, a serious illness is often so expensive that it may take years for them to recover financially from the high cost of the medical care required.

A third problem with much of our private health insurance at the present time is that it cannot be applied to membership in a prepaid organization, or as referred to in this legislation, a health maintenance organization—and thus effectively precludes such membership. No employee will pay to join such a plan, no matter how attractive it might seem to him, when deductions from his paycheck—along with contributions from his employer—are being used to purchase another health insurance policy.

The fourth gap we must correct in present private health insurance coverage is its failure to help the poor gain effective access to our medical system. Just one index of this failure is the fact that 50 percent of poor children are not even immunized against common childhood diseases. The disability rate for families below the poverty line is at least 50 percent higher than for families with incomes above $10,000. Those who need care most often get care least. A vicious cycle is thus reinforced—poverty breeds illness and illness breeds greater poverty. This situation will be corrected only when the poor have sufficient purchasing power to enter the medical marketplace on equal terms with those who are more affluent.

The legislation which I introduce today is designed to fill these gaps and correct these inadequacies, by building on our present insurance system which has been developing impressively over the past decade or two. At the conclusion of my remarks, I shall include a section-by-section analysis of the bill so that my colleagues may have the opportunity to examine the details of this bill. At this time, however, I would simply like to call attention to the major provisions of the bill.

NATIONAL HEALTH INSURANCE STANDARDS ACT

First. A National Health Insurance Standards Act would be established as a new title under the Social Security Act, which would require employers to provide basic health insurance coverage for their employees—except religious, Federal, State, and local employees, and persons eligible for medicare—who have been employed for 25 hours a week in 10 out of 13 weeks, or 350 hours in 13 weeks. Precedents for this proposal are laws which assure workers a minimum wage, provide them with disability and retirement benefits, and set occupational health and safety standards. This legislation goes one step further and guarantees that all workers will receive adequate health insurance protection.

The minimum health insurance program required under this act would pay for hospital services, physicians' services—both in the hospital and outside of it—full maternity care, well-baby care—including immunizations—laboratory services, and certain other medical expenses, such as the cost of children's annual eye examinations. To protect against catastrophic costs, benefits would include not less than $50,000 in coverage for each family member during the life of the policy contract. The minimum package would include certain deductible and coinsurance features. As an alternative to paying separate fees for separate services, workers could use this program to purchase membership in a health maintenance organization.

The Federal Government would pay nothing for this program; the costs would be shared by employers and employees, much as they are today under most collective bargaining agreements. A ceiling on how much employees could be asked to contribute would be set at 35 percent during the first 2½ years of operation and 25 percent thereafter. To give each employer time to plan for this additional cost of doing business, this program would not go into effect until July 1, 1973.

I understand that a bill will be introduced in the House next week which will contain a different formula for dividing this insurance cost but to me this is not crucial because the committees could normally be expected to con-

sider and perhaps adopt changes anyway.

As the number of individuals enrolled in the private insurance plans rises, the costs per insured person can be expected to fall. The fact that employees and unions will have an even higher stake in the system will add additional pressures to keep quality up and costs down. And since the range within which benefits can vary will be somewhat narrower than it has been, competition between insurance companies will be more likely to focus on the overall price at which the contract is offered. This means that insurance companies will themselves have a greater motivation to keep medical costs from soaring.

There are several other requirements for the employer plan that I believe bear mentioning. Hospitals providing services for which reimbursement may be made under the plan must have a utilization review plan in effect; reimbursement for services are subject to the reasonable cost and reasonable charge limits imposed under medicare; appropriate arrangements must be made by the private insurance organization underwriting the plan to avoid duplicate coverage; the employer may continue coverage at the same rate of employer participation in the premium for up to 90 days after termination of employment if he has had coverage for 13 weeks or more; and quality control standards would be applied by professional standards review organizations in accordance with regulations promulgated by the Secretary of Health, Education, and Welfare.

FAMILY HEALTH INSURANCE PLAN

Second. This legislation would also establish a new Family Health Insurance plan to meet the special needs of poor families who would not be covered by the proposed National Insurance Standards Act or by the medicare program—those that are headed by younger unemployed, intermittently employed, or self-employed persons. A poor family would be defined as one whose annual income is less than $5,000 for a family of four—with comparable amounts for families of other sizes—and whose family resources do not exceed $1,500. Excluded from this amount are family dwellings and certain other things such as land that is necessary for a family's maintenance.

What the new Family Health Insurance plan would do is eliminate that part of medicaid which covers most welfare families, and in its place substitute a health insurance scheme fully financed and supported by the Federal Government. Few would agree that with respect to poor families, the medicaid program has not accomplished its goals. Because it is not a truly national program, its benefits vary widely from State to State. Sixteen States now get 80 percent of all medicaid money and two States—California and New York—get 30 percent of Federal funds though they have only 20 percent of the poverty population. Two States have no medicaid program at all.

In addition, medicaid suffers from other defects that now plague our failing welfare system. It largely excludes the working poor—which means that all benefits can suddenly be cutoff when family income rises ever so slightly—from just under the eligibility barrier to just over it. Coverage is now provided when husbands desert their families, but is often eliminated when they come back home and work. The program thus provides an incentive for poor families to stay on the welfare rolls.

Some of these problems would be corrected by the proposal to require employers to offer adequate insurance coverage to their employees. No longer, for example, would a working man receive poorer insurance coverage than a welfare client—a condition which exists today in many States. But we also need an additional program for much of the welfare population—a Family Health Insurance plan.

Eligibility with respect to the income levels under the plan would be determined prospectively for 6-month periods and would generally be based on income for the preceding period, unless the Secretary finds that circumstances have changed. Redeterminations could be made during the 6-month period if there have been changes affecting eligibility. Termination of eligibility would be effective at the end of the 6-month period in which the finding of ineligibility is made, unless the individual is not eligible for coverage under the National Health Insurance Standards Act or medicare, in which case termination would not be effective for an additional three months.

Under the family health insurance plan, benefits in a calendar year for each family member would include: 30 days of inpatient hospital care—or equivalent days of extended-care services or home health services—emergency services, physicians' visits, additional physicians' visits for well-child care—including immunizations—laboratory services in connection with physicians' services, maternity care, and family planning services.

Various medicare provisions would be applicable, such as the provisions on reasonable cost, reasonable charges, and utilization review, and the same exclusions as are in medicare would also apply except that physical checkups would not be excluded. Cost quality controls would generally be provided by professional standards review organizations.

For the poorest of eligible families, this program would make no charges and would pay for basic medical costs. As family income increased beyond a certain level—$3,000 in the case of a 4-person family—the family itself would begin to assume a greater share of the costs—through a graduated scale of premium charges, deductibles, and coinsurance payments. This provision would encourage cost consciousness on the part of program recipients as income rises. But unlike medicaid—with its abrupt cutoff of benefits when family income reaches a certain point—this program would provide an incentive for families to improve their economic position.

The family health insurance plan would go into effect on July 1, 1973. In its first full year of operation, it would cost approximately $1.2 billion in additional Federal funds—assuming that all eligible families participate. Since States would no longer bear any share of this cost, they would be relieved of a considerable burden. In order to encourage States to use part of these savings to supplement Federal benefits, the Federal Government would agree to bear the costs of administering a consolidated Federal-State benefit package. The Federal Government would also contract with local committees to review local practices and to insure that adequate care is being provided in exchange for Federal payments. Private insurers, unions, and employees would be invited to use these same committees to review the utilization of their benefits if they wished to do so.

To review, then, this is how these two new plans would work to complement existing programs and thereby help to bring into being a comprehensive approach to providing adequate health insurance protection for almost all Americans: The Family Health Insurance plan would meet the needs of most welfare families—though medicaid would continue for the aged poor, the blind, and the disabled. The National Health Insurance Standards Act would help the working population. Members of the Armed Forces and civilian Federal employees would continue to have their own insurance programs, and our older citizens would continue to have medicare. The program would also require the establishment in each State of special insurance pools which would offer insurance at reasonable group rates to people who did not qualify for other programs—the self-employed, for example, and poor-risk individuals who often cannot get insurance.

LIMITATIONS ON THE MEDICAID PROGRAM

I mentioned previously that under this legislation medicaid would continue for the aged, blind, and disabled. These are people who are either receiving cash assistance under a State plan, or whose incomes and resources are so low as to meet the requirements of the plan. Since the Family Health Insurance plan would meet the health cost needs of most families with dependent children, this category of recipients for medical assistance would no longer be included in medicaid. The bill does require, however, that State plans continue to include children receiving foster care. State medicaid plans may optionally include the aged, blind, and disabled who are medically indigent whether or not they meet the income and resources tests of the State plan.

INAPPLICABILITY OF STATE LAWS

I also previously mentioned that a major problem with much of our private health insurance is its failure to encourage people to enroll in prepaid groups or organizations—health maintenance organizations. This legislation would take a large step forward to solving this problem. Under the proposed National Health Insurance Standards Act, the minimum insurance plan provided by an employer would have to offer the employee the option of joining a health maintenance organization. Under the proposed family health insurance plan, the Secretary could contract with health

maintenance organizations to provide services to families covered under the plan.

To insure that the Federal Government reaps the advantages of health maintenance organizations—chiefly that they increase the value of the services a consumer receives for each health dollar because of a strong financial incentive to provide better preventive care and to operate more efficiently—this legislation also preempts certain State laws in favor of the contracts entered into by the Federal Government with HMO's to provide services to family health insurance plan beneficiaries. Archaic laws prohibiting or limiting the group practice of medicine exist in 22 States, and laws in most States prevent doctors from delegating certain responsibilities—like giving injections—to their assistants.

There is one other feature of this bill about which I am most enthusiastic and strongly urge my colleagues to keep clearly in mind—and that is the provision for the participation of professional standards review organizations. As you may recall, I sponsored the inclusion of the PSRO provision in the ill-fated social security bill of last year out of a firm conviction that major new steps were required if we were ever to stem the tide of rising costs and utilization.

We are all aware of the failure of the existing methods of attempting to control the rising costs of health care—in large part, this failure is a consequence of our failure to encourage and stimulate more active participation by physicians in the review and evaluation of the utilization of services and facilities.

My PSRO proposal was designed to do just that—not only encourage, but make it possible for physicians to play a major role in determining whether our health system is being effectively and appropriately used. I am gratified by the administration's endorsement of the PSRO concept by its incorporation by reference in this bill.

The formal language and PSRO amendment apply to all programs, medicare, medicaid, and this act will be introduced and discussed fully later in the session.

CONCLUSION

In summary, Mr. President, this legislation we are introducing today is not just another proposal to do everything in the way of providing adequate health care for everybody, whether they need it or not.

It is not another proposal to abandon our present system of joint cooperation between the public and private sectors.

It is not another proposal to scatter billions of dollars hither and yon to try and solve all of our health problems.

Rather, this legislation is a rational approach aimed at meeting the major gaps that exist today in our Nation's health care system. I invite all of my colleagues to study these proposals carefully and to offer constructive comments and adjustments that they feel the proposal might need. I, of course, reserve the right to make what changes I might find necessary as we dig into this bill in the committee and I am hopeful that in the not too far distant future we can report and pass the National Health Partnership Act of 1971.

Mr. President, I ask that a section-by-section analysis plus a summary of the legislation be printed in the RECORD.

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

SECTION BY SECTION DESCRIPTION OF THE "NATIONAL HEALTH INSURANCE PARTNERSHIP ACT OF 1971"

TITLE I OF THE BILL—NATIONAL HEALTH INSURANCE STANDARDS

Section 101 of the bill

Establishes in a new title VI of the Social Security Act the National Health Insurance Standards Act (part A of title VI) requiring employers to offer to their employees a basic health insurance plan meeting specified minimum standards.

TITLE VI OF THE SOCIAL SECURITY ACT—HEALTH BENEFITS FOR EMPLOYEES AND FOR LOW-INCOME FAMILIES

Section 600. Findings and Declaration of Purpose

Based on the findings of the Congress that many Americans are not receiving adequate health care because they lack ability to pay, and lack adequate protection against the high costs of health care so that the national health and, in turn, the national defense and general welfare are adversely affected, title VI of the Social Security Act is established to provide adequate protection against these costs through a family health insurance plan and a requirement that employers, whether or not engaged in interstate commerce, provide basic health care protection to their employees.

Part A—Health insurance standards for employers

Section 601. Short Title

Part A may be cited as the "National Health Insurance Standards Act."

Section 602. Basic Health Care Plan Required

All employers are required to make available a basic health care plan to employees and members of their families (except to ministers and members of religious orders, Federal, State, and local employees, employees of a foreign government or of an international organization, and persons entitled to protection under part A of Medicare) who have been employed for 25 hours a week in 10 out of 13 weeks or 350 hours in 13 weeks. These requirements are delayed for employers under unexpired union contracts entered into prior to the enactment of the National Health Insurance Partnership Act of 1971.

Section 603. Benefits

The benefits under this plan are patterned after the Government-wide indemnity benefit plan under the Federal Employees Health Benefits Act. Benefits under an approved plan must include inpatient hospital services, emergency services, physicians' services including well-child care (to age 5), an annual eye examination (to age 12) and other medical and other health services. Psychiatric care, drugs to outpatients, and prosthetic devices need not be covered. At the option of the beneficiary, services may be provided by a Christian Science practitioner or nurse, or in a Christian Science sanatorium.

The plan must provide a two-day deductible and 25 percent coinsurance on room and board in a hospital in each calendar year; on all else, a $100 deductible (for no more than three members of family) and 25 percent coinsurance are imposed, except that there is no deductible or coinsurance for well-child care for specified numbers of visits which depend on the age of the child. After an individual has received $5,000 in services under the plan in a calendar year, all coinsurance and deductibles are waived on services to that individual for the remainder of the year and the next two years.

Total benefits per person covered under the plan cannot be limited to less than $50,000, and automatic restoration of $2,000 annually is required.

Services needed because of preexisting conditions may be excluded for no more than six months (no such exclusion is allowed for maternity care).

Other requirements for approved plans: no more than 25 percent employee contribution to premium (35 percent for the first two and a half years) may be required; hospitals providing services must have a utilization review plan; reimbursement for services are subject to reasonable cost and reasonable charge limits under title XVIII (Medicare); appropriate arrangements must be made by the carrier to avoid duplicative coverage; the employee (or surviving spouse) may continue coverage (with the same rate of employer participation in the premium) for up to 90 days after termination of employment if he has had coverage under the plan for thirteen or more weeks; and Professional Standards Review Organization provisions of title XI (which would be added by H.R. 1) as they apply to payments under titles XVIII and XIX would apply to this plan to the extent determined by the Secretary. The plan may contain benefits in addition to those that are required, but they must be offered optionally and no limit on contributions to premiums is specified and no other requirements of part A of title VI are applicable to the optional benefits. An employer is also required to offer the option to receive care through a health maintenance organization (HMO).

Section 604. Enrollment in Health Maintenance Organizations

HMO definitions and standards would follow, insofar as applicable, those that would be required under titles XVIII and XIX.

Section 605. Group Policies for the Self-Employed, Small Employers, and for Individuals Not Covered Under Part A of Title XVIII or Part B of Title VI

Insurance companies that underwrite employer sponsored plans must also develop group policies (with the same benefits as described in section 603) for use by small employers and for protection for self-employed individuals and others not otherwise eligible for benefits under part A or B of this title or under Part A or title XVIII. A small employer is one who employs fewer than 100 employees on each of 90 days during a period of 180 consecutive days. Self-employment is determined in the same manner as it would be under title II of the Social Security Act.

Section 606. Approval of Basic Health Care Plan

Each insurer must notify the Secretary when an employer subscribes to a plan; an employer who self-insures must notify the Secretary of what his plan provides. The Secretary is to approve those plans which meet the requirements established by this Act.

Section 607. Administrative and Judicial Review

Hearings and judicial review, including suits to compel performance, are authorized, and the employee may institute court action to compel his employer to make a health care plan available. Fines are imposed for knowing and willful violations by an employer of his obligation to provide health insurance.

Section 608. Definitions

The terms "employee," "family," "child," "pediatric nurse associate," and "Christian Science nurse" are defined. The terms "inpatient hospital services," "medical and other health services," "physicians' services" and "carrier" have the same meaning as when used in title XVIII.

Section 102 of the Bill

Technical amendment.

Section 103 of the Bill

Specifies an effective date of July 1, 1973.

Section 104 of the Bill

Transitional provision.

Provides that the 25 percent limitation on contributions to premiums established in section 603 shall apply only to the period beginning January 1, 1976. For the period July 1, 1973, through December 31, 1975, the limitation shall be 35 percent.

TITLE II OF THE BILL—FAMILY HEALTH INSURANCE PLAN

Section 201 of the Bill

Adds to the new title VI of the Social Security Act a new part—part B—entitled "Family Health Insurance Plan."

Part B—Family Health Insurance Plan

Section 620. Short title

Part B may be cited as the "Family Health Insurance Act."

Section 621. Purpose

The purpose of the new part is to assist low-income families with children to obtain adequate insurance coverage to meet their health needs, in a manner which will encourage the efficient and economical use of resources for health care, through the establishment of the family health insurance plan.

Section 622. Eligibility

Each family, as defined in section 625, which includes one or more members who are not entitled to Medicare hospital insurance or to health insurance under the National Health Insurance Standards Act (Part A of title VI) is entitled to health insurance benefits under this new part B, provided that the total annual family income does not exceed $1500. Income limits range from $2500 for one-member families to $7000 for families of seven or more members. The limit for a family of four is $5000.

Family health insurance coverage is required with respect to any family member who receives cash benefits under the Family Assistance Plan or under a State program supplemental to the Family Assistance Plan.

Eligibility and premium amounts will be determined within 30 days following the family's initial filing for family health insurance coverage and every six months thereafter. The Secretary will estimate the family's income for the forthcoming six-month period, basing his estimate, ordinarily, of the family's income for a preceding period. Redeterminations of eligibility and premium amounts will be made whenever the Secretary has reason to believe they are needed.

To the extent that he finds them relevant, the Secretary, in making determinations of eligibility and premium amounts, may adopt determinations of family income made under the Family Assistance Plan or under a State program supplementing the Family Assistance Plan.

The Secretary may by regulations determine when income received, or expenses incurred, in one period shall be considered as income received or expenses incurred in another period or periods.

Each family member whose coverage is terminated will be so advised by the Secretary and the termination will take effect with the close of the six-month period in which notice is given. Where the terminated beneficiary is not entitled to Medicare's hospital insurance and is not a member of a family covered by The National Health Insurance Standards Act, the termination will take effect with the last day of the quarter following the six-month period in which the coverage determination is made.

Provision is made for setting special income limits for purposes of eligibility on a family's gross income from a trade or business (including farming).

Section 623. Meaning of Income

Both earned and unearned income are counted. Specific definitions are provided. Family assistance benefits and State supplementary payments are counted, but food stamps (and other than in-kind benefits based on need) are not counted, nor are amounts received for care of foster children.

The amount of income attributed to each member of an eligible family will be determined by dividing the family's total income by the total number of family members eligible for coverage under this part and assigning an equal share to each member.

For purposes of determining premiums, deductibles and coinsurance amounts, families are classified by number of eligible members and their total income in accordance with a table included in the bill.

Section 624. Resources

In determining "resources," the Secretary will exclude the family home, household goods, personal effects, and property so essential to family self support as to warrant its exclusion. Regulations will specify the effect that disposition of a family's property will have on eligibility.

Section 625. Definition of a Family and Child

The terms "family" and "child" are defined. A parent (or spouse of such parent) who is absent because of employment or search for employment will be counted as part of the family. A "child" must be under age 18 or, if between 19 and 22, must be attending a college, university, or other school in preparation for employment.

In determining eligibility and premium amounts, income of any person that is not available to the family will not be counted (except for the income of a parent or spouse of a parent). Where the person is a child, he will be included in determining the family's eligibility but not in determining its premium amount.

Section 626. Benefits

In each calendar year, each covered member of a family is eligible for coverage of 30 days of inpatient hospital care (or equivalent days of extended care or home health services), physicians' services during those 30 days (or the equivalent number while receiving extended care or home health services), emergency services, outpatient physicians' services on 8 occasions, and other services. Also provided are well-child care, with the number of occasions of such care being limited by the child's age; one routine eye examination for a child under 12 years of age; and maternity care and family planning services and related drugs and devices. Psychiatric care, prosthetic devices and drugs to outpatients (other than those related to maternity care or family planning services), are excluded.

Deductibles and coinsurance vary in accordance with the income class of eligible families. (The classes range from 1 to 5, with 5 being the highest eligible income class.) A deductible of one day of charges for room and board in a hospital is provided for families in income classes 2, 3, or 4, and 2 days for families in income class 5. The deductible for services other than well-baby care, maternity care, and family planning services is $50 per family for those in income classes 3 and 4, and $100 in class 5. Coinsurance is at the rate of 10 percent for income class 4 and 25 percent for income class 5. There is no coinsurance for families in income classes 1, 2, or 3.

Hospitals providing services must have a utilization review plan; reimbursement for services is subject to reasonable cost and reasonable charge limits under title XVIII (Medicare); appropriate arrangements must be made by the carrier to avoid duplicate coverage; Professional Standards Review Organization provisions of title XI (which would be added by H.R. 1) as they apply to payments under titles XVIII and XIX would apply to the extent determined by the Secretary; the same exclusions that apply under title XVIII would apply, except that physical checkups are covered; and State agencies, intermediaries, carriers, and other private agencies or organizations, will be utilized by the Secretary to the extent he finds appropriate in carrying out the program.

Section 627. Premiums

Premiums are based on the family's income class, taking into account the family's size. (A family in income class 1 pays no premium.) Premiums are to be paid as prescribed in regulations. They may be deducted from payments due any member of the covered family under any title of the Social Security Act. The Secretary may request that premiums be deducted from State benefits supplementing Federal Family Assistance benefits. Family members who are dissatisfied with any determination made under the program have opportunity for hearing and review.

Section 628. Payments to Health Maintenance Organizations

Provision is made for families to choose to receive covered services through a health maintenance organization. The HMO option is like that proposed for Medicare under H.R. 1.

Section 629. Consolidated Federal-State Health Benefits

States may enter into agreements with the Secretary under which the State would provide benefits supplemental to benefits under this new part, with the State paying the administrative costs.

Section 630. Definitions

The terms "inpatient hospital services," "physicians' services," "medical and other services," "extended care services," "home health services," "provider of services," and "carrier" have the same meaning as when used under title XVIII. The term "pediatric nurse associate" is defined.

Section 202 of the bill

Sets July 1, 1973, as the effective date of the program.

TITLE III OF THE BILL—RESTRICTION OF MEDICAL ASSISTANCE PROGRAMS TO AGED, BLIND, DISABLED AND CHILDREN IN FOSTER CARE

Title XIX of the Social Security Act is amended to provide that the only mandatory coverage groups under State Medicaid plans will be the aged, blind, and disabled within the meaning of title XVI who are either receiving cash assistance under the State title XVI plan, or whose income and resources meet the requirements of such plan—and also children receiving foster care under a State plan approved under part A of title IV. State Medicaid plans may optionally include the aged, blind, and disabled who are medically indigent (whether or not they meet the income and resources tests of the title XVI plan) and also medically indigent children who are under 21 years and are ineligible for coverage under part A or part B of title VI.

TITLE IV OF THE BILL—INAPPLICABILITY OF STATE LAW TO HEALTH MAINTENANCE ORGANIZATIONS

Health maintenance organizations providing services pursuant to agreement with the Secretary under title VI of the Social Security Act (National Health Insurance Standards Act and Family Health Insurance Act) would be exempted from State laws or regulations inconsistent with the agreement or with the Secretary's regulations.

Physicians affiliated with such health maintenance organizations may delegate any of their functions to employees, either of the physicians or of the organization, subject to the Secretary's limitations and requirements, notwithstanding any State laws or regulations; no State law or regulation may prevent,

interfere with, or penalize any such physician, employee, or organization for so doing.

TITLE V—GENERAL: SEVERABILITY

Provides that if any provision of this legislation is held invalid all other provisions shall remain in effect; and that if any provision is held invalid in part, the provision shall remain in effect with respect to all other applications.

SUMMARY: NATIONAL HEALTH INSURANCE PARTNERSHIP ACT OF 1971

TITLE I—NATIONAL HEALTH INSURANCE STANDARDS

Adds part A of a new title VI to the Social Security Act. Title VI entitled "Health Benefits for Employees and for Low-Income Families." Contains congressional findings and declaration of purpose to establish base for reaching all employers, regardless of nexus with interstate commerce.

Part A of new title VI cited as the "National Health Insurance Standards Act."

1. Requires all employers to make available a basic health care plan to employees (except religious, Federal, State, and local employees, and persons eligible for Medicare) who have been employed for 25 hours a week in 10 out of 13 weeks or 350 hours in 13 weeks. Requirement delayed for employers under unexpired union contracts.

2. Benefits under this plan patterned after Aetna low option plan. Benefits include inpatient hospital services, physicians and other services, well-child care (to age 5), annual eye examination (to age 12). Psychiatric care, drugs to outpatients, and prosthetic devices excluded. At the option of the beneficiary, services may be provided by Christian Science practitioner or nurse, or any Christian Science sanitorium. Provides two-day deductible on room and board in a hospital; on all else, $100 deductible (for no more than three members of family) and 25% coinsurance are imposed, except there is no deductible or coinsurance for well-child (to age 5) care. After an individual has received $5000 in services under the plan in a calendar year, all coinsurance and deductibles waived with respect to services to that individual for the remainder of the year and the next two years. Total benefits per person covered under the plan cannot be limited to less than $50,000, with automatic restoration of $2,000 annually required.

3. Prohibits preexisting condition disqualification from applying for more than six months (not allowed at all for maternity care).

4. Also, requires plan to provide that: no more than 25% employee contribution to premium (35% for first two and a half years) will be required; hospitals providing services must have utilization review plan; reimbursement for services are subject to reasonable cost and reasonable charges limits of Medicare; appropriate arrangements must be made by carrier to avoid duplicative coverage; employee (or surviving spouse) may continue coverage (with the same rate of employer participation in the premium) for up to 90 days after termination of employment if he has had coverage under the plan for thirteen or more weeks; and Professional Standards Review Organization provisions (which would be added by H.R. 1) would apply to extent determined by Secretary. Plan may contain additional benefits, but they must be offered optionally and no limit on contributions to premiums or other requirements are applicable to the optional benefits.

5. Plan also required to offer HMO option HMO (health maintenance organization) definitions and standards follow, insofar as applicable, those in the Social Security bill (H.R. 1) with the Department's recommended changes.

6. Insurance companies must develop group policy (with same benefits as described) for small employers to whom part A applies, self-employed individuals, and other not covered under part A or B of this title, or under title XVIII. Thus, State and local employees, since the obligation does not apply to public employers, could participate under these provisions.

7. Insurer must notify Secretary when employer subscribes to a plan; self-insurer must notify Secretary of what his plan provides. Secretary is to approve plan which meets requirements. Hearings and judicial review, including suits to compel performance, are authorized, and the employee is given a cause of action.

8. Definitions—family is employee, spouse, and children or step-children. Definitions of care and health services are cross-referenced to Medicare.

9. Effective date—July 1, 1973.

TITLE II—FAMILY HEALTH INSURANCE PLAN

Adds a new part B to title VI, cited as the "Family Health Insurance Act".

1. Provides health insurance to family members who aren't eligible for coverage under the National Health Insurance Standards Act (part A of title VI) or Medicare (title XVIII), where the annual family income is less than $5000 for a family of four (and comparable amounts for families of other sizes) and family resources less than $1500. Family defined (as in the Family Assistance Plan) to include all persons related by blood or marriage and living in the same household where there is a child present.

2. Coverage is compulsory for eligible family members where FAP and State supplementary payments equal or exceed the amount of the premium. Coverage for others is optional.

3. Eligibility (with respect to the income levels) is determined prospectively for 6 month periods. Usually based on income for preceding period, unless the Secretary finds that circumstances have changed. Redeterminations may be made during the 6 month period if there have been changes affecting eligibility. Termination is effective at the end of the 6 month period in which the finding of ineligibility is made, unless the individual is not eligible for coverage under part A or title XVIII, in which case termination is not effective for an additional quarter.

4. The only exclusions of income are for in-kind benefits (food stamps, home grown produce, etc.) and payments for a foster child. FAP payments and State supplementation are counted as income.

5. Premiums depend on family income and size, and are computed with reference to income classes. Premiums range from no charge for families in income class 1, to $100 for families in income class 5. Payment of premiums, in the case of a mandatory insured, is by withholding from his title IV benefits, and the Secretary may withhold premiums from any other payments due from the Secretary, such as OASDI benefits.

6. Procedures under FAP are generally made applicable.

7. Benefits in a calendar year for a family member: 30 days inpatient hospital care (or equivalent days of extended care services or home health services), emergency services, and physicians visits, additional physicians visits for well-child care (including immunizations), lab services in connection with physicians' services, maternity care, family planning services.

8. A system of income classes, that is, ranges of income for families of varying sizes, is established for purposes of computing premiums, deductibles, and coinsurance. A deductible of 1 day of charges for room and board in a hospital is provided for families in income classes 2, 3, or 4, and 2 days for families in income class 5. On other services, except well-baby care, maternity care, and family planning services, there is a deductible of $50 per family for those in income classes 3 and 4, and $100 in class 5. The coinsurance is at the rate of 10% for income class 4 and 25% for income class 5. (There is no coinsurance for families in income classes 1, 2 or 3.)

9. Various Medicare provisions are made applicable, such as the provisions on reasonable cost, reasonable charges, utilization review, etc. Same inclusions as Medicare are provided except physical check-ups are not excluded. The Professional Standards Review Organization provisions of title XI, as would be added by H.R. 1, are made applicable to payments under this part.

10. A health maintenance organization alternative as in H.R. 1 (with Department proposed modifications) is provided.

11. Agreements with States authorized under which the Secretary will administer additional benefits for persons with FHIP coverage on behalf of the State. The State would pay the costs of the additional benefits, but not the administrative costs. If the additional benefits are not available to all persons covered by FHIP, the Secretary must find that the limitations imposed by the State are not inconsistent with the purposes of FHIP.

12. The effective date of Title II is July 1, 1973.

TITLE III—RESTRICTION OF MEDICAL ASSISTANCE PROGRAMS TO AGED, BLIND, DISABLED, AND CHILDREN IN FOSTER CARE

Provides that the only mandatory coverage groups under State Medicaid plans will be the aged, blind, and disabled within the meaning of title XVI who are either receiving cash assistance under the State title XVI plan, or whose income and resources meet the requirements of such plan—and also children receiving foster care under a State plan approved under part A of title IV. State Medicaid plans may optionally include the aged, blind, and disabled who are medically indigent (whether or not they meet the income and resources tests of the title XVI plan) and also medically indigent children who are not eligible for health insurance coverage under a plan approved under the National Health Insurance Standards Act or under the family health insurance plan.

TITLE IV—INAPPLICABILITY OF STATE LAW TO HEALTH MAINTENANCE ORGANIZATIONS

Makes inapplicable to HMO's any State law or regulations which are inconsistent with the obligations of the organizations under agreements with the Secretary to provide services under the family health insurance plan or under the Secretary's regulations to carry such agreement out. Also makes inapplicable, in the case of any physician affiliated with any such organization, any State law or regulation which interferes with the performance of functions of the physician by any employee of the physician or the organization. The employee performing the functions would, however, have to comply with criteria of the Secretary.

TITLE V—GENERAL

Contains a severability clause in case any provision of the bill or any application of any provision of the bill is held invalid. Such a holding would not affect the rest of the bill and any other applications thereof.

Mr. SCOTT. Mr. President, I am delighted to join the distinguished senior Senator from Utah, Senator BENNETT, as a cosponsor of the President's proposed National Health Insurance Partnership Act.

As I stated in introducing my own proposals for health care reform earlier this week, I believe that all proponents of health care legislation should consult among themselves and seek, if possible, to avoid the sheer pleasure or privilege of attempting to obtain individual credit. I believe that we should make a common

attempt to find a good, comprehensible, and workable health care program in this current health care Congress.

I look forward to working with the Senator from Utah toward this end. I commend, also, to all Senators, the many good features of other bills, especially the Percy-Scott bill.

Mr. JORDAN of Idaho. Mr. President, if there has been any doubt that concerted action must now be taken to assure all workers and their families have adequate health insurance protection, that doubt no longer exists. The extent to which the costs of hospital and medical care have been sharply rising has been documented many times. Medical costs have gone up twice as fast as the cost of living; hospital costs have risen five times as fast as other prices. As the President reported in his health message:

> For growing numbers of Americans the cost of care is becoming prohibitive. And even those who can afford more care may find themselves impoverished by a catastrophic medical expenditure.

The private health insurance industry has over time extended coverage and scope of benefits, and is to be commended. But more needs to be done to correct the inadequacies and to fill in the gaps that now exist; and this can and should be done through out present insurance system, combining public and private efforts. The provisions of the National Health Insurance Standards Act, which are included in the administration-sponsored National Health Insurance Partnership Act of 1971, have been designed as one part of a total effort to fill in the gaps, working with and within our insurance system.

In brief, the proposal would require nearly all employers to provide basic health insurance coverage for their employees. It would establish a minimum required program, upon which employers and employees would be free to build if they so choose. There are ample precedents for such a program. These may be found in the minimum wage laws, occupational health and safety standards, and disability and retirement benefits.

One of the major features of the plan is that it would require coverage of both inpatient and certain outpatient costs. Under many of the present health insurance policies, hospital and surgical costs are covered but essential outpatient services often are not. For example, while about 80 percent of the population have some hospitalization insurance, substantially fewer—some 50 percent—are covered for outpatient and laboratory and X-ray services. Even fewer have insurance protection against the costs of care in the physician's office or at home. The almost inevitable result is overutilization of expensive institutional services, because these will be paid for through insurance.

Under the National Health Insurance Standards Act, each health insurance plan would have to provide for hospital services, physicians' services—whether provided in or out of the hospital—full maternity care, well child care to age 5—including immunizations—and an annual eye examination to age 12, ambulance and laboratory services, and certain other medical services.

The program has also been designed to provide protection against the costs of catastrophic illnesses. Only 40 percent of the population with medical insurance now have such protection, and this usually falls far short of truly catastrophic illness protection, with upper limits in the range of $10,000 to $15,000. Under the new program, benefits would have to include at least $50,000 in coverage for each family member with an automatic restoration of $2,000 per year. Coinsurance and deductible provisions are included as incentives for efficient use of the covered services. As the President noted in his health message:

> Only as people are aware of those costs will they be motivated to reduce them. When consumers pay virtually nothing for services and when, at the same time, those who provide services know that all their costs will also be met, then neither the consumer nor the provider has an incentive to use the system efficiently. When that happens, unnecessary demand can multiply, scarce resources can be squandered and the shortage of services can become even more acute.

The basic plan would provide that employers would also be required to give their employees an option to obtain their health care services through a health maintenance organization as well as through the more traditional arrangements. About seven million Americans are now enrolled in HMO's—and the number is growing. All indications point to the great potential for providing a high quality of health care at lower cost through the expanded use of health maintenance organizations.

Mr. President, much of the debate on what we as a Nation should do to solve our health care problems center on the question of how the cost of health care is to be financed. Under the provisions of the National Health Insurance Standards Act, employers and employees would share the full costs. The employers' share will be at least 65 percent for the first 2½ years and 75 percent thereafter. Employees will contribute the remainder. Employers and employees will be free to negotiate additional benefits under their plans, and no limits would be placed on contributions to premiums for any optional benefits that might be added to the basic plan.

This program is both a reform and a reaffirmation of our private health insurance system. It corrects its weaknesses and builds on its strengths. It calls upon government, our people, business and labor, the insurance industry, and the health profession to work together, as partners, to attain our common health care objectives.

By Mr. MATHIAS (for himself and Mr. WEICKER):

S. 1626. A bill to provide an elected Mayor and City Council for the District of Columbia, and for other purposes. Referred to the Committee on the District of Columbia.

DISTRICT OF COLUMBIA CHARTER ACT

Mr. MATHIAS. Mr. President, I introduce for appropriate reference a bill to provide an elected mayor and city council for the District of Columbia, and for other purposes.

This legislation is identical in purpose to the home rule bills which I have introduced in the past and which this body has considered several times previously. In brief, it proposes a charter for self-government for the people of the National Capital, including an elected Mayor and 11-member City Council to exercise full municipal administrative and legislative powers, respectively, subject to the retention of ultimate, constitutional legislative oversight by the Congress.

In my judgment, home rule for the District of Columbia is fully consistent with the Constitution. The Federal interest in the District will be expressed and protected through my bill, and the national interest in a healthy, dynamic capital city will be advanced.

In its general thrust and in many particulars, this bill incorporates the home-rule legislation of the past and that proposed by the distinguished chairman of the Committee on the District of Columbia, Senator EAGLETON. I am, however, proposing alternative approaches on several important points in the belief that these possibilities should be discussed by the Congress and the community. I ask unanimous consent to include a summary of these specific points at the conclusion of my statement.

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

(See exhibit 1.)

Mr. MATHIAS. Mr. President, one point of particular importance in my bill is its fiscal provisions. The District of Columbia, like almost all major American cities, faces both an immediate and a long-range fiscal crisis. To help meet the great and growing gap between local revenues and necessary expenditures, my bill proposes an automatic annual Federal payment to the District, pegged at 30 percent of general local revenues and miscellaneous receipts for fiscal 1973, 31 percent for fiscal 1974, 32 percent for fiscal 1975, 33 percent for fiscal 1976, 34 percent for fiscal 1977, and 35 percent for fiscal 1978 and thereafter. Through this escalator approach, the District would be assured of rising Federal support during the next 5 years, until the city's own tax base can be strengthened and such national programs as revenue sharing can be established.

To meet the capital outlay needs of the District, my bill incorporates the President's proposal for public works bonds with a Federal interest subsidy, and for capital grants to the District for higher education.

The central theme of this bill, of course, is effective self-government for the people of the District of Columbia. President Nixon declared in his message to Congress on the Nation's Capital:

> One of my most pressing goals for this Na-

tion is to place local functions under local control, and to equip local governments with the authority and the resources they need in order to serve their communities well.

Home rule for Washington is fully consistent with that overall objective. As the Congress and the Commission on the Organization of the Government of the District of Columbia seek ways to make the District of Columbia government more efficient, we should also work toward making it more democratic. I, therefore, introduce this bill to reemphasize my personal commitment to that goal, and to promote informed discussion of alternatives within Congress and the community.

EXHIBIT 1

SUMMARY—MATHIAS HOME RULE LEGISLATION

The Mathias home rule bill, like most such legislation since 1965 would provide for an elected Mayor and City Council to exercise full administrative and legislative authority in governing the District of Columbia, subject to the retention of ultimate, constitutional legislative oversight by Congress.

The Mathias bill differs from S. 1603 (introduced by Senator Eagleton) in the following major respects:

A. FISCAL PROVISIONS

1. Under the Mathias bill, the automatic Federal payment to the District of Columbia would be computed as a percentage of general local tax revenues, following the formula passed by the Senate several times in D.C. Revenue Acts. (S. 1603 would base the Federal payment primarily on real property taxes lost to D.C. through the tax exemption of some Federal properties, not including parklands, museums, art galleries, memorials statuary and shrines.)

2. Under the Mathias bill this automatic Federal payment would be 30% of local general revenues in fiscal 1973, 31% in fiscal 1974, 32% in fiscal 1975, 33% in fiscal 1976, 34% in fiscal 1977, and 35% in fiscal 1978 and thereafter. The increasing percentage is intended to meet the District's short-run gap between rising costs and increases in the city's revenue base.

3. Capital financing under the Mathias bill would follow the method proposed by the Administration and pending before the Senate District Committee as S. 1339. In brief, this legislation would authorize the District to issue taxable bonds with a Federal interest subsidy. (S. 1603 would authorize the issuance of tax-exempt Municipal bonds.)

B. TERM AND ELECTION OF CITY COUNCIL MEMBERS

1. Under the Mathias bill, the 11-member City Council would be elected for terms of four years. (S. 1603 proposes two-year Council terms. Both bills provide a four-year term for the Mayor.)

2. The terms of Council members would be staggered, like those of members of the Board of Education, so that the Chairman, one at-large Council member, and four Council members from wards would be elected with the Mayor in Presidential election years, with the remaining one at-large post and four members from wards chosen in "off years". Elections would be nonpartisan.

C. POWERS OF THE COUNCIL

1. Under the Mathias bill the Council would exercise legislative jurisdiction over the municipal courts of the District, including their organization and composition, and within limitations the qualification, tenure and compensation of judges, but the power to appoint judges for all municipal courts would remain with the President, to be exercised by and with the advice and consent of the Senate. (S. 1603 would also authorize the Council to alter the manner of appointment or selection of judges.)

2. Under the Mathias bill the Council would not be authorized to impose any tax on the income of persons not residing in the District of Columbia.

D. COMPENSATION OF MAYOR AND COUNCIL

Under the Mathias bill the Council would be authorized to fix its own compensation and that of the Mayor. Such actions and all other legislative actions could be challenged by D.C. voters through initiative provisions of the bill. (S. 1603 fixes the initial compensation of the Mayor and Council, and authorizes the Council to change these sums subject to approval by the voters. The initiative is also included in S. 1603)

By Mr. CANNON:

S. 1627. A bill to amend title II of the Social Security Act to increase the annual amount individuals are permitted to earn without suffering deductions from the insurance benefits payable to them under such title; and

S. 1628. A bill to amend title I of the Social Security Act to increase from $70.40 to $100 the minimum monthly insurance benefit payable thereunder. Referred to the Committee on Finance.

AMENDMENTS OF THE SOCIAL SECURITY ACT

Mr. CANNON. Mr. President, I rise at this time to introduce a bill to amend title II of the Social Security Act to increase the annual amount individuals are permitted to earn without suffering deductions from the insurance benefits payable to them under such title. I ask unanimous consent that the bill be printed in the RECORD in order that my colleagues may review this proposal in detail.

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

(See exhibit 1.)

Mr. CANNON. Mr. President, essentially, I am offering a proposal that would increase the amount of earnings a social security recipient could receive before reduction of benefits. I propose to exempt $208 per month from benefit reduction. Our retired citizens, perhaps more than others, are suffering from the pains of inflation and recession. My bill will ease the economic crisis for retired people and encourage many talented retirees to seek work that will supplement their pension income. The retired man or woman who works and earns a little money is penalized with reductions in social security payments. I think it only fair that we encourage senior citizens to work and that we remove the unreasonable limitation on the amount one can earn without reduction in payments. My bill raises the limitation ceiling to a more realistic level and offers the kind of incentive required to encourage active healthy citizens to continue working on a part-time basis.

At this time, I also introduce a bill to amend the Social Security Act to increase from $70.40 to $100 the minimum monthly insurance benefit payable thereunder. As the Members of this body know, we passed a social security bill during the closing days of the last Congress providing for the $100 minimum payment. Unfortunately, this measure died last year. I would like to see the Senate act in the near future as many of our senior citizens are very much in need of this increase now.

EXHIBIT 1

S. 1627

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraphs (1), (3), and (4)(B) of subsection (f) of section 203 of the Social Security Act are each amended by striking out "$140" wherever it appears therein and inserting in lieu thereof "$208.33⅓".

(b) Paragraph (1)(A) of subsection (h) of section 203 of such Act is amended by striking out "$140" and inserting in lieu thereof "$208.33⅓".

SEC. 2. The amendments made by the first section of this Act shall be effective with respect to taxable years beginning after December 31, 1971.

By Mr. McGOVERN and Mr. HATFIELD (for themselves, Mr. EAGLETON and Mr. HART):

S. 1631. A bill to provide assistance to defense workers whose employment has been adversely affected by the transition to a peacetime economy. Referred to the Committee on Finance.

EMERGENCY TRANSITION ALLOWANCE ACT

Mr. McGOVERN. Mr. President, I introduce for myself and Senators HATFIELD, HART, and EAGLETON, a bill entitled the "Emergency Transition Allowance Act." A companion bill is being sponsored in the House by Representatives MORSE and BINGHAM.

Our proposal is designed to meet the immediate employment crisis among workers and communities that are dependent upon arms and aerospace spending.

The bill would create a system of income support benefits, coupled with educational and training incentives, for workers at all levels who feel the impact of the current aerospace emergency. Payments would be set high enough to avoid severe dislocations both for the individuals involved and for the communities which have suffered mass layoffs.

The most prominent current example of the need for such legislation lies in our recent decision to terminate Federal funding for the supersonic transport.

In that case our interest in new national priorities and in environmental protection weighed more heavily than other considerations.

But no Member of Congress was unaware of that decision's meaning to the 14,000 people whose income has been cut off or sharply curtailed as a consequence.

We were deeply concerned about them as well. And that concern is magnified by our recognition that the number of workers affected by the SST decision was quite small compared to the total who have already been laid off, or who are expecting that fate soon, as a result of cutbacks in other areas.

The shift in strategy in Vietnam has eliminated thousands of jobs in the military establishment, and it will eliminate more.

The Strategic Arms Limitation Talks have reopened in Vienna, and if they do

not produce a meaningful agreement—eliminating still more arms and aerospace jobs—it will be an historic failure of diplomacy.

Congress, meanwhile, has become much more discerning in evaluating arms programs, and is likely to order significant reductions regardless of SALT. I suspect we will ultimately recognize, for example, that the Safeguard ABM system's inability to strengthen our security would not be influenced at all by a Soviet-American agreement allowing its construction. That and other wasteful systems should be ended in our own interest.

The space program, which has stood ready in the past to take up the slack in arms spending, is taking cuts of its own this time. The Apollo program is nearing completion, and there seems to be little enthusiasm for embarking on another major effort of that kind.

The difficulty borne by these developments runs wide and deep. It will not be easily countered.

Although there are a few notable exceptions, arms industry management has shown little inclination to plan for the transition of their workers and facilities to civilian projects and programs.

I suspect their attitude derives in part from the lack of any clear national commitment to shift our resources to peacetime pursuits. It must also be said, however, that management in this sector has, for as long as I can remember, exhibited an astonishing degree of shortsightedness. In place of planning for new markets, they have held their employees hostage, obliging them to either support new military ventures or face disaster.

The Congress, therefore, has before it a number of proposals, including the Peacetime Transition Act which Senator MATHIAS and I have introduced, along with Representatives MORSE and BINGHAM and others in the House, designed to promote industry planning. At the same time we are planning substantial public investments elsewhere. New opportunities can, should, and doubtless will be created in such urgent domestic fields as housing, health, transportation, and pollution control.

Moreover, it is critical that we understand the essential differences in the nature of the work to be performed. An unusually large proportion of military and space funds is spent on research and development and on elaborate equipment, so we can probe the outer reaches of technology.

The programs we propose to expand in the domestic area will be much more labor intensive. Certainly we can use more research in these areas. But the essential commitment is to implement the research long since completed. We need less to study housing shortages than we need to build new houses. We need less to dream up new kinds of mass transportation than we need to simply build more new systems for transporting people where they want to go.

New national priorities, therefore, mean more jobs, rather than less. And labor, as a consequence, has as great a stake as any group in accomplishing these shifts.

But transition planning is not enough today. It comes too late. The promise of more jobs eventually is no more helpful than the administration's promise that an expanding national economy will take up the slack. In both cases, the promise runs far ahead of the deed, and the deed runs far behind the duration of unemployment compensation insurance. The unemployment problem is now, and promises simply cannot put meat on the table, make the mortgage payments, and keep the kids in school.

While the planning continues, therefore, I believe we have an immediate obligation to assist the people whose jobs are being eliminated by our decisions.

Consider the kinds of help we have made available to military workers who happen to be paid directly from the Treasury.

In 1964, when the Department of Defense eliminated 80,000 civilian positions within its jurisdiction, those workers were guaranteed new jobs, and they were guaranteed that they would suffer no loss of income even if the new job carried a lower grade. Retraining help was available, and the full costs of relocation were paid.

Similar assistance, although somewhat less extensive, is available today to Federal employees. It is worthwhile, and I support it.

But I fail to see why we should be less concerned about other workers who have been fulfilling precisely the same national policies, simply because their pay happens to be filtered through arms industry management. It seems to me that the same considerations should apply—particularly when we realize that wartime "no strike" pledges, along with the customer's unfailing willingness to accept delayed delivery schedules caused by work stoppages, have severely undermined the ability of these workers to bargain collectively for their job security.

Mr. President, I regard this bill as emergency legislation. I hope it will receive speedy consideration.

It will meet the most pressing immediate needs of laid off workers. It will offset the calamitous economic effects which threaten those communities where the arms and aerospace plants are concentrated.

It is time we stopped forcing labor in this industry to choose between more jobs and less work.

Let us instead offer a third choice, to assure that new national priorities can be welcomed by all Americans.

Mr. President, I ask unanimous consent that a brief summary of our bill, along with a copy of the text, be printed at this point in the RECORD.

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

S. 1631

A bill to provide assistance to defense workers whose employment has been adversely affected by the transition to a peace-time economy

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 "Emergency Transition Allowance Act".

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "defense worker" means an individual who is, or (in the case of an individual who has been displaced from employment) was (prior to his displacement from employment), employed by—

(1) a defense agency; or

(2) a defense contractor.

(b) The term "defense agency" means the Department of Defense (or any military component thereof), the Atomic Energy Commission, the National Aeronautics and Space Administration, or the Department of Transportation.

(c) The term "defense contractor" means any person having not less than 50 workers engaged in the furnishing of defense material pursuant to the terms of a defense contract, or a subcontract entered into for the performance of any such contract or part thereof; except that the term "defense contractor" shall not include any person whose total number of workers so engaged in the furnishing of such material is less than 5 per centum of his total work force within a defense facility.

(d) The term "defense contract" means any contract entered into between a person and a defense agency to furnish defense material to such agency.

(e) The term "defense material" means—

(1) any item of weaponry, munitions, equipment, supplies or services intended for use in the establishment, maintenance, training, or operation of any element of the Armed Forces of the United States or the armed forces of any other country or in the conduct of the United States Space Program, and

(2) any item, equipment, supplies, or service which, while not specifically intended for use in the establishment, maintenance, training, or operation of any element of the Armed Forces of the United States or of any other country or in the conduct of the United States space program, contributes significantly to the conduct of the United States defense or space program by reason of the research and development program carried out in connection with the designing, planning or production of such item, equipment or supplies, or the furnishing of such services.

(f) The term "'defense facility" means any plant or other establishment (or part thereof) engaged in the production, repair, modification, maintenance, storage, or handling of defense material.

(g) The term "person" means any corporation, firm, partnership, association, individual, or other entity.

(h) The term "short workweek" means—

(1) in the case of any worker who is paid on an hourly basis, a workweek of less than 40 hours; or

(2) in the case of any worker who is paid on a weekly basis, a workweek with respect to which the worker's compensation is reduced on account of his services being required for less than the period for which he would have been entitled to a full week's pay.

(i) The term "downgraded" or "downgrading" means any action taken by a defense contractor with respect to a worker (who is employed by such contractor) which results in such worker receiving a lower rate of pay, or lesser fringe benefits, or both.

(j) The term "State agency" means, when used with reference to any State, the State officer, board, or other authority, designated under the law of such State to administer in such State the unemployment compensation law of such State which has been approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(k) The term "displaced or displacement" means, when used in reference to any de-

fense worker, the involuntary separation of such worker from his employment, on a permanent or temporary basis, by action of the employer of such worker, if such action is taken to bring about a reduction in personnel in the defense facility in which such worker is or was employed.

(l) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

(m) The term "period of eligibility" means, in the case of any defense worker, the period beginning with the week for which such worker becomes entitled to benefits under this Act and ending (except in the case of a defense worker who is entitled to extended benefits under section 7) with the close of the 103-week period which immediately follows such week. If any period of eligibility has begun in the case of any defense worker, no other period of eligibility may thereafter begin in the case of such worker.

(n) The term "benefits" or the term "benefits under this Act" does not include payments payable to individuals pursuant to agreements entered into under section 9.

(o) The term "Secretary" refers to the Secretary of Labor.

ENTITLEMENT TO BENEFITS

SEC. 3. Each defense worker who—

(1) has been employed after 1969 as a defense worker;

(2) (A) has been displaced from his employment as a defense worker; (B) has been placed on a short workweek in his employment as a defense worker; or (C) has been downgraded in his employment as a defense worker;

(3) files application (in such form, manner, and containing such information as may be prescribed by regulations of the Secretary) for benefits under this Act; and

(4) on the date that such application is filed continues to be (A) displaced from his employment as a defense worker; (B) placed on a short workweek as a defense worker; or (C) downgraded in his employment as a defense worker;

shall be entitled to benefits under this Act for 52 weeks during his period of eligibility, plus (in the case of an individual entitled to extended benefits under section 7) the number of weeks during his extended benefit period.

AMOUNT OF BENEFITS

SEC. 4. (a) The amount of the benefits payable to any defense worker for any week shall (prior to any reduction under subsection (b) on account of earnings) be equal to whichever of the following is the smaller—

(1) an amount equal to the aggregate of the following—

(A) $115 with respect to such worker;

(B) $38 with respect to the spouse of such worker; and

(C) $19 multiplied by the number of dependent children of such worker; or

(2) an amount equal to 80 per centum of the average weekly wage of such worker during his prior service period (as determined under section 6).

(b) (1) If any defense worker has earnings for any week during his period of eligibility, the amount of the benefits payable to him with respect to such week shall be reduced (but not below zero) by an amount equal to the amount by which—

(A) the amount of the benefits payable to him (as determined without regard to this subsection) for such week; plus

(B) the amount of such worker's earnings for such week;

exceeds 100 per centum of the average weekly wage of such worker during his prior service period (as determined under section 6).

(2) Amounts received by a defense worker for any week under any State or Federal unemployment compensation law shall be regarded, for purposes of this subsection, as earnings of such worker for such week.

(c) If, for any week, the amount of the benefits of any defense worker is reduced under subsection (b) to zero, such week shall not (for purposes of section 3) be regarded as a week for which such worker has received benefits under this Act.

CONDITIONS AND LIMITATIONS ON PAYMENT OF BENEFITS

SEC. 5. (a) Notwithstanding any other provision of this Act, benefits shall not be payable to any defense worker—

(1) for any week if, for such week, such worker is not—

(A) registered for employment with the appropriate local employment office (as provided by regulations of the Secretary) of the State in which such worker resides;

(B) regularly participating in a vocational education or manpower training program; or

(C) a full-time student in an educational institution (as determined under subsection (c)); and

(2) in the case of any defense worker who does not meet the criteria specified in clause (B) or (C) of paragraph (1), for any week during the 4-week period following the week in which such worker refuses without good cause (as determined under regulations of the Secretary) to accept an offer of suitable employment (as determined under such regulations).

(b) If any defense worker is, by reason of the provisions of subsection (a), denied benefits for any week, such week shall, nevertheless, be regarded (for purposes of section 3) as a week for which such worker has received benefits under this Act.

(c) (1) (A) For purposes of subsection (a) (1) (C), a "full-time student" is an individual who is in full-time attendance as a student at an educational institution, as determined by the Secretary (in accordance with regulations prescribed by him) in the light of standards and practices of the institutions involved.

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time student during any period of nonattendance at an educational institution at which he has been in full-time attendance if (i) such period is 5 weeks or less, and (ii) he shows to the satisfaction of the Secretary that he intends to continue to be in full-time attendance at an educational institution immediately following such period.

(2) For purposes of subsection (a) (1) (C), an "educational institution" is (A) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof, or (B) a school or college or university which has been approved by a State or accredited by a State-recognized or nationally-recognized accrediting agency or body, or (C) a nonaccredited school or college or university whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

DETERMINATION OF AVERAGE WEEKLY WAGE FOR PRIOR SERVICE

SEC. 6. (a) For purposes of this section, the term "prior services period", when used in reference to any defense worker, means the period—

(1) which ends with the last week (determined as of the date such worker applies for benefits under this Act) with respect to which such worker was employed as a defense worker and with respect to which none of the following events occurred—

(A) such worker was (or continued to be) placed on a short workweek as a defense worker;

(B) such worker was (or continued to be) downgraded in his employment as a defense worker; or

(C) such worker was displaced from his employment as a defense worker;

and

(2) which begins with the—

(A) first day of the 51st week which precedes the week on which such period ends; or

(B) if later than the day referred to in clause (A), the first day of the first week for which such defense worker was employed as a defense worker in the employment with regard to which the event specified under paragraph (1) occurred.

(b) For purposes of this Act, the average weekly wage of any defense worker for such worker's prior service period shall be deemed to be equal to whichever of the following amounts is the greater.

(1) the amount derived by dividing the number of weeks of such worker's prior service period into the total amount paid to such worker during such period as compensation for services performed by him in his employment as a defense worker; or

(2) the amount which would have been payable to such worker during such period as compensation for such services if such worker had worked for 40 hours in such employment during each of the weeks in such period at a rate of hourly compensation equal to the hourly rate of compensation at which he was employed for the last week in his prior service period.

EXTENDED BENEFITS

SEC. 7. (a) Any defense worker who—

(1) is entitled to benefits under this Act;

(2) files application (in such form, manner, within such period, and containing such information as the Secretary shall by regulations prescribe) for extended benefits under section;

(3) on the date such application is filed—

(A) is regularly participating in a vocational education or manpower training program which such worker cannot complete prior to the week following the last week for which he is entitled (without regard to this section) to benefits under this Act; or

(B) is pursuing, as a full-time student in an educational institution, a course of study which such worker cannot complete prior to the week following the last week for which he is entitled (without regard to this section) to benefits under this Act;

shall be entitled to extended benefits under this section for such period (not in excess of 26 weeks) as may be necessary to enable such worker to receive benefits under this Act during the period required for him to complete the education or training program (referred to in clause (3) (A)) or the course of study (referred to in clause (3) (B)), as the case may be.

(b) The extended benefits under this section shall be payable, in the case of any defense worker, in the same amount and in the same manner as the benefits to which such worker is entitled under section 4.

ADMINISTRATION

SEC. 8. (a) Subject to subsection (b), this Act shall be administered by the Secretary.

(b) (1) The Secretary shall make an agreement with any State which is able and willing to do so under which the State agency of such State will be utilized by him for the purpose of making determinations of eligibility for and entitlement to the benefits under this Act of defense workers residing in such State, and of making benefit payments to such workers who are entitled thereto.

(2) The Secretary shall pay any such State, in advance or by way of reimbursement, as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), amounts equal to (A) the amounts of benefits under this Act paid to defense workers pursuant to such agreement, plus (B) the amount of the administrative costs incurred by the

State agency of such State in carrying out such agreement.

AGREEMENTS FOR THE PAYMENT OF EXTENDED UNEMPLOYMENT COMPENSATION

SEC. 9. (a) The Secretary shall make an agreement, with any State which is able and willing to enter into such an agreement, under which the State agency of such State will make payments of unemployment compensation to defense workers residing in such State—

(1) (A) whose period of eligibility (as defined in section 2(m)) has expired, or (B) whose period of eligibility (as so defined) has not expired but whose entitlement to benefits under this Act has been exhausted; and

(2) who, during their period of eligibility (as so defined) were (or upon filing application therefor would have become) entitled to unemployment compensation under any State or Federal law.

(b) (1) Any such agreement shall provide that the payments of unemployment compensation thereunder shall be payable during the 26-week period which begins, in the case of any defense worker, with the week following the last week of such worker's period of eligibility (as defined in section 2 (m)) (or, if earlier, the week following the week in which such worker's benefits under this Act were exhausted); and (except as otherwise provided in paragraph (2)) any such payments shall be made in the same manner and subject to the same conditions as are applicable in the case of payments under the unemployment compensation law of the State with which such agreement is made.

(2) The amount of the unemployment compensation payable to any defense worker under any such agreement for any week shall be equal to the amount of the weekly unemployment compensation which was (or, upon the filing of application therefor, would have been) payable to such worker during the last week during such worker's period of eligibility (as defined in section 2 (m)), for which such worker was (or would, upon filing application therefor, have become) entitled to such compensation under any State or Federal law.

(c) The Secretary shall pay to any such State, in advance or by way of reimbursement, as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), amounts equal to—

(1) the amount by which payments made to defense workers under such agreement exceed the amount of the unemployment compensation which would have been payable (under the law of such State) to such workers if such agreement had not been entered into; plus

(2) the amount of administrative costs incurred by the State agency of such State in carrying out such agreement.

FURNISHING OF INFORMATION BY EMPLOYERS AND GOVERNMENT AGENCIES

SEC. 10. (a) Any agency of the Federal Government having information or data with respect to employment which the Secretary deems necessary in the administration of this Act, shall, upon request of the Secretary, furnish such information to the Secretary.

(b) Any defense contract entered into after the date of enactment of this Act between a defense contractor and a defense agency shall contain a provision under which such contractor is required to report to the Secretary such information or data with respect to employees of such contractor as the Secretary shall, by regulations, prescribe as being necessary in the administration of this Act.

(c) Information and data with respect to employment obtained by the Secretary shall, whenever appropriate for the effective administration of this Act, be furnished by the Secretary to State agencies which are parties to agreements entered into under section 8.

(d) Any information or data with respect to employment which is obtained by or furnished to the Secretary (or any State agency) for purposes of the administration of this Act shall be used only for such purposes.

AUTHORIZATION OF APPROPRIATION

SEC. 11. There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this Act.

EMERGENCY TRANSITION ALLOWANCE ACT

Summary of a bill to be introduced by Senators McGovern and Hatfield and Representatives Morse and Bingham.

I. ELIGIBILITY

Benefits under the Act would be payable to defense and aerospace industry employees who have been displaced or downgraded or have suffered shortened workweeks as a consequence of reductions in Federal expenditures on military and space programs or on other programs, such as the SST, which are related to military and space efforts although not specifically a part of them.

Benefits would be payable immediately upon the Act's passage and funding, and would apply from that date to all workers then eligible, regardless of when they were laid off or downgraded, so long as they had been employed within the scope of the Act at some time after 1969.

To maintain his eligibility for benefits, a worker would be required to maintain an active registration for employment with the appropriate employment office and be willing to accept suitable employment, or be registered as a full time student in an educational institution or regularly participating in a vocational education or manpower retraining program.

II. AMOUNT AND DURATION OF BENEFITS

Eligible workers would receive on a weekly basis the lesser of:

A. $115 per week ($5980 per year) for the worker himself plus $38 per week ($1976 per year) for the spouse and an additional $19 per week ($988 per year) for each dependent child, or

B. 80 percent of the worker's average weekly earnings prior to his loss of income resulting from the cutback.

In either case the worker could supplement his income from other sources to the point where it totalled 100 percent of his prior earnings without suffering a loss of benefits. The amount of outside earnings above that point would be deducted from benefits payable under this Act.

Benefits would extend for any 52 weeks out of a 104 week period, except that they would be payable for an additional time, not to exceed 26 weeks, to workers who are enrolled in retraining or educational courses which cannot be completed prior to the end of the basic eligibility period.

III. RELATION TO UNEMPLOYMENT COMPENSATION INSURANCE

Unemployment compensation payments made to the worker while he is collecting benefits under this Act would be considered outside earnings for the purpose of determining the amount of payments to which he is entitled under the Act, i.e., for determining the point at which his total income exceeds prior earnings thus requiring a reduction in benefits under the Act.

However, the Secretary of Labor would be authorized to seek agreements with the States under which the employee, if he remained eligible, could collect unemployment compensation payments after his eligibility under this Act had been exhausted. If such an agreement were made, the Secretary would pay to the State any amount paid out to workers in excess of the amount which would have been paid in the absence of the agreement, plus any administrative costs incurred as a consequence of the agreement.

IV. ADMINISTRATION AND FUNDING

The Act would be administered by the Secretary of Labor, under procedures similar to those used in unemployment compensation for federal employees. The Secretary would be authorized to enter into agreements with state agencies charged with administering state unemployment compensation laws, providing that such agencies would make determination as to eligibility and pay the benefits created by the Act. The States would either be paid in advance or reimbursed for the amounts paid out plus administrative costs.

The program would be financed through Federal appropriations in the amounts required.

By Mr. THURMOND:

S. 1632. A bill to amend the Internal Revenue Code of 1954 to increase, in certain cases, the deduction allowable for expenses incurred in providing care for certain dependents. Referred to the Committee on Finance.

Mr. THURMOND. Mr. President, I am introducing a bill which will correct a gross inequity in our income tax laws. The bill which I am offering would provide for a deduction from taxable income of the amount a family has to pay for child care when the mother is forced to work to earn income to be applied to special medical treatment for a child.

Existing regulations allow medical expenses to be deducted from taxable income. There is also a special provision whereby a married working mother can deduct up to $600 for child care provided the combined income of both parents does not exceed $6,000. Under this provision, if family income is $6,600 or more, there is no allowable deduction for child care. These regulations do not, however, provide for any child care deductions when a mother is forced to leave the home to earn funds to be applied to special medical treatment for a child.

Mr. President, when a family is faced with a situation where a child needs an operation or extensive medical treatment, very often the only way to obtain necessary funds is for the mother to leave the home and work. When she does this, the family incurs the expense of child care for the child or children who are left in the home. This expense should be deductible from taxable income just as an actual medical expense is deductible.

This deduction would be entirely different from the $600 deduction allowed for a working mother generally. Under the $600 deduction the mother of a low-income family is encouraged to supplement family income by electing to work. However, when a mother is forced to work to provide medical assistance to a child, cost incurred for child care should be deductible.

Mr. President, a child who is in need of special medical treatment should not be penalized by a family deciding not to have the mother work to earn necessary funds for the medical treatment, because resulting child care expenses are not deductible.

It is important to emphasize that the amendment I am offering would allow

child care expenses to be deducted only when the mother is forced to work for the purpose of acquiring or accumulating funds to defray expenses of special medical treatment received by her child. These expenses, except for the existing $600 deduction, would not be deductible if the primary use of the income earned by the mother is not for medical treatment for a child.

Mr. President, I introduce this bill for appropriate reference and ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

S. 1632

A bill to amend the Internal Revenue Code of 1954 to increase, in certain cases, the deduction allowable for expenses incurred in providing care for certain dependents

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 214 of the Internal Revenue Code of 1954 (relating to expenses for care of certain dependents) is amended by—

(1) striking out "subsection (d)(1)" in subsection (a) and inserting in lieu thereof "subsection (e)(1)";

(2) redesignating subsection (d) as (e); and

(3) inserting after subsection (c) the following new subsection:

"(d) SPECIAL RULE WHERE EMPLOYMENT OF MARRIED WOMAN IS NECESSARY TO PAY FOR SPECIAL MEDICAL TREATMENT OF A CHILD.—In the case of a woman who is married, the provisions of paragraphs (1) and (2) of subsection (b) shall not apply if the taxpayer establishes that—

"(1) her employment is for the purpose of acquiring or accumulating funds to defray expenses of special medical treatment received or to be received by an individual who (within the meaning of section 152) is her son, daughter, stepson, or stepdaughter, and

"(2) the financial resources otherwise available to her were, or are expected to be, inadequate to defray such expenses. For purposes of this subsection, 'special medical treatment' means an operation or other procedure designed to permanently cure, rectify, or mitigate the effect of a disease, injury or defect."

(b) The amendments made by subsection (a) shall apply with respect to taxable years beginning after December 31, 1970.

By Mr. MOSS:

S. 1634. A bill to designate a certain route on the National System of Interstate and Defense Highways between Omaha, Nebr., and Sacramento, Calif., as the Golden Spike Highway. Referred to the Committee on Public Works.

GOLDEN SPIKE HIGHWAY

Mr. MOSS. Mr. President, 2 years ago—on May 10, 1969, to be exact—we celebrated in my State of Utah the centennial of the driving of the Golden Spike at Promontory, Utah, and the linking of the United States by transcontinental railroad.

The hundredth anniversary of the date when the Nation was welded from sea to sea by twin bands of steel gave us an opportunity to pay tribute to the leadership and vision which produced the railroads, and the incredible endurance of the men who laid the rails. These were celebrated both in rhetoric and pageantry. Those who were there will never forget, I am sure, the dramatic reenactment of the moment when the Union Pacific's engine No. 119 and the Central Pacific's "Jupiter" inched forward to touch snouts, the executives shook hands, the workers exchanged bottles of champagne and the Nation went wild with joy as the telegraph message reached major centers of population from coast to coast.

Those of us who were there for the centennial will never forget either hearing again the story of the grueling years of work and sweat and courage which went into the construction of the railroad from Omaha, Nebr., to Sacramento, Calif.

The builders, surveyors, engineers, graders, and track layers battled deep snow in the California Sierra and bitter cold in the Wasatch Mountains of Utah and on the Wyoming and Nevada plains. Side by side with Federal troops they fought costly skirmishes with Indians who suspected that the manmade iron trail meant an end to their free way of life.

The logistics of the construction job were unprecedented. Rails and other supplies for the Central Pacific were shipped around Cape Horn; ties for the Union Pacific were hauled across hundreds of miles of treeless prairie. Locomotives were hauled across the ice of the yet unbridged Missouri River. Horses, scrapers, hand shovels, pickaxes, and black powder were the most modern tools available in this nonmechanized era.

Union Pacific crews mostly made up of Irish immigrants pushed across the plains and Chinese laborers of the Central Pacific tunneled and laid track across the high Sierras of California and across Nevada toward Promontory. After the Civil War, freed slaves and former soldiers from both sides were added to the work crews. In Utah, Brigham Young—bitterly disappointed when told the railroad would bypass Salt Lake City by swinging north of the lake—nevertheless put Mormon contractors to work building the grades and embankments for both lines. In all, Union Pacific laid 1,085 miles of rails and the Central Pacific 690 miles.

I can think of no better way to cement forever in the minds of all Americans the story of the building of the first transcontinental railroad than to name the highway which follows the route of these bands of steel, "The Golden Spike Highway." The route I would recommend renaming is as follows:

The National System of Interstate and Defense Highways, which consist of Route I–80 from Omaha, Nebr. to Echo Junction, Utah, Route I–80 North from Echo Junction to the junction with Utah State Highway No. U–70, and Route I–80 from the junction with such State Highway No. U–70 near Oasis, Nev., to Sacramento, Calif.

Part of this road—the portion across Nebraska and Wyoming, and part of the road in Utah—was once known as the Lincoln Highway. Some of the route across Nevada was once known as the Victory Highway. But now no one ever calls either portion by these names. They are known only by their numbered route designations.

So it is not a question of usurping any name which is now in common use, or taking away any distinction which the highway now has. It is simply a question of giving to a portion of one of our major cross country highways a name which links it to a very important and dramatic portion of our past, and associating that highway with the construction and completion of the railway which united the American East with the American West and paved the way for the development of the vast wilderness west of the Mississippi River.

Mr. President, I send to the desk for appropriate reference a bill to designate a highway beginning in Omaha, Nebr., and ending in Sacramento, Calif. and passing within a few miles of Promontory, Utah, as the Golden Spike National Highway.

By Mr. MOSS:

S. 1635. A bill to amend section 4107 of title 38, United States Code, to provide for the payment of pay differentials for evening, night, weekend, and holiday work performed by nurses employed by the Veterans' Administration, and for other purposes. Referred to the Committee on Veterans' Affairs.

PAY DIFFERENTIALS FOR VA NURSES

Mr. MOSS. Mr. President, historically, registered nurses employed by the Veterans' Administration's Department of Medicine and Surgery have been denied fringe benefits provided for those in non-Federal employment. These benefits include shift differentials for evening and night work, overtime, holiday and on-call pay, and compensatory time off. To remedy this situation, I am today introducing a bill to authorize the Administrator of Veterans' Affairs to make appropriate payments in these areas.

Enactment of these premium pay provisions is essential if the VA is to recruit and retain enough registered nurses to provide quality care for our disabled and ill veterans. The VA must offer premium pay if it is to compete successfully for the limited supply of available nursing personnel.

In the last few years, salaries for registered nurses in public and private hospitals have been increasing at a faster pace than those in the VA. This is especially true in States with large metropolitan areas. The VA has attempted to keep pace by increasing the entrance salaries for junior grade, associate grade, and full grade nurses at 74 locations. But this has not been enough to attract and hold the necessary nursing staff.

Nurses in VA hospitals work under trying conditions because of a high nurse vacancy rate as well as many other shortages, both professional and subprofessional, in medical and nursing personnel categories. VA nurses are required by agency policy to be on duty 7 days a week, 24 hours a day unless excussed by proper authority. Nurses are required to rotate to all three tours of duty so that wards may have professional nursing coverage 24 hours a day. Operating room nurses take call every other week in addition to their regular schedule. It takes a special dedication for this sort of duty.

The report published by the House

Committee on Veterans Affairs on February 17, 1971, reveals that registered VA nurses worked an average of 2 uncompensated hours in excess of 40 hours per week during the report week of November 24–30, 1970. Morale is low and this has made it difficult to retain newly hired nurses.

My bill will take a giant stride toward improving the working conditions of a dedicated group of professionals engaged in the vital area of nursing practice. VA nurses have been asking for premium pay for many years. Every year the need becomes more acute. We cannot permit this situation to go any longer. We need to take prompt action to secure passage of this bill.

By Mr. McGEE (by request):

S. 1636. A bill to establish a Federal wage system for fixing and adjusting the pay of certain employees of the Government. Referred to the Committee on Post Office and Civil Service.

Mr. McGEE. Mr. President, by request of the administration I send to the desk for appropriate reference a bill to amend title 5, United States Code, to establish a system relating to the fixing of wages for employees of the Government of the United States who are paid at prevailing rates—commonly known as a wage board bill.

On March 29, the Committee on Post Office and Civil Service started public hearings on several bills designed to establish a new wage board pay system. Further hearings have been scheduled for May 3 and 6. I think it is appropriate to have the administration's bill before the committee for our consideration and to give both the administration and the employees an opportunity to look over the administration proposal and comment on its provisions.

Quite frankly, I must express my very considerable disappointment in the language of the bill submitted by the administration. I sense the deft touch of the Office of Management and Budget in this bill, because I notice that none of the provisions of any of the bills that have been introduced this year that would benefit the workingman are included in this proposal. No progressive step increases are suggested, no genuinely fixed policy other than the glittering generality of prevailing rates is included. The hundred thousand or so poorly paid employees of the canteen and PX services of the armed services are excluded from the administration proposal. I regret very much that the officials in the executive branch who are responsible for making recommendations on this legislation have failed so miserably to see the handwriting on the wall. Because if they were anything but blind, they would know that the bill which the Committee on Post Office and Civil Service is going to report and the bill which the Congress is going to enact is not going to overlook those vitally important features of this legislation.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the letter of transmittal, a statement of purpose and justification, and a section-by-section analysis of the bill.

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

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 20, 1971.

Hon. SPIRO T. AGNEW,
President of the Senate.

DEAR MR. PRESIDENT: I am transmitting for the consideration of Congress proposed legislation "To amend title 5, United States Code, to establish a Federal Wage System for fixing and adjusting the pay of certain employees of the Government." A draft bill, a section analysis, and a statement of purpose and justification are enclosed.

The draft bill is designed to continue existing coverage of trades, craft and manual laboring occupations and certain employees in the Bureau of Engraving and Printing, as well as officers and members of crews of vessels. The system is based on the fundamental principle that, consistent with the public interest, the pay of Federal employees in trade, crafts and manual laboring occupations should be related to prevailing rates for the same levels of work. This fundamental principle provides the necessary flexibility to keep the system current and meet changing conditions as they arise.

The proposed legislation vests in the President the responsibility for the system as part of his responsibility for management of the executive branch, with authority to designate an agent, expected to be the Chairman of the Civil Service Commission, to operate the program. This is consistent with the placement of responsibility for adjustments in statutory salary systems.

The Bureau of Labor Statistics is designated to serve as the survey agency for the Federal Wage System. Assignment of the responsibility to the BLS would unify wage survey activities of the Federal government and reduce substantially the element of duplication that now exists because of the collection of similar wage information in the same wage areas by BLS and the agencies. White collar salaries are fixed on the basis of BLS surveys as are rates of employees of companies that contract with Federal establishments (McNamara-O'Hara Service Contract Act). The professional capability of the BLS to conduct such surveys is well established.

The proposed legislation would authorize establishment of a Federal Wage System Advisory Council. This Council would not be a decision making body, but would serve to advise the agent of the President on basic policy matters concerning the establishment and the operation of the Federal Wage System. This Council would provide both management and labor representatives with a medium for expressing their views on policy matters affecting the system. The Council would consist of five labor representatives and five management representatives. Members would be selected on the basis of numbers of wage workers employed in the agencies and represented by the labor organizations.

The proposed legislation continues section 5341(c) of title 5, United States Code, commonly referred to as the Monroney Amendment, which sets requirements, under specified conditions, for using pay data from other wage areas in setting local pay schedules.

The proposed legislation specifies an effective date of 180 days after enactment with two conditions. The first concerns the recognition of surveys conducted by the agencies during the transition period and the second specifies an area-by-area application of the system as wage surveys are completed by the Bureau of Labor Statistics. The conversion process would be completed approximately one year after the first wage schedule is established under the new system.

We urge that the proposed legislation be given prompt and favorable consideration. The proposed legislation contains many features of the Coordinated Federal Wage System which we consider have proven workable and equitable based on experiences gained during the nearly three years of its operation. It will also be noted that the proposed legislation states only the general framework of the general policies and principles under which the system will function rather than specifying detailed rules and instructions. This approach provides the flexibility needed to establish or modify existing features of the system as necessary in order to respond quickly and fully to often changing needs of the system.

The Office of Management and Budget advises that enactment of the proposed legislation would be in accord with the program of the Administration.

A similar letter is being sent to the Speaker of the House of Representatives.

By direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

STATEMENT OF PURPOSE AND JUSTIFICATION

(To accompany a draft bill to amend title 5, United States Code, to establish a Federal Wage System for fixing and adjusting the pay of certain employees of the Government.)

The purpose of this draft bill is to fix into law a Federal Wage System based on the fundamental principle that, as nearly as is consistent with the public interest, the pay of employees covered by that system should be related to prevailing rates for the same levels of work. This fundamental principle provides the necessary flexibility to keep the system current and meet changing conditions and problems which arise.

The bill is designed to continue existing coverage of trades, craft and manual laboring occupations and certain employees in the Bureau of Engraving and Printing, as well as officers and members of crews of vessels. It proposes the continuation of provisions that the pay of officers and members of crews of vessels shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices of the maritime industry. In areas where inadequate maritime industry practice exists it provides for the fixing of pay in accordance with section 5343 of title 5, United States Code. It also proposes the continuation of exceptions presently recognized in section 5102 of title 5, United States Code.

The proposal would vest in the President the responsibility for fixing the pay of employees under the Federal Wage System and for establishing regulations to govern the establishment of wage structures and pay practices, the classification of positions, the coverage of appropriate wage surveys, and the administration of the Federal Wage System. The President would be empowered to designate an agent to carry out these executive responsibilities. These responsibilities previously have been executed by the heads of agencies and the Chairman of the Civil Service Commission. It is expected that the Chairman of the Civil Service Commission will be designated as the agent of the President.

The draft bill continues section 5341(c) of title 5, United States Code, commonly referred to as the Monroney Amendment. The Monroney Amendment requires the use of industry pay data from other wage areas when local industry does not have sufficient employment in the kinds of positions that are directly comparable to the principal types of Federal positions in the area.

The draft bill specifies that the Bureau of Labor Statistics shall serve as the survey agency for the Federal Wage System. The BLS now conducts the National Survey of Professional, Administrative, Technical and

Clerical Pay. The salaries of a much larger group of classified employees are fixed on the basis of that survey. The BLS also conducts surveys under the McNamara-O'Hara Service Contract Act which are used to establish rates for employees of companies providing services under contracts with Federal establishments. Assignment of responsibility to conduct surveys for the Federal Wage System would unify wage survey activities of the Federal government. It would eliminate a substantial element of duplication which exists under the present system whereby both the BLS and agencies now collect similar wage information in the same wage area. Wage surveys are needed to establish the facts about levels of rates being paid by industrial employers. The factfinding is best done by an impartial, objective body that will not be affected by the outcome. The BLS meets this test. The professional capability of the BLS to conduct such surveys is well established.

The draft bill would authorize the establishment of a Federal Wage System Advisory Council. This would not be a decision making body. Rather, its purpose would be to advise the agent of the President on the basic policies to govern the establishment and operation of the Federal Wage System. Five members would represent key agencies and five members would represent key labor organizations. The agent of the President or his designated representative would chair meetings with the Council. The views of management and labor would be expressed in the review of existing and proposed policies applicable to employees subject to this Act. These views would be considered by the agent of the President in the discharge of his responsibilities for the fixing and adjusting of pay in accordance with the basic principles of equity establish by this Act.

The draft bill does not include existing statutory provisions concerning position classification appeals by employees under the Federal Wage System. Under existing statutes wage fixing authority is vested in the heads of agencies and the current provisions of section 5345, title 5, United States Code, are necessary to employer the Civil Service Commission to review and possibly change the classification decision of the head of an agency. The proposed bill would vest in the agent of the President, expected to be the Chairman of the Civil Service Commission, authority to govern the classification of positions under the system. There no longer is a need for a statutory appeals system. Appeals provisions paralleling those already in existence will be established by regulation under the authority of the agent of the President to manage the new system.

The draft bill specifies an effective date 180 days after enactment under the following conditions. It is necessary to have an orderly transition in the Government's business from wage surveys conducted under the existing system to those wage surveys which will be conducted by the Bureau of Labor Statistics. One hundred eighty days are needed for the Council review of the existing system and for the preparation of regulations defining the Federal Wage System. This is the minimum time required by the BLS to recruit and train needed staff and to plan for the conduct of the wage surveys. In order to continue the orderly adjustments of existing wage schedules while BLS makes such preparations, a condition is included to recognize a wage survey conducted by an agency before the effective date of this Act for a wage schedule which becomes effective after such effective date. The second condition to insure an orderly conversion to the Federal Wage System specifies an area-by-area application as wage surveys are completed by the BLS. A full round of surveys would require one year to complete, and all affected employees would be brought under the system by approximately one year from the effective date of new wage schedules in the first area surveyed.

SECTION ANALYSIS

To accompany a draft bill to amend title 5, United States Code, to establish a Federal Wage System for fixing and adjusting the pay of certain employees of the Government.

The first section of the draft bill provides for the Act to be cited as the "Federal Wage System Act of 1971".

Section 2 of the draft bill completely revises and restates Subchapter IV of Chapter 53 of title 5, United States Code. The various sections of that subchapter as amended by this draft bill are discussed below.

Section 5341. Policy: This section sets forth the policy that the pay of employees under the Federal Wage System shall be fixed and adjusted from time to time as nearly as is consisent with the public interest in accordance with prevailing rates. It continues the requirement that subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided for by section 206(a) (1) of title 29.

Section 5342. Definitions: This section defines a number of terms used frequently throughout the draft bill. 'Agency' has the usual definition set forth in section 5102 of title 5; however, subject to section 5343(b) of title 5, an 'agency' referred to in section 5102(a)(1)–(viii) may become an 'agency' for the purpose of this subchapter. 'Employee' is defined to include (1) an employee in a recognized trade or craft or skilled, unskilled or semiskilled manual labor occupation including their supervisors in a position having trade, craft, or laboring experience and knowledge as the paramount requirement; and (2) an employee of the Bureau of Engraving and Printing who performs or directs manual or machine operations or the counting, examining, sorting, or other verification of the product of manual or machine operations.

Section 5342(b) specifically provides that the draft bill does not apply to employees and positions described by section 5102(c) of title 5, other than by paragraphs (7) (trades, crafts and laboring employees, generally) and (8) (officers and members of crews or vessels) of that section.

Section 5343. Administration: This section sets forth the procedures for carrying out the policy expressed in section 5341 of the draft bill. Responsibility for the Federal Wage System is vested in the President of the United States. It provides further for the President to designate an agent to execute these responsibilities. These previously were the functions of the heads of agencies and the Chairman of the Civil Service Commission. It is expected that the Chairman of the Civil Service Commission will be designated as the agent of the President. This includes authority to prescribe the regulations under which pay will be fixed, to establish wage structures and pay practices, to determine wage survey coverage, to govern the classification of jobs under the system, to make appropriate surveys by the Bureau of Labor Statistics, to administer the Federal Wage System, and to negotiate with the heads of each agency referred to in section 5102(a)(1)–(viii) of title 5 and with appropriate labor organizations for the purpose of bringing wage-system type employees of those agencies under the Federal Wage System. The agent of the President also is authorized to delegate wage fixing authority to the heads of agencies and to provide for management-labor union involvement.

Section 5343 continues the "Monroney Amendment" provision for using wage data from outside a wage area for the purpose of setting rates for the principal types of positions under the Federal Wage System which do not have counterparts within the area.

Section 5344. Effective date of pay increase: This section of the draft bill states when increases in pay will become effective. The term pay, rather than basic pay, is used to reflect the broadest coverage of increases (basic pay plus differentials) which result from wage surveys. This section recognizes that wage 5102(a)(1)–(viii) may become an 'agency' (BLS) other than the wage fixing authority, and continues that part of the existing statutory time limits for effecting wage increases based on surveys conducted by other than the wage fixing authority. This provides that such wage increases would be effective not later than the first day of the first pay period which begins after the 19th day, excluding Saturdays and Sundays, following the date on which the BLS survey data are received by the agent of the President or the head of an agency designated under section 5343 of title 5. The existing provisions pertaining to the effective dates for increases based on agency-conducted surveys will have no further application after BLS assumes the survey roie, and accordingly that provision is being dropped.

Section 5345. Retroactive pay: This section of the draft bill continues existing statutory provisions governing the conditions under which an employee under the Federal Wage System is entitled to retroactive pay. Generally speaking only employees who are on an agency's rolls on the date the retroactive schedule is issued or who have retired or died between the period of the effective date of the schedule and the issuance date of the schedule are entitled to the retroactive pay. However, retroactive pay under this section is excluded from pay for the purpose of Chapter 83 of title 5, United States Code and for the purpose of determining the amount of insurance for which an employee is eligible under Chapter 87 of title 5, United States Code.

Section 5346. Federal Wage System Advisory Council: This section provides for the agent of the President in carrying out his functions to establish a Federal Wage System Advisory Council to advise him on policy matters. This Council will review existing and proposed policies applicable to employees under the Federal Wage System and recommend to the agent of the President their adoption, modification, or continuation consistent with the purposes of the Federal Wage System. The Council will have ten members, five representatives from among the executive agencies and five labor organization representatives. Agency representatives will be selected with due consideration to the relative numbers of employees under the Federal Wage System in those agencies. The labor organization representatives will be selected with due consideration to the relative numbers of employees under the Federal Wage System represented. The agent of the President or a representative designated by him will serve as the spokesman for the executive branch and will chair meetings with the Council. He will consider the views of each member in the discharge of his responsibilities under the basic principles of equity established by this Act.

Section 5346 of the draft bill provides for the agent of the President to make an annual report to the President on the operation of the Federal Wage System. Any views of Council members which are submitted in writing also will be furnished with the report to the President.

Section 5347. Crews of vessels: This section continues the practice of setting the pay for officers and members of crews of vessels in accordance with prevailing rates and practices of the maritime industry. It specifies that the agent of the President will prescribe the regulations to carry out the provisions of this section. These responsibilities formerly were vested in the heads of agencies. This section continues to exclude officers and members of crews of vessels from the other

provisions of this subchapter. This section also provides authority to fix the pay of crews of vessels in an area where inadequate maritime practice exists in accordance with section 5343 of title 5, United States Code.

Section 2(b) of the draft bill makes conforming changes in the analysis of Chapter 53 of title 5, United States Code.

Section 3 provides for the agent of the President to prescribe the pay-fixing regulations for converting an employee's initial rate of pay to a wage schedule established pursuant to the amendments made by this Act. Under no circumstances will the amendments made by this Act be construed to decrease the existing rate of pay of any employee subject to the Act.

The draft bill also contains provisions for continuation of agreements at present in effect as a result of negotiations between departments and agencies of the Government and labor organizations.

Section 4 provides a conforming amendment to section 5541 of title 5, United States Code.

Section 5 provides a conforming amendment to section 5544 of title 5, United States Code. This section does not apply to the proposed section 5347, Crews of vessels, of this Act.

Sections 6 through 8 provide conforming amendments to appropriate sections of title 5, United States Code.

Section 9 provides for the repeal of all laws inconsistent with this Act.

Section 10 provides an effective date of 180 days after enactment for the orderly conversion to the Federal Wage System on an area by area basis.

By Mr. METCALF:

S. 1637. A bill to establish uniform standards and procedures for Government advisory committees. Referred to the Committee on Government Operations.

GOVERNMENT ADVISORY COMMITTEES

Mr. METCALF. Mr. President, I introduce for appropriate reference a bill to establish uniform standards and procedures for Government advisory committees.

The bill was drafted as a result of hearings held last year, by the Subcommittee on Intergovernmental Relations, on S. 3067, a bill to provide consumer, labor, and small business representation on committees which advise the Office of Management and Budget.

The hearings, which are printed in three parts and available from the subcommittee, deal principally with the 16 OMB committees and their role in delaying the collection of information needed by Government agencies to enforce laws and regulations, especially in the environmental and energy fields. It is the OMB committees, for example, which have for 8 years delayed the urgently needed national inventory of industrial water waste.

The OMB committees, which are coordinated through the privately financed Advisory Council on Federal Reports, are composed primarily of representatives of large corporations and their trade associations. Prior to introduction of S. 3067, these committees and the OMB discouraged public knowledge and attendance of these meetings. At the hearings last fall the OMB spokesman assured the subcommittee that notice of meetings had been broadened, that attendance by interested persons was welcomed and that efforts were being made to broaden the membership of the committees somewhat, if not to the extent suggested by S. 3067. The chairman of the Advisory Council on Federal Reports declined repeated invitations to testify. In a letter to the subcommittee he took the position that the proposed broadening of the Advisory Council would water down what OMB wishes to obtain; namely, the advice of business as respondents on a particular questionnaire.

At issue during these hearings was the fundamental question of disclosure of information by and to the Government. Knowledge is power; corporation executives who are privy to information and attitudes held by Government officials with whom they associate on advisory committees have an advantage over less-favored persons. Government officials who are persuaded by industry committees to delay and delete questions that should be asked of industry increase the difficulty of law enforcement in the corporate sector. As witness Ralph Nader pointed out:

> What good is the Freedom of Information Act if the rights accorded under that Act can't cling to any information of any significance because the information was never collected by the regulatory agencies because the Bureau of the Budget or the Office of Management and Budget has impeded that collection.

Mr. President, recent actions by some other Government advisory committees show that they do not believe in taking even the small steps taken recently by OMB toward broadening the base of advisory committees to include nonindustry representatives. I shall cite several examples.

NATIONAL INDUSTRIAL POLLUTION CONTROL BOARD

The National Industrial Pollution Control Board was created by Executive order of the President on April 9, 1970. Its stated purpose is to advise the Government on environmental programs affecting industry. The Council consists of 63 top executives of major polluting companies. They have access at their meetings to the President and his principal lieutenants. There is no comparable organization through which nonindustry persons who are concerned with environment have entry to the Presidential family.

At a meeting in the Department of Commerce on October 15, 1970—1 week after the OMB appearance before the subcommittee—this Presidential Council refused the request of 10 environmental and consumer organizations to have representatives attend the meeting. The Council refused to make a transcript of the meeting available to these 10 interested organizations. And the Council leadership declined a request to hold a press conference after its meeting.

At its meeting this year the Council again excluded the public. The Council moved its meeting place from Commerce to the new State Department Building, where security regulations prohibit entry of nonemployees without special visiting arrangements. This artifice prevented participation or even observation by the young conservationists, who must wonder how they are supposed to work within the system when they cannot even get inside the door.

CIVIL AERONAUTICS BOARD ADVISORY COMMITTEE ON FINANCE

On November 2, 1970, the Civil Aeronautics Board Advisory Committee on Finance held its organizational meeting. The Advisory Committee made several important decisions, I quote from the committee's summary of that meeting:

First. A transcript of its proceedings "was not necessary";

Second. The committee would make recommendations to the CAB "on the procedural and philosophical conduct of the Board's business."

Third. "Meetings of the committee would be closed to the press and the public."

This Government Advisory Committee did not meet in a Government office. It was not chaired by a Government official. It met at One Chase Manhattan Plaza, the New York office of its chairman, James P. Mitchell, the vice president of Chase Manhattan who is directly concerned with aerospace activities.

Chase Manhattan Bank is the major creditor for five of the nine local service air carriers. Chase Manhattan is apparently the principal stockholder in the major carrier serving my State—Northwest Airlines, and the second largest stockholder in Eastern Airlines.

I say Chase is "apparently" a major stockholder in those airlines because—thanks to industry advisory committees—Government does not assemble the basic information on corporate ownership which is necessary in antitrust and conflict of interest actions. In its 1969 annual report to the CAB, Northwest reported that 1,249,401 shares of stock—5.97 percent of total outstanding capital—were held by Kane & Co., in care of Chase Manhattan Bank. Kane & Co., according to the Nominee List published by the American Society of Corporate Secretaries at 9 Rockefeller Plaza, New York, is the nominee—the street name—for Chase Manhattan. Similarly, Eastern Air Lines reported that Kane & Co. held 763,847 shares, amounting to 6.4 percent of total outstanding capital.

In addition, Trans-World reported Chase Manhattan held as trustee the largest bloc of stock in that airline, 1,254,674 shares of common which, along with preferred stock held by the bank amounted to 11.75 percent of the airline's outstanding capital. Trans-World told the CAB that Chase held the stock "as trustee for various beneficiaries whose names the bank is unwilling to disclose."

Chase may have other substantial airline holdings—only holdings of 5 percent or more of outstanding capital need to be reported, a reporting inadequacy, I should point out, that would be rectified by passage of S. 608, the Transportation Consumers Information and Counsel Act. However, the bare facts conveniently available are sufficient to point up the

conflict of interest inherent in this situation.

DEFENSE INDUSTRY ADVISORY COMMITTEE

The Defense Department's Industry Advisory Committee was created by Executive order in May 1962. Its "mission," as described by a 1968 DOD directive, is to provide a forum for top level Pentagon and industry executives to discuss policies, practices and the findings of industry study groups. Though "membership may also include representation from nondefense industry, the educational community and the professions" these groups are not represented. Most members are chairmen or president of major defense contracting firms. As of mid-1970, 12 of the 24 IAC members were from corporations in the top 40 defense contractors. Their companies held $6.12 billion of the military prime contracts let that year.

IAC is chaired by Deputy Secretary of Defense Packard. The vice chairman until recently was Paul A. Gorman, president of Penn-Central Transportation. The IAC excludes the public and press from its meetings and keeps only summary minutes which have not been available to the public.

Members who are interested in the recent General Accounting Office study of defense profits, and who had difficulty in obtaining the report, should know that the IAC received the report and a briefing on it from the Comptroller General, after which the report was revised, the criticism softened. This is the group that worries more about congressional interest in cost overruns and excess profits than about methods to eliminate the excessive costs and profits.

RAIL AND MINE SAFETY ADVISORY COMMITTEES

Mr. President, congressional directive that public members be included on advisory committees, in order to balance the advice given by industry representatives, is not carried out. Congress provided in the Rail Passenger Service Act of 1970 that the financial advisory panel would consist of two Government representatives, six representing the business of investment banking, commercial banking, and rail transportation and seven to represent the public. Nevertheless, the President went to the banking and investment community to find several of the public members, with the result that the advisory committee does not have the diversity and balance which Congress said it should have. Similarly, the administration casually disregarded the congressional directive, in the Coal Mine Safety Act of 1969, that persons "knowledgeable in the field of coal mine safety research" be appointed to the Advisory Committee on Coal Mine Safety Research. The lack of knowledge about this most important subject was admitted by some of the embarrassed appointees, who subsequently resigned.

Mr. President, I have spoken briefly about several advisory committees to illustrate the point that our whole structure of Government advisory committees needs attention. I am inclined to think we would be better off without any of them. If in some cases they can be justified they should operate openly, under the control of Government officials, and include persons with no financial interest in the business regarding which they advise. I believe the bill I am introducing today would accomplish these objectives.

I ask unanimous consent that the text of the bill along with the article and minutes to which I have referred be printed in the RECORD at this point.

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

S. 1637

A bill to establish uniform standards and procedures for Government advisory committees

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 "Open Advisory Committee Act."

DECLARATION OF FINDINGS

SEC. 2. The Congress finds and declares—

(1) that advisory committees should be established and used only when they are absolutely essential, and that their number should be kept to the minimum necessary;

(2) that such committees shall be subject to rules of public notice of meetings and disclosure of their number should be kept to the minimum necessary;

(3) that their membership should include a substantial number of representatives from the public;

(4) that the Congress and the public should be kept fully and currently informed with respect to the number, purpose, membership, and activities of such committees; and

(5) that the function of such committees shall be advisory only, and that all matters under their consideration shall be determined, in accordance with law, by the Federal agency involved.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Federal agency" means any Executive department, military department, independent establishment, or agency in the executive branch of the Government of the United States, including Government owned or controlled corporations;

(2) "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established for the purpose of furnishing advice or recommendations to a Federal agency, or for any other purpose, and which is not composed wholly of officers or employees of the Government.

APPLICABILITY

SEC. 4. This Act shall not apply to an advisory committee—

(1) which furnishes advice or recommendations only with respect to national security or intelligence matters;

(2) to the extent that Congress has by statute specifically provided that such committee shall be subject to provisions which are different from the provisions of this Act with respect to restrictions, purposes, or standards of conduct or disclosure; or

(3) which is composed wholly of representatives of State or local agencies or charitable, religious, educational, civic, social welfare, or other similar nonprofit organizations.

AUTHORITY; COMPOSITION

SEC. 5. No Federal agency shall establish or use an advisory committee unless—

(1) such establishment or use is specifically authorized by law, or the President has determined, as a matter of record, that such establishment or use is essential to such Federal agency's performance of its statutory functions; and

(2) at least one-third of the members of such committee shall be persons appointed from private life who are knowledgeable and competent to represent the interests of the public with respect to the subject matter of such committee; or in the case of an advisory committee composed substantially of members of representatives of an industry or of a type or group of industries, not less than one-third of the members of such committee shall be persons appointed from private life who have no direct or indirect economic, financial, or other interest in such industry or type or group of industries and who are knowledgeable and competent to represent the interests of the public with respect to the subject matter of such committee.

RESTRICTION OF FUNCTIONS

SEC. 6. The function of an advisory committee shall be exclusively advisory. The determination of Federal agency action to be taken or the decision of any matter with respect to such action shall be made solely by officers or employees of that agency.

AGENCY RESPONSIBILITY

SEC. 7. Any Federal agency which establishes or uses an advisory committee shall—

(1) appoint or designate an officer or employee of that agency who shall call, chair, and prescribe the agenda for each meeting of such committee;

(2) give timely and conspicuous notice of each meeting of such committee and of the agenda of each such meeting by publication in the Federal Register and by such other means as may be appropriate; and

(3) provide within that agency a process by which interested persons may appeal any ruling of the chair at any meeting of such a committee to the head of that agency.

ADVISORY COMMITTEE PROCEDURE

SEC. 8. (a) Each meeting of an advisory committee shall be open to the public, and a verbatim transcript shall be taken at each such meeting. The transcript shall include the names and affiliations of all persons present at such meeting and the capacity in which they attend. The chairman of the meeting shall certify the accuracy of the transcript.

(b) No advisory committee shall receive, compile, or discuss data or reports showing the current or projected commercial operations of identified business enterprises.

TERMINATION

SEC. 9. Except as otherwise provided by law, an advisory committee shall cease to exist not later than two years after the date of its establishment, unless the head of the Federal agency which established that committee determines in writing not more than sixty days prior to the expiration of such two-year period that its continued existence is absolutely essential to the performance of duties imposed on such agency by law. Except as otherwise specifically provided by law, no advisory committee shall continue to exist for a period longer than four years after the date of its establishment.

REPORTS AND RECORDS

SEC. 10. (a) Any Federal agency which establishes or uses an advisory committee shall include in its annual report or shall make a separate report to include—

(1) the name and function of each such committee;

(2) the names and affiliations of the members of each such committee; and

(3) a list of the time and place of each meeting of each such committee during the period covered by that report. Such Federal agency shall furnish copies of its report to the Library of Congress, where they shall be available for public inspection.

(b) Each Federal agency shall make available to the public for inspection and copying

the records and files, including agenda, transcrips, studies, analyses, reports, and any other data compilations and working papers, which were made available to or prepared for or by each advisory committee. Such records shall be maintained at a single location in each agency for a period of five years after the committee ceases to exist.

JUDICIAL REVIEW

SEC. 11. (a) Any person may bring a suit against a Federal agency if—

(1) that person is or was adversely affected or aggrieved by an action of a Federal agency; and

(2) that action is or was related to a matter considered by an advisory committee subject to the provisions of this Act; and

(3) that advisory committee is or was not operating in accordance with the provisions of this Act.

Any such suit may be brought in the United States district court for the district in which the person bringing such suit resides or has his principal place of business or in the United States District Court for the District of Columbia.

(b) The court having jurisdiction of a suit brought under this section may enter such order as may be appropriate to enforce compliance with the provisions of this Act, and to set aside any agency action in violation of such provisions.

EXECUTIVE ORDERS AND REGULATIONS

SEC. 12. To the extent that any Executive Order or regulation is inconsistent with provisions of this Act, such Executive Order or regulation is superseded.

CIVIL AERONAUTICS BOARD, ADVISORY COMMITTEE ON FINANCE, MINUTES OF MEETING OF NOVEMBER 2, 1970

The organizational meeting of the Civil Aeronautics Board's Advisory Committee on Finance was held at the offices of its Chairman, James P. Mitchell, at One Chase Manhattan Plaza, New York, New York on Monday, November 2, 1970.

The meeting, pursuant to notice, was convened at 10:00 A.M., Mr. Mitchell, presiding. The following members of the committee were present:

James P. Mitchell.
William A. McCurdy.
Blake W. Irons.
Frederick F. Robinson.
Harper Woodward.
Milo Vesel.
S. Kenric Lessey.
Webster B. Todd, Jr.

Also present was Monte Lazarus, Administrative Assistant to CAB Chairman Secor D. Browne.

The meeting opened with a discussion as to whether or not a verbatim transcript was necessary or whether general minutes would suffice. It was decided, after much discussion, that a transcript was not necessary to the conduct of business and that this matter would be taken up with Chairman Browne. With the Chairman's concurrence the necessary steps would be taken to amend the Committee's charter to authorize the use of minutes.

The next subject was the proper province of committee operation. Both the Executive Order (11007) and the memorandum from the Office of the General Counsel were reviewed and it was agreed that the Board could request the Committee's aid in all appropriate areas except where a matter was pending before the Board.

It was also agreed that the Committee would bring matters to the attention of the Board and would make recommendations on the procedural and philosophical conduct of the Board's business and the committee could request that other appropriate members of CAB staff attend meetings.

It was decided that the meetings of the Committee would be closed to the Press and the public. The Committee would, as it deemed necessary and upon invitation, request the participation of outside persons.

The next item concerned the Board's collection and tabulation of financial information of the carriers. The feeling was expressed that the Board was dealing more with historical data rather than current or projected positions. It was agreed that in order for the Board to truly discharge its obligations, its financial information must be of the most up-to-date nature.

The Committee agreed to review the Board's methodology of compiling financial reports and would recommend changes in these procedures in the future.

There then followed a broad discussion of why the advisory groups were formed, what was expected of them, and how they fit into the general scheme of Board operations.

It was pointed out that Chairman Browne had the deepest concern with direct communication between the government and those affected by its operations and that this was the primary reason for the committees: to provide a direct informal flow of ideas. At this time there were no specific projects that the Board has set down for committee action.

The *Domestic Passenger Fare Investigation* was discussed as to format and timing without any discussion of the merits, and particular attention was paid to the *Moss* case and the necessity for legal tariffs. The details of the *Moss* case were discussed as was the Board's most recent fare order (70–9–123) and the reasons behind it.

The general economic posture of the airlines and the industry as a whole was reviewed. The Committee expressed grave concern as to the seriousness of the current situation and urged the Board to address this problem swiftly. The Committee suggested several questions which should be asked of the carriers in order to get a more precise reading of their condition. The list is attached as Appendix A.

The next meeting of the Committee was set for December 4, 1970 at Mr. Mitchell's offices.

The meeting adjourned at 12:30 P.M.

WEBSTER B. TODD, JR.,
Secretary.

AIR TRANSPORT: NEW PRESSURES FACE LOCAL CARRIERS; DETERIORATING WORKING CAPITAL POSITIONS OF REGIONAL CARRIERS FORCE MERGER, RAISE FEARS OF OUTSIDE CONTROL IN SOME AREAS

(By Laurence Doty)

NEW YORK.—Deteriorating working capital position of the local service industry is forcing a proposed merger between Allegheny and Mohawk airlines and is generating new pressures on the group by creditors, which some observers fear may result in outside control of several carriers.

Deeply involved in the latest moves to protect outstanding loans is the Chase Manhattan Bank here, which is the major creditor for five of the nine local service carriers. The merger plan is being instigated by the Sid W. Richardson Foundation of Texas which holds a substantial interest in Mohawk.

The merger would call for an exchange of one-share of Allegheny common stock for four of Mohawk.

Question of whether actual control of some carriers by banks or loan groups now exists is being studied closely by a number of Washington, D.C., attorneys associated with the industry. Many now believe that a statutory problem may be present in that some banks could be found to hold excessive control over carriers and be in much the same position as a holder of large amounts of equity who could direct the activities of a carrier.

Several locals are resisting what they view as a growing dominance of creditors. This has created a state of ambivalence for all parties involved. The airlines cannot afford to wipe out a major source of capital. Nor do they wish to accept foreclosure because of default.

The banks must protect their loans and are forced to take some action when a carrier's debt/equity ratio and working capital positions reach dangerous levels. Foreclosure would be anathema to them because of the dubious resale value of major assets such as flight equipment.

THE 1971 PROSPECTS

Anxiety in financial circles over the slumping air travel business, which has darkened prospects for the locals in 1971, has been compounded by a recent Transportation Dept. study. This report warned that "it should be evident upon examination of the exhibits [contained in the study] that every local service carrier for one reason or another could be in a bankruptcy court."

The Civil Aeronautics Board considers this an "extreme" judgment but concedes that the debt situation is severe (AW&ST Feb. 22, p. 13).

Chase Manhattan's James P. Mitchell, vice president directly concerned with aerospace activities, thus concluded that the short-term solution lay in increased federal subsidy. Office of Management and Budget placed severe limits on the local carrier's subsidy for fiscal years 1971 and 1972.

But the CAB decided to rebuff the OMB and proposed a Fiscal Year 1971 subsidy of $58.1 billion (AW&ST Feb. 8, p. 23). Mitchell has indicated that an annual subsidy rate of between $80 million and $90 million would be the amount necessary to rescue the locals from their current fiscal dilemma.

For long-range purposes, Mitchell first publicly disclosed his thinking in an address before the Wings Club here on Nov. 18, 1970. He noted that "something is obviously wrong with the design of the local carrier system," and added:

"What is called for is a broad systems approach that will examine the entire picture: the regulatory practices and policies; equipment adequacy; competition; the relative roles of trunks, regionals and third-level carriers; the inter-play with other transport modes. . . ."

Specifically, he called for research and development which would raise economic techniques to the same efficient level attained in the technological area.

It was on this point and the subsidy issue that Mitchell met with the presidents of five local service companies here on Dec. 15, 1970. These were the carriers most heavily obligated to Chase.

The overall situation was discussed but, since the entire industry was involved, the five did not feel they were in a position to commit the other four carriers to any major program and a second meeting was arranged to be held in St. Louis on Jan. 11.

Presidents of seven locals reported at this session. Piedmont Airlines was not represented. Allegheny Airlines was represented by Edwin I. Colodny, vice president-legal affairs and economic research.

Paul Cherington, Harvard professor and former assistant secretary of Transportation under John A. Volpe, was present and emerged as a key figure in the meeting. Heads of Mohawk, Southern Airways and RKO, which holds control of Frontier Airlines, had proposed Cherington to head the long-range analysis of the industry which Mitchell had called for in his address.

In addition, because of his close association with the Nixon Administration, Cherington was felt to be the logical choice to approach the OMB and clarify the industry's immediate requirement for additional subsidy.

CONSULTING FIRMS

Cherington proposed that two consulting firms be retained: Simat, Helliesen and Eichner, and Temple, Barker and Sloan, Inc., in which Cherington has an interest. The

program would be conducted over a period of two years at a cost of $200,000 each year.

The group tentatively agreed to accept the project since there were signs that its adoption would relieve some of the pressures on several airlines.

Shortly thereafter, the CAB learned of the action and appeared to respond with some disfavor. The mumblings were subdued but sufficient enough to cause concern among several officials and their attorneys.

In addition, there were a few presidents who were not totally convinced that such an undertaking would provide any beneficial guidance in the conduct of business through 1975.

Nevertheless, an outline plan for the proposed study, which had been prepared by Simat, Helliesen and Eichner, was submitted for review at a third meeting of the group on Jan. 31 at the Hotel Shoreham North in Washington.

The study, which has been nicknamed the "bible," would cover three phases; immediate-range, medium-range and long-range. It would analyze the route structure of the local service carriers to determine how they could operate at a minimum of cost and the highest degree of efficiency.

Basically, the study would define the role of local service operations in the overall air transportation field.

In this respect, the point which stirred the most dissidence among the presidents was the suggestion that the locals' major markets would be on routes with stage lengths up to 600 mi. in the west and 400–500 mi. elsewhere. Many believed that acceptance of this standard would disrupt the Board's current route strengthening policy.

Allegheny would quickly oppose such restrictions in view of its goal to establish itself as a major operator in the northeast sector of the U.S.

In addition, the cost of the project was deemed too high, although it is not out of line with current consultant rates. But, as one lawyer put it, "how willing would the Board be to accept an expenditure of $400,000 to define a role for the locals when that role had already been established by 25 years of route development under Board supervision."

Consequently, the overall plan was rejected and, the next day, the presidents screened their qualms under the enthusiasm over the annual congressional appreciation luncheon, presided over by Joseph P. Adams, general counsel and executive director of the Assn. of Local Transport Airlines (ALTA), host of the affair. During the course of the luncheon, it was evident that members of Senate and House committees concerned with aviation continue to support the locals in their economic development.

Meanwhile, strike-bound Mohawk passed the 30-day grace period after defaulting on payment of $240,000 in interest charges on 6% convertible subordinated debentures. Payments were due on Jan. 15 when the grace period began.

The lapse of the grace period means that bond holders or the indenture trustee—the Marine-Midland Bank of Buffalo—could demand immediate payment of the $8 million in principal. The airline also has a Mar. 1 deadline for payment of $3.3 million in other debt charges due in December and January.

Beyond the proposed merger plan, the airline is attempting to restructure its financial position by correcting its default situation, renegotiating long-term indebtedness and obtaining substantial new equity.

Allegheny and North Central Airlines reported profits in 1970. But the industry as a group is experiencing a decline in the working capital level. Equity for the nine carriers totaled $130 million as of Sept. 30, 1970, and long-term debt at that time stood at $532 million.

By Mr. McGEE:

S. 1639. A bill to provide an additional period of time for review of the basic national rail passenger system; to postpone for 6 months the date on which the National Railroad Passenger Corporation is authorized to contract for provision of intercity rail passenger service; to postpone for 6 months the date on which the Corporation is required to begin providing intercity rail passenger service, and for other purposes. Referred to the Committee on Commerce.

RAIL PASSENGER SERVICE ACT

Mr. McGEE. Mr. President, I introduce today and send to the desk a bill which would postpone for a period of 6 months the date on which the proposed National Railroad Passenger Corporation Act can go into effect.

I do so, Mr. President, with the hope that this body can act quickly to prevent the initiation of a rail passenger system operation that does violence to the legislation which created it—namely, the omission of six States and large sections of the western United States from the rail system that is supposed to provide a national rail passenger network.

Many Members of this body have already expressed their opposition to the system at special meetings of the Transportation Appropriations Subcommittee several days ago, and the House Commerce Committee is currently hearing similar testimony from numerous members of that body.

My own views on the Railpax Corporation proposal were expressed to the subcommittee to which I previously referred, and I ask unanimous consent that my testimony be printed in the RECORD, at this point.

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

TESTIMONY OF SENATOR GALE MCGEE

Mr. Chairman, at the outset I would like to thank you for your prompt response to my request to hold this hearing today to discuss the recent route selections of the Railpax Corporation and to explore the ramifications of the public funds involved in its creation and operation. I know many other Senators share my appreciation that you are holding this hearing.

PURPOSE OF MY TESTIMONY

I testify before your Committee today, Mr. Chairman, for one simple reason—to urge this Committee to rescind any public funds earmarked for the Railpax Corporation and to deny any future requests for funds, until the Congress receives a detailed justification of route selection and restoration of rail passenger routes across Wyoming.

HISTORY OF THE ACT

When the Rail Passenger Service Act of 1970 was enacted into law on October 30, 1970, no one was any more pleased than I. For I believe, as many believe, that the Railpax approach to upgrading and providing more efficient rail passenger service in this country is basically a sound and needed one. Certainly there is no need for me to convince anyone in this Committee of the great need to upgrade our national rail system.

Under the terms of the Railpax Act, the Secretary of Transportation, in recommending a basic route system, was directed to take into account "the need for expeditious intercity rail passenger service within and between *all* regions of the continental United States." I stress the word *"all."* All.

Further, under the Act, the Secretary was directed to consider "adequacy of other transportation facilities serving the same points."

And, finally, to quote from the Act, "The exclusion of a particular route, train, or service from the basic system *shall not be deemed* to create a presumption that the route, train, or service is not required by public convenience and necessity. . . ."

Mr. Chairman, I believe the subsequent actions by the Secretary and more specifically by the Incorporators have been in direct violation of the spirit and intent of the Rail Passenger Act.

Certainly, the route system announced by the Incorporators March 22, 1971 does not meet the criteria of providing service "within and between *all* regions of the Continental United States." Indeed, it left entirely *without* rail service some half-dozen states!

And what about the criteria of "adequacy of other transportation facilities serving the same points"? It certainly wasn't considered in Wyoming's case where we have a bare minimum of commercial air and commercial bus transportation.

WYOMING'S CASE

Indeed, Mr. Chairman, I am at a loss to understand under what logic the Incorporators operated in excluding the Union Pacific Railroad route from Omaha to Cheyenne and west across southern Wyoming and onward to the West Coast. It is the most direct route. It offers the best rail equipment in America today. It offers the smoothest and best-maintained roadbed. In short, it makes eminent sense. Yet the Incorporators have rejected it and recommended instead that the route go from Omaha south to Denver and then wind slowly across Colorado—bypassing Wyoming completely! This decision has come as an incredible shock to me and to the people of Wyoming who depend dearly on reliable rail transportation.

We in Wyoming have a long history of helping and co-operating with the Union Pacific Railroad. As everyone knows, during the construction era, the Union Pacific was granted every other section of land across the right of way spanning the entire State of Wyoming. The income to the Railroad from the mineral and other usages of those lands has not been inconsiderable. They are a large employer of Wyoming working men. And, more importantly, they provide fast, *reliable* east-west transportation within our State boundaries.

We have been shocked, therefore, at the notable lack of interest on the part of Union Pacific to press for inclusion of the Wyoming route in the Railpax system.

I noted with interest the following comments in a letter from Mr. Anthony Haswell, Chairman of the National Association of Railroad Passengers, to Mr. David Kendall, Chairman of the Railpax Corporation:

"Finally, a comment on what may be, after Cleveland, your biggest headache regarding routes and services—Wyoming and Idaho. In our view, a train should be operated between Denver (across Wyoming) and Portland by the Union Pacific Railroad at least until July 1973 at no net cost to the Railpax Corporation. Union Pacific is the wealthiest railroad in the country, and received extensive land grants from the U.S. in aid of its construction. By joining Railpax, it expects to save at least $20 million a year in avoidable passenger losses. It is inconceivable to us that the avoidable loss of a Denver-Portland operation would exceed $3 million annually. Were UP to absorb this loss, it still would have a very good deal. We urge the Corporation to do whatever is possible to persuade the UP to continue a Denver-Portland train at least three times a week. . . ."

Surely those revenue figures are well known to the Corporation and only add further to the incongruity of the decision to omit Wyoming. Additionally, we are told that the

future of efficient rail transportation in this modern age lies in the ability to move lots of people in a minimum of time—rapid transit—in this case, high speed rail transportation. Surely if this is the notable objective we all think it is, then what more logical trackage to use than that of the Union Pacific Railroad which with its superior roadbed is almost a straight east-west course across Wyoming?

RECOMMENDATION

I submit, Mr. Chairman, that the Railpax Corporation has simply not measured up to its obligations to the Act and to the people of the United States. Yet it seeks public funds from the Congress. I urge this Committee to rescind whatever portion of the $40 million, appropriated for this purpose last year, that remains unexpended. I urge that those funds be denied until the route across Southern Wyoming is included and that rail passenger trains be provided to *each* of the states omitted from the system. And I urge the Committee to serve notice that the Congress of the United States will entertain no requests for additional funds now or in the future until those criteria have been met.

Thank you, Mr. Chairman.

Mr. McGEE. Mr. President, in the past few days we have seen many expressions of opposition to the Railpax proposal. According to the press, several of the rail carriers that were to participate are now having second thoughts. I am advised that certain segments of railroad labor are most unhappy with the proposed severance contracts under the proposal and are considering court action.

All of these developments indicate rather clearly that the pending May 1, 1971, date for the beginning of Railpax service is premature. There are too many unsolved questions, too many ill-considered route selections, and—according to many—far too little money to operate a successful nationwide system.

In view of this, I am therefore introducing this measure which would give the Congress a 6-month period to consider further the implications of the legislation and hold additional hearings on the entire concept.

By Mr. BYRD of Virginia:

S. 1640. A bill to extend the period within which members of the Armed Forces serving on extended active duty may acquire a new principal residence. Referred to the Committee on Finance.

Mr. BYRD of Virginia. Mr. President, this bill would apply to those members of the Armed Forces serving on extended active duty who have sold their principal residences. The general tax law permits any taxpayer 12 months from the time of the sale of his principal residence to reinvest the proceeds in a new principal residence without considering it income.

The current tax law puts the serviceman on an equal basis with civilians by allowing him 1 year after returning from overseas assignment to purchase new homes for not to exceed a 4-year period. Normally overseas assignments have been for a period of 3 years. More recently, however, the Department of Defense is beginning to lengthen a number of foreign assignments to 4 years.

The bill would permit members of the Armed Forces who have sold their homes up to 5 years to reinvest the proceeds in new principal residences without having to treat such proceeds as income.

The proposal I am submitting to the Senate would put the military men on the same footing as civilians. I think this bill is a matter of simple equity and would put the military men on an equal basis with civilians.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 377

At the request of Mr. TOWER, the Senator from Hawaii (Mr. FONG) was added as a cosponsor of S. 377, a bill to equalize military retirement pay.

S. 455

At the request of Mr. INOUYE, the Senator from California (Mr. CRANSTON) was added as a cosponsor of S. 455 to amend the Internal Revenue Code of 1954 to allow a deduction from gross income for social agency, legal, and related expenses incurred in connection with the adoption of a child by the taxpayer.

S. 922

At the request of Mr. RIBICOFF, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 922, the Youth Camp Safety Act.

S. 1307

At the request of Mr. RANDOLPH, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 1307, a bill to provide increased employment opportunities for middle-aged and older workers, and for other purposes.

S. 1374

At the request of Mr. THURMOND, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of S. 1374, a bill to exempt from taxation certain property of the Daughters of the American Revolution in the District of Columbia.

S. 1379

At the request of Mr. JORDAN of Idaho, the names of the Senator from Indiana, (Mr. BAYH), the Senator from Nevada (Mr. BIBLE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from South Carolina (Mr. THURMOND), and the Senator from New Hampshire (Mr. MCINTYRE) were added as cosponsors of S. 1379, to authorize the Secretary of Agriculture to establish a volunteers in the national forests program, and for other purposes.

S. 1435

At the request of Mr. STEVENSON, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 1435, a bill to ban sports from closed circuit television.

S. 1461

At the request of Mr. MCGOVERN, the Senator from Michigan (Mr. HART) was added as a cosponsor of S. 1461, the Truth in Advertising Act of 1971.

S. 1470 AND 1471

At the request of Mr. THURMOND, the Senator from Alaska (Mr. STEVENS), the Senator from Florida (Mr. GURNEY), the Senator from Nevada (Mr. BIBLE), and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 1470, a bill to provide an incentive plan for participation in the Ready Reserve; and the Senator from Alaska (Mr. STEVENS), the Senator from Florida (Mr. GURNEY), and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 1471, a bill to provide an annuity for the dependents of persons who perform the service required under such chapter and die before being granted retirement pay:

S. 1483

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Georgia (Mr. TALMADGE) I ask unanimous consent that, at the next printing, the names of the following Senators be added as cosponsors of S. 1483: Mr. AIKEN, Mr. ALLEN, Mr. ALLOTT, Mr. BELLMON, Mr. BROCK, Mr. BURDICK, Mr. EAGLETON, Mr. EASTLAND, Mr. ERVIN, Mr. GURNEY, Mr. HARRIS, Mr. HART, Mr. HOLLINGS, Mr. HUGHES, Mr. JACKSON, Mr. MCGEE, Mr. MCGOVERN, Mr. MANSFIELD, Mr. METCALF, Mr. MUSKIE, Mr. NELSON, Mr. PACKWOOD, Mr. PEARSON, Mr. SAXBE, Mr. SYMINGTON, Mr. THURMOND, and Mr. YOUNG.

Mr. President, this is 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.

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

S. 1607

At the request of Mr. BELLMON, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 1607, a bill to provide for additional acreage diversion to protect the environment or the local economy of any area from the results of a natural disaster.

SENATE JOINT RESOLUTION 59

At the request of Mr. EAGLETON, the Senator from Hawaii (Mr. INOUYE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Illinois (Mr. STEVENSON) were added as cosponsors of Senate Joint Resolution 59, a joint resolution regarding the powers of the Congress and the President to commit the Armed Forces of the United States to hostilities.

SENATE JOINT RESOLUTION 80

Mr. BYRD of West Virginia. Mr. President, at the request of the senior Senator from West Virginia (Mr. RANDOLPH), I ask unanimous consent that, at the next printing, the name of the Senator from New Jersey (Mr. WILLIAMS) be added as a cosponsor of Senate Joint Resolution 80, a joint resolution expressing the support of the Congress that the United States should convene in 1971 an international conference on ocean dumping.

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

SENATE RESOLUTION 103—SUBMISSION OF A RESOLUTION DESIGNATING INTERNATIONAL WALK FOR DEVELOPMENT WEEKEND

Mr. PERCY (for himself, Mr. McGOVERN, Mr. COOK, Mr. RANDOLPH, Mr. TUNNEY, and Mr. CRANSTON) submitted a resolution (S. Res. 103) that Saturday, May the 8th, and Sunday, May the 9th, of this year be declared International Walk for Development Weekend, which reads as follows, and which was referred to the Committee on the Judiciary:

S. RES. 103

Whereas, the continued existence of hunger, malnutrition, overpopulation, unemployment and inadequate housing in this country cannot be justified, and;

Whereas, a nation that produces and consumes the largest share of the world's resources cannot call itself a just nation until an equitable global distribution of resources is achieved, and;

Whereas, Young World Development of the American Freedom from Hunger Foundation believes that a new future for mankind can be achieved when:

We can assure an adequate income for every family and every nation thru an equitable distribution of work opportunities and world trade, and;

We can feed the world's population, and;

We can re-evaluate our foreign commitments and reorder our domestic priorities, and;

We can come to live at ease with—and be enriched by—our own and the world's diversity of people and cultures, and;

We can harness the growth of the world's population, and;

We can preserve the house of man: earth and its environment, and;

A moral concern that stops at national borders is no longer moral, and;

Whereas, Young World Development of the American Freedom from Hunger Foundation further believes that these concerns are far too serious to be left to the sole care of governments and institutions, and that their solutions will be found only when there is widespread local concern for human development brought about by thousands of individuals educated in the issues that affect the future of man, and;

Whereas, Young World Development of the American Freedom from Hunger Foundation, through Walks for Development in over 300 cities in this nation on May 8 and 9, 1971, is working to gain individual involvement and public recognition for these issues, as well as raising funds to support development programs in this country and around the world, and;

Whereas, the young people who join in the Walks for Development in this country on May 8 and 9 of this year will be joined in their efforts by young people in over 40 countries around the world who share a commitment to a new future for the world; Therefore, be it

Resolved, That Saturday May the 8th and Sunday May the 9th of this year be declared International Walk for Development Weekend and, be it further

Resolved, That the week of May 9 through May 15 be declared Human Development Week in the United States of America.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971—AMENDMENT

AMENDMENT NO. 56

Mr. ERVIN submitted an amendment intended to be proposed by him to amendment 55 proposed by Mr. COOK and others, to the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes, which was received, ordered to be printed, and to lie on the table.

NOTICE OF HEARINGS ON ECONOMICALLY DISTRESSED AREAS

Mr. McCLELLAN. Mr. President, the Committee on Government Operations will begin hearings next Tuesday and Wednesday, April 27 and 28, on S. 10, to establish a national policy to revitalize rural and other economically distressed areas. The hearings will be held in room 3302, New Senate Office Building.

NOTICE OF HEARINGS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD notice of hearings on behalf of the distinguished chairman of the Judiciary Committee, the Senator from Mississippi (Mr. EASTLAND).

There being no objection, the notice to be printed in the RECORD, is as follows:

NOTICE OF HEARINGS

Mr. EASTLAND. Mr. President, notice is given that hearings will be held beginning at 10:30 a.m., Wednesday, May 5, before the Internal Security Subcommittee on six bills introduced by the Chairman of the Judiciary Committee, Senator Eastland, and dealing with various aspects of Internal Security matters.

These bills are, respectively:

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.

The hearings will continue from day to day as the convenience of the Subcommittee permits until all those wishing to testify have been heard. A witness may desire to submit a statement on any one or more of these six bills at the time of his appearance before the Subcommittee; but a separate record with respect to the testimony on each bill will be maintained.

All those desiring to testify should communicate with the Chief Counsel of the Subcommittee at Room 3234 New Senate Office Building. The attention of prospective witnesses is called to the Rule of the Committee requiring that any witness desiring to read a prepared or written statement should file a copy of such statement with the Counsel or Chairman of the Subcommittee twenty-four hours in advance of the hearing at which the statement is to be presented.

VETERANS OF VIETNAM

Mr. MATHIAS. Mr. President, I am reminded that during the past week, the Nation's Capital has been honored by the presence of the Daughters of the American Revolution. I am a great admirer of that organization. I have for many years been a member of the Sons of the American Revolution. I think that both these organizations perform a very useful service in reminding us of the great struggle that was involved in gaining the political independence of America and the goals of that political independence, which were certain civil liberties.

I have just been looking over the Declaration of Independence and note that one of the points that was made by those who signed the Declaration of Independence in 1776 was as follows:

> In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury.

This complaint, which was made in 1776, became the subject of attention at the time of the Constitutional Convention and became a part of the first amendment—the first article of the Bill of Rights, as it were—whereby the right of the people peaceably to assemble and to petition the Government for a redress of grievance is guaranteed. These are—if anything are—basic American rights, rights for which the Revolution itself was fought.

These are rights which I think are very properly being considered in connection with the attempt of the veterans of Vietnam to give to Congress and the other branches of Government their views on American policy in Indochina. I may not agree with everything they have to say, but I think they have a right to say it. They are young men who have a special place in our society for the contribution they have made, for the military honors they have earned. I honor them for that. I think that they share with every other American citizen the right of petition for a redress of their grievances.

I am hopeful that this right of petition, this right to approach Government—and the attitude of Government to be approachable—will be respected while these young men are trying to express the concern and the fear and the anxiety they feel in their hearts for this country, for which they have fought so well and so honorably.

ADDITIONAL STATEMENTS

INCLUSION OF ARKANSAS IN RAILPAX SYSTEM

Mr. FULBRIGHT. Mr. President, the Arkansas General Assembly has passed a resolution, subsequently signed by Gov. Dale Bumpers, urging the inclusion of Arkansas in the network of passenger train service to be established by the National Railroad Passenger Corporation.

This resolution is indicative of the widespread feeling in Arkansas that the

State should be included in the Railpax system. As I have indicated in previous statements, I strongly believe that each of the contiguous 48 States should be served by the Railpax system, and I am cosponsoring legislation (S. 1018) with that purpose.

In addition to the resolution by the Arkansas General Assembly, I would like to call attention to two recent editorials from Arkansas newspapers. As the Arkansas Gazette points out:

Arkansas, in plain language, got a raw deal out of the initial routing of Railpax, just as other states and many sizable cities were ignored or slighted.

I think it should be recognized that there can be no fair test of profitability and utilization until the people are provided with comfortable, reliable, and efficient service.

Mr. President, I ask unanimous consent that House Concurrent Resolution 91 of the Arkansas General Assembly, along with editorial from the Arkansas Gazette, and the Fort Smith Southwest Times Record be printed in the RECORD.

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

HOUSE CONCURRENT RESOLUTION REQUESTING THE ARKANSAS CONGRESSIONAL DELEGATION TO VIGOROUSLY SUPPORT AND PROMOTE THE INCLUSION OF ARKANSAS IN THE RAILPAX SYSTEM

Whereas, the National Railroad Passenger Corporation (Railpax) this week announced plans for a network of passenger service crisscrossing the country; and

Whereas, the proposed network of passenger service announced by Railpax would not include the State of Arkansas in the system; and

Whereas, the inclusion of the State of Arkansas in the Railpax system would provide an opportunity for the development of the State, especially the rural areas and would help reverse the trend toward greater urbanization and the problem accompanying the development of congested metropolitan areas; and

Whereas, the inclusion of the State of Arkansas in the Railpax system would be beneficial not only to the citizens of this State but would also improve the overall potential of the system,

Now therefore, be it resolved by the House of Representatives of the sixty-eighth General Assembly of the State of Arkansas, the Senate concurring therein;

Section 1. The General Assembly hereby respectfully urges and requests the Arkansas Congressional Delegation to vigorously support and promote the inclusion of Arkansas in the network of passenger train service to be established by the National Railroad Passenger Corporation.

Section 2. Upon adoption of this Resolution the Secretary of State shall send a copy hereof to each of the members of the Arkansas Congressional Delegation.

[From the Arkansas Gazette, Apr. 7, 1971]

A "NATIONAL" SYSTEM WITHOUT ARKANSAS

Each time we take another look at the intercity route map for the National Railroad Passenger Corporation (Railpax) the omission of any route through Arkansas seems more outrageous than it did before.

In the middle of the country, Arkansas appears on the map as a blank, the bare outlines of its borders being its only identifiable characteristics. It is a lonely splendor shared by only two other states west of the Mississippi—Wyoming and South Dakota—and only three east of the Mississippi—New Hampshire, Vermont and Maine, together in the northeast corner. The other five states are indeed relatively isolated by their geographic position, but in Arkansas's case the inescapable indication is that pains had to be taken to exclude us. The route lines form a loop around Arkansas. The Chicago-to-Houston route sweeps far to the west to make a loop around Arkansas.

Arkansas, in plain language, got a raw deal out of the initial routing of Railpax, just as other states and many sizable cities were ignored or slighted. After May 1, when Missouri Pacific Lines drops its last pitiful one-car daily passenger service through Little Rock, the passenger train will be foreign to Arkansas.

It is appropriate and commendable that Senator J. William Fulbright now is trying to do something about the situation that Arkansas and other states and cities find themselves facing, and we would recommend the issue as well to all others in Arkansas's congressional delegation. Senator Fulbright has joined Senator Frank Church of Idaho, whose state was barely touched on the Chicago-to-Seattle route, in sponsoring legislation that would require Railpax to provide intercity rail passenger service to a major population area in each of the 48 contiguous states. It is certainly reasonable to expect a rail system that is truly "national" to include more than 42 states. A similar expectation has been expressed by Mr. Fulbright and other senators who are not pleased with the initial route plan of Railpax.

We are not prepared to accept several of the arguments implicit in Railpax's initial routing criteria as appropriate justificaton for omitting or slighting less populous areas such as Arkansas. Railpax, for example, made its decisions partly on "current train ridership and number of trains per week." Arkansas rail passengers along the St. Louis to Texarkana route, especially, have been discouraged in almost every way imaginable from riding trains for several years now, and, of course, they have responded in exasperation by using other means of transportation.

At the time Railpax was making its decision, Little Rock was served by one northbound and one southbound train a day. Rail passengers, in truth, have been driven away, and it is simply not fair to judge the need or usefulness of a Railpax line through Little Rock on ridership, number of trains, or another of the criteria used—"current operating costs on each route."

The demand for the kind of first class train service that Railpax proposes to provide, we submit, is very strong indeed, at least on the route of the once splendid Texas Eagles. Those people who make up the demand, however, have not been willing to endure in recent years what has come to be almost a hardship to ride what few trains are left.

There are other reasons as well why Arkansas ought to be a part of the "national" passenger railway network and perhaps they can be expressed by the interested parties to the Congress. Fulbright and six other senators have asked Senator Warren Magnuson of Washington, chairman of the Senate Commerce Committee, to conduct hearings on legislation to extend Railpax. It may afford an appropriate forum for Arkansas to assert its own case in the strongest of terms.

[From the Fort Smith (Ark.) Southwest Times Record, Apr. 7, 1971]

"RAILPAX" SOUGHT IN "SKIPPED" STATES

Senators Fulbright and Church have begun an effort to make sure all states have service in the new Railpax network. Several of them, including Arkansas, were left out entirely in the routes recently announced.

The proposed move would be a law requiring that rail passenger service to a major population center be provided in each of the contiguous 48 states.

To us, this seems reasonable if the new network is to serve a national purpose and contribute to the general development of the country.

In Arkansas, for instance, the nearest passenger service available would be at Memphis on the one side of the state and Oklahoma City on the other.

That doesn't have much significance to Arkansas people.

In the original outline of the network, there were only a very few states which were provided no service at all. It seems to us some minor readjustments should be able to correct that.

And the corrections should be made.

The new bill proposed by the two Senators should receive wide backing in the Congress.

BEYOND VIETNAM: AN ADDRESS BY SECRETARY LAIRD

Mr. GRIFFIN. Mr. President, in a major speech before the American Newspaper Publishers Association in New York yesterday, Secretary of Defense Laird presented an important statement concerning our national security requirements.

I ask unanimous consent that the text of Secretary Laird's address be printed in the RECORD.

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

BEYOND VIETNAM

(An address by the Honorable Melvin R. Laird, the Secretary of Defense, before the American Newspaper Publishers Association, New York City, April 21, 1971)

I am particularly pleased to have this opportunity to meet with the American Newspaper Publishers Association and to discuss with its members, the serious national security problems we face.

This is, in my view, a particularly timely meeting. I would not want to miss this chance to comment briefly on a matter which is of great mutual concern to the ANPA and to the Department and your profession.

As we look beyond Vietnam to the challenges of the years ahead, rarely before in our history have we needed a closer understanding among those who believe in a strong defense and a strong free press.

A strong, free country and a strong, free press go hand-in-hand. You and I share an obligation—and a unique opportunity—to preserve and strengthen both of those great national imperatives.

What we need is not to shout at one another. Rather, we need to sit down and talk over together the problems of national security news coverage which have arisen in the past decade or so. It is time for improved professional contacts—contacts that candidly recognize past mistakes and seek future understanding.

I welcome the opportunity, as you are giving me here today, to discuss openly with you some of our crucial national security problems. The President's goal of a generation of peace through partnership, strength and meaningful negotiations is a worthy goal. Our national security programs are linked to that goal.

In this month of April, 1971, I am able to report that U.S. objectives in Vietnam are rapidly being achieved and that U.S. military involvement in the war in Southeast Asia is coming to an end.

Successful negotiations in Paris remain the quickest way to resolve the Southeast Asia conflict. But Vietnamization is consistent

with the goal of self-determination, should Paris continue to produce no meaningful results. Vietnamization will bring about termination of American involvement upon resolution of the Prisoner of War issue. In my judgment, Vietnamization will continue to succeed. The problems that do remain are not going to thwart the policy of United States withdrawal as announced by our Commander-in-Chief.

Now the time has come for the American people to think about America's role in promoting peace and security after Vietnam.

In 1969, when the Nixon Administration assumed office, it seemed to me that we had to shift public debate and discussion from "Why Vietnam" to "Why Vietnamization." It seemed to me profitless to continue an argument about decisions made in earlier years that had committed American forces to combat in South Vietnam. What we needed to do at that time was shift the focus from what led to increasing levels of American troops in Vietnam to what was needed and what we were doing to reduce American troop levels and terminate our involvement.

It is time now to shift the debate from "Why Vietnamization" to "Beyond Vietnam." It is time to discuss the Strategy of Realistic Deterrence which we have formulated to help achieve the goal of a generation of peace.

The changed conditions in the world today and the demands of world realities called for a new foreign policy, a new national security strategy and a different approach and attitude toward American involvement in the affairs of the world.

The President has provided the new foreign policy and the new approach that emphasize realistic involvement and vigorous negotiation while maintaining adequate strength. And we have formulated a new defense strategy that supports the foreign policy goal and approach of the Nixon Administration.

In the 1950's, you will recall, we had a defense strategy that was widely described as a strategy of massive retaliation. It was a credible or realistic strategy for that decade because we had an overwhelming strategic nuclear superiority.

In the 1960's, massive retaliation gave way to a strategy that became known as assured destruction and flexible response. This also was realistic from the standpoint of deterring nuclear war. In the early sixties, for example, President Kennedy was able to take the stand he did in the Cuban missile crisis to a large extent because we still maintained a four or five to one nuclear superiority. Unfortunately, however, the strategy of flexible response did not prevent us from becoming involved in the longest conflict in our history.

And that is precisely the challenge of the 1970's. We need a strategy for the 1970's that can effectively deter not only nuclear war but all levels of armed conflict. It was that need coupled with an awareness of the realities we face that led to the adoption of what we call the Strategy of Realistic Deterrence.

We call it realistic because it is designed to take account of the major realities facing America and the rest of the world in these difficult times. It recognizes that there cannot be any instant solutions to the problems that simultaneously confront us. And it underscores the fact that the United States by itself cannot provide realistic deterrence on a global scale.

The four basic realities which led to the new strategy are: a strategic reality; a fiscal reality; a manpower reality, and a political reality.

The strategic reality includes most notably the tremendous growth in Soviet military strength from a position of clear inferiority in the early 1960's to near parity today. It also includes an emerging nuclear capability on the part of the Peoples Republic of China.

The fiscal reality involves not only the heavy pressure in Congress for reduced defense spending but the upward pressures of inflation on the cost of everything we need to buy to maintain adequate military forces.

The manpower reality is not yet fully understood. People constitute the single biggest cost in the defense budget. Pay and related costs in FY 1972 will claim some 52 per cent of the total defense budget based on the pay increases we have recommended. It will cost us almost $18 billion more than it did in 1964 for 133,000 fewer people. And in the next year or two, manpower costs will be claiming close to 60¢ out of every defense dollar as contrasted to the 43¢ it claimed from the 1964 defense dollar.

The political reality severely complicates the other three:

Whether you look at it from the standpoint of the political and psychological effects of Soviet policy and growing presence around the world, such as in the Mediterranean and the Middle East;

Whether you look at it from the standpoint of political pressures from our allies to maintain forward deployed U.S. forces;

Whether you look at it from the standpoint of Congressional pressure to reduce those forces; or

Whether you look at it from the standpoint of gaining broad political support here at home for doing all the things we have to do to assure our national security interests while continuing to reorder our national priorities.

The most pressing reality remains the strategic reality. The most essential requirement in terms of national survival remains assuring the adequacy of our strategic deterrent.

One year ago yesterday, I spoke to the Annual Luncheon of the Associated Press here in this room. The thrust of my remarks was the deep concern I felt that by the mid-1970's the United States could find itself in a second-rate strategic position.

I regret to report today that nothing has happened in the intervening twelve months to lessen that concern. Quite the opposite is true.

In December and January, it began to look as if the Soviet Union was slowing its rapid rate of ICBM deployments after having reached a level of land-based ICBM's that gave them approximately 400 more than the 1054 possessed by the United States. The situation began to change in February and March, as we reported publicly. More recent evidence confirms the sobering fact that the Soviet Union is involved in a new—and apparently extensive—ICBM construction program. This new ICBM construction effort, coupled with additional momentum in the strategic defensive area—all clearly planned months ago—must be of major concern. Moreover, while we have an advantage in submarine-based missiles today the USSR is rapidly closing that gap with an energetic construction program that continues.

Last year, I indicated that we could postpone some hard decisions in the FY 1971 transitional budget to give SALT every chance of success. We were forced to face some of those decisions in the FY 1972 budget on which I reported to Congress last month. We felt, in the light of the continuing Soviet momentum, as it was assessed late last year, that prudence dictated accelerated development of a new strategic bomber, the B–1, and a new undersea-launched strategic missile system, the ULMS. We are proceeding at the optimum development rate consistent with sound management, but, of course, no procurement decisions have yet been made.

We sincerely hope for convincing progress in SALT. But failing such progress I must tell you today that the renewed Soviet strategic weapons momentum may confront us with the need for additional offsetting U.S. actions. I would have no choice but to recommend these actions—over and above what has been presented to Congress in the FY 72 budget—in order to preserve the sufficiency of our strategic forces. We would much prefer success in SALT.

I felt last year and I feel now that the people of America perhaps may be willing to settle for a situation of so-called strategic nuclear parity. But under no circumstances, in my view, would the American people be willing to settle for inferiority.

I can assure you of one thing: so long as I am Secretary of Defense—and no matter the criticism it may evoke—I will never refrain from recommending programs which I believe are essential to the survival of our nation and the safety of our people.

My job is to provide the capabilities necessary to prevent war, and that is what we are seeking to do under the Strategy of Realistic Deterrence. But while we can never neglect the essentials of strategic sufficiency, we have tried to fashion a strategy that will lead to the effective deterrence, of all war, not just nuclear war.

If we are to prevent all forms of war, if we are to restore and preserve peace, if we are to make possible a world in which there can be expanding freedom, we must maintain adequate U.S. strength and help improve the strength of our friends and allies. That is what the Strategy of Realistic Deterrence is all about.

In its simplest formulation, Realistic Deterrence is the strategy we have designed to carry out the Nixon Doctrine. It is based on the three principles of partnership, strength, and willingness to negotiate. It seeks to steer a prudent middle course between the policy extremes of world policeman and a new isolationism. It does this by providing the means for effective development and use of the military resources of peace-seeking nations to deter conflict at all levels. Except in the field of nuclear weaponry, it calls on other nations to do more to provide for their own defense—particularly by furnishing manpower. It seeks to foster greater readiness on the part of other nations, individually and in regional cooperation, to increase their ability to defend themselves. It offers U.S. assistance—economic and military—and U.S. support to such nations where our interests are involved. The partnership it proposes means that other nations must do for themselves some of the things we have been doing for them. One of its major goals is to prevent American involvement in future Vietnams.

Realistic Deterrence means a smaller military force for the United States, but one which is more combat-ready than it has been in peacetime in the past. It means modernized equipment. It means a vigorous Research and Development program to assure our continued technological leadership. It means strengthening the National Guard and Reserves and reducing reliance on the draft.

In our FY 1972 budget, the Department of Defense is implementing the President Strategy for Peace by completing the transition from a military force of 3.5 million men and women involved in war—largely draftees or draft-induced volunteers—to a truly volunteer force of at least one million fewer men and women who will be engaged in preventing war. We have established the goal of zero draft calls by July 1, 1973.

Let me be perfectly frank. Successful implementation of the Strategy of Realistic Deterrence is the most difficult and challenging national security effort we have ever undertaken in this country. It must be accomplished in an environment of strategic nuclear parity—a reality that leaves little margin for error and no room for failure. It must be accomplished in a period of vigorous Soviet military expansion at sea, on the land, in the air and in space. Nor can we ignore their expanding military assistance

to deploy Soviet troops and equipment in other countries.

What is required is the maximum utilization of all Free World resources for deterrence—not just those, nor primarily those—that the U.S. can provide. That is why in Asia, we are stressing a greater manpower contribution on the part of our friends and allies. That is why in NATO, a new spirit of burdensharing has evolved.

But that is also why it is so important for us in the Department of Defense to have the trust and confidence of members of the press. For it is through the press that we must seek the understanding and support of the American people. Without that support, and full understanding, the goal of a lasting peace—so elusive to so many generations before us—will have no chance for success.

At the beginning of these remarks, I emphasized how important it is for all of us to begin looking beyond Vietnam. It might be appropriate, therefore, to close by calling to your attention important forthcoming talks in NATO.

As we look ahead, to the long-range national security requirements of our nation and the rest of the Free World, the meetings of the Defense Ministers in NATO next month may be the Alliance's most significant substantive discussion in at least a decade. At the Nuclear Planning Group session in the Federal Republic of Germany and then immediately afterwards at the session of the Defense Ministers in Brussels, I will continue the new level of consultations with our NATO Allies which President Nixon initiated shortly after he assumed office.

These meetings will give me an opportunity, both in the formal sessions and in my private meetings with my colleagues, to explain in full detail the new United States National Security Strategy of Realistic Deterrence.

I will speak to my fellow Ministers against a background of two decades in which the partnership, strength and willingness to negotiate among NATO members have provided peace and stability for that Alliance.

I will bring them up to date on the threat assessment as we see it today, and I will want to hear from them their view of the momentum of Soviet activities, such as the stepped-up naval operations in the Mediterranean, and the provision by the Soviet Union of sophisticated new weapons in the Middle East.

I think it is clear that we are past the day when the United States could or should discuss defense problems with our NATO allies or anyone else with a "big brother knows best" attitude. Not only are we trying to face the realities that require adequate free world strength, we are seeking conscientiously and systematically to conduct our relations to fulfill our responsibilities on a full partnership basis.

We are not going to preach platitudes to our own people or to our allies and friends as we seek to implement the Strategy of Realistic Deterrence. We ask only for recognition of the realities we face and the determination to meet them together in a timely and effective manner. In that way, we can achieve our goal of peace.

NATIONAL SCIENCE FOUNDATION ANTITRUST STUDY PROPOSAL

Mr. McCLELLAN. Mr. President, I believe that there is no category of laws of the United States which regularly and daily produce more unhappiness to both those who are subject to the law and those who enforce the law than our antitrust laws. It is an accepted fact that the statutes in this area are, generally speaking, not based upon the sort of economic evidence on which they should be based. Indeed, I am informed that the sort of economic evidence on which sound workable antitrust laws should be based is not even available.

Antitrust laws which would promote a proper relation between Government and business with regard to competitive practices and accumulation of competitive power should be assembled, and they should be assembled by an impartial organization with the expertise to give us proper bases for formulation of legislation in this field. At the present time, lawyers and judges are making antitrust laws without the benefit of such facts. A fresh idea as to how to obtain this information has been advanced by Mr. Allen C. Holmes, a district attorney, in a recent address in New York. He urges that the impartial National Science Foundation support comprehensive studies designed to develop economic theory under which we could fix acceptable standards and determine the economic facts at any given time.

I commend Mr. Holmes for his proposal and suggest that it is worthy of the serious consideration of everyone concerned with the present state of knowledge underlying our antitrust laws.

Mr. President, I ask unanimous consent that Mr. Holmes' speech be printed in the RECORD.

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

VALIDATING ECONOMIC EVIDENCE

ECONOMIC DATA AND EVIDENCE OF COMPETITION

(By Allen C. Holmes)

Last summer when Betty Bock asked me to address myself to the subject of validating economic data and evidence in the context of antitrust litigation, I responded with mixed emotions. It is an area in which I am deeply interested—although I hasten to disclaim any expertise as an economist—but the antitrust decisions in the last decade make me feel as lonely as a Chinese astronaut. Attention to the *facts* of our present economy and to the development of empirically derived economic principles has become passe. I recently heard a story that aptly illustrates the point. It seems that the Chief Executive Officer of a rapidly growing conglomerate—if there are any today—decided to employ a new firm of auditors. It took him a half day to interview eight of the leading accounting firms in the country and make his choice. When asked how he was able to act so swiftly he explained that he needed to ask only one question of most of them. How much is 2+2? Each of the first seven said 4. The last said that it wasn't really sure and then asked "what do you have in mind?" I see you get the point.

Too often major antitrust cases of great significance have been tried and ultimately decided without any real attempt to apply soundly developed economic theory to the particular facts of the case. Too often each side produces a mass of statistical and other data, attacks the meaningfulness of the data produced by the other side and then calls an appropriately-qualified expert who, without reference to any empirical studies, holds forth at length as to the significance of the data submitted to him, usually in the form of a hypothetical question. On appeal it is customary to seek to discredit, or demonstrate the irrelevancy of the testimony of the other party's expert, by reference to hoary studies of past economic systems which have become enshrined in our economic literature by virtue of the constant reference to them by prior courts and official reports of various sorts.

Obviously, this is hardly the way to bring about a wise resolution of the complex controversies regarding economic policy reflected in much of our present antitrust litigation.

In considering this problem it might be helpful to draw at the outset a basic distinction between at least two areas of economic analysis required for the proper disposition of antitrust cases. Logically, the first is analysis and validation of economic theory to the extent necessary to establish the economic standards against which structure and conduct are to be tested. The second involves the analysis and validation of the specific economic facts of a given case in relation to these standards. The courts have traditionally attempted the latter. Unfortunately they have either failed to recognize the necessity for the former or have engaged in questionable judicial abnegation.

The consequence is that there is now a widespread recognition that the trial of complex antitrust cases involving significant economic issues has become a charade. In many instances the parties engage in elaborate discovery programs consuming months upon months of time in order to secure traditional standards of proof. Once this has been done we then see courts being urged to abandon virtually all evidentiary standards in selecting and evaluating the economic data. Obviously careful proof of basic economic data is a meaningless step if the economic theory which is applied to it is without validity.

The willingness of courts to accede to such urging is, no doubt, premised in part at least upon the practical limitations of the judicial process itself. While courts are equipped to deal with a substantial volume of raw economic data relating to the particular facts of the case before it, they obviously are not able to conduct empirical studies from which meaningful economic theory may be inferred. Thus, once the battle of experts has run its course, the courts have no alternative but to turn to the available secondary economic authority.

Unfortunately, much of the available and superficially prestigious "economic" authority has no foundation in empirical data. An apt example of such authority is the report of the White House Task Force on Antitrust Policy, released in 1969 (the so-called Neal Report).[1] In explaining its preoccupation with concentration, it states:

"In general it may be said that the smaller the number of firms in any industry—at least where the number is very small or where a very small number is responsible for the overwhelming share of the industry's output—the greater the likelihood that the behavior of the industry will depart from the competitive norm."[2]

The Report cites no data, no studies, or other material which lawyers would regard as probative evidence to justify these propositions of economic theory. It merely observes that "these propositions have found general acceptance in economic literature in the past 25 to 30 years."[3] It concludes by recommending specific and drastic legislation designed to result in the restructuring of industries having annual sales of at least $500,000,000 in which four, or fewer, firms control 70% or more of the market.

One is immediately struck by the fact that the elaborate legislative scheme has been constructed on the basis of a glibly-stated economic proposition, the validity of which is never examined. This should perhaps not be surprising, for as I have just noted it is precisely this approach which has been successfully urged upon our courts in recent years.

Footnotes at end of article.

This same issue was recently re-examined by a task force appointed by the present administration prior to its taking office and the results of this examination have been published in the so-called Stigner Report.[4] While the Stigler Report rejects the idea that structure is dispositive as to the issue of antitrust violation and calls for examination of specific conduct, it suffers from the same defect as the Neal Report. Like the Neal Report, it accepts the assumption that concentration is inconsistent with competition. The line is drawn somewhat differently, but apparently just as arbitrarily; the Stigler Report assumes that five to ten equal-sized firms constitute a sufficient number of firms to permit free competition. Unlike the Neal Report, the Stigler Report does not advocate deconcentration. Rather it calls for a change in the law by suggesting that in the "highly oligopolistic industries" noncompetitive pricing, without more, ought to be "a clear basis for proceeding against the leading firms under Section 1. Collusion that can be incontrovertibly inferred from behavior . . . should not bring immunity from the Sherman Act. . . ."[5] Like the Neal Report, the Stigler Report recommends sweeping "reforms" without any attempt to explain the concept of "noncompetitive pricing" or provide any statistical basis for demonstrating its presence.

The FTC staff report on corporate mergers (the so-called Meuller Report) differs from the Neal and Stigler Reports in that it purports to be an impartial study of the significance and character of certain economic phenomena, for example, reciprocity, cross subsidizing, predatory competition, and interdependence and mutual forbearance, all of which are asserted to be anti-competitive in nature.[6] The report contains some sixty tables which ostensibly constitute authority for the economic proposals set forth in it. Unfortunately, as one outstanding economist has recently noted, few of the tables can be duplicated even in part and nearly all list as their source of information the Bureau of Economics of the Federal Trade Commission.[7] Study of the report leads to the conclusion that, to the extent that the authors have attempted to substantiate their economic propositions, their attempts have resulted in failure.

On the other hand, it is unfair to ignore the fact that courts have sought to rely upon studies that are much more effective efforts to develop economic principles relevant to the disposition of economic issues in antitrust litigation. Unfortunately, these studies have certain common characteristics that throw serious doubt upon the propriety of a court's reliance upon them. I am speaking of the studies which were made twenty to forty years ago and include those of Berle and Means, Burns, Bain and several others. All of these studies were made with respect to an economic and business world vastly different from that of today. Further, they lack persuasiveness were we to assume that they are relevant to the present situation.

For the purposes of example only I would call attention to the studies concerning concentration undertaken by Professor Bain.[8] Professor Bain studied the relationship between eight firm concentration ratios in 42 industries as determined in 1935 and the weighted average accounting rates of return on book net worth in three or more companies in each such industry over the years 1936 through 1940. For reasons that we may accept as valid he did not use concentration ratios in the other 298 industries for which concentration ratios were calculated. His conclusion was that there was an affirmative relationship between profit margins and the degree of concentration in those industries which he studied, but he noted a series of significant reservations concerning the significance of his data which I need not go into here but which I can properly say have been completely ignored in the use of his studies by those who have followed him.

Were we to concede that the study had validity when made it is hardly to be assumed that the equilibrium condition which he sought to observe would continue to exist many years later after three wars, numerous recessions, periods of unprecedented domestic inflation and technological advances not even dreamed of in the 1930's. Certainly as one thoughtful economist has recently pointed out, the evidence offered by Bain is neither strong enough in its original form nor sufficiently supported by later evidence generated by the passing of time to underpin the conclusions that have been drawn from it by the courts.[9]

Unfortunately, effective comprehensive empirical research in areas such as this has not been undertaken in recent years. To be sure some more recent studies have been undertaken, but none of the scope of the Bain study. And even the most recent studies rely on data from the 1950's.[10]

One other aspect of the distressing state of the economic art insofar as it relates to the determination of antitrust issues should be noted. Many economic studies are based to a large degree upon data compiled by the Bureau of the Census and organized in accordance with their Standard Industrial Classifications. Before reliance can be placed upon these statistics the categories must be scrutinized to determine whether they reflect economic reality and the information gathering process itself must be validated. As many of us know, the information submitted to the Bureau of the Census is sometimes fragmentary and the classification of individual plant information frequently is made on the basis of historical precedent rather than on the basis of the directions provided by the Bureau.

Faced with this bleak situation it is not surprising that the courts, especially the Supreme Court, have begun to postulate dubious economic principles and make sweeping economic determinations on the basis of economic concepts that have not been empirically demonstrated. Moreover, judicial restatement of dubious economic propositions has become the proof of their validity. While the ultimate outcome of the Supreme Court cases may or may not be economically justifiable this methodology clearly is not. Illustrative of this problem is the line of cases commencing with the Supreme Court's decision in *United States* v. *Philadelphia National Bank*, decided in 1963 and ending with the *United States* v. *Pabst Brewing Co.* case decided in 1966.[11]

In the *Philadelphia National Bank* case the Supreme Court adopted as a matter of national economic policy, but virtually without any economic support therefor, the proposition that: "competition is likely to be greatest when there are many sellers, none of which has any significant market share."[12] On the basis of this proposition the Court constructed a rule of presumptive illegality in any merger case in which the merged company would control more than 30% of the market and held the merger in question illegal.[13] No meaningful economic evidence was offered to support the presumption and, in fact, the Court ignored substantial economic testimony which the District Court had found persuasive.[14]

The courts and legal scholars attempt to justify the use of such arbitrary presumption on the ground that they provide meaningful guidelines by which businessmen can conduct their affairs. As we are all aware, no such meaningful guidelines have emerged. The reason for this is apparent. The Supreme Court typically ignores the available economic evidence as to the anticompetitive effects of the merger in question and focuses almost exclusively on the market share of the combined company. By ignoring the available economic evidence the Court has deprived itself of the opportunity to construct a conceptual framework within which to test the conduct at issue. As a result, every merger case decided by the Supreme Court is tantamount to the establishment of a rule of presumptive illegality based on market share. Subsequent to the *Philadelphia National Bank* case the Court held unlawful the merger in the *Alcoa* case where the merged companies controlled approximately 29.1% of the market;[15] the *Continental Can* case, where the merged companies controlled approximately 25% of the market;[16] the *Von's Grocery Co.* case, where the merged companies controlled approximately 7% of the market;[17] and the *Pabst Brewing Co.* case where the merged companies controlled approximately 5% of the market.[18]

The line of cases rests upon *Philadelphia National Bank* and as such has been constructed without the benefit of economic authority. Moreover, what little economic authority was cited in the *Philadelphia National Bank* case is irrelevant to many of the subsequent decisions. For example, Professor Bain's studies, cited in *Philadelphia National Bank*, relate to concentrated industries consisting of eight manufacturers. The *Von's Grocery Co.* case however involved the retail grocery market in Los Angeles—hardly a concentrated industry. Further confusion is caused by the fact that the logical culmination of these cases, the Department of Justice Merger Guidelines appear to be less restrictive than the cases themselves. Accordingly, it seems very difficult to justify the rule of thumb approach to mergers on the ground that it has added certainty to the conduct of business affairs.

An even more basic shortcoming to the Supreme Court's handling of merger cases is its approach to the concept of the relevant market. The geographic market is typically arbitrarily drawn by reference to political boundaries which have no economic significance whatever. At the same time the definition of the product market has been the subject of *ad hoc* determination with no reference to theoretical analysis. Frequently this has involved focusing upon the historical demand side only of the market and ignoring the supply side of the equation. As a result, slight differences in product characteristics have frequently been elevated to the status of market determinants. As Dr. Terleckyj pointed out, modern market analysis ought to take into account whole systems rather than focusing solely on a restricted group of products or services.

The lack of any meaningful standard of product market is most apparent in the *Alcoa* and *Continental Can* cases, both decided by the Supreme Court in June of 1964. In both cases the Supreme Court ignored the substantial volume of economic evidence reviewed and analyzed by the district court; and in both cases the Supreme Court reversed the district court's definition of the relevant product market and found the mergers to be legal. Had there been established in the law a requirement that the structure and conduct of markets be measured against a basic concept obviously centering upon an area of effective competition, the Supreme Court could not have determined the product market in *Alcoa* to be substantially narrower than that determined by the district court and a scant three weeks later determine the product market in *Continental Can* to be substantially broader than that determined by the district court.

While the picture of economic unreality which I have painted appears to be somewhat bleak, there are some encouraging signs that an awareness of the need of a two-level analysis of the type which I have suggested as essential to the disposition of antitrust cases is receiving some support in the district courts. Six weeks ago in Chicago Judge

Footnotes at end of article.

Richard B. Austin ruled in the Justice Department's case challenging ITT's acquisition of Canteen Corporation that the Mueller Report was not admissible into evidence. The Government had attempted to introduce the Report and the tables contained therein to substantiate the proposition that there is a trend toward increasing concentration of economic power among large companies. ITT objected to the introduction of the report primarily on the ground that the FTC had not permitted ITT the opportunity to examine fully the underlying data upon which the various tables were based. Judge Austin sustained ITT's objection and ruled the material inadmissible unless all underlying data were made available for inspection and unless the author of the Report be subjected to cross-examination. Several weeks earlier, in the Justice Department's case challenging ITT's acquisition of Grinnel Corporation, Judge William H. Timbers excluded the same report on the ground that it was not relevant to the issues in that case.

By this time those of you from the world of business, whether executive or counsel, are of two minds: some of you feel that all of the foregoing criticism is well deserved and the result should be that actions of the type that have been brought recently by the Government, particularly under Section 7 of the Clayton Act, should be abandoned; the rest of you are saying to yourselves that this has indeed been a waste of time for we all know that the Government can't abandon its enforcement activities under the antitrust laws and particularly Section 7, so why enveigh against the inevitable?

The reason I am here today is precisely because I don't think these are the only two alternatives. Quite the contrary. There are several other ways of approaching the problem I have been describing. I have one that I would like to present to you today.

I propose that the National Science Foundation be asked to support, on a broad scale, comprehensive economic studies designed to collect, organize and analyze the available economic reports, studies and statistics relating to the major economic presumptions and assumptions upon which the antitrust laws and current antitrust policy are premised. The National Science Foundation should be encouraged to commission a series of independent empirical studies by economists with differing backgrounds and positions on economic questions. Such studies would include for example (i) development of a meaningful concept of product markets including, if appropriate, the relationship between submarkets and markets, (ii) analysis of the relationship, if any, between concentration and competition, (iii) identification and analysis of the role of potential competition in various types of industries and (iv) the significance of advertising in industries having very few competitors. I could go on at length but I'm sure that each of you can expand the list from your own familiarity with recent antitrust litigation.

The program would be ongoing, the studies would be updated periodically and obsolete studies replaced or supplemented by current studies. This would enable continuous re-evaluation of current and past statistics in light of more sophisticated techniques of fact gathering and analysis.

All the resulting conclusions, reports and underlying data would be available to any party to antitrust litigation, including parties to private treble damage actions. The authors of the reports or studies would also normally be available for examination by parties to antitrust litigation. For example, if one party to antitrust litigation would seek to introduce into evidence the results of a specific study the opposing party would have the opportunity to attack the data on which the studies are based and would also have the opportunity to present other studies which it feels limit or question the study sought to be introduced. There would be no pervasive doctrine of collateral estoppel or stare decises. The fact that an economic proposition had been accepted as valid in one case would not compel its acceptance as valid in a subsequent case. While judicial acceptance in an earlier case would have some relevance, perhaps constituting a prima facie showing of validity, an economic principle established in one case would be subject to challenge in subsequent cases.

Hopefully this procedure would result in the gradual refinement of a realistic, meaningful and workable body of economic principles against which the economic evidence in antitrust cases could be tested and in relation to which the antitrust laws could be applied to the facts of a given case. Under such circumstances it does not seem unrealistic to assume that district courts would be prepared to reject miscellaneous articles, reports and other economic literature not validated in the fashion discussed above. It may not be too much to hope that appellate courts would likewise recognize the desirability of abandoning the wholesale use of miscellaneous economic literature with which none of the parties have had an opportunity to deal and which are frequently nothing more than the inspired intuition of economists.

Existing judicial procedures could be adapted easily to accommodate such economic studies and data. For example, courts might require, as they now do in many complex cases, that a pretrial hearing be held to define the economic issues. In connection with that hearing each side would be required to disclose the economic evidence which it intended to offer at trial. The judge could then set up a schedule of pretrial hearings at which the validity and relevance of the propositions could be tested; and in this manner these evidentiary questions could be thoroughly briefed, argued and disposed of prior to trial.

The National Science Foundation could become a singularly appropriate overseer of these studies. Unlike the Federal Trade Commission, it is not an antitrust enforcement agency and thus would not have an interest in the outcome of the studies. On the other hand, since the National Science Foundation is not identified with the business community it could hardly be charged with bias. Further, its activities are scholarly and could be expected to receive serious consideration. It has sufficient resources to finance the type of in-depth studies required; in fact, a specific section of the National Science Foundation is devoted to research relating to the social sciences, including law and social problems. Finally, it is likely that it could secure access to substantial quantities of statistical materials which would not otherwise be available and it has the prestige necessary to attract the participation of leading economic experts.

I suspect that this brief statement is not sufficient to convince the majority of you, but please think about the proposal. I hasten to suggest that you not spend your time criticizing my precise statement of the proposal for I am advancing an idea, not attempting to provide working drawings, although I am very conscious of their importance.

This is a logical time in history to undertake a basic reform of the approach to economic theory in antitrust cases. The courts are not incapable of change and I need only call again to your attention the decision of Judge Timbers in *Grinnel* and Judge Austin in *Canteen* to make my point. Recent decisions of our highest Court in other fields show a willingness to re-examine prior propositions established but a few years ago. Many persons are now calling for a thorough re-examination of our national antitrust policy. If this is to be done, it is important that a conceptual structure be developed to permit an evaluation of the quality of the competitive performance of our present economic institution. Further, we are undergoing a knowledge revolution. The conditions that have made economics so unsciencelike are ending. Enormous quantities of significant data are becoming available on a continuing basis. Human conduct and motivation are now better understood and there is a vastly greater awareness of the fact that technological change is bringing with it significant changes in our economic institutions.

If you have the confidence that I have in the quality of the performance of our present economic institutions, you will join in the effort to encourage objective economic research concerning the assumptions basic to the determination of antitrust policy and basic to fair and reasonable resolution of antitrust controversies under our antitrust laws.

FOOTNOTES

[1] *Report of the White House Task Force on Antitrust Policy*, dated July 5, 1968, released May 21, 1969.

[2] *Id.* at II–2.

[3] *Id.* at II–2.

[4] *Report of the Task Force on Productivity and Competition*, Cong. Rec., vol. 115, pt. 12, p. 15933.

[5] *Id.* at p. 15935.

[6] *An Economic Report on Corporate Mergers*, Staff Report to The Federal Trade Commission, published as *Economic Concentration*, hearings before the Subcommittee on the Judiciary, United States Senate, Ninety First Congress, First Session.

[7] Adelman, *Recent Reports on Antitrust Policy: An Economists's View*, 25 Record of N.Y.C.B.A. 566 (1970). See Bock, *Statistical Games and The "200 Largest" Industrials: 1954 and 1968*, (1970).

[8] Bain, *Relation of Profit Rate to Industry Concentration: American Manufacturing 1936–1940*, 65 O. J. Econ. 293 (1951).

[9] Brozen, *The Antitrust Task Force Deconcentration Recommendation*, 13 J. Law & Econ. 279, 288 (1970).

[10] See, id. at 280, n. 5.

[11] *United States v. Philadelphia National Bank*, 374 U.S. 321 (1963); *United States v. Pabst Brewing Co.*, 384 U.S. 546 (1966).

[12] *United States v. Philadelphia National Bank*, 374 U.S. 321, 363 (1963).

[13] *Id.* at 364.

[14] *Compare Id.* at 366–67 *with* 201 F. Supp. 348, 364–69 (E.D. Pa. 1962).

[15] *United States v. Aluminum Co. of America*, 377 U.S. 271 (1964).

[16] *United States v. Continental Can Co.*, 378 U.S. 441 (1964).

[17] *United States v. Von's Grocery Co.*, 384 U.S. 277 (1966).

[18] *United States* v. *Pabst Brewing Co.*, 384 U.S. 546 (1966).

EARTH RESOURCES TECHNOLOGY SATELLITE PROGRAM

Mr. YOUNG. Mr. President, last year after several years of consideration, a decision was made to begin work on the earth resources technology satellite program. This space program, as announced, was to encompass the development and flight of two satellites, the equipment to be carried aboard them, and the supporting ground data handling systems. The data handling systems will receive information which the satellites gather about our earth and distribute that information to a great number of users, both within and outside the Government.

This program is obviously one of the

most significant of our space efforts to date. As envisioned, it will gather information of real and practical value to all of us about our farming and forestry, our oceans and rivers, and other aspects of our environment on a repetitive and long-term basis.

We as a nation have among other things used satellites and spacecraft to go to the moon; to explore and chart the radiation and magnetic fields in space; to photograph the planet Mars from close range; and to orbit and record data about our sun. Now we have the capability to develop and fly satellite systems, which will give us significantly greater knowledge of the resources of our own "Mother Earth."

In my opinion, the earth resources technology satellite program of all our space projects should have the highest priority and the greatest support at this time. I say this not from some parochial standpoint, but because I believe that this program has the greatest promise for both immediate and future payoffs.

Since the start of the program, a year ago, NASA and its contractors have progressed the plan toward the 1972 and 1973 launches of ERTS A. & B. Agencies in the Government, including the Interior Department, the Agriculture Department, the Commerce Department, and others have developed specific plans for use of the ERTS A. & B. data, building on their long involvement in NASA's earth survey program. The Department of Interior has initiated building plans for regional facilities to receive and utilize the data from the ERTS system.

The following is a recent Department of Interior news release concerning its EROS data center at Sioux Falls, S. Dak. It states as follows:

DATA CENTER FOR EROS PROGRAM

February 15, 1971.

DEPARTMENT OF INTERIOR,
Office of the Secretary:

A significant step forward for the Department of Interior's EROS (Earth Resources Observation Systems) program—directed by the U.S. Geological Survey—was announced today by Secretary Rogers C. B. Morton.

Secretary Morton said that an architect-engineer contract for an EROS data center to be located in the vicinity of Sioux Falls, South Dakota, has been successfully negotiated.

The master plan for the center 'ncluding design of the building and support facilities, was negotiated with Spitznagel Partners, Inc. in joint venture with Fritzel, Krogler, Griffin and Berg, both of Sioux Falls. The total cost of the center is estimated at $4.8 million, and is scheduled for completion in mid-1972.

"The center at Sioux Falls," Secretary Morton said, "will be a key installation in the use of remote sensor data obtained from aircraft and spacecraft for purposes of resources and environmental surveys. Under the management of the Geological Survey, it will be a central repository where data will be received and processed."

"The principal source of such data," he said, "will be NASA's ERTS (Earth Resources Technology Satellite) satellites. Launching of the first experimental ERTS satellite is planned in the spring of 1972."

Secretary Morton said that, "the facilities of the center will be available to provide professional and instrumental assistance to government and private users of the data and is expected to be of interest to resources and environmental scientists throughout the world." ERTS satellites, carrying photographic and other remote sensing equipment will eventually return about 50,000 images per year of a wide variety of land and water features of the United States.

"Repetitive images of such features," Secretary Morton said, "will be used to improve knowledge of our natural resources. Fundamental to the EROS program—the 'user' companion to NASA's ERTS program—is the data center, which will insure optimum utility of the information that will be obtained from the satellites."

Doctor William T. Pecora, Director of the U.S. Geological Survey, and Director of the EROS program, said that, "this 'down-to-earth' use of space technology promises to be a boon in the management of the nation's natural resources."

It is envisioned that the Sioux Falls center will receive data from NASA's two ERTS on a repetitive basis over a period of several years. With the enormous potential of these Earth Resources Technology Satellites, for gathering data directly relating to the resources and environmental problems facing our world today, it is essential that NASA's minimal program of two satellites be carried out as planned. Two satellites flown sequentially assure the continuous flow of data to regional centers such as that at Sioux Falls, and will enable us to reap the benefits which this system promises.

HOBBIES AND BETTER UNDERSTANDING BETWEEN NATIONS

Mr. CANNON. Mr. President, all too often we hear of the failure of nations to communicate and their inability to close the gaps which prevent better understanding.

But, sometimes it is possible for a private citizen to create the kind of spontaneous goodwill that serves to promote understanding between countries on a people-to-people basis.

Such is the case of a distinguished constituent of mine, William Harrah, who, together with his wife and several employees, were recently in Japan to promote a fast-growing hobby of collecting antique and vintage automobiles.

From all news reports, the Harrah collection did accomplish this highly laudable objective, and in the process created a new, common meeting ground for hobbyists between our Nation and Japan.

I agree with the editorial which appeared in a recent issue of the Reno Evening Gazette which comments on the journey of Mr. and Mrs. Harrah, and ask unanimous consent that this newspaper editorial be printed at this point in the RECORD.

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

[From the Reno Evening Gazette, Mar. 30, 1971]

IMPRESSIVE EXHIBIT

Harrah's automobile collection is a tremendous asset to the Reno community, as has been pointed out before by many viewers.

The finest and largest collection of antique vintage and classic cars in all the world, it has attracted over a million visitors, and has helped to spread the word that Reno is more than just a casino town.

Now, the Harrah collection is adding a new dimension to its public relations contribution—an international dimension, this time.

Thirty of its cars are the focal point of the World Classic Car Festival created by a Japanese promoter and currently on tour of three major Japanese cities.

The opening March 4 in Tokyo was attended by Mr. and Mrs. Harrah and several employees. They have reported that the exhibition is attracting phenomenal interest among the Japanese, who are just now developing an automotive society.

All of the Japanese news media, including the world's most popular newspaper, have given the event extensive coverage. It was also of sufficient significance to merit the appearance of a prominent member of the royal family—an unusual occurrence.

The success of the exhibition is generating substantial public relations benefits not only for Reno, but for the entire nation.

It is an outstanding attraction of the wholesome and positive type that can win many friends for America.

THE JAPANESE CONCEPT OF ECONOMIC COOPERATION

Mr. HATFIELD. Mr. President, as the Senator from a Pacific basin State, I have followed closely the relationship of the United States with Japan. As Governor of Oregon, I was involved intimately with the enlargement of our trade with Japan and the increase in person-to-person contacts. Portland, Oreg., is the sister city of Sapporo, Japan, site of the 1972 Winter Olympics. As Governor, I led trade missions to Japan, and was honored by being made an honorary member of the Diet.

Oregno is a leading exporter of goods to Japan, and I know that my State looked with disfavor at the import quota bill before the Congress last year. Newspapers throughout Oregon editoralized against the bill, and many citizens wrote me urging me to continue my opposition to the bill.

These remarks are preliminary to my comments regarding a recent speech by Mr. Masamichi Hanabusa, of the Embassy of Japan, before the International Development Committee of the Federal Bar Association, on April 14, 1971. Mr. Hanabusa's thoughtful speech focuses on an aspect of Japan's role in the Pacific that too often is overlooked as public attention is centered on such issues as textiles and other imports, the return of Okinawa, and similar matters. A member of my staff heard Mr. Hanabusa's speech, and told me it was well received by the audience.

Because it sheds light on an important and a growing role of the Japanese Government, I call it to the attention of my colleagues.

I ask unanimous consent that the speech by Mr. Hanabusa be printed in the RECORD, to be followed by a recent article by George W. Ball in Newsweek of April 12, 1971. It, too, contains thought-provoking material.

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

JAPANESE CONCEPT OF ECONOMIC COOPERATION

(By Mr. Masamichi Hanabusa)

I feel very much honored and privileged to be invited by this distinguished committee to discuss with you some aspects of Japan's economic cooperation in the devel-

oping countries. I heartily thank you for the kind invitation.

Foreign aid has at least one thing in common with space exploration: Many of us really don't understand why we should do either, although we spend a substantial amount of public money for both. Any book on the subject of foreign aid devotes a chapter to "why aid?" Even Mr. Pearson's recent famed report to the World Bank is no exception. Although various explanations have been made rationalizing the giving of aid, I am afraid that none of them would convince everyone. Perhaps, Sir Edmund Hillary's well-known remarks about why he conquered Mt. Everest, "Because it is there," may be the only answer that effectively shuns futile polemics.

At any rate, Japan has already been thrown into the arena: We have been cooperating with less-developed countries, in terms of both technical and financial assistance, since the mid-50s. We started our "technical cooperation program" as early as 1954, only two years after Japan regained her sovereignty following the coming into force of the San Francisco Peace Treaty in 1952.

Also after the war, Japan assumed substantial reparation or reparation-like obligations vis-a-vis most of the Southeast Asian countries, which amounted in all to $1.5 billion (70% of which has already been paid). The annual payment of such reparations averaged between $70 to $100 million in the late 50s and 60s.

In addition, in 1958 Japan started to extend bilateral Government-to-Government loans, with its first loan of $50 million going to India.

Now Japan's governmental loan recipients number over twenty; they include all the Far Eastern and Southeast Asian countries excluding Laos, to which all aid has so far been extended in the form of grants, as well as India, Pakistan, Iran, Brazil, Mexico, Nigeria, Kenya, and Yugoslavia. In addition, we extend substantial loans to Latin American countries through IDB.

Although we started our efforts to cooperate with developing countries rather early, our aid program was initially a poor man's effort, as our economic capacities were very much limited in terms of our own living standard, the amount of available financial resources, the level of foreign exchange reserves, the state of our own social overhead capital and the relative lack of national awareness of the need for foreign aid.

For example, in 1960, when Japan became one of the original members of Development Assistance Group, the predecessor to the present DAC in the OECD, our per capita GNP was only $430. Incidentally, this is quite remarkable, because a number of aid-receiving "developing countries" of today enjoy a much higher per capita GNP. For example, per capita GNP was $639 for Singapore in 1966, $871 for Argentina, and $682 for Chile in 1970. It may be of interest to say at this point that Japan's early aid program was going on even as we continued to borrow money from the World Bank, which we did until 1966.

At any rate, as our economy expanded in the 60s, with our GNP increasing fourfold during that period our cooperative effort continued to grow in magnitude and importance.

According to OECD statistics, the volume of flow of financial resources from Japan to less-developed countries increased from less than $500 million in 1965 to over $1.2 billion in 1969. During that 5-year period the annual rate of increase in such financial flow has far exceeded the annual rate of increase in our GNP, which ranged from 15% to 19%. As a result, Japan's "aid" flows now represent 0.76% of our GNP. For reference, I might point out that the corresponding figure for the United States has declined from 0.86% in 1961 to 0.49% in 1969. In absolute terms Japan now is the fourth largest donor in the world, after the United States, Germany and France. Furthermore, the Japanese Government decided last year on a policy to endeavor to attain the United Nations target of 1% of GNP for aid by 1975. This would, in five years' time, bring Japanese aid to the level of $4 billion, which is nearly the same as the level of U.S. aid today. Even with such an impressive record of aid performance, a recent public opinion poll in Japan still indicates that almost half of the Japanese favor still greater increase in the level of our economic assistance.

I feel that Japan is one of very few countries who are not only capable but also willing to make increasingly positive efforts for the economic development of the LCDs. The purpose of my talk today is to give my views on how Japan has, and will continue to proceed in such policy.

Some of you might have noticed that the title of my talk today is the Japanese concept of "economic cooperation", rather than the Japanese concept of "foreign aid". We have tended to prefer the term "economic cooperation" to the term "foreign aid". This is partly because we wish to avoid hurting the feelings of recipients by appearing to be a "big brother". I also suspect that we may have unconsciously avoided the term "foreign aid", out of sensitivity to criticisms abroad that the Japanese effort is not so altruistic in motive or concessionary in terms and conditions as to be called "aid" pure and simple.

However, the primary reason for our differentiation between the two denominations is that we Japanese tend to regard so-called "foreign aid" as part of our total global activities in the field of non-trade economic relations. In other words, with the developing countries and that with, say, Australia, the Soviet Union or Canada. This is because we believe that, after all, Japan herself is on only a certain intermediate rung of the ladder of economic development.

In other words, in a sense we still consider ourselves a developing country. If the world regards us as a developed country, then yesterday's developing country can, and will easily become a developed country tomorrow. It is not a matter of absolute difference in quality or kind, but rather a matter of degree, or a stage in a pattern of upward growth. In this sense the classification of "developed nation", like beauty, is only skin-deep.

However, since the mid-60s, the emphasis in Japan has been placed increasingly on aid-type activities, so these days many people, even in Japan, use "aid" and "economic cooperation" as interchangeable words. Therefore, for the sake of convenience, I, too, will follow this more common usage where convenient hereafter in my talk.

Japanese economic cooperation or aid programs have shown a marked historical development. Therefore, the best way to explain the nature of our efforts in this field is first to analyze our early motivations for pursuing such activities and then to observe the ways in which these motivations have changed with the passage of time.

In the early years of Japanese aid, its proponents had considerable difficulty in persuading the general public, not to speak of the financial authorities, in allocating even a fraction of public funds to financing the economic development projects of our less fortunate neighbors. In the late 50s, Japan's per capita annual income was as low as $250 to $300 and public utilities, roads, sewage systems, housing and other social infrastructure was also miserably inadequate. In fact, quite a few of the developing countries today enjoy better roads and sewage systems than those of Japan in the 50s. Under the circumstances of our own modest economic situation, justification for giving aid for humanitarian reasons had little appeal to our people.

Until the mid-60s, the two justifications the Japanese found least objectionable for extending financial credits to the developing countries were export promotion and development of natural resources. This situation reflects the fact that for a small island nation with the population of 100 million, imports of raw material and exports to earn enough foreign exchange to pay for such imports are of overwhelmingly crucial importance.

These early interests were purely a matter of economics. As a marginal donor and a minor political power, Japan was quite free from any idea of "buying" by aid the friendship of countries which were believed to occupy vital position in the cold war checker board. Some political considerations, if we ever made any, were of a kind aimed at placating any dissatisfaction due to imbalance of trade.

As you might imagine in those days of our post-war recovery, rather more important over-all consideration for us was the need and desire to cooperate more with other developed nations, especially with the United States.

In the 60s the idea of sharing the aid burden among the economically prosperous nations became stronger. Collective pressures were brought upon all donors to increase their aid in such forums as DAC, the World Bank consortia, and various consultative groups, so that the aid burden on the United States might be lessened. Japan joined in most of these collective frameworks for international aid and made its due contributions.

A kind of shock jolted us in 1964, when the first UNCTAD meeting served strong notice that the advanced countries of the "North" must help develop economically backward countries of the "South". A veteran Japanese diplomat likened the surge of such pressures from the LDCs to the movement of a glacier, which is irreversible and overwhelming even though its movement may appear slow.

It is now widely accepted in Japan, as the poll results I mentioned substantiate, that Japan, as the unique major economic power of the world in the sense that it forever renounces war, should make positive contributions to the economic and social development of the developing countries in order to strengthen the foundations of world peace. Last October, Prime Minister Sato made this point abundantly clear in his address to the Twenty-fifth Anniversary Session of the United Nations in New York. He said "My country will use its economic power for the construction of world peace, and we have no intention whatever to use any major portion of our economic power for military purposes".

Actually even before Prime Minister Sato spoke, Japan had already taken two important steps towards the stepping up of our development assistance in the late 60s.

The first was the creation of the Asian Development Bank with authorized capital of $1 billion. Japan and the United States contributed $200 million each to the initial funding of the Bank. Japan has already made additional contributions amounting to over $70 million to the ADB's Special Fund for technical assistance grants and soft loans.

The second step was the diplomatic initiative taken by Japan in 1966 to convene the Ministerial Conference for the Economic Development of Southeast Asia. The Ministerial Conference has already met five times and considered how to promote economic development in Southeast Asia through regional cooperation. Out of the deliberations of the Conference, the Agricultural Special Fund in the ADB, the Southeast Asian Fisheries Development Center, the Southeast Asian Promotion Center for Trade, Investment and

Tourism, and the Asian Medical Organization have each come into existence or are soon to be inaugurated.

Because of Japan's geographical proximity to Asia and the recent historical fact of its own economic development, and because of the fact that Japan itself is an Asian country, there is a wealth of support among the Japanese people for such a course as was described by the Prime Minister. Moreover, unlike Japan of the 50s, my country in the 70s has the economic capacity to sustain a substantial aid program.

The gradualism in our effort has imprinted unique characteristics on the style and organizational setup of our aid activities.

One of the salient features of Japan's aid activities, although one that is often misunderstood, is the fact that they are undertaken on the basis of close cooperation between the Government and private enterprises.

To illustrate this, I wish to quote certain figures. In 1969, of the total aid by Japan of $1.2 billion, about one-third was purely official governmental aid, comprising grants including reparations payments, technical aid, bilateral loans, and contributions to multilateral organizations. The rest, two-thirds, was composed of "private flows", such as export credits and private investments, some with and some without governmental financing.

If you draw a hasty conclusion from this and say, "Ah, even in aid, Japan, Inc. is at work", you will miss an important point. Our primary goal is to assure maximum results with minimum cost: The fact is that state organizations are usually not the best instruments for running economic undertakings with efficiency and speed. Moreover, the business judgments of private industry itself has proved to be economically more sound and rational.

Secondly, the ultimate aim of economic cooperation is the establishment of lasting and harmonious relations in the fields of trade and investments among all nations. We feel that this can be best brought about by having closer working relationship between private firms of those countries, since their considerations are based on continuing advantages for both parties.

Today, the word "co-prosperity" has a bad connotation. But co-prosperity in the sense I just mentioned is no less appropriate a goal than "co-existence", which all of us in the world are eagerly seeking today.

Now let me explain how our economic cooperation works in actual practice. Of course, it varies with the type of activities. As regards technical assistance such as sending our experts or receiving of trainees in Japan, cooperation is extended almost exclusively in response to requests from the recipient Governments. In this regard, I must mention that efforts are being made to relate our technical aid to the promotion of exports by the recipient countries, by holding seminars on export promotion or sending our experts to LDCs to help develop their exportable agricultural crops.

In the development of the "private sector" of the developing countries, close working relationships between the Japanese Government and private enterprises are effective.

In most of the developing countries, the development of the so-called "private sector" is left to the initiatives of private concerns.

Japanese enterprises, together with the help of the ubiquitous overseas representatives of our trading firms, keep close touch with government and business circles in many of the developing countries. They carefully study these countries' development plans, development policies and priorities. Through this process, Japanese enterprises often come up with development projects for productive purposes, such as fertilizer plants, textile mills, electric power stations, iron and steel mills, shipyards, etc., and they seek the financing of these projects by government funds in the forms of export credits or private investments.

In these cases the main role of the Government and its lending agencies is to check and make sure that these projects are economically viable and that they make positive contributions to the economic development of the host country. Such scrutiny has been rather rigorous, contrary to the popular belief abroad that the Japanese do not care much whether these projects make real contribution to the economic development of the host country or not as long as Japan can sell its products and make money. Such is far from the truth.

You must remember that our available financial resources have always been scarce. Therefore, the Government agencies must try to make the best of them, not only from the export promotion view point, but also from the developmental view point. You may be surprised to hear that the Japanese Government officials concerned, not financial officials exclusively, have stood up against various pressures, both political and commercial, for spending public money on prestige projects or projects for domestic political consumption. All in all, I believe that Japanese economic cooperation in the form of export credits and private investments have been making immediate and substantial contributions to the economic progress of the Asian countries.

Government-business cooperation is not so important in the case of Governmental loans to social and economic infrastructure projects, such as the construction of dams, highways, bridges, and telecommunication networks, as the selection of such projects is made by agreement between the Governments. These loans are tied to the procurement of Japanese goods and services, as most of the donors do these days. However, we consider that harmful effects of aid-tying are not so large, because competitive biddings serve to bring the prices down—not infrequently the recipient Government requires international bidding among all the interested foreign firms before it utilizes our loan proceeds.

As I have already mentioned, since the mid-60s, the aid of this kind has been quickly gaining in its magnitude and importance. In 1969 net disbursements of such loans reached the level of $200 million. And the increasing trend is sure to continue in the future.

At this point, I wish to address myself to the question of the Japanese aid structure, as this problem is presently receiving a great deal of attention in the United States.

Reflecting the gradual development of our aid efforts, the institutional setup both at home and abroad for administering Japanese aid is quite unique.

In Japan there is no single agency administering our "economic cooperation" as is the case in the United States at least up to now, or as it is in the U.K., Germany or Canada. Instead three Ministries and one Agency are involved in the handling of aid matters; namely, the Ministries of Foreign Affairs, Finance, International Trade and Industry and the Economic Planning Agency. Policy decisions, including such details as terms of loan, are made after consultations among the four Ministries concerned. Very important decisions are often made by the Prime Minister himself.

In addition to these decision-making bodies, there are three principal executing agencies for our economic cooperation activities. The Export-Import Bank administers export credit as well as granting Government loans at conventional terms. Soft loans are extended by the Overseas Economic Cooperation Fund. Both of these, by the way, finance private investments, too. Finally, as the sole executing agency of the Government's technical aid programs, there is the Overseas Technical Cooperation Agency under the Ministry of Foreign Affairs. The budget of these semi-Governmental lending agencies is annually appropriated by the Diet. However, singularly lacking in such appropriations are the funds for grants and for contingency purposes. Thus, whenever a specific grant is to be extended a special appropriation must be sought in the Budget. It can not be denied that this rigidity often hampers speedy action and makes execution of our aid program inflexible.

Another point—there are practically no field missions involved in the administration of our aid programs. Aid requests are channelled through our Embassies in the recipient countries and/or Japanese enterprises on behalf of their counterparts in the developing countries. Even in cases where a substantial number of Japanese experts are working in the field, only one or two officers of the Overseas Technical Cooperation Agency are stationed in the capital of the recipient to look after these experts. In fact, at present the Export-Import Bank and the Overseas Economic Cooperation Fund together have just one or two representatives stationed in each of only a few major recipient countries in Asia.

In the past, this disorganized state of affairs in our aid setup has often been criticized in the DAC and by the United States. However, it has so far managed to handle an aid program totalling over $1 billion. We may feel it necessary in the future to create a simplified and integrated aid agency, but chances are that we will continue the present system at least for the time being. It is interesting to note, in this connection, that there is a strikingly close parallel between our aid structure and the one which has been recently recommended by Mr. Peterson and endorsed by the President.

In concluding my remarks, I shall briefly address myself to the problems facing us. In a sense, I feel Japan is approaching a crossroads. The problem is not lack of will, nor is it necessarily organizational defects. The problem for us is how we can continue to put an ever-increasing amount of financial and technical resources to the real good and welfare of the host countries. The change in quantity of funds involved necessarily entails various qualitative changes.

So far we have acted on the belief that economic and social development is something outside people cannot "give" to the developing countries, but something they should themselves strive hard to "attain." Therefore, the initiative should be taken by the recipient not by the donor. Corollary to this, we think that there is hardly a recipient country who doesn't really know what is best for her.

Also, we have been very cautious with our Asian friends about not appearing to be imposing our wishes on them. This is partly because there has been latent animosity and suspicion against us among these countries, stemming from their memories of our activities during the last war. But also it is because there is a strong sympathy in Japan for the nationalism and national aspirations of these countries.

These considerations remain valid, and we should continue to bear them in mind. However, it is becoming increasingly difficult to maintain a low profile as Japan emerges as a substantial donor, rather than the marginal donor which it used to be. Now Japanese official aid accounts for 30 to 40% of total aid receipts of some of the Asian countries. In addition, Japanese private investments in some of the Southeast Asian countries have come to such a visible level as to make host countries worry about the possibilities of "Japanese economic domination."

One way of solving the dilemma is to channel a greater portion of aid through multilateral aid organizations, which we are doing seriously. Japan's contributions to multi-

lateral aid organizations, such as World Bank, IDA, Asian Development Bank, and UNDP, have been greatly increased in the past few years. Such contributions now account for about 20% of our total official aid.

Also we are trying actively to soften our loan terms. At the moment, the weighted average interest rate of our loans is 3.6%, and their weighted average maturity is about 20 years, including a 6 year grace period. These terms may not appear to be as soft as they should. But as internal interest rates are high in the Japanese domestic capital market, they are considered to be quite concessionary by many Japanese.

About the untying of aid, too, the Japanese Government is prepared to untie bilateral official loans and multilateral contributions, provided that all major DAC donors participate in an effective arrangement for that purpose.

We also will institute a generalized preferential tariff scheme at the latest by the coming October, in accordance with the law and regulations which passed the Diet last month.

Surely, these steps are welcome and will help solve part of the problem we face. However, our fundamental problem will still be there, until some rapport is reached between the donors and recipients about how we can bridge the enormous gap in material wealth between "have's" and "have-not's" in the world in a manner which is satisfactory to the aspirations of the people of the "developing countries" and yet also to the taxpayers of the "developed countries."

This is not a problem challenging Japan alone. Rather it is the challenge which has faced humanity in the past two decades. I am afraid I cannot offer any clear-cut solution to the problem. The only thing I can say at this point is that we in Japan are prepared to tackle the challenge squarely, to use our favorite phrases, in a forward-looking manner and with a low posture.

PLAYING WITH THE FIRE OF THE RISING SUN

(By George W. Ball)

The chronicle of our relations with Japan prior to the second world war begins with ineptitude and ends with disaster. Not only did we affront Japanese pride by slamming our doors on their sons and daughters, but, by prohibitive tariffs, we excluded their goods from our markets. For this protectionist outrage we, of course, paid dearly. By threatening Japan's ability to earn the foreign exchange needed to buy the raw materials required to sustain her then exploding population, we helped encourage her soldiers to gain control of raw material sources through conquest—a course of action pretentiously known as the "Greater East Asia Co-Prosperity Sphere," which ultimately led to Pearl Harbor.

Happily, in the postwar period, we have shown the Japanese a more mature comprehension and a greater awareness of mutual interests; yet the critical test is only now beginning, as—a quarter century after the war—Japan abandons its "low posture" for a more assertive role.

Where that role may lead her no one can say, since Japan is pervasively rootless. More than in any other country, the war tore asunder the fabric of Japanese society and politics. No longer was the Emperor the godking, with his imperial will expressed through the military. No longer was the state cult of Shinto intact, or the obsession with ancestor worship and the Confucian authority of the family. Today, as a great industrial nation, Japan turns her eyes toward the West; yet even now the atavistic pull of the mainland remains strong, since Japan's Western ties lack the vital adhesive of a common culture, language, literature or history.

Largely because Japan leaped from feudalism to industrial pre-eminence in less than a century, the resemblance between her institutions and those of Western nations is more apparent than real. We watch with dismay as her great industrial companies pursue pricing policies and practices in external markets that subordinate profit to the national purpose. We find the collective spirit of national effort permeating every aspect of society.

SENSIBLE COMPROMISE

Thus to fit Japan into a world system of politics and economics shaped by the traditions of Western individualism will not be easy, nor can it be achieved by America alone. Although European statesmen and business leaders seem deaf to the problem, it remains a common task for the whole community of industrialized nations. Meanwhile, Japanese relations with the rest of the world are becoming more and more polarized between Tokyo and Washington.

Undoubtedly, those two capitals have much to say to one another, but not always with full understanding. Recently they have faced two issues of special urgency: the reversion of Okinawa and the opening of the burgeoning Japanese market to the produce and investment of the West.

On the first issue, President Nixon took a long stride forward when he promised Prime Minister Sato in November 1969 that Okinawa would revert to Japanese administration during 1972. It was a decision long overdue, since how could anyone possibly justify the continued rule by the United States, a whole generation after the war, of more than 1 million Japanese living in Japanese territory? The solution—a sensible compromise that assured the United States the same rights in the Okinawa base as in the bases in the Japanese home islands—came just in the nick of time. It saved the Sato government and forestalled the termination of the security treaty which might otherwise have occurred last spring.

Yet, having taken this statesmanlike step, the Administration is now in danger of throwing away the benefits by deciding not to effectuate the Okinawa reversion by executive agreement, which at the most would require only a majority vote of both houses of Congress, but rather by a treaty, requiring the approval of two-thirds of the Senate.

DANGEROUS SUSPICION

All other things being equal, one could properly regard the issue as deserving full Senate treatment. But all things are not equal, for a totally irrelevant reason—that the Administration has shown a persistent willingness to sacrifice larger interests to fulfill a campaign promise to the American textile industry. In a so-far futile effort to reduce the inflow of Japanese textiles, not only has it squandered much political capital with Japan but it has proved more Catholic than the Pope by rejecting a proposal of self-restraint from Japanese industry that had been accepted by the chairman of the House Ways and Means Committee, Wilbur Mills.

In the atmosphere of bitterness and confusion thus created, calm analysis cannot flourish, and suspicion has inevitably developed in Tokyo and elsewhere that the treaty route was deliberately chosen to strengthen the Administration's hand in extracting a more restrictive import limitation from Japan. Yet what could be more grotesque than an attempt to trade off the reversion of Okinawa—a vital step to preserve our security in the Far East—for the appeasement of a single industry and a few Southern senators, at large cost to American consumers and with grave risk of undercutting all hopes of widening access to the vast Japanese market?

Whatever the Administration's motives—and I prefer to draw no invidious conclusions—the situation demands the most careful attention, for we dare not let protectionism again wreck our relations with Japan, as occurred 40 years ago. But, unless the White House vigorously intervenes, the protectionist lobbies may well mobilize the maximum 34 Senate votes needed to block the Okinawa treaty, in the event Japan refuses to grant their protectionist demands. That is an eventuality to make one shudder, for if the President should prove unable to deliver on his promise to hand back Okinawa, there is no doubt that the whole fragile structure of our relations with Japan would come tumbling down. And if that should happen with the only large modern industrial nation in the Far East, it would make defeat in Indochina seem like a pinprick.

GENOCIDE CONVENTION—NO CONFLICT WITH TREATY-MAKING POWER LIMITS

Mr. PROXMIRE. Mr. President, it has been suggested by critics of the Genocide Convention that the treatymaking power of the United States is not without limitation and that the convention may conflict with it. This is what the case of *Geofroy* v. *Riggs* (133 U.S. 258, 267, (1890)) says about the treaty power:

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 its departments, and those arising from the nature of 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 contents. * * * But with those 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.

Solicitor General Perlman interpreted the constitutional restraints or limitations cited in this case as being of two kinds—express prohibitions and those implied by the nature of Government and the States. He cited a Supreme Court decision, *Asakura* v. *Seattle* (265 U.S. 332, 341 (1924)) as indication on that the Supreme Court had "whittled down" the breadth of the limitation suggested in *Geofrey* v. *Riggs* (133 U.S. 258, 267 (1890)). The decision said in part:

The treatymaking 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 all nations.

In 1920, in *Missouri* v. *Holland* (252 U.S. 416) the Supreme Court specifically eliminated the tenth amendment to the Constitution as a possible limitation on the treatymaking power. What Mr. Justice Holmes said on the existence of limitations to the treatymaking power is also of importance:

Acts of Congress are the supreme law of the land only when in pursuance to 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 in 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 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).

Solicitor General Perlman further stated that the express power of Congress to define and punish offenses against the law of nations was not a limitation on the treatymaking power. Some opponents of the convention argue that under the powers delegated to Congress "to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations"—a treaty obligating the United States to punish an offense under international law is a usurpation of the legislative power. This charge is unfounded. I would like to quote Solicitor General Perlman at some length with regard to this charge:

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. *Neilson* (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.

The passage from the case of *Geofrey* v. *Riggs*, which speaks of restraints arising from the nature of the Government and the States, and restraint against change in the character of the Government or in that of one of the States, is used as another argument for the existence of a constitutional limitation on the treaty power. It is argued against the convention as a whole that to impose a new body of treaty law which will become the domestic law of the United States is a change in the structure of the relation of the States and the Federal Government, and that to deprive the States of a field of criminal jurisprudence and place it in the Federal jurisdiction by treaty would be so revolutionary as to be in violation of the Constitution.

If there were matters of criminal jurisdiction confided to the States so vital to their existence that a change by the Genocide Convention would destroy our dual system of government, conceivably the problem suggested might be more than hypothesis. The fact is quite the opposite. Congress is already invested by the Constitution with the power to provide the criminal sanctions for offenses against the law of nations [Constitution, article I, section 8, clause 10]. It has had that power since 1789, and the States expressly committed that field of criminal jurisprudence to the Federal Government. It is therefore of little or no consequence in comparing the effect of the exercise of Federal criminal jurisdiction upon residual State criminal jurisdiction that Congress may exercise its power to punish genocide pursuant to the authority provided in article I, section 8, clause 18 (the necessary and proper clause) of the Constitution, or pursuant to both sources of power. It is wholly unwarranted to say that, because another offense has been added to the list of the few now punishable as offenses against the law of nations, the States have been deprived of a field of criminal jurisprudence. This area of the field they never possessed . . . (p. 45–46, Hearings).

Mr. President, the Genocide Convention, if ratified by the U.S. Senate, is certainly a proper subject of the treatymaking power of the United States. Ratification would in no way alter the balance of authority between the States and the Federal Government. Genocide has been cited by the United Nations as a subject of international concern. Therefore, it is perfectly correct for Congress to enter into conventions, treaties, or agreements which deal with matters of international concern.

Mr. President, I see no constitutional limitation of the treatymaking power that would restrict in any way our ratification of the Convention on the Prevention and Punishment of the Crime of Genocide. I urge that we act now.

CONGRESS MUST ACT ON VIETNAM DISENGAGEMENT

Mr. JAVITS. Mr. President, I ask unanimous consent that my testimony in support of the Vietnam Disengagement Act of 1971—the so-called Hatfield-McGovern bill—be printed in the RECORD. These remarks were delivered in my capacity as a cosponsor of the bill and were presented to the Senate Foreign Relations Committee on April 21, 1971.

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

CONGRESS MUST ACT ON VIETNAM DISENGAGEMENT

President Nixon—in his television address to the Nation of April 7 and in his remarks of April 16 to the American Society of Newspaper Editors—has refused to establish a deadline for the withdrawal of all U.S. armed forces from Vietnam. He has declared his intention to continue the massive U.S. air role in the fighting and to retain some "residual" ground forces until certain conditions are met.

In the two conditions he has set for total U.S. withdrawal, President Nixon has reaffirmed the veto of both Hanoi and Saigon over U.S. disengagement. In addition to the release of all POWs held by North Vietnam, he has established Vietnamization as a precondition to U.S. withdrawal, defined as follows:

"The ability of the South Vietnamese to develop the capacity to defend themselves against a Communist takeover, not the sure capacity, but at least the chance."

Vietnamization continues to be the base of the President's policy, so the issue is drawn between withdrawal by a time certain or an open commitment no matter how troop strength is reduced. To show how long this can take, Vice President Ky recently estimated it will take 15 to 20 years for Vietnamization to succeed.

I will yield to no one in my solicitude for American prisoners-of-war, but I do not believe the only way to rescue our prisoners is to continue the war; the history of warfare teaches that prisoners are released when wars are ended. To insist on retaining substantial U.S. troops in Vietnam to induce the release of the POWs could result in a stalemate on the POW issue, rather than their release.

The key substantive issue to be decided is whether a "time certain" should be established for the total withdrawal of U.S. armed forces from Vietnam. The President has opted for a policy of scaling down the level of U.S. involvement while leaving it open-ended with respect to time. I feel such a policy is undesirable for a number of reasons related to the Vietnam war itself and also to the unpostponable need to reorder U.S. priorities at home and in the world.

The scars in this country will not begin to heal until the United States has fully disengaged itself militarily from the fighting in Vietnam. What could our nation possibly win in Vietnam that would be worth the destruction and the division—economic, social and in morale—which this war is inflicting on our own Nation?

To cite some examples, the Vietnam war has so weakened international confidence in the dollar that our world financial position is being jeopardized. It has so eroded the motivation of the American worker that our very productive and technological superiority—our greatest strength—is threatened. It has so dismayed American youth that large segments have lost faith in the essential effectiveness, decency and humanity of our society—in our culture—and even in our credibility. It has so strained our resources as to bring on a great inflation and a dangerous erosion of confidence in our economy resulting in serious unemployment.

Along with this we have the deep aggravation of our urban problems—leading to the near "bankruptcy" of city governments across America—and the deep sense of alienation and pessimism now so prevalent in what used to be known as the most optimistic nation in the world. And there are those 50,000 American lives lost and the 200,000 wounded and that $100-billion of treasure.

The Vietnam war is now an obsolete struggle as regards U.S. interests in Asia. Whatever justification there may once have seemed to be for U.S. intervention in what has always essentially been a civil struggle—and I have long regarded any combat intervention as very improvident—continuing U.S. military involvement in Vietnam would be tangenital, if not contradictory, to the advancement of U.S. interests in Asia.

The real issues of Asia in the 1970's and the 1980's will have little to do with the question of who rules Saigon. By way of reminder it is certainly today a moot question whether the "communist" government of Yugoslavia is more opposed to the basic principles of our nation than the military dictatorship in Greece. The issues we should be concentrating on are our relations with China and Japan—and the shifting quadrilateral power relationship in Asia among the United States, Japan, China and the Soviet Union.

The Vietnam war has done more to complicate and strain our relations with both China and the Soviet Union in recent years than any other issue. Moreover, the domestic inflation produced by the Vietnam war is largely responsible for the protectionist claims which threaten a trade war with Japan.

The American obsession and preoccupation with Vietnam over the past decade has led to the danger of U.S policy being bypassed by events in many parts of the globe. Vietnam has contributed heavily to the deterioration of the U.S. position in Europe and in the Mideast. We have been so distracted and so "locked-in" to the struggle in Vietnam that we have lacked the energy, the resources and the mental freedom to give our best to the great challenges which have emerged in other parts of the globe.

It is also time that we recognize that the Vietnam war has seriously weakened the United States from a purely military viewpoint. This is a seldom discussed aspect of the question but it is one which I know to be very much on the minds of our military leaders. The Vietnam war has undermined the morale of our armed forces. It has lowered the prestige and honor of the military profession in the eyes of many millions of Americans. The vast—and improperly funded—expenditures on the Vietnam war have lead to a strong move for major cuts in the defense budget. And, while the U.S. was devoting more than $100-billion to the Vietnam war and holding the 1965 line on its strategic forces, the Soviet Union—unencumbered by Vietnam—has brought its nuclear forces up to strategic parity, has reequipped its conventional forces in Europe and has constructed a worldwide navy which now challenges the U.S. Sixth Fleet for supremacy in the Mediterranean and other vital waterways.

When viewed against the perspective of competing priorities at home and abroad, there is nothing in my judgment which we could realistically seek or gain in Vietnam to justify an open-ended involvement in the Vietnam war.

The time has come for the Congress to establish by statute a "time certain" for the withdrawal of all U.S. armed forces from the Vietnam war. Hopefully, this can be accomplished in cooperation with the President. I do not believe that a showdown confrontation on this issue between the President and the Congress would be in the interests of the President, the Congress or our nation. Like many other Senators, I came reluctantly to the view that the Congress should assert its ultimate power—the power of the purse—to bring an end to this improvident war which has done such vast and incalculable harm to our nation and its interests at home and throughout the world.

The U.S. would, of course, continue to supply financial and material aid to the South Vietnamese to assist their self-defense efforts if there is not a negotiated political settlement. Moreover, it is to be expected that the U.S. will participate in multinational regional construction assistance efforts when the war is over as previously pledged by President Johnson.

I personally favor establishing June 30, 1972, as the terminal date for the withdrawal of all remaining U.S. military forces in Vietnam, except such forces as might normally be stationed in a nation we are assisting in the traditional manner of military assistance programs where U.S. involvement in local fighting is strictly and conspicuously prohibited.

In closing, let me say that the recent operation in Laos, where U.S. helicopters, fighters and bombers played such a massive and intimate role in the South Vietnamese ground effort, showed the fallacy of limiting U.S. withdrawal to ground combat troops. If U.S. "air power" and "residual forces" are to remain in Vietnam until the ARVN masters the skills and weapons now represented by U.S. air and artillery forces in Vietnam, the President's Vietnamization and withdrawal policy does not meet the basic mandate he was given in 1968—to end the Vietnam war for America.

SUPPORT OF WITHDRAWAL OF U.S. TROOPS FROM VIETNAM

Mr. FULBRIGHT. Mr. President, I am pleased to bring to the attention of the Senate a petition signed by 47 members of the House of Representatives of the Arkansas General Assembly.

The petition supports withdrawal of U.S. troops from Vietnam by January 1, 1972, and favors legislation to this effect.

The petition takes note of the "unjustifiable and unnecessary" expenditure and of the "thousands of loyal courageous American soldiers who have lost their lives as a result of this futile war."

Mr. President, I think this petition is indicative of a widespread feeling across the country, as more and more Americans are convinced that we must curtail our involvement in Vietnam.

I ask unanimous consent that this petition, along with a letter of transmittal from the three legislators who secured the signatures, be printed in the RECORD.

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

STATE OF ARKANSAS,
HOUSE OF REPRESENTATIVES,
Little Rock, Ark., March 31, 1971.

Hon. WILLIAM F. FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: Enclosed is a copy of request signed by 47 members of the Arkansas House of Representatives. This requests the Members of the United States Congress to withdraw U.S. military forces from Viet Nam by January 1, 1972. It also promises our support and encouragement to you in any efforts which you might find proper.

Respectfully,

N. B. MURPHY.
RUDY MOORE, Jr.
JOSEPH K. MAHONY II.

Requesting the United States Congress to withdraw the United States' Military Forces from Viet Nam.

Whereas, the Viet Nam War has resulted in the unjustifiable and unnecessary expenditure of billions of dollars each year by the United States on war materials and equipment; and

Whereas, thousands of loyal courageous American soldiers have lost their lives as a result of this futile War; and

Whereas, the exorbitant cost of maintaining the status quo in Viet Nam has resulted in the drastic curtailment of many essential and worthwhile domestic projects and programs for the American people; and

Whereas, under the circumstances United States military activity in Viet Nam has been unduly and unnecessarily prolonged; and

Whereas, continued United States participation in this War has sharply divided the American people and threatens to bring chaos to our Nation, it has caused the disaffection of a large number of the youth of our Nation; and

Whereas, the loss of troops and the expenditures of billions of dollars should be curtailed by the United States by the withdrawal of American troops from Viet Nam by January 1, 1972.

Whereas we understand that Senators Church and Cooper plan to introduce legislation which would cause the withdrawal of United States troops from Viet Nam by January 1, 1972; and

Whereas we understand that in the House Democratic Party Caucus on Wednesday a similar motion is to be introduced; and

Whereas we feel that any such legislation, motion, resolution, etc., is desirable;

We, the members of the Arkansas House of Representatives, therefore, do encourage and support you in your decision to vote in favor of any such legislation, resolution, motion, etc., which would cause withdrawal of United States troops from Viet Nam by January 1, 1972.

MILITARY MANPOWER PROBLEMS MAY BLOCK ALL-VOLUNTEER ARMY

Mr. EAGLETON. Mr. President, many questions have been raised—questions that trouble me—about both the desirability and the feasibility of an all-volunteer army.

Would a volunteer army increase the already substantial power and influence of the military on American life?

Would the cost be prohibitive either absolutely or relatively in terms of the desperate needs in other areas of our society?

Would not some form of draft still be necessary in time of war?

Further doubt is cast on the feasibility of an all-volunteer army in the foreseeable future by an article in the April issue of Fortune. Juan Cameron, Washington editor of Fortune, has written about conditions in the military services today, including the shortages of manpower, especially skilled manpower, the low rate of reenlistments, the high level of discontent, and the general waning attraction of military life in our society, Mr. Cameron concludes that—

The deep-seated manpower problem of the military must be overcome before the nation can hope to rely on an all-volunteer force . . . If the day of a 'zero draft' is ever to come, with U.S. forces still deployed around the world, the reform of military life will have to go far beyond anything so far proposed . . . (T)he continuous wholesale movement of men must be done away with. It will also be necessary to reform the entire pay and promotion—and retirement—system if the services are to achieve a stable career force; the Administration's proposals, and even the recommendations of the Gates Commission, are only a feeble first step in this direction.

Most vital of all, military life will have to be made more interesting and challenging. Just how this is to be done is not clear yet, nor is it clear that the Defense Department is gearing itself adequately for the job.

Mr. President, I ask unanimous consent that Mr. Cameron's article, entitled "Our Gravest Military Problem Is Manpower," be printed at this point in my remarks.

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

[From Fortune magazine, April 1971]

OUR GRAVEST MILITARY PROBLEM IS MANPOWER

(By Juan Cameron)

Three years ago, as candidate for President, Richard Nixon committed himself to end the draft and establish an all-volunteer

military force. In January of this year, however, President Nixon called for a two-year extension of the draft. "Nobody knows precisely when we can end conscription," he told Congress. And he might well have added *or if we can.* For military manpower problems have become so severe and vast in scope that the nation's armed services are in an extremely perilous situation. Even with 650,000 men entering the services every year—most of them draftees or volunteers who are induced to enlist by the threat of conscription—dangerous shortages of men prevail in every branch of service, seriously impairing combat capability. Some low-priority units, like the 172nd Infantry Brigade in Alaska, are at only half of "foxhole," or combat, strength. Even high-priority forces are seriously undermanned. The Seventh Army is charged with the defense of Europe and, according to Nixon, stands next to the Vietnam forces in its claim on men and equipment. But last winter the Seventh Army was 20,000 men short of its authorized strength (190,000 men).

Nor is the crisis one simply of numbers. The real pinch comes from the failure of the armed services to retain officers and men with the experience and skills needed to operate and maintain the complex weapon systems of modern warfare. The U.S. Army's crack Berlin Brigade has to rely on German civilians to maintain its tanks and other armor because there aren't enough trained technicians in the service. The Navy has reported a "critical" to "serious" shortage of skilled ratings in half of its air squadrons and a third of its ships. And the Air Force is finding it increasingly difficult to retain experienced pilots.

Discontent is rampant among servicemen of all ranks and ages—not just the raw recruit reluctantly putting in his draft time, but the tough Sheridan tank commander on patrol along the East German border, the operations officer aboard a destroyer escort in the Mediterranean Fleet, the missile-silo commander in North Dakota, and the infantry noncom just returned from a second tour in Vietnam. Low morale contributes to the high turnover in personnel, costing billions each year in wasted defense dollars and ruling out the possibility of any quick move toward all-volunteer services.

White House policy still aims at ending the draft in 1973, and the Administration has taken a number of steps to make military life more attractive. Secretary of Defense Melvin Laird has proposed a pay package, involving $1.5 billion a year, to mitigate some glaring inequities in the lower ranks of the services. "Mickey Mouse" rules regulating hair length, beards, and off-duty dress have been relaxed. Go-go girls do their thing in enlisted men's clubs, beer is available in mess halls, and a few barracks have been painted in psychedelic fashion. But as treatment for what ails the armed services, these measures are like treating a cancer with a Band-Aid.

Discontent in the armed services flows from many sources. The Indochina war has been an important irritant, of course, particularly because of controversial personnel decisions dictated by the political assessments of the Johnson Administration. When American troops are finally withdrawn from Vietnam, some of the wasteful and enervating policies that have contributed to what the services call "personnel turbulence" will be lessened.

But not even an end to the Vietnam war will cure ills that derive from decades of neglect. The brightest and most ambitious military commanders have never regarded personnel administration as the way to advance professionally. "These things have been snowballing for years and pose a pretty big problem now," says Roger Kelley, Assistant Secretary of Defense for Manpower and Reserve Affairs. On top of everything else, there has been a growth of antimilitary feeling among the young people whom the services must draw upon for manpower. Higher pay scales will help, but the Nixon proposals call for, at best, only about half the amount of money recommended last year by a presidential commission headed by Thomas S. Gates Jr., a former Defense Secretary who is now chairman of the executive committee of Morgan Guaranty Trust Co.

A HEMORRHAGE OF TALENT

The magnitude of discontent among military men shows up dramatically in the low percentage of officers and enlisted men who elect to remain in the service after their first tour of duty. Perhaps it is not surprising that only about 1 percent of draftees, who were inducted involuntarily, stay in after their two years' hitch is completed. But the services are falling far short of their goal in getting volunteers to sign up for additional tours after their first three to six years of duty. They would like to get 30 to 35 percent of these men to re-enlist, but the Army is retaining only about one out of nine of its enlistees at the end of their first hitch. The retention rate for Navy enlisted men is 12 percent; for the Air Force, about 11 percent. The Marines, for all the carefully nurtured pride in "the Corps," have the lowest re-enlistment rate of all—six out of every hundred enlisted men.

The Pentagon is quick to point out that re-enlistment rates can be misleading—especially at a time when the over-all size of the military establishment is being reduced—because the services have different methods of computing the rates. Moreover, the Defense Department's manpower experts tend to denigrate the relevance of these figures with the argument that more than half of the "volunteers" were induced to sign up by the threat of being drafted for Army combat units in Vietnam. This is especially true, they argue, for many of today's young officers, who were not career-minded in the first place. There is some truth in that argument, but the trends of retention are down even among those who seemed intent on military careers. For example, in 1961 the Army was able to retain about one-third of the lieutenants and captains who had entered by way of Reserve Officers Training Corps. Today the Army's retention rate for these officers is down to about 11 percent. In 1966 the Navy retained 25 percent of the officers assigned to surface ships. The retention rate today is 16 percent.

As recently as 1966, the Navy could count on having nearly two-thirds of its pilots—each of whom takes up to two years to qualify for carrier duty at a training cost that may total $250,000—elect to stay in the service after the first obligatory service was finished. Today three out of four pilots are leaving at the end of their first six years. The situation, says one Navy personnel officer, is "getting to the point where we have no experience in the fleet." The elite nuclear-submarine force has had similar trouble keeping its officers. They are offered bonuses of up to $15,000 to remain in the submarine service, but the retention rate is only 36 percent, or slightly more than half of what it was several years ago. And in the noncommissioned ranks, men with six to eight years of service have been leaving the Navy in such numbers that the fleet is short of petty officers with critical skills—technicians who can handle sonar, missile, electronic, aviation, and data systems. Even boiler tenders are scarce.

In the Air Force, which in the past retained nearly half of its younger officers, the situation is also deteriorating. More than 13,000 officers who had previously indicated an intention of making a career in the Air Force have requested separation at the end of their current tours. Lieutenant General Robert Dixon, the deputy chief of staff for personnel, has estimated that it will cost $1 billion to train their replacements.

LIKE JUMPING ON A MOVING SURFBOARD

Few, if any, business executives ever witness the kind of turnover in manpower that the armed forces take for granted today. The military services turn over 60 percent of their *total* personnel every two years. It is not uncommon for units in Vietnam and elsewhere to roll over personnel two to three times a year. Says the Army's Vice Chief of Staff, General Bruce Palmer Jr., "When your force is turning over at the rate of 100 percent a year, you have a tough job of training to start with. The training base required to cope with this is huge. And then as fast as you get the men up to any level of proficiency you lose them. When the rate is over 100 percent, it's a hopeless situation." It's expensive, too—about $5.8 billion annually to train new men, one study shows.

The 4th Infantry Division (Mechanized), stationed at Fort Carson, Colorado, is an example of Palmer's "hopeless situation." The 4th Infantry is one of four high-priority reserve forces supposedly able to move on short notice to bolster U.S. troops in a trouble zone. On paper, that is; for today the 4th is in a decidedly parlous state. Since most of its men are Vietnam veterans with only a few months of service remaining, the division sees 6,000 of its 15,000 men depart every three months, while men just returned from Southeast Asia stream in to take their places. Lieutenant Colonel Fred Bartlett Jr., today the division's personnel officer, says that the fifteen months he spent as a battalion commander with the 4th Infantry seemed like five years. "In that short time I have had 3,700 men assigned to an 800-man battalion. With that kind of turnover, how do you get a man feeling he belongs to a unit? It gives you sort of a transitory feeling, like jumping on a moving surfboard." The game of musical chairs obviously affects the division's morale and sense of cohesiveness. In addition, the constant retraining required to integrate the newcomers into the division materially reduces the unit's combat capability.

This high rate of turnover also affects individual decisions about staying in the service. Navy Lieutenant John J. Costello, a twenty-six-year-old Harvard graduate who is operations officer aboard the destroyer escort *Hamerberg,* has been in the service for four and a half years. His ship, based in Naples, is engaged in classified underwater detection operations. Now he says he is sick of trying to run a department (four officers and fifty-one enlisted men) whose personnel is replaced every few months. "This job is like shoveling sand against the tide. I'm constantly working to train officers who hardly know their jobs here before they're transferred to another position or ship. It's the same with my men. I've made known that we lack enough technicians to maintain the ship's electronics, but nothing happens. As soon as we get a man broken in, off he goes. The whole job has become a pain in the neck. Who wants to stay in and work like this?" Costello has sent in his resignation, along with a blistering critique of Navy personnel management and leadership.

The situation that the Lieutenant Costello and Colonel Bartlett have had to face is caused in large part by two decisions made early in the Vietnam war. The first one, made by President Johnson and Secretary of Defense Robert McNamara, was to rely on the draft instead of calling up the reserves

when they found it necessary to expand the Army by 50 percent in 1965. The second decision, recommended by the service chiefs, was to limit the tour in Vietnam to twelve months. In retrospect, a number of Defense Department officials, civilian and military, call these the two worst decisions of the war. They were based on a variety of political and morale factors—and on the expectation that the war would last merely months, instead of the more than five years it has lasted to date.

BUILDING IN SMALL INCREMENTS

During the Korean war, and again during the Berlin crisis in 1961, the reserves—on which the nation now spends about $3 billion a year—were partially mobilized. For Korea, over 800,000 out of a total force of 3,700,000 came from the call-up of reserves; for the Berlin crisis, 150,000 reservists were called up by President Kennedy. But only about 37,000 reservists were ever called up for Vietnam, after the *Pueblo* incident in 1968.

Because of the sharp public outcry over the 1961 call-up and the low state of readiness of the reserves, McNamara told his military commanders not to count on calling up the reserves again except for a major shooting war. In August, 1965, he affirmed this policy in a confrontation with the Joint Chiefs of Staff. His rationale was that the gradual buildup called for in Vietnam could best be met by drafting small increments of men as they were needed. This would have the advantage of leaving the reserve forces in being in case they were needed in another theatre. The policy also suited presidential politics. Lyndon Johnson was anxious to play down the U.S. involvement in Southeast Asia. He would have had to go to Congress for authority to call and hold the reserves, which would have meant a noisy debate. Using the draft instead of the reserves avoided this distasteful prospect.

Reliance on two-year draftees instead of reservists, who could have been held in service for the duration of the emergency, meant that a heavy inflow of replacements was needed as the war continued and the armed forces grew (to a peak of 3,500,000 men in 1968). The flow of new men into the services has ranged between 600,000 and one million annually over the past five years. Over five million men—half of all eligible American males between the ages of nineteen and twenty-six—have been in military service during the Vietnam war (and over 40 percent of them actually went to Southeast Asia). Because the Marines had to rely on the draft instead of volunteers, more men—about 700,000—have worn the Corps' green uniforms in this war than in all of World War II.

The decision to limit each man's tour in Vietnam to twelve months added greatly to the heavy turnover in the largely draftee Army. The aim of this policy was to spread the risks of war, as well as the hardships of family separation, over as many men as possible. However, to maintain the short tours has required rotating 25,000 to 45,000 troops a month—or up to 500,000 men a year—out of Southeast Asia and replacing them with a like number of troops from the U.S. or other theatres. The effects have been felt in military commands throughout the world. Career servicemen, particularly in the Army, have been continually shifted from post to post to fill recurring shortages caused by the rotation. It is not uncommon for officers to have been moved five times in less than three years. The constant upheaval has disrupted family life for millions of military people and intensified their discontent with the services.

The drastic cutbacks in military manpower since 1969 have also taken a toll. Nixon and Defense Secretary Laird will have sliced one million men off military payrolls by June, 1972. The very swiftness of this manpower reduction is unsettling; a reduction of comparable size at the end of the Korean war was spread over six years. As ships are decommissioned, bases closed, and divisions demobilized, men must move to other commands, thus aggravating the turbulence. The services have tried to schedule these cutbacks in an orderly manner but when a war is being waged the schedules go awry. And sometimes the consequences are serious, as the predicament of the 82nd Airborne Division illustrated last autumn.

Like the 4th Division, the 82nd Airborne, stationed at Fort Bragg, North Carolina, is supposedly to be ready to deploy anywhere in the world on a few hours' notice. But when the division was alerted last September to prepare for a move to Jordan in case U.S. citizens were endangered by the fighting there, its commander told the Joint Chiefs of Staff that only one of its three brigades was fully combat ready. The squeeze arose because the Army had cut the number of draft inductions, in the expectation that it would be reducing the size of its Vietnam force by 10,000 to 12,000 men a month. But when Nixon withdrew Marines instead of Army troops from Vietnam, he upset the Army's calculations of its manpower needs. To fill the gap, troops were levied from commands in Germany and Korea, and from U.S. outfits like the 82nd Airborne, for dispatch to Vietnam. When the Jordan emergency came, the 82nd was nearly 2,000 men short. Since then this shocking situation has been remedied for the 82nd, but not for other commands.

ICING ON THE CAKE

In a well-publicized campaign, the Pentagon has moved to show that it *does* care about its "grunts." The Chief of Naval Operations has issued "Z-grams" to abolish many restrictive regulations, and similar orders have come from the Army and Air Force Chiefs of Staff. To date there has been an encouraging pickup in reenlistment rates due to these efforts. More important, a start has been made on a dialogue between officers and men on what's wrong with the services.

The old guard—particularly retired officers—have thundered against these reforms as steps that will turn the services into country clubs. But many enlisted men and officers regard them as inadequate, though welcome. To thirty-nine-year-old Odiss Sweet, a black first sergeant with the Seventh Army, the changes that have been made are "just cold icing on a hot cake." A career man who has put in twenty years' service, Sweet says: "When the cake is hot inside, the icing is going to melt. They're going all the way for the young trooper who's not going to stay anyway. But they haven't begun to touch the problems that bother the old soldiers. Until they do, they might get men to come into the Army but they won't stay."

In analyzing their manpower problems, senior officers often tend to blame society as a whole for the waning attraction of military life. A standard lecture for visitors to military bases dwells on the fact that much of today's discontent with the services stems from the children of a permissive society and the profoundly antimilitary temper of the times. Certainly the attitude toward the Vietnam war has had a sharp impact on servicemen's morale. Says Major General John Bennett, commander of the 4th Infantry at Fort Carson: "The Vietnam soldier has seen more combat than the man who fought from Normandy to Berlin in World War II. He's been through the real meat grinder. Yet when he comes home, there's no flag in the window, no free drink at his neighborhood bar. Only silence and neglect."

Harold Wool, a Department of Labor official who until recently was the Pentagon's career civilian expert on the draft and manpower, notes that there are still deeper reasons for the alienation of young people. Recruits must be drawn today from an increasingly white-collar urban society that tends to look down on the military professions. "Quite aside from pay," Wool says, "the services have a status problem." The young see most service work as a predominantly menial, blue-collar occupation. Furthermore, he finds, life in a disciplined career bureaucracy doesn't appeal to servicemen, whose median age is twenty-three.

WHITEWALLS FROM BASE BARBERS

For centuries armies have been a haven for the unemployed. The Duke of Wellington once said that his conquering British Army was composed of "the mere scum of the earth . . . all enlisted for drink." Until the 1940's the U.S. Army could find all the recruits it needed by offering food, shelter, and $22 a month. But today the military forces do not find much of a manpower pool among the unemployed, even in recession years such as this one.

Some critics have argued that an all-volunteer army would be an army made up of blacks and other minority groups with a low-income background. In fact, though, experience has shown that black servicemen like military life only slightly more than other young Americans. Their complaints, however, are sometimes different. They don't like the "whitewalls"—a trim above the natural hairline around the ears and back of the head—that base barbers mete out. They complain about the lack of combs and shampoos for Afros in PX's, and of magazines dealing with racial issues. Blacks charge they are discriminated against in promotions; and that military justice is applied in unfair ways, resulting in an unduly high percentage of their brothers' being put in the stockades.

The services have been moving to meet these complaints, as well as the overt or subtle discrimination practiced by bar owners and landlords here and in Europe. In the meantime, however, there is a serious disciplinary problem in many commands. On some U.S. bases, junior officers have been attacked when venturing at night into barracks areas where there is a heavy concentration of black troops. There have been instances in Germany of senior officers being struck in public by blacks. And in the rear areas in Vietnam there have been an ominous number of "fragging" incidents—the throwing of gas or fragmentation grenades at officers.

A few officers, like Major General Raymond Shoemaker, commanding general of the 32nd Army Air Defense Command in Kaiserslautern, West Germany, look inward to find the causes of discontent. A trim, white-haired man who began his career as an enlisted man in the 1930's, Shoemaker comments: "Personnel procedures have been our greatest weakness. We have tended to think of soldiers as great masses of numbers instead of individuals."

What attention has been paid to manpower has been mainly in terms of promotion and pay among the career force. There has been a comfortable feeling that men to fill the lower ranks could always be obtained, thanks to the draft, at cheap prices. When the choice has been between better housing and pay for the lower ranks and new weapons, the military chiefs have invariably opted for hardware.

50,000 MEN ON WELFARE

Today's military pay scales are badly skewed in favor of the upper enlisted and

officer ranks. In its exhaustive study of military pay, the Gates Commission pointed out that there has been a long "history of discrimination" against the lower enlisted and officer grades. The commission found that between 1948 and 1965 the average basic pay of officers with two or more years of military service increased 45 percent, while the pay of officers with less than two years of service increased by only about 13 percent. Pay for enlisted men with more than two years' service also increased by 45 percent in this seventeen-year period, but men with less than two years got an increase of only 4 percent, or less than one-tenth as much.

Partly as a result, it is estimated that at least 50,000 married enlisted men are actually on welfare or qualify for food-stamp programs, or both. Major General James Hollingsworth, Army commander in Alaska, has found that his married enlisted men in the four lower ranks (E–1 through E–4) go into the red by an average of $60.18 a month. By contrast, one of Hollingsworth's first sergeants with twenty-two years' service, Clarence Burdett, says he and his working wife saved $10,000 last year on their combined gross income of $20,000.

The pay and rank structure has been further distorted in recent years by a ragtag package of accelerated promotions and bonuses geared to spur re-enlistment rates. Enlisted men with skills that are in short supply can receive up to $10,000 in bonus pay by re-enlisting for a six-year tour; certain categories of officers also get bonuses to extend their service. The practice creates some inequities. For example, the skipper of the nuclear-attack submarine *Spadefish*, Commander George Henson, a Naval Academy graduate with seventeen years' service, is the third-highest-paid man on his ship; some of his junior officers have received bonuses amounting to $15,000 for staying in the Navy.

The military pay system is both discriminatory and grossly inefficient in retaining men. For one thing, the pay structure is such a complex maze that most military men have little idea of what their actual compensation is. For instance, a married E–5 with ten years' service perceives his pay to be $7,300. Actually, if quarters and subsistence allowances and medical care, which are tax free, are taken into account, his compensation may be equivalent to $10,400. Since servicemen fail to realize just how generous their total benefits are—they tend to exaggerate the gap between their wages and those of civilians—the Gates Commission recommended translating the various elements of pay and noncash benefits into a single lump sum. That would make the full value of military wages easily visible.

Although Congress and the Budget Bureau have turned a deaf ear to the fact, across-the-board pay increases, which make the rich richer and the poor relatively poorer, are also inefficient. An across-the-board increase means more for the $33,000 general than the $9,400-a-year captain, although it is the captain who leaves the Army because of low pay. Stephen Herbits, a member of the Gates Commission, points out that selective pay hires would redress a system that continues to raise the total compensation of senior officers above parity with the civilian sector, while junior servicemen fall further behind.

Even the military retirement system works against the services' needs to retain more men in their middle years. Because the system provides benefits only after twenty years of duty, future retirement pay gives little incentive to remain in until a man has at least ten to twelve years' service. The result is a surplus of men with over nineteen years' service and a shortage of those with four to eight years' service. Again the services and Congress have long ignored suggestions to encourage mid-length careers by letting men build some equity in retirement before they have served twenty years.

WHITEWASHING AND BRASS POLISHING

The availability of cheap labor in the lower ranks has encouraged the military to use its men to haul garbage and trash, wash dishes and peel potatoes, and perform such standard—and meaningless—tasks as chipping paint, polishing the base's traditional brass cannon, and whitewashing the stones lining the general's driveway. Many of these tasks could be mechanized to a greater degree, farmed out to civilians, or abolished altogether. For years the Air Force, which has a large training investment in its relatively small, highly specialized enlisted force, has contracted out its K.P. and much of its ground maintenance to civilian labor. Lieutenant General Dixon explains: "We felt it makes no economic sense to take a man capable of working on equipment worth millions of dollars and have him doing kitchen work."

The Air Force also provides its highly trained enlisted men with living quarters that are palatial in comparison to those provided by other services. To be sure, some modern barracks are to be found on Navy, Army, and Marine bases. And recently a crash program has been undertaken to provide a minimum of habitability in older quarters. A little bit of paint, a few patches of carpeting, and wall lockers rearranged to serve as partitions are being breathlessly hailed in the news media as part of the mod Navy and modern Army. Nearer to the reality of what the majority of enlisted men have are the thirty-year-old Henderson barracks, which house the Marines' headquarters force. Here, in the shadow of the Pentagon, the Marines live in cheerless open bays, stifling in Washington's summers; each bay accommodates fifty men. The bathroom facilities consist of open shower rooms and toilet stalls without doors.

Many younger men find drudgery and boredom to be the hallmarks of military life. Assistant Secretary of Defense Roger Kelley says that only among men aboard ship or among the pacification and combat units in Vietnam has he found a feeling of achievement in young officers and enlisted men. "People are either not being used at all, or are being used in jobs that aren't relevant to their mission. There just aren't the ordinary challenges in the life that are needed to sustain men."

The problem is one similar to that of a fire department, wonderfully equipped, that never has a fire to put out. A visitor to military bases is struck with the lack of activity that has any real importance. A tank crew in the U.S. is apt to spend the morning checking the oil and gas of its vehicle, starting the engine, tightening rattles and loose fittings. The rest of the day will be spent in repetitive lectures, physical training, and personal chores—or, for officers, in fighting a paper war with an endless stream of pointless correspondence and record keeping. A tank outfit not in combat might go out for training every two or three months and engage in a full firing exercise once a year. An infantry soldier might fire his M–16 once every six months. It makes for a boring life. David Gyongyos, twenty-six, a sergeant in an engineering battalion with the 4th Infantry Division, says of life at Fort Carson: "There is an old Army concept that to be an enlisted man you must be dumb. You're just a serial number assigned to meaningless work."

Many Air Force officers and men likewise find little of the wild blue yonder in their jobs. For many officers of the 91st Strategic Missile Wing stationed at Minot, North Dakota, life in an ICBM silo is as dull as or duller than that for the tank trooper. One of them, a twenty-five-year-old captain, comments that "it's hard to get much satisfaction out of 'flying' a capsule. You may work thirty minutes an hour. But for the next thirty minutes you twiddle your thumbs. After a while your mind goes stagnant."

In some instances, the feeling of frustration among military careerists is intensified by shortages of the parts and equipment that they need to do their jobs. Sergeant John Bushell, twenty-seven, has been a soldier for eight years and commands a Sheridan tank in the 1st Squadron of the 2nd Armored Cavalry. His unit, which spends one month out of three patrolling along the border between West and East Germany, has been plagued by a shortage of parts, which makes an already demanding assignment needlessly more difficult. "You're working half the night sometimes to rig these things up," Bushell says.

MEN FOR FANCY SYSTEMS

The deep-seated manpower problems of the military must be overcome before the nation can hope to rely on an all-volunteer force. The gap between the number of men the services need and the number who volunteer is enormous—for the Army alone it is over 160,000 a year. If the day of a "zero draft" is ever to come, with U.S. forces still deployed around the world, the reform of military life will have to go far beyond anything so far proposed. It is plain what some of the needed changes are. For example, the continuous wholesale movement of men must be done away with. It will also be necessary to reform the entire pay and promotion—and retirement—system if the services are to achieve a stable career force; the Administration's proposals, and even the recommendations of the Gates Commission, are only a feeble first step in this direction.

Most vital of all, military life will have to be made more interesting and challenging. Just how this is to be done is not clear yet, nor is it clear that the Defense Department is gearing itself adequately for the job. But among some high-ranking officers a sense of urgency is appearing at last. Says the Army's General Shoemaker: "You can have all the fancy weapons systems you want. But they won't do you any good if you can't keep the men needed to run them."

CONSTITUTIONAL DEMOCRACY AND THE CONTROL OF UNDECLARED WAR

Mr. JAVITS. Mr. President, I ask unanimous consent that the text of my address, entitled "Constitutional Democracy and the Control of Undeclared War," given at the Albany School of Law on April 19, 1971, be printed in the RECORD.

My remarks deal with the issues addressed in S. 731, a war powers bill I have sponsored, and which is the subject of hearings before the Senate Foreign Relations Committee. I would like to have my views available to the Senate in anticipation of the testimony on behalf of the administration of the Secretary of State on this crucial subject, which is expected in the near future.

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

CONSTITUTIONAL DEMOCRACY AND THE CONTROL OF UNDECLARED WAR

(An address by Senator JAVITS)

The most impelling lesson of the 1960's for the United States is our need to devise procedures to prevent future undeclared wars as in Vietnam. I believe that an effective statutory remedy is both possible and essential. The guidelines for such legislation can be derived from within the Constitution.

To meet this challenge, I have introduced legislation which deals with the crux of the problem we face today—undeclared war.

It specifies four broad categories, derived from historical experience, wherein the President, as Commander-in-Chief, may initiate military action in the absence of a declaration of war. It requires the President to report fully and immediately to the Congress the circumstances and details of the military action he has initiated. His authority to sustain such military actions terminates within thirty days unless affirmative legislative action is taken by Congress to sustain for a longer period the action initiated by the President.

The four categories in which the President may act are:

First, to repel a sudden attack against the United States, its territories and possessions;

Second, to repel an attack against the Armed Forces of the United States on the high seas or lawfully stationed on foreign territory;

Third, to protect the lives of U.S. nationals abroad;

Fourth, to comply with a national commitment affirmatively undertaken by Congress and the President.

Under my bill, even the 30-day period may be shortened by joint resolution of Congress.

The bill also contains provisions assuring action can take place in Congress within 30 days avoiding the danger of overly extended debate or filibuster.

If the Congress does act to determine by statute how the division of the war powers specified in the Constitution is to be applied in contemporary circumstances, it will have a decisive effect in stabilizing U.S. relations with the world. In my judgment, it would raise materially our people's sense of confidence at home in dealing with foreign policy and create a climate for healing the deep division among Americans over the Vietnam war.

In a very important sense, through the passage of a war-powers bill, our democracy will have shown itself again capable of self-correction of its governing processes—by the use of those very same processes of law—and will have answered the charge that our democratic system is incapable of creative change and that revolution is required to effectuate needed change.

I am very hopeful that the Administration—which has not yet indicated its position—will support the war powers bill. To do so would be consonant with the foreign policy goals which the President has established and articulated on numerous occasions.

In his February 25, 1971, "State of the World" message, President Nixon stated:

"This Administration must lead the nation through a fundamental transition in foreign policy . . . we are at the end of an era. The postwar order of international relations—the configuration of power that emerged from the Second World War—is gone. With it are gone the conditions which have determined the assumptions and practice of United States foreign policy since 1945."

The President further stated:

"Our experience in the 1960's has underlined the fact that we should not do more abroad than domestic opinion can sustain."

In my judgment, the President is right in his diagnosis; there is urgent need for a fundamental updating of U.S. foreign policy principles and procedures—and especially is this right in recognition of the perils of trying to fight undeclared wars which domestic opinion will not sustain.

This is the fundamental rationale for S. 731. My cosponsors and I regard this bill as basic national legislation. It is legislation essential to our security and well-being. It is legislation in the interest of the President as well as the Congress. By joining us in support of this legislative approach the Administration would be seizing an opportunity to transform into creative partnership its embattled relationship with Congress over Vietnam—and it would open an opportunity to clear the turgid and oppressive political atmosphere created in this country by the Vietnam war.

The President on many recent occasions has expressed his fear of what he calls "neo-isolationist" trends. The best way for him to arrest any such trend would be to join in legislation to establish a role for Congress and the people in controlling undeclared wars.

Conversely, opposition to this type of legislation can only exacerbate the situation between the Congress and the President over undeclared wars.

For, undeclared wars have been Presidential wars. Such wars—while seeming to have so vastly expanded Presidential power—have in fact done more to undermine the Presidency than any development in modern history.

I know of no Senator who is not keenly aware of the potential dangers to American Security and American interests in many parts of the globe. And I know of no Senator who wants a President and Commander-in-Chief unequipped to safeguard U.S. security and the national interest with vigilance and dispatch.

I believe that S. 731 gives the President more authority to do what is necessary and proper in an emergency than he now possesses.

Under S. 731 the President for the first time would have statutory authority to take emergency protective actions in defense of American lives and American interests—in areas where Presidents previously have acted solely on the basis of unilaterally asserted authority which faced many subsequent challenges.

I regard the bill I have introduced as giving ample play to the need of the Commander-in-Chief to have "discretionary" as well as "emergency" authority. At the same time, the bill immediately establishes a role for Congress right from the beginning: (a) by requiring the President to report fully and promptly to the Congress as to the circumstances of and the authority for the action he has initiated; (b) by requiring the President to terminate in 30 days whatever actions he has initiated under one of the four specified categories, in the absence of a declaration of war, "except as provided in regulation enacted by the Congress to sustain such hostilities beyond 30 days."

The bill further provides that hostilities initiated by the President can be terminated by joint resolution of the Congress in less than 30 days otherwise allowed. In addition, there is a detailed section which would prevent in a filibuster from blocking Congressional action.

The period of 30 days is, of course, essentially an arbitrary one. But I think it is just about the right period of time—and it can be shortened or lengthened in particular instances as the Congress might decide. On balance, I feel that a period of 30 days strikes a fair balance between the desirability of full deliberative action by Congress (without impairing the capacity for sudden, or emergency, action by the Commander-in-Chief), and the requirement of brevity to prevent the nation from being involved beyond the point of recall before the Congress might otherwise act.

I also wish to make it clear that my bill anticipated full prior consultations between the President and the Congress with respect to developing or deepening crises which might be leading toward the outbreak of armed hostilities. There are many drawbacks in the contemporary world to a declaration of war—because of the far-reaching domestic and international implications of a declaration of war, whether enacted before or after the initiation of combat hostilities.

In developing situations which are not of a sudden nature, I believe that it would be good practice for the Administration to consult with the Congress and seek a Joint Resolution outlining the policy which the United States intends to pursue. I would like to see this become a normal practice. I am referring here to serious situations which might involve the use or threat of the use of armed force. I am not suggesting that the President should be obliged to seek a resolution from Congress to endorse all of the policies or actions he initiates—only those which move toward the exercise of the war powers.

The United States is a world power. It must and will remain one. I certainly do not advocate any American retreat from its legitimate world responsibility. It must continue to utilize its vast power for the maintenance of world peace and the establishment of the rule of flaw in place of the rule of force. I know of no significant "neo-isolationist" sentiment in the Congress. There is a great sentiment for prudence, for a reordering of priorities and for a new style and updated foreign policy goals. But this is not isolationism. The responsibilities, the difficulties and the dangers ahead are known and accepted.

Prolonged engagement in undeclared, Presidential war has created a most dangerous imbalance in our Constitutional system of checks and balances. That danger now permeates the political climate beyond the immediate issues of the war per se.

The stress of the imbalance has reached proportions where the very credibility and bona fides of our Constitutional form of government has been called into question in the minds of many Americans, particularly younger Americans. They see the unchecked power of a President to prosecute an undeclared war as a barrier to their most fundamental aspirations and ambitions for the nation they will inherit. Many members of my own generation are also deeply disturbed by the unresponsiveness of our last two Presidents to Congressional and public pressures to control war and to give the nation the means to redirect our national energies and resources to even higher priority issues at home and abroad.

The legislation I have introduced is a crucial first step in reestablishing the Constitutional balance so essential to the survival and proper functioning of our democratic political system.

Clearly, the drafters of the Constitution had the experience of Continental Congress with George Washington in mind when they designated the President as "Commander-in-Chief" in Article II, section 2. Thus, the "legislative history" of the Constitutional concept of a Commander-in-Chief was the relationship of George Washington as colonial Commander-in-Chief to the Continental Congress.

That relationship is clearly defined in the Commission as Commander-in-Chief which was given to Washington on June 19, 1775.

I would like to quote the final clause of this Commander-in-Chief's Commission, because it establishes the relationship of the Congress to the Commander-in-Chief in unmistable terms:

"And you are to regulate your conduct in every respect by the rules and discipline of war (as herewith given you) and punctually to observe and follow such orders and directions from time to time as you shall receive from this or a future Congress of the said United Colonies or a committee of Congress for that purpose appointed."

This historical background clarifies, and gives added meaning to, those phrases in the Constitution concerning the war powers which are the subject of some contemporary controversy.

The bill is rooted in the words and the spirit of the Constitution. It uses the clauses of Article I, Section 8 to restore the balance which has been upset by the historical disenthronement of that power over

war which the framers of the Constitution regarded as the keystone of the whole Article of Congressional Power—the exclusive authority of Congress to "declare war;" the power to change the nation from a state of peace to a state of war.

The framers of the Constitution took pains to reinforce the central power of Congress to "declare war" by surrounding it with the power of Congress to "raise and maintain" the armed forces and "to make rules for the government and regulation of these forces. The Founding Fathers did not contemplate the existence of anything more than minimal standing armies. Consequently, they did not foresee the possibility of a President/Commander-in-Chief having the wherewithal at hand to engage in warfare without prior action by Congress (except in emergency defensive actions).

The foresight of the framers is reinforced in the crucial final clause of Section 8, Article I, which goes beyond the comprehensive and carefully specified war powers reserved to the legislature. That final clause gives to Congress the unequivocal authority:

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

The War Powers bill will, after almost 200 years, do exactly that in regard to the most decisive power dealt with under the Constitution.

NATIONAL SECRETARIES WEEK

Mr. HUGHES. Mr. President, too many people around us do not get the recognition they deserve. There are hundreds of people just in this Capitol who put in long hours and perform the many services and kindnesses that make our jobs easier.

Today I want to pay special tribute to our secretaries and to all secretaries. I would also like to remind the Senate that there is still pending Senate Joint Resolution 67, introduced by the distinguished Senator from Michigan (Mr. HART) and cosponsored by the senior Senator from Iowa (Mr. MILLER) and myself, which would authorize the President to designate the last full calendar week in April of each year as "National Secretaries Week."

We may make heavy demands on our secretaries, but they perform magnificently. Behind every speech we give, there is a typist hurriedly making our thoughts readable. Behind every letter we send, there is a stenographer adding punctuation to make our words understandable. I am convinced that better secretaries mean better government.

Today I would like to insert in the RECORD an article by Mrs. Phyllis Bauer, the president of the national Secretaries Association International. Mrs. Bauer works in Davenport, Iowa, and has written on the theme, "Better Secretaries Mean Better Business." Her comments are worthy of consideration and recognition, as is the secretarial profession. I ask unanimous consent that Mrs. Bauer's article be printed in the RECORD.

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

BETTER SECRETARIES MEAN BETTER BUSINESS

(By Mrs. Phyllis Bauer, CPS, NSA International President)

Before a secretary may assume responsibility, her boss must be willing to delegate it—either directly or tacitly. Does your boss have confidence in your ability? Does he know that work will be done correctly the first time? Do you know your employer's goals in order to be able to work together as a team to achieve them? Does your employer allow you latitude to exercise your own initiative? Does your employer encourage you to compose letters for his signature? Does your employer appreciate your annotation of the volumes of correspondence and reference material crossing his desk?

The purpose of Secretaries Week is to bring to the attention of management the role of the professional secretary. It is a time for a reexamination of the contribution the secretary can make by freeing her employer from onerous tasks, thus conserving more of her employer's time for truly executive activities.

The potentialities of a professional secretary are limitless when opportunity is combined with desire and ability.

A good secretary is one who is dedicated to self-improvement and continuing education in professional fundamentals. The importance of education is stressed by NSA through its sponsorship of the Future Secretaries Association, one of our fastest-growing programs. FSA enables us to make personal contact with students and encourage them to prepare themselves thoroughly for their chosen career. We open classroom windows to an overview of the business world to be for them. We are attempting to communicate with and assist educators in providing more realistic training for students embarking on a secretarial career. Consequently, we are helping to provide business with capable secretaries and assistants who are better qualified to meet the challenge that is offered to them.

The constancy of change is inevitable. Neither time nor business nor the secretarial profession stands still. Experienced secretaries are no longer satisfied with merely obtaining a position and becoming ensconced in a static situation. They look for new challenges and self-impose increasingly higher goals to which their capabilities can aspire. The Certified Professional Secretary program is designed to meet new challenges to keep pace with the evolutionary changes of a profession.

The evolving role of the secretary in this century and the unrelenting struggle to gain confidence and win acceptance based on performance is recorded in the minutes of time for all to perceive. Advancements in technology, equipment, and specialized techniques pique the curiosity as to what the job requirements of a professional secretary will be in the years to come. Speculation is never lacking when it is a question of off-the-top-of-the-head predictions. To arrive at a valid, accurate projection, NSA, through its Research and Education Foundation, is working with management on a research project to determine just what should and will be expected of a secretary in the last quarter of this century. The findings will provide management, educators, and secretaries with insight into a workable approach to education and training.

The professional secretary must be able to adapt to the cause and effect of change with the poise and self-assurance that comes with preparedness. NSA will continue to be governed by its underlying objectives of elevating the standards of the secretarial profession and meeting the challenge of change, with the cooperation and encouragement of management.

Mrs. Bauer is secretary to Attorney Richard M. McMahon, partner in the law firm of Betty, Neumann, McMahon, Hellstrom and Bittner, Davenport, Iowa.

ECONOMIC CONVERSION IN CERTAIN COMMUNITIES

Mr. PEARSON. Mr. President, the Congress is fast becoming aware of the necessity to make provision for the economic conversion of many of our communities and industries. On February 25, I introduced S. 967, known as the Adapt bill, which contains both an organizational structure and the authorization of sufficient funding for a program of economic conversion in communities which suffer significant losses in federally related employment.

Of course, while I am concerned with this nationwide problem, my immediate concern is for affected areas in Kansas, particularly Wichita.

Other Senators have been similarly motivated.

On March 11, Senators MCGOVERN and MATHIAS introduced a bill, S. 1191, which approaches the problem differently, but which would have like end results. As evidenced by recent editorials in two Maryland newspapers, Senator MATHIAS' motivation specifically came from the situation in western Maryland. It pleases me to see these two newspapers call attention to this legislation, and I ask unanimous consent that two editorials—one from the April 14 Frederick, Md., Post and the other from the April 16 Hagerstown Morning Herald—be printed at this point in my remarks.

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

BOLD PLAN FOR JOBS

It is apparent that if we are to attain full peace-time employment in America that a bold and imaginative approach must be taken by both the government and private industry.

Refusal of Congress to continue the SST program, with its resulting layoffs of thousands of workers by the Boeing Aircraft Company, prime contractor, and such sub-contractors as North American Aviation, General Electric, and Fairchild Hiller with plants in nearby Germantown and Hagerstown has brought the problem more sharply into focus.

These thousands of employes comprising highly trained specialists and skilled workmen have suddenly been confronted with the tragedy of receiving pink slips notifying them of their job terminations instead of their weekly paychecks.

And with the increasing tempo of troop withdrawals in Vietnam and the deescalation of the war literally hundreds of firms providing munitions, aircraft, and, in fact, all of the thousand and one items going up to the equipping of a large military force are going to be faced with similar contract cancellations.

All of Western Maryland, including Frederick County, has been hard hit by the sudden cancellation of the SST program, with the jobless rate in Washington County at 12 per cent becoming the highest in the entire state.

But, as Senator Charles McC. Mathias well points out, there has been a complete lack of intelligent planning by both the government and private industry to cope with such situations.

"It is about time," he says, "that the federal government and industry come together and establish a means of insuring workers and communities of protection against the harsh economic effects of sudden policy changes such as the recent cancellation of the supersonic transport program."

And he adds, there will inevitably be many further drastic cutbacks in government contracts as the Vietnam War comes to a close.

Yet presently both the government and industry operate as though a given program will last indefinitely.

Little or no concern is shown for the day when political events, cessation of the war, technology, or a change of emphasis in Congressional appropriations for programs will force a new course for many industries and cause widespread layoffs of their personnel.

To meet with the problem, Senator Mathias has realistically filed a bill in the Senate co-sponsored by a dozen or more of his colleagues which would require the preparation of comprehensive conversion programs as part of the awarding of all future governmental contracts.

He suggests that industry should be required to set aside some part of the funds involved in each such contract—and he suggests possibly a five per cent figure—to plan for the conversion of their plants to some other manufacturing purpose at the termination of their contracts if the products they produce are no longer required for any reason.

"This bill," says the senator, "is more than an attempt to patch-up the economy as the nation winds down its involvement in the Vietnam War.

"It is aimed at curing the chronic economic illness suffered by giant corporations that are dependent largely upon government contracts.

"As we cut spending in Vietnam and reorder our national priorities, we must also reorient our economy.

"To effectively utilize existing facilities, both public and private, for new projects will require imaginative programs that look to the time when an existent contract will expire."

It seems to us that this is merely common sense.

It should be speedily enacted by the Congress.

Sudden cancellation of government contracts—as in the instance of the SST—should not create a void, causing heavy financial losses to industries but more shattering loss of employment by thousands of highly skilled workers who find the jobs market glutted and their industrial and scientific know-how no longer required.

If, as Senator Mathias proposes, all firms holding government contracts were required to pump a percentage of their income from such sources into scientific development of alternative production to which they might expeditiously shift with the termination of their existing programs such industrial financial losses and widespread layoffs of their employes would cease to be such a crippling blow to both the economy of the community in which they are located and their suddenly surplus employes.

Nothing is so certain in this life as change.

It is ridiculous for both the government and industry to assume that any program, whether it be the SST or the Vietnam War, will continue forever.

But unless realistic and mandatory planning is required as proposed by the Mathias bill just such emergencies as has cost the jobs of thousands of workers involved in the SST development program will become still more frequent as we move toward the inevitable termination of the war in Indochina.

CONVERSION PLANS

Failure of the supersonic transport to get Congressional appropriations to complete the job is not an isolated case. There have been other instances in which companies holding government contracts suddenly find themselves without work and their employes getting pink slips instead of pay checks.

Senator Charles McC. Mathias hopes to do something about cases where employes of private industry are laid off because of a governmental decision.

In the case of Fairchild Hiller in Hagerstown, highly trained specialists and other skilled workmen were suddenly among the unemployed simply because the federal government changed its mind.

Senator Mathias' bill would require the preparation of economic conversion programs in conjunction with the awarding of all future government contracts. It is aimed at curing chronic economic illness suffered by corporations largely dependent on government work.

The Maryland senator does not spell out the details on his conversion proposal, but it stands to reason the economy cannot be bolstered unless imaginative programs are substituted for government contracts when they expire.

THE AMERICAN WORKER AND CAMPAIGN SPENDING LEGISLATION

Mr. McGOVERN. Mr. President, I have introduced the Federal Campaign Assistance and Disclosure Act—S. 1039—which is designed to provide public financing of certain campaign costs incurred in campaigns for election to Federal office, to insure full public disclosure of campaign finances, and to regulate unfair campaign practices.

The most distinctive feature of this bill is the formula for direct public financing of the costs of political campaigns for Federal office. This provision would insure that no man or woman would be disqualified from seeking public office simply because he or she lacks personal wealth or access to large political donations.

Because of this feature of the bill, it has been referred to the Committee on Finance and has largely been left out of the present debate over campaign spending legislation. I hope, Mr. President, that the bill will receive early consideration by that committee, because it could answer many of the doubts that have been expressed about other currently pending legislation.

While the bill does call for public financing of campaign costs, it also leaves the door wide open to direct political contributions from individuals. The bill is designed in such a way as to encourage such small contributions by allowing for tax deductions and by setting a limit of $50 on contributions.

The purpose of the suggested ceiling, coupled with adequate disclosure provisions, is to allow for increased citizen involvement in financing campaigns, while preventing a few large donors from dominating the process.

The Citizens Research Foundation has reported that many individual contributors have contributed enormous sums of candidates of their choice. The largest single contributor appears to have reported gifts of $148,916 to various Nixon-Agnew committees in 1968. This same donor has also said subsequently that he contributed an additional $350,000 to that campaign. His contributions apparently violate no law. But it is precisely this type of contribution that much of the pending legislation is designed to halt. Certainly, it would not be permitted by my bill.

On the other hand, I find that contributions from organized labor are unfairly grouped with such massive individual contributions. It is incorrect to equate a contribution from a single person with a contribution from a political fund supported by the individual, small contributions of a great number of workingmen. In no case does the individual contribution of any one union member come anywhere near the amount contributed by just a single major individual donor.

I intend to make it clear in the Federal Campaign and Disclosure Act that, so long as individual contributions remain below the limit on personal contributions, it is perfectly acceptable for these contributions to be channeled through a single committee, provided that is the wish of the donors.

The approach that American labor's political funds have used in performing such a function of pooling individual small contributions has been necessary to counteract the influence of the individual donors. It should be noted, for example, that officals of the 56 corporations which won the largest Government space, nuclear, and defense contracts in 1968 reported $1,235,402 in political donations. In the face of that kind of political giving, union members have had to band together if they wanted their donations even to be noticed.

Mr. President, the assertions that have been made that contributions by union members are somehow the same as those from major individual donors is blatantly false. It is based on the erroneous assumption that if many corporate donations are worthy of criticism, then many donations by members of organized labor must also be worthy of criticism. That is simply false. The concept behind the political action and education funds associated with the labor unions is a healthy one, allowing for the small contributor to have a voice in political campaigns. That, after all, is supposed to be the underlying reason for much of the pending campaign legislation.

NATIONAL SECRETARIES WEEK

Mr. MILLER. Mr. President, this week has been designated Secretaries Week by many States and cities across the Nation.

The tribute is well deserved, for these hard-working people play vital roles in business, industry, education, government, and the professions.

The 1971 theme, "Better Secretaries Mean Better Business," gives further emphasis to the importance of good, loyal secretaries in the smooth operation of our offices.

This annual week is sponsored by the National Secretaries Association—International—an organization I am pleased

to note is headed by an Iowan, Mrs. Phyllis Bauer, of Davenport.

It is my hope that the Congress, through the means of a resolution I have cosponsored with Senator HART, will authorize the President to issue a proclamation designating the last full week of April as National Secretaries Week.

PRESIDENTIAL IMPOUNDMENT OF FUNDS

Mr. McGOVERN. Mr. President, the practice of presidential impoundment of funds appropriated by the Congress is of increasing concern to all of us.

This is not a new problem. Earlier administrations have also been guilty of refusing to expend funds made available by the Congress and have, in fact, even held up the distribution of trust funds for highway construction and other purposes.

But the approach of the current administration is particularly disturbing. One reason for special alarm is the unparalleled size—nearly $13 billion—of the amount held in budgetary reserve.

Another is the fact that in some cases these funds are being held for indefinite periods of time. On South Dakota's Oahe irrigation unit for which we have been waiting more than two decades, for example, the administration refused to spend land acquisition funds appropriated for fiscal 1971, and its fiscal 1972 budget discloses that those same funds will also be withheld next year.

Finally, whereas previous administrations have argued that the withholding was necessary for economic purposes, President Nixon can make no pretense of such an argument because he has, himself, presented what is termed an "expansionary budget," with an enormous deficit.

The administration is, in effect, telling the Congress that we have no right to make positive decisions on national priorities. It degrades the Congress as a coequal branch of Government. In the process I believe it attacks the vitals of our constitutional system.

All of these programs and all of these appropriations bills have been approved and signed by the President. Not a single one has been returned for the two-thirds test to override a veto, and many were approved by votes far in excess of two-thirds of the Senators and Representatives in any case. By withholding these funds, therefore, the President exercises an item veto authority he simply does not have—an authority which the executive has repeatedly been denied.

Mr. President, on April 13 the distinguished Chairman of the Senate Appropriations Committee, Mr. ELLENDER, addressed this issue in some detail, in a speech before the annual meeting of the Red River Valley Association in Shreveport, La.

Senator ELLENDER pointed out that:

What we have in effect is a group of desk-bound bureaucrats on the Washington level, looking at our national problems and saying what should be done and where. What we have is an outright denial of the wisdom of Congress, and furthermore, a denial that Congress even has a role to play in the establishment of national priorities and policies. . . .

To put it bluntly, this is a topsy-turvy state of affairs. I sometimes think that there is no one in the Government who knows less about what is going on in the country than the Washington bureaucrats. Under the current regime, a tiny elite is being allowed to substitute its judgment on national priorities for the collective will of the Congress.

The Senate Judiciary Subcommittee on the Separation of Powers, led by Senator ERVIN, has initiated an important investigation into possible solutions to this problem. Senator ELLENDER has also suggested some answers which deserve careful consideration, including the prospect that Members of Congress might simply say "no" to other programs being sought by the President until he begins giving our initiatives the respect they deserve.

Mr. President, Senator ELLENDER's speech has provoked wide interest in my own State, and I am sure the same is true in other parts of the country. I therefore ask unanimous consent that it be printed at this point in the RECORD.

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

REMARKS DELIVERED BY SENATOR ALLEN J. ELLENDER, CHAIRMAN OF THE SENATE APPROPRIATIONS COMMITTEE, BEFORE THE ANNUAL MEETING OF THE RED RIVER VALLEY ASSOCIATION, APRIL 13, 1971, SHREVEPORT, LA.

CONGRESS, THE EXECUTIVE AND THE PUBLIC FINANCE

Ladies and gentlemen: For many years now, it has been my pleasure to spend part of the Easter recess of the Congress visiting here in Northwest Louisiana and attending some of the festivities that mark the annual conventions of your Red River Valley Association.

I have been with you in the past, as a friend I hope, but more importantly in my official capacity as Chairman of the Senate Appropriations Subcommittee for Public Works. Now a change has been made and I am appearing before you as Chairman of the full Senate Appropriations Committee. This marks the culmination of a dream I have had since I was first named to the Appropriations Committee in 1948.

There are those who would criticize the operation of the seniority system in the Congress. I am not one of those. As a matter of fact, the only criticism that I could offer of the system is that it sometimes takes a little long to get where you are going.

I hope my good friends here and all over Louisiana will find the results of this change to be worth waiting for.

You will recall that I assumed the Chairmanship of this Committee, which had been called the salt mines of the Senate, after a long tenure in other positions which reflected the long-term interests of my public career. For eighteen years, I served as Chairman of the Senate Committee on Agriculture and Forestry. For fourteen years, I was Chairman of the Subcommittee on Public Works of the Appropriations Committee.

From these two seats in the Congress, I was able to do my share of constructive work in the nation-wide effort to protect and preserve our land and water resources. This concern of mine—improvement of the land by making it more productive, improvement of our waterways through navigation, flood control and hydro-electric projects, and the general harnessing of our finite resources to make them better able to serve generations of Americans yet unborn—has been the guiding light throughout my entire career of public service. This career now spans better than half a century. I say this in order to let you know that I expect, and you can expect, that my interest in this area will continue for as long as I am allowed to continue.

I am addressing you here today as a U.S. Senator from Louisiana, but at the same time I am proud to say that it has been my privilege over these years to perform services of benefit to the entire nation. Looking back over the history of my stewardship in the Congress as a member of the Appropriations Subcommittee concerned with public works, some of the progress that had been made becomes apparent.

A great deal of progress has been made in that period of time. I can see the results wherever I travel across this great country. I can see the results here in Louisiana. It may be that some among you are too young to recall when tremendous portions of our state were under several feet of water every other Spring. That condition is now largely a thing of the past. The residents of many areas have forgotten what it was to look forward to the Springtime with dread and concern. Flood conditions in Louisiana have now been brought almost entirely under control. The Southern part of the state still has a primary concern with hurricane protection, but progress is being made in that area as well.

All over the state, we are now more concerned with putting this water to work for us through improved navigation for the movement of commerce, for the production of power, and for the more and more important recreation benefits. That is your concern here today, and it need not be said that I share it fully. In the past, I have been successful in obtaining funds over and beyond the President's budget in order to get this work underway so that Red River navigation can become a reality rather than a dream. Last year the Congress added 2.8 million dollars to the public works bill for Red River Development, and it is my hope to see that additional funds are made available this year.

We are, however, facing a problem in this area, in Louisiana and all across the nation. It is a problem which many feel is approaching the crisis stage. I am coming to share that view. I refer to the increasingly intransigent attitude of the Executive toward the obligation and expenditure of funds, legally provided by the Congress, as a matter of public policy.

If I can refer to my Congressional tenure once again, over the last thirty years I have seen a tremendous shift take place in the balance of power between these supposedly co-equal branches of our Government—the Presidency and the Congress. In foreign affairs, the Executive has assumed a dominance unheard of before the Second World War. In domestic affairs, much the same situation exists, but we have not yet progressed so far as to place our Congress in the position of those in the European countries. It is said that the Twentieth Century has been hard on legislatures. That is true abroad and it is true to a certain extent in this country. I am glad to say, however, and you should be glad to say, that our Congress has not yet been reduced to a rubber stamp for Presidential policies and pronouncements, and we need not blindly follow the positions assumed by any of our Political Parties.

I am not here referring to President Nixon as an individual, or even as the man who holds the office at this particular point in time. He and I have our differences, but by-and-large I find myself supporting him in his efforts to govern the nation. I think he is definitely on the right track on many areas of public policy both at home and abroad.

I believe, however, that President Nixon is getting and accepting bad advice from some of his multitude of advisors on domestic affairs. The funds I referred to earlier as being added by the Congress to push ahead with work here in the Red River Valley have not been put to use as Congress directed. The same situation holds true all across the nation. Not one cent of Congressionally added funding has been spent for the purpose stipulated by the Congress as a policy-making body. The latest figures show that the total thus impounded by the President's Office of Management and Budget amounts to 12.7 billion dollars.

What we have in effect is a group of desk-bound bureaucrats on the Washington level, looking at our national problems and saying what should be done and where. What we have is an outright denial of the wisdom of the Congress, and furthermore, a denial that Congress even has a role to play in the establishment of national priorities and policies.

To put it bluntly, this is a topsy-turvy state of affairs. I sometimes think that there is no one in the Government who knows less about what is going on in the country than the Washingtonian bureaucrats. Under the current regime, a tiny elite is being allowed to substitute its judgment on national priorities for the collective will of the Congress.

This is a situation foreseen by our Founding Fathers in the summer of 1787, and they took steps to protect against it. They provided no item veto to the Executive. They provided a system of checks and balances to maintain a division of power between the branches of our Government, and in this manner provide some protection to the people against official tyranny. Granted that presidents do not like it—not only Mr. Nixon but many past presidents have attempted to usurp Congressional authority on occasion. Neither has the Congress always liked the Constitutional separation of powers. Occasionally the Congress has sougtht to curtail the Presidential Power, but generally over time we have worked together quite well. The will of the people, or at least the will of most the people, has been followed most of the time.

It seems to me that we are faced with a new problem in this area, however. In the beginning of the decade of the 1970s, what we are witnessing is an unparalleled attempt on the part of the Executive to say "no" to the Congress on an unprecendented scale. Thirteen billion dollars is a lot of money, even at today's values. It is more than the entire federal budget was before the Second World War. Congress has approved the use of these funds for the benefit of our people. The President is saying they shall not be used for that purpose. We have here an argument, not over a program, but over a long-range national policy.

Shortly before I left Washington, the President sent to the Congress a supplemental appropriation request in the amount of 732.9 million dollars, most of which is over and above his original budget. The parallel between the Congressional add-ons to the fiscal 1971 budget, and the Presidential add-ons to that same budget is entirely appropriate. One slight difference is that the additional funds now being requested by the President will be used to benefit our friends abroad. In my book, this goes to the heart of the matter, for we are dealing here with the establishment of national priorities in matters of finance. Some faceless individual is saying this is what we should do and will do, and Congress is being told to go jump in the Red River Waterway if it ever gets built.

I have opportuned President Nixon to change his attitude on many occasions in the recent past. I have pleaded with the head of his Budget Bureau. All to no avail, and I for one am getting tired of it.

The question is, "What can be done?" How can Congress reassert its will in this matter? To a large extent, the old saying that you can lead a horse to water but cannot make him drink has application here. It is not entirely applicable, however, thanks to the Constitution and the wisdom of its drafters. There is recourse open if the Congress is serious in its concern.

One suggestion has been that the Congress might sue the President to get a court-approved division of responsibilities and powers in this area. Frankly, I do not put much credence in this suggestion.

A second suggestion, favored by my good friend from North Carolina, Senator Ervin, is that legislation be enacted requiring the President to lay a decision to impound funds before the Congress with the provision that 60 days be allowed the Congress to overturn his decision.

A third proposal is for the members of Congress, individually and as a body, to say "no" to other policies whose approval is being sought by the President. It may be that in the long run this will prove the most effective. It was an important element in the rejection by the House of Representatives and the Senate of the funding request to carry on development of the Super Sonic Transport. I suspect we are going to see more and more of this thinking in the Congress in the days ahead if changes are not made. Although in the past I have tried to judge each issue on its merits, I myself am being brought around slowly to this point of view, particularly in areas where it seems the welfare of foreigners is being given priority over that of our own people.

Finally, it seems to me that the Congress might well consider repealing past legislation enacted during the Korean War, which provides the President with one basis for his vastly expanded power in this area. At present, Presidential authority to impound, or place in reserve, the funds appropriated by the Congress is upheld by three columns of support. One is the general authority of the Executive to administer national programs. The second is the war powers of the President, first given flesh and bone by Roosevelt in the Second World War. And the third supporting Column is language approved by the Congress in the General Appropriations Act of 1951, giving Bureau of the Budget authority to establish so-called budgetary reserves as a tool of financial management. In recent months, that tool has come to be abused and mis-used. I think that the Congress is going to have to blunt it if a change in attitude does not occur.

A final resort lies in the will of the people. I ask your support for Congress in this area, and I ask you to make your views known to the President and his advisors. Essentially, this is a political question and its ultimate solution must be found on political grounds. I am convinced, however, that regardless of who occupies the White House, if steps are not taken to curtail this new foray into the Congressional prerogatives, we will see more and more control move to the Executive. The Power of the Purse is one of the few real sources of authority left to the Congress. If we allow this to slip from us, representative government in this country will suffer a staggering blow.

Thank you.

NUTRITION FOR THE ELDERLY

Mr. EAGLETON. Mr. President, in 1968 Congress appropriated funds for the establishment, under title IV of the Older Americans Act, of a special research and demonstration program to improve nutrition services for the elderly. Currently 18 demonstration projects are serving over 14,000 meals a week to elderly persons in 15 States and the District of Columbia. Federal funding for all of these projects will expire within the next few months.

On Tuesday the senior Senator from Illinois, Senator PERCY, testified before the Labor-HEW Appropriations Subcommittee in support of an amendment to the second supplemental appropriations bill to provide an additional year of funding for these 18 projects.

Because of previous commitments, I could not be present at the hearing. I have, however, submitted to the subcommittee a statement in support of Senator PERCY's amendment, and I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

As I point out in my statement, it is very likely that Congress, within the next year, will enact legislation to provide an ongoing nutrition for the elderly program. In view of this likelihood, it seems to me only sensible that we not allow these 18 existing and successful projects to die in the interim.

Mr. President, I strongly support the appropriation of $1.7 million to keep these projects alive, and I hope that other Senators will also support this effort.

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

STATEMENT OF SENATOR THOMAS F. EAGLETON ON PERCY AMENDMENT TO SECOND SUPPLEMENTAL APPROPRIATIONS BILL SUBMITTED TO SENATE LABOR-HEW APPROPRIATIONS SUBCOMMITTEE TUESDAY, APRIL 20, 1971

Mr. Chairman, I wish to express my support for the amendment Senator Percy will propose to the Second Supplemental Appropriations Bill for Fiscal 1971 to provide $1.7 million for the Administration on Aging to continue for one year the funding of 18 existing nutrition demonstration projects.

As the Subcommittee knows, these 18 projects are the result of an appropriation by Congress in 1968 for the purpose of establishing, under Title IV of the Older Americans Act, a special research and demonstration program to improve nutrition services for the elderly. Federal funding for 17 of these projects will have expired by the end of the current fiscal year; funding for the remaining project will be terminated in the fall.

These are, of course, only demonstration projects and there has been no reason to expect that Federal funding would continue beyond the original project period. However, I believe there are special circumstances which justify an additional year of funding.

First, there is no question about the value of the programs that have been developed. The Administration on Aging's 1970 annual report to the Senate Special Committee on Aging clearly states that "the effectiveness of group meal services for improving the nutritional status of older people, as well as their social and personal well-being, was verified through the results of . . . (the demonstration) projects."

The success of these projects has, in fact, led to a series of proposals for a permanent program. In the December 1969 report of the White House Conference on Food, Nutrition, and Health, the Panel on Aging recommended that "the U.S. Government . . . now accept its obligation to provide the opportunity for adequate nutrition to every aged resident" and that "the Administration on Aging . . . and the Department of Agriculture . . . undertake permanent funding programs of daily meal service, initially consisting of at least one meal for all the aged

needing this service and desiring it, in both urban and rural locations emphasizing the importance of the values of eating in group settings where possible."

In April 1970, the President's Task Force on the Aging recommended that "the President direct the Administration on Aging and the Department of Agriculture to develop a program of technical assistance and, when necessary, financial assistance, to local groups so that such groups can provide daily meals to ambulatory older persons in group settings and to shut-ins at home."

In May 1970, Congressman Claude Pepper introduced a bill in the House of Representatives to establish a national nutrition program for the elderly under the Older Americans Act through which grants would be made to the States to underwrite 90% of the costs of local nutrition programs.

Congressman Pepper has reintroduced his bill this year as H.R. 5017 with the cosponsorship of 118 Members of the House. Senator Kennedy has introduced a similar bill in the Senate (S. 1163) with the cosponsorship of some 17 Senators, including Senator Percy and myself.

Commissioner Martin, of the Administration on Aging, testifying last year on Congressman Pepper's bill, opposed the "categorical grant program" approach in favor of an approach "which integrates nutrition services into a system of comprehensively delivered social services."

While the Administration proposal referred to by the Commissioner at that time was not forthcoming in 1970, AoA's annual report to the Special Committee on Aging indicated that, as 1970 ended, AoA "was actively engaged with OEO, OMB, the Community Services Administration, and other HEW components, in developing the preparations and plans for the major demonstration of the provision of nutrition services as part of a comprehensive social services delivery network."

Finally, nutrition will be one of the nine areas of need to be assessed by a technical committee and included in the deliberations of the 1971 White House Conference on Aging. Dr. Donald M. Watkin, Chairman of the Technical Committee on Nutrition, made the following remarks to a recent nutrition conference in New York City:

"While it would be unwise to prejudge the policies to be developed in 1971 (by the White House Conference on Aging), it is reasonable to refer back to the policies recommended by the White House Conference on Food, Nutrition and Health in 1969 and to note recommendations of the Panel on Aging that the Federal Government assume the obligation of providing the opportunity for optimum nutrition and health to every aged resident. Since the resources to achieve this objective are available, no policy falling short of this objective seems valid."

I have recited this chronology of recommendations and proposals to illustrate, first, that there is widespread agreement on the need for an on-going nutrition program for the elderly and, secondly, the likelihood that Congress, within the next year, will act to establish such a program.

In view of these facts, it seems to me that it would be extremely "penny wise and pound foolish" to permit 18 existing and successful projects, with their assembled facilities, personnel, and services, to be either terminated or drastically cut back for lack of funding.

And this is to say nothing of the impact on the lives of those elderly people being served by these projects for many of whom the social contact and nutritious meals mean the difference between living and merely surviving.

As Chairman of the Subcommittee on Aging of the Labor and Public Welfare Committee, I intend to schedule hearings on Senator Kennedy's bill at an early date so that Congress may carefully and thoroughly consider the best means of providing an ongoing, national nutrition program for the elderly. I am hopeful that an Administration proposal—if there is to be one—will be forthcoming in the near future.

In the meantime, I urge this Subcommittee to adopt Senator Percy's amendment and thereby provide the funds to keep the 18 existing nutrition projects alive during the period that will be required for Congress to consider new legislation.

THE TEXTILE SITUATION IN THE UNITED STATES

Mr. SPARKMAN. Mr. President, the legislature of the State of Alabama on April 8 adopted a resolution with reference to the textile situation in the United States. I ask unanimous consent that it be 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, Within the last several years the situation in the American textile industry has become increasingly acute and particularly so in the Southern states where the production of cotton and the manufacturing of cotton products constitute the very life blood of this area; and

Whereas, Hundreds of Alabamians have lost their jobs or are onto short time manufacture and the foreign competitors who flood our market and force thousands of our citizens completely out of work and market their textiles and apparel under conditions that are illegal in the State of Alabama and in the United States; and

Whereas, The government of Japan has offered a most unsatisfactory proposal to restrain, unilaterally, its textile and apparel exports to the United States; and

Whereas, The Japanese proposal has been rejected by the President of the United States, by the Governor of Alabama, by many members of the Congress, including the Senators and Representatives from Alabama, by the American Textile Manufacturers Institute, by the Alabama Textile Manufacturers Association, by numerous newspaper editorials and by many others; and

Whereas, The textile markets of the United States are virtually wide open to foreign imports while many of the major exporters to this country tightly protect their own markets against our textile exports; and

Whereas, The American textile industry pays its employees approximately two dollars an hour more than the industry of Japan, with the gap being even wider between this country and some other Asian Nations; and

Whereas, The Alabama Legislature and the people of Alabama are not willing to see these terribly unfair conditions continue to weaken one of their most important industries which together with its supply and related industries over the years have been good, responsible corporate citizens; and

Whereas, These unfair conditions largely have been created by a combination of policies of our Federal Government. Now, therefore;

Be it resolved by the Legislature of Alabama, both houses thereof concurring, That the Legislature of Alabama respectfully requests the President of the United States and the Congress of the United States to do all in their power through legislative and adminstrative action to see that order is restored to the chaotic international textile and apparel situation.

Be is further resolved, That the Legislature of Alabama expresses to the Alabama Congressional Delegation and to other members of the Congress, who continue to work for a solution to this problem, deep appreciation for their dedication to this vital effort.

Be it further resolved, That copies of this resolution be sent to the President of the United States, to each member of Alabama's delegation in the Senate and in the House of Representatives of the United States Congress, to the Secretary of Commerce, to the Secretary of State and to the Clerks of the respective Houses of the United States Congress.

I hereby certify that the above is a true, correct and accurate copy of Senate Joint Resolution No. 16 by Messrs. Foshee, Fine, Wilder and McLain, adopted by the Legislature of Alabama on April 8, 1971.

PRISONER OF WAR DAY IN NEW YORK CITY

Mr. JAVITS. Mr. President, to express the concern of the citizens of New York City for the American prisoners of war held in Indochina, Mayor John V. Lindsay has proclaimed April 28 POW Day in New York.

The release of the prisoners ultimately depends on the termination of U.S. involvement in military hostilities in Vietnam. Until that hour, our greatest concern is that the prisoners are treated humanely—in accord with the rules of the Geneva Convention.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of the proclamation of Mayor Lindsay, which I feel certainly bespeaks the feeling of the people of New York City:

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

PROCLAMATION

For more than half a decade, American soldiers have been prisoners of war in Indochina. Their plight should command the compassion and concern of our people and the best diplomatic skills of our Government. The country owes them an unremitting effort to protect their welfare and their security.

Their fate finally depends on a negotiated peace agreement. But in the meantime, their greatest need is for fair treatment under the rules of the Geneva Convention.

Americans who support the war as well as Americans who oppose it are united by a special duty to the fighting men imprisoned in Indochina.

Now, therefore, I, John V. Lindsay, mayor of the city of New York, do hereby proclaim Wednesday, April 28, 1971, as "Prisoner of War Day" in New York City, in the hope that an expression of concern by all New Yorkers will contribute to the cause of decent, humane treatment for American prisoners of war and to the end of a conflict that prolongs their imprisonment and makes prisoners of more American soldiers every day.

ADDRESS BY FRANCIS L. KELLOGG, SPECIAL ASSISTANT TO THE SECRETARY OF STATE FOR REFUGEE AND MIGRATION AFFAIRS

Mr. PELL. Mr. President, the status of Jews in the Soviet Union is a matter of deep concern to Americans, regardless of faith or national origins. The suppression of Jewish religious practices in the Soviet Union and the reluctance of the Soviet Government to permit its

Jewish citizens to emigrate are established facts, and these policies have brought forth protests from peoples throughout the world.

I am glad that our own Government has expressed its own concern at the United Nations General Assembly and the Human Rights Commission over the status of the Soviet Jews.

Recently, in an excellent address to the United HIAS Service, Francis L. Kellogg, special assistant to the Secretary of State for Refugee and Migration Affairs, reviewed the program of the U.S. refugee program. Mr. Kellogg spoke especially of the U.S. Government's efforts to make known its concern over the status of Soviet Jews. Mr. Kellogg has had a long record of public service and very real concern in the lot of minorities and of refugees. I ask unanimous consent that the text of Mr. Kellogg's statement be printed at this point in the RECORD.

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

ADDRESS TO THE ANNUAL MEETING OF UNITED HIAS SERVICE ON MARCH 14, 1971

I count it a signal honor that I have been asked to speak on this occasion. United HIAS, as one of the oldest voluntary societies in America engaged in finding immigration opportunities for needy and oppressed persons, has a record of humanitarian action and concern second to none. Thank you very much, President Friedman, for extending this invitation.

I hope that I can justify it, not only in my remarks today but more importantly in the manner in which I shall discharge the large responsibilities inherent in my position as the Secretary of State's principal agent in developing and effecting United States policy concerning refugees.

Most of you know that I am new to Government. Therefore I must feel my way, for a time, in seeking to grasp the essentials in the relationship of refugee problems to foreign policies in general, and toward learning the fact about current refugee problems in the world and about those agencies and people who deal with them. In my short time in office, I have already come to know United HIAS as a highly effective organization, masterfully capable and experienced in carrying out its basic dedication to the greatest of humanitarian endeavors: the granting of new life and renewed opportunity and thus hope to those from whom all has been cruelly taken. All, that is, except deep religious faith, and trust that help will come to them from men of good will.

I have long been deeply involved—as a person and in my associations—with humanitarian concerns. I have had during the past decade an opportunity to know the work which United HIAS is engaged in, as a Director and Treasurer of the American Immigration and Citizenship Conference and as a Director of the International Rescue Committee. Through this experience, I have come to know how vital and compelling are the endeavors of the voluntary agencies. And thus I am pleased and challenged by the chance to serve in that position in Government which, among its duties, involves the maintenance of close and productive relationships with your agency and other voluntary organizations toward resolving individually and collectively the problems of refugees.

These relationships have been and must continue to be, in a real sense, a virtual partnership. The interests and policies of government and those of the private agencies may diverge at many points and even conflict at some. But they converge and are indeed congruent in their concern for the freedom, dignity, and well-being of the individual, and in their determination that no effort shall be spared to secure for the individual the right to fulfill his destiny as a free man, free to choose and follow his religion, his profession, and to move with freedom on the face of this earth.

One of the first things I did when I assumed my duties was to ask for a briefing on the basic foreign policy objectives of the United States Government. To know these would be essential to my own work. I was given, by high-level officials, a "tour d' horizon" of broad United States policies, objectives and related actions, the most fundamental of which are: to preserve or bring about peace in all parts of the world, to foster the spread of institutional and individual freedom, and to promote the well-being of the individual so that he may live in liberty, decency and as a self-supporting, self-respecting human being. These are noble ends which, as you well know, are fully shared by the voluntary agencies such as United HIAS. They are the basis for the partnership between the United States Government and the private agencies to which I have alluded.

They are the basis of my decision to come to Washington, of my enthusiasm for my work there and of my determination to perform it as well as I can. You may be sure that I will work toward strengthening the Government and private agency partnership, so that it may endure and develop in inspiration as well as material resources. I shall also lend myself fully to the support of productive refugee assistance programs and to the development of new programs where they may be needed, and to securing Government funds and other resources consistent with present and changing requirements.

I wish at this point to emphasize also the importance of strong support and generous contributions from private sources in behalf of the voluntary agencies. As we all know, there are a number of other pressing priorities, primarily domestic, which present compelling requirements for government funds. It is therefore important and necessary that United HIAS and other private organizations, and their constituencies, themselves develop adequate priorities and contributions for refugees in order that both public and private funds may be available for assistance programs. Indeed, in the absence of sufficient private funds and support I would have great difficulty in securing government authorization and appropriations for continuing the programs jointly carried out with the voluntary agencies.

Some of these programs lend support to efforts such as your own in fostering immigration to the United States. I am deeply committed by conviction to the importance of continuing refugee immigration to this country; and I am well aware that the fabric and quality of American life have, from the earliest days of our history, been enriched beyond calculation by the contributions of immigrants from many lands. As you know, should the need for new immigration legislation arise in relation to world developments, the matter in the first instance rests chiefly with the Congress. You may count upon my firm support in the councils of government of liberal and resourceful implementation of the Immigration and Nationality Act, toward humanitarian and timely assistance in behalf of qualified refugee applicants for immigration.

A great part of your work and concern has historically centered on Europe and, to quote from the refugee preference in our immigration law, "in the general area of the Middle East." Some but not all of you are aware of the resources and mechanism existing primarily in Europe for assisting refugees who continue to seek asylum from persecution in certain European and Middle Eastern countries. Perhaps a word or two about the organizations which comprise this mechanism would be in order.

At the core of all effort in behalf of persecuted refugees is the work of the voluntary agencies—American and international. These agencies, such as your own, devote their own resources to refugee assistance and resettlement. They are also the operating partners and agents of other important entities.

The United States Refugee Program which is directed by my office and funded by the Congress provides supplemental care and maintenance and facilitates resettlement processing on an individual case basis. Our funds for these purposes are made available to the voluntary agencies who carry out the operations under contractual arrangements with the Department of State.

The vital function of arranging for and financing the movement of refugees from asylum countries to their countries of end destination is provided by the Intergovernmental Committee for European Migration—ICEM. This agency consists of 31 member governments, and is funded by voluntary contributions. Membership in ICEM is by its constitution open only to those governments which stand for freedom of movement.

Finally, the UN High Commissioner for Refugees effects the local integration of those refugees who are unable or unwilling to emigrate. More importantly, the High Commissioner's office secures for refugees, in a meaningful sense, political protection, and those rights within asylum countries which the refugee must have if he is to be rehabilitated and to live in dignity and self-respect.

Most of you know how closely United HIAS has worked with these organizations which I have briefly described and especially with the U.S. Refugee Program. Through this association, HIAS has resettled large numbers of Jewish refugees from various Eastern European countries. Until HIAS also has, as you know, strong interests and immigration programs and other activities in many areas throughout the world including Latin America. In my brief period in Washington, I have already dealt with HIAS on specific aspects of this effort; and I have come to know and to respect your outstanding Executive Vice President whose wise leadership has meant so much to so many in the restoration of their life and liberty and opportunity—Gaynor Jacobson.

We must all deplore conditions anywhere which foster human deprivation and the flight of people from their homelands. Perhaps through our efforts we can help bring about gradually, but surely, a fully awakened world in which persecution has ended and the necessity for flight no longer exists. But meanwhile we must succor those who must flee. More than that, we must press for universal recognition of the right of freedom of movement. In helping the individual refugee we learn of the misery and peril he has endured. We can see collectively the concentration of misery and desperation which has fallen on those who remain under conditions of deprivation. Prominent today in this respect is the plight of Soviet Jewry.

Our Government deeply deplores the fact that Jews in the Soviet Union are not permitted to live as Jews and are discriminated against and oppressed. And we deplore equally that those who wish to leave the Soviet Union have—except in a few instances—been denied the right to do so. Jews in the Soviet Union have been deprived of their human rights—including the right of freedom of movement. This is in direct conflict with the spirit and letter of the Universal Declaration of Human Rights and of countless subsequent related United Nations resolutions, and we deplore the denial of such rights from any human being. It is in conflict with the simple principles of humanity

for which you stand and which have always been at the foundation of American thought and action. We of course share your conviction that the plight of Soviet Jews can only be aggravated by violent and irresponsible actions by a small nucleous of extremists in our country.

We have repeatedly called world attention—in the UN Human Rights Commission and the General Assembly—to the plight of the more than three million Soviet Jews and other oppressed Soviet minority groups. Our UN representatives have devoted hundreds of hours to this question, expressing US concern for Soviet Jews over the strenuous objections of the Soviet delegate.

Our support for Soviet citizens wishing to emigrate has been reiterated many times. Secretary of State Rogers, meeting with Foreign Minister Gromyko in October 1970, underscored the US position that free movement is one of the basic human rights by handing Mr. Gromyko an official representation list of Soviet citizens, including many Jews, who have been denied permission to emigrate to the US.

We support the efforts of a number of governmental and private international organizations, including the Intergovernmental Committee for European Migration in Geneva, which seek to facilitate the emigration of Soviet citizens desiring to leave the USSR. I can assure you also that those who do succeed in departing will be given, to the extent that they may need it, the full benefit of the resources of the United States Government refugee programs.

EDGAR SNOW'S TALKS WITH CHOU EN-LAI

Mr. McGOVERN. Mr. President, the distinguished journalist, Edgar Snow, is one of the few Americans who has been able to visit China and meet with the leaders of that country in recent years.

Edgar Snow has followed Chinese affairs at first hand for four decades. He has been able to talk with the leaders of the Chinese Peoples' Republic. He has, in some measure, been responsible for keeping a small line of communication open between the United States and China.

Now we see the opportunity for increased contacts between the people of our Nation and China. Our table tennis team had the opportunity of meeting with China's Premier Chou En-lai. We have sought for even a few grains of increased understanding from that meeting.

Mr. Snow has held conversations recently with Chou En-lai and they have been reported fully in the New Republic. In order that a wide number of Americans can have the opportunity to learn more about China's views and can thus evaluate them in terms of American policy, I ask unanimous consent that Mr. Snow's article from the New Republic of March 27, 1971, be printed in the RECORD.

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

TALKS WITH CHOU EN-LAI: THE OPEN DOOR

(By Edgar Snow)

PEKING.—In two long dialogues Premier Chou En-lai discussed with me some of China's foreign and domestic policies and achievements, and released for publication the most detailed interview he has given for some years. One session brought forth the first concrete figures on China's industrial and agricultural output made available in Peking for nearly a decade.

We sat in a spacious, vaulted, noiseless reception chamber in the Great Hall of the People. The premier was, as usual, urbane, relaxed and alert. A stranger would hardly guess that he is 72 and in his twenty-first year as premier of the Republic, the last five years of which saw him at the center of stability, holding an administration together during the second or cultural revolution.

Behind China's current achievements in broadening international diplomatic and trade ties there is a recovered rhythm of agricultural and industrial production following her emergence from a valley of discord. Considering the depth of that radical upheaval and the still uncompleted reconstitution of a new state superstructure, it was striking to learn from the premier that the basic economy suffered relatively mild damage. "As a result of some struggles in factories, disruption of traffic, and lost labor hours, industrial production in 1967 and 1968 did decline somewhat," he frankly conceded. Without minimizing past difficulties he asserted: "We can still say that what we gained"—in purification of the leadership and revolutionary growth—"was far, far more than we lost."

The premier said that despite the 1967–68 decline the goals set for the 1966–70 five-year plan had been basically attained and some had even been greatly exceeded. I asked for an estimate of total value of industrial production in 1970. "Approximately ninety billion U.S. dollars," he answered. "That only includes industry and transportation and does not include commerce and the service trades."

As for agriculture, the premier said that "as a result of Liu Shao-ch'i's interference" mistakes were made in the late fifties and other mistakes were made in measures of correction during the "hardship years" of 1960–62. "Now for nine years our agriculture has had a steady growth." He continued:

"China's total grain output in 1970 was more than 240 million tons. In addition China has now accumulated state grain reserves of about 40 million tons." Grain tonnage is taken by Western economists as an index of Chinese agricultural conditions. Until recently many of them have continued to regard 1957 as the peak year, when output was officially given as 180 million tons. After that, "buoyant exaggeration" in 1958 greatly distorted China's statistical credibility. Since then few responsible estimates were ventured. The premier's statement may therefore be regarded as highly significant.

"If you now have surpluses, why does China continue to import wheat from abroad?"

Although China's grain imports in 1970 dropped to less than one percent of her total production, the premier explained why a limited amount of wheat intake from abroad was necessary. Imported wheat is cheaper in China than rice. China keeps the cheaper wheat for home consumption or reserves and exports rice, in balance, to Cuba and Ceylon in exchange for sugar and rubber, for example, and uses it in African trade. China also sends millions of tons of rice to help Vietnam and other countries.

Premier Chou gave the present production figure for chemical fertilizer as approximately 14 million tons, now considerably above Japanese output. Agriculture here needs 30 to 35 million tons and that is China's goal for 1975, the last year of the new five-year plan. "Thirty million tons of chemical fertilizer may be more or less sufficient but we need more because not only grain crops but cash crops need fertilizer. We still don't have enough phosphates and urea; our chemical fertilizer plants are mainly ammonium sulphate. Small chemical fertilizer plants have been highly effective. We have made big strides on the road to self-sufficiency by building such small plants."

The premier noted that China had attained the world's largest output of cotton, cotton yarn and cotton cloth. In 1970 China produced 8.5 billion meters of cotton cloth.

Steel output was also affected by revolutionary struggles in 1967 and 1968, he said. The average production was 10 to 18 million tons during the past five years. Capacity is now being expanded and modernized and may show a rapid increase in 1971.

Oil output reached more than 20 million tons last year—self-sufficiency in terms of China's present demands. Many new fields have been discovered. Railway mileage and double-tracking have been greatly extended. In southwest China a new and difficult system has been completed, which now connects the frontiers of Vietnam with Sinkiang in Central Asia.

The premier put agricultural product value for 1970 at about 25 percent of total combined output value of industry, transportation and agriculture. Calculated on that basis, China's industrial-transportation-agricultural output value in 1970 was around 120 billion American dollars. There is, however, no reliable index for converting "output value" in China in terms of gross national product systems used in the West. "Output value" omits or minimizes important "service values" such as rents, privately owned rural homes—now rising by the millions, built with mutual labor—as well as major and small water conservancy projects constructed by army and volunteer labor. Or consider China's nationwide urban and rural air-raid shelter system, built largely by unpaid neighborhood mutual labor teams. It would elsewhere cost billions of dollars. Finally, how is one to fit into the GNP formula the value of some 30 million acres of marginal land added during the past ten years to the cultivable area by peasant labor—with unbelievable toil—at a cost of little more than peasant food consumption?

China's output figures are based on a constant-value yuan, fixed at a rate of 2.40 to the U.S. dollar since 1953. Until now China has avoided inflation, internal prices have remained stable and on many items have been reduced, while low wages have risen more in purchasing power than in cash. China has no internal or external debt, the premier proudly pointed out. There is no personal income tax and basic consumer necessities are generally cheaper, amazingly so in food, now available in variety and abundance, as any visitor to China may see for himself.

Taking various imponderables into account one is tempted to suggest a hypothetical GNP for China much nearer to that of the larger West European countries than is generally supposed. The hard fact remains that in per capita income China still ranks among the poorer countries, with its population, despite mass birth control measures, approaching 800 million.

Switching to internal politics, the premier discussed some features which he felt were misrepresented abroad. Although at one time it was widely reported that the entire Communist Party was dissolved during the cultural revolution, membership was in fact only suspended and the premier now asserted that less than one percent was expelled. In echelons of higher leadership changes were of course much greater. At the Ninth Party Congress held in 1969, for example, a large majority of the former membership of the Central Committee and the former Politburo was replaced by cadres who had emerged from the cultural revolution. Yet the majority of those not re-elected have not been expelled from the Party but have gone down to the countryside to "temper themselves," according to Chou.

Under Mao Tse-tung's leadership the Party and the state superstructure are now being rebuilt throughout the country. Councils or congresses of peasants, workers, mass organizations and the People's Liberation Army are preparing to send delegates to a new National People's Congress. Its purpose will be to adopt a new constitution to affirm the character of the new state, and the form of future central and local government, as well as the people's fundamental rights and duties.

One of the Mao Tse-tung's aims has been to "simplify the administrative structure" and "eliminate duplication." "In the past there were 90 departments directly under the central government," said the premier. "Now there will be only 26. They are all run at present by revolutionary committees, and in each committee the Party nucleus is the core of the leadership. Formerly there were more than 60,000 administrative personnel in the central government. Now it is about 10,000."

Where have the displaced cadres gone? He said that about 80 percent of them were sent to rural centers known as May 7th schools, a term deriving from a Mao Tse-tung directive of that date. In such schools re-education in socialism and Mao Tse-tung Thought is combined with self-supporting labor on commune farms, often operating newly opened land. As for others, the premier said, many are past 60 and ready for retirement on pension. Some will choose to live on with their families in the communes. Some will go into factory work. "The ablest cadres will go or have already gone to strengthen leadership in various localities, and to help run industries and institutes formerly under central government ministries but now being turned over to local management."

Such decentralization policies also reflect intensified regional and local self-sufficiency aims not only for food but also in industrialization, based partly on growing rural electric power. Organized migrations continue, on a massive scale, of educated urban youths and city people ready for new employment into the interior cities and communes. In Shanghai alone the exodus since 1965 approaches one million.

That the rural communes continued to sow and reap better harvests, that industry recovered and advanced in new technologies, and that the government and party did not disintegrate into anarchy during the cultural revolution: all that was attributable, said the premier, to the people's unity and faith in the teachings and leadership of Mao Tse-tung. That fact would now be explicitly recognized in the new constitution. It would state that "the People's Republic of China is led by Mao Tse-tung, and the Thought of Mao Tse-tung is the guiding principle of all our work." It would also "openly declare" the proletarian state to be irrevocably under the leadership of the Communist Party.

Likewise in the constitution, said Chou, would be guarantees of new forms created by the people during the cultural revolution for carrying out the socialist revolution: the right "freely to air their views; to arouse the masses; to engage in great debates; and to write *tatsupao*." (The latter are large posters or papers, once circulated by the billions by the Red Guards.) The constitution would also guarantee the right to strike, Premier Chou added.

One point the premier wished to be clearly understood. The foreign press had greatly misinterpreted the role of the army by presenting it as dominating both the party and the government. That had not and would never be the case, he said; in the future it would become even further evident to those who wished to analyze the party leadership.

Between interviews with Mr. Chou and other officials, my wife Lois Wheeler and I traveled about the country above and below the Great Wall, retracing some of my old paths and exploring new ones. We met people at work in farming communes and on local industries—in urban communes and their revived neighborhood workshops—in large modern industries cooperating with schools and in universities experimenting with innovations in teaching and in student selections. We visited hospitals where modern surgery is combined *with acupuncture* and training of village medicine men, called barefoot doctors, who are also bearers of China's effective birth control pill now in widespread use even in rural areas. We visited a commune where whole families, down to age 6, engage in target practice, we met teachers and actors and high officials laboring in rice paddies and saying they like it and we saw electricians demonstrating how to repair overhead wires, alive with 220,000 volts, before spectators who included the director of China's largest steel plant and the chairman of a governing revolutionary committee in a city of a million men.

We found Premier Chou interested in our impressions of the cultural revolution and eager for fresh news of the United States. That I was the first American writer to return to China to gather material for Western publications perhaps in itself gave significance to these interviews. The major obstacle to re-opening long-closed lines of communication between the Chinese and American peoples remained, as for nearly two decades, the United States' armed protectorate over Taiwan and Chiang Kai-shek's defeated Nationalist regime there.

The premier reviewed the new condition in China's world relationships, featured by her expanding trade and diplomatic ties with foreign states, notably increased Canadian and Italian recognition. Not surprisingly it is believed here that continuing diplomatic breakthroughs, including the changing vote to seat China in the United Nations, increasingly isolate the Taiwan regime and isolate the US and Japan over the Taiwan question in the world community. The "revolt" is now becoming general, the premier observed, reaching to all continents. Even in Western Europe few countries are left which still have relations with Chiang Kai-shek. Canadian and Italian recognition ended illusions about the viability of a "two-China" compromise, or a "one China, one Taiwan" arrangement.

"What will be China's response whenever the United Nations votes in favor of recognizing the People's Republic as entitled to China's seat in the Security Council?" Premier Chou replied: "And with Chiang's clique out of the United Nations altogether? Then, of course we would consider that. The future of the United Nations is hard to predict. There are two possibilities. One possibility is that [organizational] change will take place. The other is that it may suffer the same fate as the League of Nations. It becomes evident from the 25th session of the General Assembly that an increasing number of medium and small countries and even certain big countries are opposing the superpowers' manipulation of the United Nations, or, more often, bypassing the United Nations to play power politics, divide spheres of influence, and even scramble for high seas and space."

In this part of the world China is still threatened with war by the superpowers, Chou asserted: with some one million land, air and naval forces as well as rocket troops to the north and west; and with the United States in alliance with a remilitarizing Japan on the east, and through Taiwan even deeper into Southeast Asia.

Since Taiwan is Chinese territory, United States encroachment there is regarded as the crux of Sino-American difference which led to the Indochina war, where China has now extended an umbrella of protection and support to the alliance of the three Indochinese peoples against the United States. The premier recalled that in 1960 and in 1965 he spelled out for me the conditions under which the Taiwan problem could be solved so as to establish Sino-American relations. He said that there had been and would be no change. China required that 1) the United States must recognize Taiwan as an inalienable part of the People's Republic of China and must withdraw all its armed forces from Taiwan and the Taiwan Straits; 2) despite their different social systems, China and the United States should practice peaceful coexistence on the basis of the Five Principles.

"Taiwan is China's internal affair and the Chinese people alone have the right to liberate it. United States armed aggression there is another question, an international question, and we are ready to negotiate that," Premier Chou said. "The door is open but it depends on whether the United States is serious in dealing with the Taiwan question." He expressed friendly feelings for the American people. He indicated a readiness to consider applications from "friends of China, in concrete cases, and in a concrete way," to visit here. [The United States last week lifted all restrictions on travel to China. A spokesman said the State Department hoped the move "would result in greater travel to the mainland." *The Editors*]

Chou En-lai explained the Chinese side of the present deadlock in Sino-Soviet boundary negotiations, which has persisted for a year or more. On September 11, 1969, the Chinese and Soviet premiers reached an understanding that Sino-Soviet boundary negotiations should be held free from any threat and that the two sides would reach an agreement on provisional measures to maintain the status quo of the border, avert armed conflicts and disengage the armed forces of both sides in disputed areas. "Disputed areas," according to Premier Chou, are places where the two sides differ in their boundary delineations on the maps, according to the Sino-Russian boundary treaties of the 19th century: "That is to say, they are places which they say belong to them and we say belong to us. This question can be solved only when an agreement on the provisional measures has been reached and adjustment is to be made in accordance with the principles of mutual understanding, mutual accommodation and consultations on an equal footing. And it really shouldn't be difficult to settle."

In practice, it seems, the Russians have simply refused to agree to disengage in the disputed areas, where the two lines remain as intertwined as the prongs of two forks pushed together.

I asked the premier whether he would today repeat China's call, made in the early 1960's, for a summit conference to prohibit the use of nuclear weapons, to abolish their manufacture, and to secure their total destruction.

"Let me make our position on this question clear," he replied. "In the first place, our nuclear tests are still in the experimental stage, and every test carried out is limited and made only when necessary. The aim of our nuclear tests is to break the nuclear monopoly and nuclear blackmail and prevent a nuclear war. Therefore, each time when we conduct a test, we declare that at no time and in no circumstances shall China be the first to use nuclear weapons. And we reiterate the proposal that a summit conference of all countries of the world, big or small, be convened to conclude an agreement on the complete prohibition and thorough destruction of nuclear weapons and, as the first step, to reach an agreement to prohibit the use of nuclear weapons. After our recent test (October 14, 1970) the Japanese Socialist Party expressed their support for this stand and proposal of ours."

As for "so-called nuclear arms limitation" talks between the superpowers, he said, these were aimed to maintain their monopoly over all others, and nothing else. Each power concentrated only on how to "limit" the other

so as to maintain its own superiority. The United States and the Soviet Union indeed wished to "limit" the costs of supporting their monopoly of terror, but the costs nevertheless continued to rise astronomically even as they talked. As to how their contradictions were ever to be resolved, "We are not their chiefs of staff!" He said, "Don't cherish any illusion in that kind of 'disarmament'. For 25 years, they have all along been engaged in arms expansion, and not at all disarmament."

Speaking of China's "world outlook," Premeir Chou quoted Chairman Mao's words: "The people of all countries, the masses comprising more than 90 percent of the entire population, sooner or later want revolution. . . ." According to Chairman Mao, he said, the danger of a world war still exists, and the people of all countries must be prepared. But "revolution is the main trend in the world today."

The Premier said that Chairman Mao's statement of May 20, 1970, foresees prospects for an American revolution. Indeed no one can speak seriously to responsible leaders here without noticing their intense interest in the signs they detect of disintegration of American capitalist society. Clearly Chairman Mao is not expecting an early American revolution, however, nor seeking to build China's foreign policy on that speculation. The policy for which China seeks adherence is more limited. It calls not only for American troops to be withdrawn from Asia and Taiwan, but also for all foreign troops "to be withdrawn from all territories they are occupying, and go home, so that people of all countries may enjoy the right to solve their problems on their own without any menace or interference from the outside."

My own impression after nearly six months here is that the recovery of political stability and economic growth are now a first priority, while abroad China seeks the renewal and expansion of state-to-state ties on the basis of the old Bandung principles of peaceful coexistence. China does not aspire to become a nuclear superpower but aims at credible deterrent power while seeking to end superpower domination in world affairs with the cooperation of the medium and small powers. Relying on her own means however, China has never been so well prepared for war, and to frustrate American military and political purposes in Asia by fulfilling her obligations to support Hanoi and the Indochinese peoples allied with Hanoi.

PRISONERS OF WAR DAY IN ILLINOIS

Mr. PERCY. Mr. President, the people of Illinois, as all Americans, are deeply concerned about the plight of our men held prisoner in North Vietnam, South Vietnam, Cambodia, and Laos. We participate in every reasonable initiative to enhance opportunities for the release of the prisoners, and we support President Nixon in his own efforts.

On April 28, 1971, in Illinois, we shall observe Prisoners of War Day. I ask unanimous consent to place in the RECORD at this point in the proclamation of Prisoners of War Day by the Honorable Richard B. Ogilvie, Governor of Illinois.

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

PROCLAMATION

Thousands of families throughout our country daily grieve for absent members—those young stalwarts who answered our nation's call to the defense of others and are now the defenseless, silent ones. They are the prisoners of war.

The silence that envelops them fills their loved ones at home with apprehension for their safety, anxiety for their comfort and a suffocating frustration of their instinct to know and to help.

Only with a massive national protest can we hope to gain the attention of their captors and perhaps influence the North Vietnamese in their release and in fulfilling their obligations as a signatory of the 1949 Geneva Convention concerning treatment of prisoners and releasing of their names.

Therefore, I, Richard B. Ogilvie, Governor of the State of Illinois, proclaim Wednesday, April 28, 1971, Prisoners of War Day in Illinois. I urge all Illinoisans to pray for the men who are held prisoners and to cooperate in every effort to call attention to their plight.

RHODE ISLAND GENERAL ASSEMBLY RESOLUTION

Mr. PELL. Mr. President, I ask unanimous consent that the Rhode Island General Assembly's resolution memorializing Congress to permit retired persons of 65 years of age, and over, to work without sacrificing any social security pension benefits be printed in the RECORD.

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

RESOLUTION, MEMORIALIZING CONGRESS TO PERMIT RETIRED PERSONS OF 65 YEARS OF AGE, AND OVER, TO WORK WITHOUT SACRIFICING ANY SOCIAL SECURITY PENSION BENEFITS

Whereas, a great number of persons have been forced to retire at the age of 65; and

Whereas, Many of the this group are physically and mentally competent and are desirous to continue to work; and

Whereas, Their expertise in their various fields of endeavor would continue to be of great assistance to the economy of the nation; and

Whereas, With rising costs many find it necessary to work, yet are penalized by having their social security benefits reduced; now therefore be it

Resolved, That the State of Rhode Island and Providence Plantations through its general assembly requests the Congress of the United States to enact legislation to remove the limit of wages presently in effect for social security beneficiaries; and be it further

Resolved, That the secretary of state be and he hereby is authorized and directed to transmit duly certified copies of this resolution to the senators and representatives from Rhode Island in the Congress of the United States with the hope that each will use every endeavor to have favorable action taken by Congress on this special matter.

THE SUEZ CANAL AND U.S. INTERESTS

Mr. HATFIELD. Mr. President, within the past few weeks world attention has been drawn to the question of reopening the Suez Canal. This has occurred within the context of building pressure to break the deadlock in U.N. mediated talks between Israel and the United Arab Republic. Within the past month there have been numerous articles written on this matter, three of which I would particularly like to draw attention to. The first article was written by David G. Nes, a man who has 26 years of military and diplomatic service to his credit and has acquired a thorough knowledge and expertise through his firsthand experience in the Middle East. Mr. Nes' article appeared in the March 4, 1971, edition of the Baltimore Sun.

The second article is by Ragael El Mallakh, professor of economics at the University of Colorado and a former economic consultant to the World Bank. Professor Mallakh's article appeared in the Denver Post on March 14, 1971.

The third article appeared in the New York Times of March 17, 1971. The author, William D. Smith, compares various analyses of the importance of the Suez Canal to the United States as well as its strategic and economic value to the rest of the world.

All of the authors point to the great significance the canal has for the United States and its future role in not only the Middle East, but for its own economic and technological needs as well. This is one further aspect to the crisis in the Middle East that makes it imperative that the U.S. policy supporting the Jarring mission be successful.

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

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

THE BIG AMERICAN STAKE IN AN OPEN SUEZ CANAL

(By David G. Nes)

President Anwar Sadat's offer to re-open the Suez Canal has raised the question: would an open canal be of net advantage to the Free World? Would the United States, in particular, benefit or not?

Several weekly news magazines have recently reported State Department coolness to the re-opening of the canal. Admiral Horacio Rivero (U.S.N.) is quoted in *The Sun* of a few days ago as stating that the re-opening would provide "an enormous strategic advantage" to the Soviet Mediterranean fleet and would be "of no direct benefit for the North Atlantic Treaty Organization." But there is another, more cheerful view.

A check with high-level, reliable sources in both State and Defense departments reveals less than unanimity on the issue. They do indicate that were an American government position be set forth publicly, we would favor a canal reopening as economically and politically advantageous and as of minimal military disadvantage.

A number of factors contribute to this position. As things stand with the canal closed a vessel making an average round trip from the Persian Gulf, from the Indian subcontinent, or from the East African ports to Western Europe or North America, faces this burden: double distance covered and double time required in having to sail around Africa and the Cape of Good Hope. The result has been a very significant increase in both petroleum and dry cargo freight rates since the closure of the Suez Canal in June 1967. This increase has been reflected world-wide inasmuch as a parallel shortage of world shipping has resulted, despite accelerated construction of giant tankers.

During the first 12 months of the canal's closure, the cost to Western Europe alone was $1.5 billion in loss of export advantages and in the increased cost of imports. American exports to India, East Africa and the Persian Gulf area have also suffered. Exports from Communist China to these areas have doubled.

In the year prior to June 1967, the United States ranked fourth in tonnage of shipping using the canal, surpassed by Italy, Britain and France. The United States and Western Europe together accounted for 76 per cent

of the total, with the Soviet Union's share a mere 4 per cent. With cargo and naval shipping related to the Vietnam war, American use was roughly four times that of the Soviet Union. Flotillas of American destroyers of the Seventh Fleet employed the canal regularly en route to and from Norfolk.

It is estimated that the combined dry cargo and petroleum Free World cost of the canal closure in 1971 will approximate $2.7 billion, of which the share borne by the American consumer will exceed $400 million. Higher petroleum rates on our East Coast are directly due to higher spot tanker rates related to the closing of the Suez Canal.

From a strategic standpoint, it has been contended that an open canal would facilitate Soviet naval penetration of the Indian Ocean. There is, in fact, a small Soviet naval flotilla east of Suez now. This view is not shared by military officers at the three-and four-star level in the Pentagon. They point out that the Russians would never risk maintaining major fleet units in an area which could be cut off in an emergency from their home ports by the sinking of a single vessel in a narrow canal. In such an eventuality, these units would have to run a gauntlet of 12,000 miles either to the Baltic around the Cape of Good Hope, or to Vladivostok in the Pacific. Thus, unless or until Russia gains a major port of her own east of Suez, she will not risk keeping in that area more than a small naval reserve, oriented to politics and intelligence, whether the canal is open or closed. She has that presence now and considers it expendable.

From a political standpoint, the canal's closure has been highly advantageous to the Soviet Union. She has been able effectively to attribute the cost borne by East Africa and India to Israeli-American intransigence.

Opening the canal would require abandoning the Bar Lev defense line. Israel in return, would be assured an indefinite de facto prolongation of the current "cease-fire," thereby providing time for a more all-embracing permanent peace to be worked out without the pressure of "cease-fire" deadlines.

A good case could be made for the contention of many liberals in England and in Western Europe who point out that the only real winner in the Suez Canal's disuse has been the Republic of South Africa. This country has profited by the greatly increased traffic around the cape resulting in bunkering and fueling fees, harbor dues, commercial transactions and a new strategic importance. It is this latter development which has forced Britain's Conservative government to resume arms sales to Pretoria against strong Labor opposition.

From a global standpoint, the Washington consensus seems to be that re-opening the Suez Canal would be of great economic advantage to the Free World, of some political benefit, and would not on balance give the Soviet Union a significant military-strategic asset which they do not already enjoy.

Looking ahead to 1980 when American dependence on Middle East oil will—according to recent estimates—have increased from 3 per cent to 50 per cent, transit costs from the fields of Iran, the Persian Gulf, Kuwait and Saudi Arabia will virtually govern the price of fuel oil and gasoline in the United States. An open and modernized Suez Canal will become of very vital interest to the American consumer by the end of this decade.

CLOSED SUEZ CANAL COSTING WEST DEARLY

(By Ragaei El Mallakh)

Closure of the Suez Canal in June 1967 interrupted a significant portion of international trade and caused dislocations due to the required Cape route around Africa, but the initial shock seemed to fade away with time.

World shipping apparently began to learn to live without the canal. Moreover, the prevailing impression was that oil and other commodities were finding their way around the Cape of Good Hope in quantities sufficient to support normal activities at fairly reasonable costs. One reason for this adjustment was the availability of new, efficient supertankers and the relatively stable growth of demand for oil in general and from the Persian Gulf specifically.

However, by the second half of 1970, the picture had altered drastically. For one thing, there has been a rising energy demand in the West which has been aggravated by dislocations in the logistics and production of oil on a world-wide scale.

This situation emanated from two primary causes: (1) reduced output from the Libyan fields and (2) the breakdown of Tapline. The cutback of approximately 20 per cent by Libya—the world's fourth largest exporter of crude oil—understandably wreaked havoc when one recalls the increased reliance of Western nations on Libyan oil because of that source's proximity following the Suez Canal closure. The reduction was aimed at conservation as well as securing prices because of locational advantage enjoyed since mid-1967.

The second immediate cause was the accidental cutting in Syria of the Trans-Arabian pipeline (Tapline) which moves oil from the Saudi Arabian fields to the Mediterranean in Lebanon. More than nine months elapsed before the Syrian government allowed repairs. In short, the reduction in Libyan production was to be made up by increased output from other sources, principally in the Persian Gulf area, which would have to be moved via tankers. The closing of Tapline meant that crude ordinarily moved overland also would have to be shipped by tanker. Thus, the pressure on the tanker fleet was drastic, driving up rates for the "spot" or shortcharter market, which accounts for about one-fifth of all tanker trade. By the end of 1970, rates for the long-haul trips from the Persian Gulf to Europe or North America were six times the pre-June 1967 level.

Simple supply and demand forces led to a world-wide rise in tanker rates. For example, rates for the short-haul to the United States from Venezuela (incidentally, the major source of the 24 per cent of imported oil in total U.S. consumption), almost tripled. So, while the United States does not rely heavily on Mideast oil imports, a projected direct cost of some $300 million to our country can be made for 1971 through increased transport rates within the Western hemisphere, coupled with newly won price increases in Venezuela.

A total estimated 1971 cost, direct and indirect, of the canal's closure under present demand conditions and associated with both transport and price hikes, could reach a staggering $4 billion for the United States and other Western countries.

This figure includes the February rise in Middle East oil prices negotiated at Tehran by the companies and the Organization of the Petroleum Exporting Countries, but excludes the current demands being made by Mediterranean producers on the basis of locational advantage.

Although oil is the most publicized commodity of traffic in the canal, seaborne dry cargo also has been affected by the waterway's closure.

But perhaps the most compelling ramification of the canal's disuse is the burden on consumers everywhere, including Americans. The added transport costs most usually are ultimately passed on through price increases to the final purchaser of seaborne commodities. True, there are many factors contributing to the rising oil prices both at home and abroad. The 40 cent per barrel rise in U.S. crude oil (1969 and 1970 hikes combined), which will cost an additional $1.6 billion annually, is partly the result of inflation and rising expenses in exploration and drilling, but it also can be traced in part to overall world oil price levels, which were pushed up as a result of the canal closure.

Granting the magnitude of Middle Eastern and North African reserves (70 per cent of the world total), placing 1969 U.S. proved reserves at 38 billion barrels (Saudi Arabia has 140 billion barrels and Kuwait, 68 billion barrels in reserves), and keeping in mind the ever rising energy demand of the United States over the coming 10 to 20 years, it can be assumed the United States will have to import greater quantities of oil despite development of the Alaskan fields.

Thus, factors weighing the level of non-U.S. crude prices and the cost per barrel delivered to American ports are or should be of concern to the public in this country. In fact, the Suez Canal, supertankers, existing pipelines and the Suez pipeline soon to be built, all will be needed to move the quantities of oil required by the United States, Europe, and Japan for the 1970's, let alone the following decade. Even if freight and crude posted prices cannot be rolled back with a normalization and expansion of oil transport through the resumed functioning of the Suez Canal, the cost spiral can probably be halted.

ECONOMICS OF SUEZ REOPENING: CONSUMER BENEFIT

(By William D. Smith)

Speaking strictly in terms of economics—if that is possible in the explosive and delicate potpourri of Middle East affairs—the opening of the Suez Canal would appear to be an unqualified boon to almost every country in the world.

Hope for opening of the canal was kindled last month when Egypt and Israel, whose forces face each other in an unstable cease-fire across the narrow, manmade waterway, both indicated they were willing to discuss the future of the big ditch. It has been blocked since 1967 by sunken ships, live mines and natural silt build-up.

Hot debate can be generated about whether the canal will ever open, what its importance will be when it opens, what its closing has cost the world.

Few serious students of the matter, however, would argue that the closing of the canal has not done considerable damage to consumers throughout the world.

The canal is short cut between East and West; between the oil-producing center of the world, the Persian Gulf, and the oil-consuming nations of Western Europe and North America. With the canal closed, oil from the Gulf travels 11,000 miles around the tip of Africa, rather than 6,000 miles through the canal.

The distance and time required for the longer trip called for four to six times as much tanker tonnage, creating a shortage of ships. This has driven charter rates to record highs, which in turn have influenced the costs of everything from oil to grain. This added cost has been a world inflationary factor.

The closing of the famous waterway connecting the Red Sea with the Mediterranean has cost Europe, the United States and Japan more than $3-billion in 1970, according to Ragael El Mallakh, professor of economics and chairman of the department of African and Middle Eastern studies at the University of Colorado. He has recently completed a study of the canal. His estimate is supported by other economists.

Other knowledgeable sources would place the cost considerably lower.

Some pressures are building up from various sources in an attempt to open the canal.

Besides Egypt and Russia, these include Europe and Japan, which see their foreign exchange being eaten up by higher energy shipping rates; the oil companies, which need an open canal to help withstand the pressures from North African petroleum producers for sharply higher prices, and some diplomats, who believe that an open canal would be the first step toward a general Middle Eastern settlement.

Very few countries have benefited from the closing. Communist China is one. It has seen its exports to the Persian Gulf increase to $200-million last year from less than $100-million in 1967.

South Africa is another beneficiary, since the tankers from the Persian Gulf travel around the tip of Africa often stopping in Durban on their voyages to consuming centers.

North African oil producers, Libya and Algeria, have also benefited through being able to exact higher prices for their oil because of their proximity to European markets.

The opening of the canal would have mixed effects on other countries. Israel would lose some of the profit it makes from its Eilat-to-Ashdod pipeline, because the outlet to the Mediterranean would decline in its importance. Yet Israeli shipping would likely be allowed to use the canal if it were open.

Greece and Norway, whose fabled shipping magnates have been reaping large profits because of sharply higher tanker rates, would see much of this slip away. Yet their commerce and consumers would benefit from an open canal.

For the rest of the world, on both sides of the Iron Curtain, the closing has been costly. In 1966, the last full year before the blockage, Italy, Great Britain, France and the United States in that order were the chief users of the canal. The Communist nations were responsible for 7 per cent of the shipping through the waterway, with the Soviet Union accounting for 4 per cent.

Professor Mallakh contends that the closing of the canal has added $1.1-billion for shipments to Europe and the United States in spot tanker-rate increases, although these short-term charters only account for 20 per cent of total tonnage.

He says the cost of spot-tanker charters to other destinations, such as Japan, were about $600-million, and general, non-oil cargo charges he places at more than $200-million.

The economist contends that $810-million in price increases for North and West African and Venezuelan crude oil can be charged to the closing of the canal.

He also charges that a large part of the recent $1.2-billion settlement between the oil industry and the producing nations, reached in Teheran, can be linked to the supply-demand pressures caused by the closing of the waterway.

Can the canal be opened?

The Egyptian Government says yes, and within a matter of four months. Independent students of the situation might place the span at six or nine months.

The canal, prior to closing, could handle ships with drafts of up to 38 feet usually accommodating 60,000 deadweight ton vessels loaded and 150,000 tonners in ballast.

What would be the importance of the canal if it were opened? That it would never regain its former importance seems to be a consensus.

However, most informed sources feel it still has an important role to play in world commerce.

According to the Analysis of the World Tank Ship Fleet, made by the Sun Oil Company, some 86 per cent of the world tanker tonnage, as of Dec. 31, 1969, was capable of sailing at least in ballast through the canal. Some 42 per cent could make the voyage with a full cargo of oil.

These figures do not tell the whole story, however. Many ships capable of transiting the canal never enter the canal because they are assigned to specific coast and harbor duties.

The world tanker fleet has been growing at a rate of 15 per cent a year, with the majority of this additional tonnage coming in ships too big to use the canal even in ballast.

Prof. Morris A. Adelman of the Massachusetts Institute of Technology, an oil economist, is one who believes that the canal is unlikely to experience a renaissance. He points to the fact that the Egyptians are seriously considering building a pipeline to parallel the canal.

Other analysts who feel the canal is passe point to the overwhelming trend toward supertankers, which the canal cannot handle.

Thomas R. Stauffer, a consultant on petroleum economics at the Center for Middle East Studies at Harvard University, thinks this position is too easy. He contends that the costs of supertankers are rising and that past economies of scale are no longer being fully realized.

The Egyptian Government has announced plans to improve the canal so that in six years the waterway will be able to accommodate ships with cargo up to 250,000 tons. Mashour Ahmed Mashhour, head of the Canal Authority, also said that fees to use the canal will make it cheaper for a vessel to use the canal than go around the Cape. By this measure he hopes to convince tanker owners to build ships that will fall within the limitations.

Walter J. Levy, considered the dean of American independent oil economists, believes that the opening of the canal would have an immediate and sharp downward effect on tanker rates.

"It only takes a 3 per cent shift of tanker supply to create a shortage of a surplus. The opening of the canal would present far more tanker availability than that," he observes.

Mr. Levy opposes the substitution in the Middle East of pipelines for ship transportation. "From a Western point of view, the canal is far more reliable than pipelines that must pass through often hostile lands."

John Lichtblau, an independent economist, head of the Petroleum Industry Research Foundation, believes that the canal could play an important role in commerce for many years. But he wryly adds, "That's if politics will let it."

U.S. ENERGY CRISIS

Mr. McGOVERN. Mr. President, it is of some comfort that we made it through this past winter without any major "freezeouts" due to failures in the Nation's electric power distribution system.

We are, however, approaching the period of peak summer demands on that system, and we can expect that "blackouts" and "brownouts" will again threaten many major metropolitan areas. We will again suffer this most visible evidence that our Nation's confused power supply patchwork is unraveling.

In the current issue of Playboy magazine, writer Robert Sherrill has supplied a detailed account of the status of that system.

Having heard the private utilities argue the need for increased generating capacity—and blame the environmentalists for failures to meet demand—I suspect many of us will be startled by Mr. Sherrill's report that,

There is no electricity shortage. In some densely populated areas, yes, there are shortages as the result of industry backwardness. But nationally there is no shortage, and the only problem is how to spread the existing power around.

Yet he cites no less reliable a source than Federal Power Commission Chairman John N. Nassikas to substantiate this claim. The dependable national generating capacity in existence now is 326,667 megawatts, whereas the estimated peak demand—at the point of highest loads—is 257,419 megawatts. What is needed is a national grid system, so that power can be moved to points of demand.

Unfortunately, the administration has been no more hospitable to that concept than it was to Interior Secretary Hickle, who once advocated it before his sudden loss of status with the White House.

Mr. President, because of the light it sheds on this and other facets of the power crisis, I ask unanimous consent that the article to which I have referred, entitled "Power Play," be printed at this point in the RECORD.

I also ask that an additional article on the same subject be printed at this point in the RECORD.

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

POWER PLAY

(By Robert Sherrill)

The most serious, immediate threat to the environment—and to the consumer's pocketbook—comes from the developing cooperation between the fuel industry and the electric-power industry. If they have their way, and there are signs that they will, then the most harmful source of air pollution will go uncontrolled, along with our most monopolistic markets. The situation has become so critical that some responsible observers are beginning to use such unkind words as conspiracy and collusion. Vermont Senator George D. Aiken, one of Congress watchdogs of the energy industry, was not accused of hysteria when he warned that what's happening constitutes "a very serious threat to political democracy," because "when you control energy—and oil interests now control coal and are on their way to controlling nuclear fuel—then you control the nation." Of specific concern, he said, is the evidence that "there is some group determined to get control of electrical energy in this nation." That would be a natural target for any group interested in controlling all of the nation's power systems—or in chain-reaction profits—because, if Montana Senator Lee Metcalf knows what he's talking about, "Electric power is by far the nation's largest industry. It's growing rapidly because it has a monopoly on an essential product. The electric utilities took the lighting business away from the gas utilities half a century ago. They appear to be on their way toward domination of the heating area as well. They are going into the real-estate and housing business in a big way. They are intertwined with the banking and insurance industries and have extraordinary force in politics, the eductional system and the press." The concentration of the industry is impressive. The 212 largest private electric companies (as distinguished from public outfits like TVA, the rural electric co-ops and the municipals) are said to constitute about one eighth of all investment in U.S. industry.

And from the environmentalists' point of view, the electric utilities are of paramount concern. The coal and oil they burn produce more than 50 percent of the deadly sulphur dioxide and nearly 30 percent of the particulates in air pollution of our cities—which is

why Jerome Kretchmer, the Environmental Protection Administrator for New York City, can hardly be thought to exaggerate when he contends that "power versus the environment is *the* issue for the Seventies." (New York's sulphur-dioxide level is three times higher than the safe maximum set by Federal and state officials, and a heavy atmospheric inversion this summer could kick it up to a level that would kill enough people to ease the city's tight housing situation.)

Nothing unusual there. With an Amherst physicist claiming to have evidence that between 1000 and 10,000 lung-cancer deaths each year are caused by electric-power-plant emissions, and with some scientists now tentatively estimating that coal-burning power plants may be putting as much as 150 tons of the newest hazard, mercury, into the ecosystem each year, it's hardly surprising to find that Senator Edmund Muskie and other politicians rate power pollution at the head of the list of environmental plagues.

Aside from the various chemicals and dirty solids the industry dumps on us, the face of America has been permanently mutilated by 67,000 miles of extra-high-voltage transmission lines strung across 1,300,000 acres of land—and, in all likelihood, by 1990 there will be 165,000 miles of lines hanging over the land. By 1980, the generating plants will be pirating one sixth of our fresh water as a cooling agent and returning it to the streams and lakes at such a heightened temperature that fish will have to swim for their lives. Algaeic scum will follow.

This continual degradation of what was once a green and pleasant land may be halted only by a massive public confrontation. The situation is neatly summarized by Lee C. White, former chairman of that laissez-faire fraternity, the Federal Power Commission: "It is perfectly evident that the dialog between the environmentalists and utilities is beginning to shift. The utilities are no longer being asked, 'Why don't you locate your plant in a site other than the one you have selected?' The question being asked today is, 'Can you justify the construction of an additional plant anywhere?' "

For several years it's been plain that if the electric-utility companies were to escape stiffer regulations, they would either have to pour research money into developing more efficient and cleaner methods of production, or they would have to fight off reform by political lobbying, propaganda and threats. They chose the latter course.

Habitually, the power industry has skimped on research—even while mooching billions of dollars of Government research funds. One knowledgeable witness told the Senate Subcommittee on Fuels in 1970 that there are "only 14 Ph. D's in the entire utility industry." Expert analysts have reported that *all* power companies together spend only twenty-three hundredths of one percent of their operating revenue for R & D, which proportionately is about one ninth what the Bell System spends for that purpose, and about one eighth as much as the utility companies lay out in advertising to persuade the consumer to use more of the power they often cannot provide.

Not wishing to break their habit of sloth, the big electric companies decided to fight reform regulations by other means. For this, they teamed up—conspired, connived, whatever word seems to fit—with the big oil, gas and coal companies. Their weapon was fear, based on disruptions of electric service.

Electricity we've got to have. In vertical cities, there is no substitute for an elevator. For the urban cave dweller, who lives in canyons no breeze ever penetrates, there is no alternative to an air conditioner. The gas furnace may compete with the coal or oil burner, but nothing competes with the light bulb.

Ever since the 1965 power disruption that plunged much of the Northeast into darkness, the residents of most of the larger urban centers of the country have been wondering when the elevators would stop again between floors. And there have been enough blackouts and brownouts—more than 50 nationwide in 1970, and a severe one in New York this past February—to keep the worry flourishing. Industry spokesmen insist that the crisis will last at least another five to ten years.

Because they peddle an absolutely essential commodity and because utilities are the only industrial monopoly protected officially by Federal and state governments, it's been quite easy for the electric power companies to create a crisis situation in which they could successfully issue ultimatums: Let us charge the rates we want to charge, or we will permit our equipment to deteriorate and we will not develop new sources of power—so there will be critical blackouts. Let us build our power plants on the steps of city hall and string our transmission lines through national parks without protest from environmentalists, or we will permit so much of our operations to stop that normal life will be disrupted and endangered.

A contrapuntal ultimatum has come from fuel companies, which want no restrictions on their profits or on their drilling and mining operations. In the fight for profits, both groups have apparently won. The fuels that go into the production of electricity have jumped in price by as much as 130 percent in the past year. The electric-utility industry's income, which was 19.4 billion dollars for the 212 largest companies in 1968, is believed to have jumped a billion dollars a year since then. (It is difficult to be certain, for there is no central government office for collecting rate data.) But still at issue between the public and the electric moguls is the matter of environmental controls.

Utility officials are not very subtle about their threats. If environmentalists continue to interfere, says New York Consolidated Edison's chairman, Charles Luce, "eventually it will have an effect when you try to switch on the light." And a top official at Boston Edison said, "We can probably meet our demands in New England if no more states pass those anti-pollution laws." The fuel industry plays an equally obvious role in this psychological warfare. From Prudhoe Bay, Alaska, William Steif of the Scripps-Howard newspapers reports that in talking with a dozen of the nation's top oil executives, he learned that "the big oil companies are counting" on the possibility of blackouts caused by energy shortages to "brush aside objections of conservationists" to the construction of the highly controversial Alaskan pipeline.

When conservationists protested the proposal of some oil and gas companies to use Federal atomic devices for blowing up portions of the Rocky Mountains in their quest for 42 billion dollars' worth of new gas, Dr. Glenn T. Seaborg, chairman of the Atomic Energy Commission and a friend of the industry, warned: "Today's outcries about the environment will be nothing compared with the cries of angry citizens experiencing blackouts which could endanger the health and lives of their families."

The generator that sends electricity out one end is powered at the other by water, nuclear energy, coal, oil or natural gas. No conspiracy could depend on the first two, because water-powered generators supply 16 percent of our electricity, and at present the nuclear generators produce about two percent. The great sources are coal, oil and gas, and of these gas is the most important because it's virtually pollution-free. There is an insatiable demand for it.

And because there is such a demand, the gas producers two years ago "discovered" a shortage. Their objectives were to throw off FPC regulations, increase prices and get their hands on a larger share of the oil and gas of the outer continental shelf. Every trade magazine acknowledged that if gas prices were raised, the "shortage" would evaporate. *Business Week* flatly stated that the industry was shooting for a 60 percent price increase. Others estimated a 100 percent boost. Charles F. Wheatley, Jr., general manager of the American Public Gas Association (which is run by municipal gas distributors, at the other end of the commercial spectrum from Shell, Gulf and the rest, and is the most consumer-oriented sector of the industry), noted with apparent sarcasm that "the timing of the present asserted gas shortage is quite interesting," because the industry's chief lobbyist for a rate increase "has stated that he did not realize until late in 1968 or 1969 that there was any real gas shortage." Strange. Wheatley's suspicions were heightened by the remembrance that, though 1954 had been a banner year for drilling, "a similar [shortage] claim was made in 1955 when the industry sought passage of legislation to exempt producers from FPC regulation."

Many observers are convinced that the gas companies have plenty of reserves to meet the nation's needs but have simply capped the wells to await higher prices. Dr. Bruce Netschert, an economist with National Economic Research Associates, claims that 500 gas wells in the outer continental shelf off Louisiana have been capped. Michigan Senator Philip Hart, whose Antitrust and Monopoly Subcommittee has been investigating gas prices, says that Louisiana officials "have found 1100 gas wells shut in, mostly waiting for higher wellhead prices."

Gas prices are supposedly set by the FPC according to supply. But this is pretty much a farce, since the official supply is determined in secret session by the American Gas Association—a group of so-called competitors—who have consistently refused to disclose their records to the FPC. In other words, the FPC simply takes industry's word and is happy to do so. Says John Flynn, special counsel on the Senate Antitrust Subcommittee: "The way gas reserves are predicted through the A. G. A. is a serious antitrust question. It is a possible device for price-fixing."

What are the stakes? Joseph C. Swidler, chairman of the New York Public Service Commission, puts it this way: "There are probably some 1500 trillion cubic feet of gas in our underground resources. Each cent [increase on the price] per 1000 cubic feet thus represents 15 billion dollars for the consuming public." That's 15 billion dollars for a one-cent increase, yet, according to Flynn, "The FPC has been talking in terms of an 8- or 10-cent increase and industry wants 14 or 15 cents more."

Another assault on the consumer's peace of mind and pocketbook come via the marketers of residual fuel oil, which fires the furnaces that turn the generators that produce more than 90 percent of the electricity in the Northeast; oil figures heavily in electricity production in other areas as well, such as Florida. These days, residual oil is selling for twice the price it fetched a year ago. Industry spokesmen insist the oil is scarce for several reasons. Libya cut back on production. The big trans-Arabian pipeline has not been repaired since it was ruptured in Syria last year. There is a severe tanker shortage.

U.S. Congressman Silvio Conte, at hearings before the Subcommittee on Special Small Business Problems, got to muling over those excuses and began to suspect that somebody was lying. The oil industry had begun complaining about a "shortage" and had started pushing up its prices in April 1970, but, said Conte, "The pipeline didn't break until May 3, 1970, and the Libyan cutback occurred

sometime thereafter." Furthermore, the pipeline was shut down for 100 days during 1969, yet there was no claim of a shortage or any increase in prices that year. And finally, "Only about three percent of our [residual] oil is imported from the Middle East. The remaining 97 percent comes from Venezuela, Canada and our own domestic markets." And if Libya was curtailing production, wouldn't this free tankers for the Venezuelan run?

Putting it all together, Conte concluded: "The price had gone up by such a huge amount—in some cases as much as 130 percent on the East Coast—because, I felt, there was a conspiracy among the domestic oil companies, the producers, in making this oil scarce, so that the price could be increased. . . . Let me put it this way. It is either a conspiracy or a gross miscalculation by the oil companies. And I can't believe that the oil companies would miscalculate the situation, because they certainly have the finest backup force of any industry in the world, and they very, very seldom make a miscaluation."

Coincidentally with all that came a startling "scarcity" of coal and a sudden increase in its price. There were, as usual, suspicions of collusion, but nothing was done about it. Senator Hart acknowledge that testimony before his subcommittee raised serious questions as to "whether there has been a deliberate withholding of coal from the market place."

The railroad companies were doing their share by creating a shortage of coal cars. Many cars were allowed to stand idle rather than be used to deliver coal to the power plants. Everything was screwed up: One trainload of coal bound for New England stopped short and returned to the mine; rail officials claimed the rerouting was a computer mistake. And delivery of coal was sometimes delayed because the rail lines have allowed much of their equipment, including roadbeds, to deteriorate.

It was easy to contrive these shortages because ownerships of the different fuel industries are tightly interwoven. Within the past five years, eight of the ten largest coal-mining companies, which produce half the coal in the U.S., have been purchased either by oil companies or by mineral companies or other large "energy" corporations. Since the oil companies control natural-gas production, and since they also control 45 percent or more of the known U.S. uranium reserves, which of course gives them dominance over nuclear power, the production of electricity is pretty much a matter of their whim. Clearly, control of supplies and prices is in capable hands.

So critical is this threat of fuel monopoly that it has overshadowed other monopolistic trends. Too little attention has been paid, for example, to the interlocking banking relationships of the various industries that support the electric utilities. A House Banking Committee study shows that the 49 largest banks hold interlocking directorates with 36 of the largest electric companies, 28 gas companies, 15 coal-mining companies, 17 petroleum companies, 58 coal-carrying railroads, one oil-pipeline company and 27 companies supplying electrical transmission and distribution equipment.

The Mellon National Bank & Trust Company, for example, which holds 52 percent of all bank deposits in the Pittsburgh area, has three interlocks with the Consolidation Coal Company; a total of six interlocks with General Electric, Westinghouse and H. K. Porter, all suppliers of electric-transmission, lighting and wiring equipment; a total of five interlocks with the Penn Central, Pittsburgh and Lake Erie, Cleveland & Pittsburgh and Pittsburgh, Fort Wayne & Chicago railroads; four interlocks with the Gulf Oil Corporation; and a total of seven interlocking directorates with the Pennsylvania Power and Light Company, the Duquesne Light Company and the Monongahela Power Company of Ohio. All the biggest banks can show similar ties.

The point to keep in mind is that while a fuel monopoly can afflict our pocketbooks and our blood pressure, the linchpin that holds the over-all power conspiracy together and guarantees maximum profits for all concerned is that private electric-power monopoly. There are 40,000,000 households that use gas, but if the only issue were higher gas prices or a gas shortage, they could switch to other fuels—sometimes at great expense. If the only issue were higher coal prices or a coal shortage, the switch could be made to oil or gas. And if the developing oil-gas-coal monopoly made switching meaningless, the consumers could still fight it out without feeling panic, except that oil-gas-coal is electricity, and there is no switching from that.

Having passed through the panic factory, we come back to the simple, aggravating truth: There is no electricity shortage. In some densely populated areas, yes, there are shortages as the result of industry backwardness. But nationally there is no shortage, and the only problem is how to spread the existing power around.

Obviously, this is something the industry does not exactly like to have publicized. I believe I have read every important article on the power crisis printed during the past two years. Yet I cannot recall ever seeing anyone mention what Federal Power Commission chairman John N. Nassikas admitted in Congressional testimony just before 1970's winter demands set in that "the net dependable capacity of the 48 continguous states is 326,667 megawatts, with an estimated peak demand of 257,419 megawatts." That leaves a reserve capacity—or surplus—of 27 percent, and "reserves of 15 to 20 percent are generally considered normal to guard against unexpected equipment failures and higher peak loads than predicted."

It would appear, then, that present concepts of "need" are cockeyed. The idea that New York City "needs" to build more generating facilities in Queens; or that the Los Angeles area "needs" a power plant at Malibu to continue the devastation of the beach already begun in that way at Playa del Rey, El Segundo, Redondo Beach, Alamitos Bay and Huntington Beach; or that the Chicago area "needs" more generating facilities along the Lake Michigan shore—solutions like these, with transmission technology being what it is today, are about as scientifically defensible as rubbing the scalp with parsley to cure baldness.

William E. Warne, a West Coast water-resources and energy consultant, voices from expertise what the local residents know from common sense: "[In such megiapolises as] Washington to Boston . . . San Diego to Santa Barbara . . . around southern Lake Michigan and elsewere . . . there are not now, and are not going to be later, places for twice as many power plants by 1980 or seven times as many by 2000"—as the electricity demands would seem to dictate building. "New York City simply cannot accommodate in its environs a multiplication of generating stations."

The best and easiest way to avoid new stations is to establish a national transmission grid. This is the only way to take advantage of the national electricity surplus, tying together all major sources of power production and power consumption. There are already regional grids and even a few important interregional grids, especially in the Far West; but these are not sufficient, as the experiences of the past few years clearly show. The national transmission picture is, as one Senate aide described it, "Like an interstate highway interspersed with gravel roads, detours and a few unbuilt bridges."

The idea of a national grid was first seriously proposed in the Thirties, but the private power lobby has always managed to prevent it from becoming a reality. Senator Muskie rightly blames the FPC for its failure to "face up to the needs for a national power network. We know how to build and regulate broadcast networks, sports networks, merchandising networks, food-distribution networks—but not a power network. And now we end up having hundreds of thousands of kilowatts of power unable to reach New York in an emergency because the necessary transmission lines have not been built." Yet for at least 15 years we have had the long-line transmission techniques to do the job.

If there are only two electric systems interconnected and one system loses 25 percent of its generating capacity because a turbine goes out, chances are that the combined systems will not have enough generating reserves to make up the deficiency. The result: blackouts, or at least brownouts. New York is supposedly backed up by the Pennsylvania-New Jersey-Maryland (P-J-M) Interconnection, but at the most crucial point in the summer of 1970 the backup P-J-M was itself riddled with so many problems that one fourth of its generating capacity was out of action. There were boiler explosions, boiler-tube ruptures (seven in all), an explosion in a pulverizer mill, a kinked turbine spindle and more. The situation was a total mess. The manufacturers of electric-power-plant equipment almost seem to be involved in a conspiracy of their own, for when they are not delivering needed equipment months late, what they are delivering is so shoddily made that it can almost be guaranteed to break down.

However, if you interconnect all the major systems, the combined spinning reserve would take care of any emergency. And if the country were tied together from coast to coast, there would be other great advantages resulting from the time and weather differentials. A summer evening's peak usage in New York puts a strain on Consolidated Edison's creaky equipment; but the West Coast, three hours behind has not yet reached its peak usage and could bump surplus power to New York. Most power systems in the country are overloaded in summer because of air conditioning; some, such as the Pacific Northwest, have a winter peak and a summer surplus. These various systems could bump their seasonal surpluses around the country to meet demands elsewhere.

Much of a company's equipment can earn money only during peak-use periods, which is why the electric giants are so slow about buying needed equipment. With a national grid, this wasted capital outlay could be avoided.

The national grid would also be a way to achieve almost immediate relief from air pollution. Given a serious atmospheric inversion that traps dangerous levels of a utility's crud in the urban air, the company could simply shut down its generators and import the power it needs from systems in other parts of the country.

Not only is construction of the national grid possible; it could also be built quite swiftly and, as utility-equipment costs go, relatively cheaply. Robert O. Marritz, executive director of the Missouri Basin Systems Group, says that it would probably take no more than 1.6 billion dollars to build a grid with the main direct-current transmission lines running from the Pacific Northwest through the Wyoming-Montana coal fields to Chicago and then to New York, and the southern line running from Los Angeles to Four Corners (Arizona, Colorado, New Mexico and Utah), which already has a big generating complex, through the Little Rock area to the TVA and then north to New York. (The stringing of these long lines, incidentally, will of course ultimately reduce the need for additional regional lines.) The grid could be built, Marritz believes, in three years—compared with the minimum of five years

needed to build a new power plant that essentially has only local usefulness.

We asked Kenneth Holum, who was assistant Interior Secretary for Water and Power Development for eight years under Kennedy and Johnson, if he agreed. He said he thought Marritz might be optimistic on the time needed to build a transmission system. Holum talks in terms of five or six years, but he conceded "Marritz is an engineer and I'm not."

Marritz is also more optimistic on the impact. With a national grid, he said, there would be no more blackouts or power shortages for decades, if just a moderately reasonable plant-construction program went along with it. Holum balked at predicting "no" blackouts or shortages, but he agreed that their possibility would be "exceedingly remote." On that, most experts would agree. So why hasn't the grid been built? That question cannot be answered fully without illustrating the *atmosphere* of the answer. On April 8, 1970, in a hearing before a Senate subcommittee, then-Interior Secretary Walter J. Hickel said something that would have been unusual for a Democratic Cabinet official but was downright spectacular for a Nixon appointee: "I think we need a national grid system." Hickel went on talking that way, and indicated that he wanted to be encouraged to say more. After the hearing he told reporters, "Some people think it's socialism, but it isn't."

Indeed, some people do think it is socialism. And some who think so were working within shouting distance of Hickel. Rumor has it that as soon as word of Hickel's heresy got back to the Interior Department, his Assistant Secretary for Water and Power Development, James R. Smith (who came to Washington from an executive post with the Northern Natural Gas Company of Omaha), hurriedly called together everyone at the policy level and assured them that Hickel hadn't really meant it—but if he *had* meant it, he, James R. Smith, friend of private enterprise, intended to resign. Some in the power industry believe Hickel's remark on the national grid helped bring about his downfall, but this may be a parochial suspicion.

Most private power executives hate and fear the idea of a national grid. When blackouts and brownouts struck the East Coast in the late summer of 1970, emergency supplies were wheeled into the New York area from as far away as the Tennessee Valley Authority. This leaning on the TVA—still a bête noire to the private power men—and the success of long-distance transmission caused deep concern among those who dread the national-grid specter. The PR offices of the major utilities began putting together anti-grid material, just in case.

There are several reasons for this opposition, aside from the fact that leaders of the private power industry simply don't like change. As we have already shown, there are tremendous profits in isolation. Most state regulatory bodies have so many other duties—overseeing road transport, railroads, elevators, phone companies, weighing stations—and have so few trained personnel that they couldn't regulate the power companies even if they wanted to. Texas has pushed isolation to the ultimate, refusing to have any interstate power ties, so that it is not subject to any supervision from the Federal Power Commission—and there is no state agency that regulates electric rates in Texas. As long as the enormously complex utility industry keeps its activities chopped up into fiefdoms, realistic regulation is bound to be impractical.

But there are other major reasons why the grid is opposed. If the nation were tied together in this way, the resources of the West would have to be acknowledged and—given a reasonable degree of public pressure—utilized, which would further explode the "fuel shortage" myth. One of the great, untapped sources of power in the U.S. is subterranean steam. If the steam trapped under the earth's crust—mostly in the West—were put to work turning turbines and generators, we would have an almost endless supply of electricity. Italy, Japan, New Zealand and Russia, among other countries, have been using steam to generate electricity on a massive scale for years.

Since 1960, geothermal energy has actually been turning generators in California and is so efficient a source that oil companies—Union and Standard and others—have been buying into the action all over California and Nevada. Some experts believe that there is enough reachable geothermal energy under California's Imperial Valley alone to meet the electricity needs of 20,000,000 people for decades at least. The important things about it are that it's cheaper than any power except hydroelectric, it does not incur the risks of nuclear installations, and it is nonpolluting.

Also looking West: Of the nation's 130,000,000 kilowatts of undeveloped hydoelectric power, 108,000,000 kilowatts are in that region, according to the Federal Power Commission; this is impressive even as a fraction of the present total generating capacity of the nation (about 300,000,000 kilowatts), and downright overwhelming, when one considers that it is about 13 times the power needed at the peak hour in New York City.

More to the immediate point, the West has immense reserves of fossil fuel. Never mind the shale-oil potential. Production methods for it are still too iffy. But one can speak practically of coal. It's there, it's easy to get at, it's relatively free of the kind of sulphur that pollutes the air. Sixty-four percent of the nation's low-sulphur coal is in the West, and only four percent of it is being mined.

The excitement that Western coal generates in some people can be detected from the claims of Senator Metcalf that "Montana coal has something like 100 times the energy source that the East Texas oil fields have. We can provide energy for America, all the energy, out of the coal fields of Montana for the next hundred years. We have that potentiality. In North Dakota and Wyoming it's the same. We could build up a mine-mouth power complex out there and set up transmission lines, and we could literally light America from Maine to Los Angeles."

Virtually all of the Western coal would have to be strip-mined, however, and there is nothing in the Western air that reforms corporations. There is no reason to expect Humble Oil, for example, to operate with more environmental decency when strip-mining its vast coal holdings in the West than its corporate brothers have shown in strip-mining the Eastern fields.

But even if conservation guarantees could be worked out, there is no assurance that full utilization of the Western sources of geothermal energy, hydroelectric power and coal would come about easily, because the Eastern establishment might not want to cooperate.

What has New York got to do with the development and transmission of power in the West? The answer to that touches one of the primary hang-ups in trying to establish the national grid. The big corporate guns of New York, who have helped create a situation of chronic crisis from which to draw maximum profit, dominate the national picture. Senator Aiken last year urged Congressional investigators to look into New England, where private utilities—which charge the highest rates in the nation—recently spent half a million dollars in a lobbying campaign to kill a public power project. "The interlocking directorships and the deals between various executives might provide some exciting antitrust material," he said. "It might also be well to take a very special look at the financing structure in control of this New England combine. It might be shown that scarcely a kilowatt can move in New England without the approval of a Wall Street investment firm."

Somewhat the same thing might be said about the West. A recent study of ten of the big private utilities in the West, selected at random from stockownership reports filed with the FPC, showed that a majority of the ten largest stockholders of each company were headquartered either in New York or Boston.

If we, as a nation of consumers, should ever manage to construct a national grid, we would have, in a sense, achieved industrial fission. Like nuclear fission, the achievement could become a force for either good or evil. It will be a most potent force for good if the high-voltage transmission lines that tie the nation together are owned and controlled by the Government and, like highways, available to any private or public utility company that wishes to use them. On the other hand, if the Government does not retain control over the national grid, it could become the most oppressive weapon ever offered a monopoly industry—in this case a monopoly interest that is becoming increasingly concentrated.

There were 1060 private utility corporations in 1945. Today there are 267. Serving as the best balance we have to the private companies are the 2010 public and 921 rural electric co-op systems. But if the national grid's transmission lines fell into the hands of the private utilities, they would doubtless bring the public systems under their domination even more than they have today. As it is, many of the public systems that must buy power from the privates are getting short shrift.

A memorandum uncovered accidentally in the summer of 1970 at a hearing before the Securities and Exchange Commission told of a two-day meeting in January 1968 at which 100 executives representing 66 private power companies got together in a Clayton, Missouri, motel to exchange advice and experiences on how to kill municipal and co-op electric systems. A leading role was taken by executives of the Edison Electric Institute, the private utilities' trade association. The good soldiers of capitalism discussed such tactics as refusing to sell power at wholesale prices to municipal power companies; lending money to communities with municipal plants, and then putting the squeeze on them; and refusing to let public utility companies come into pooling and joint power-supply arrangements.

This cutthroat attitude on the part of private utilities is not at all unusual. Arthur Jones, president of the Basin Electric Power Cooperative in Bismarck, North Dakota, one of the more aggressive populist outfits of the Midwest, says that if consumer-owned and public systems don't get to participate actively in the planning *and ownership* of the huge regional and interregional grids which are coming, "the people's basic electric-power supply eventually will be dominated by those few utilities that can manage to finance very large facilities.

"Domination of an electric grid by a few utilities and the domination of essential-fuel supplies by a few oil companies [will mean] price-fixing at the expense of the consumer and political control by large corporations."

He could have made that much stronger and still have been accurate. Price-fixing is achievable without the grid. With a private grid, what can't they fix? The monopoly of the telephone by A. T. & T. has been with us for years. The monopoly of the energy industry by a dozen major oil companies has been apparent, if less visible, for several years. If the national grid, which is surely inevitable, gets into the hands of the major electric companies, then the monopolistic control of all industrial essentials

will have gone too far to reverse. On the other hand, if the people, through their Government, own and control the grid, industry may at least be stalemated in its bid for a strangle hold on both the sources and transmitters of electric power.

CURRENT'S FUTURE, A REALISTIC APPRAISAL OF THE POSSIBILITIES FOR POWER WITHOUT POLLUTION

The power lines you see stretching off at angles to the roads you drive, looping across the countryside, their sagging folds supported by huge steel towers evenly spaced through right of ways cut out of farmland and woods, carry millions of watts of electricity—but not enough, it seems. And demands on the cumbersome system that sends current through these slender conduits will double in ten years. Present technology will be inadequate for two reasons: the finite quantity of resources (coal, water, U-235) and the technological inefficiencies that are built into the production processes—wastefulness that turns up as pollution. The scientific problem is basic enough: Find a means of converting an available energy source into usable electrical power without discharging even more heat or soot into the sorely abused environment.

The sun is one such source of energy, available—given the variables of weather and smog—for conversion. Solar energy is, in fact, already being converted into limited quantities of usable electricity—in the space program especially. Electrical power from solar cells could keep the Russian moon vehicle, Lunokhod I, lumbering across the lunar surface indefinitely, or until the Soviets lose interest. Some ambitious planners have suggested converting 300 square miles of reliably dry and sunny desert into a solar-energy collector. A more grandiose alternative would be to send huge collectors—squares some five miles across—into orbit around the earth, where, free of the vicissitudes of climate, they would concentrate sunlight and send it via microwave to receiving grids on earth, where it would be converted into electricity. Microwaves, however, are rather inefficient conductors; an even more visionary solution might be laser beams. The science is, in both cases, sound, but the engineering techniques have yet to be perfected and would be staggeringly expensive. The size of the machinery that would be required to harness terrestrial energy sources, the winds and the tides, is equally awesome and improbable. And the machinery would desecrate the landscape. Hopefully, there is still time to consider aesthetics.

Magnetohydrodynamics may be a winner. MHD eliminates the ponderous machinery upon which present generating systems depend by sending conductive gases under pressure and at superheated temperatures—4000 to 5000 degrees—through an electromagnetic field, thereby generating a current (a principle discovered by Michael Faraday in 1831). The greatest advantage of MHD is that it involves one energy transformation rather than the three (fuel to heat, water to steam, steam to rotary motion of conductors in a field) now required. The simplification translates into an efficiency level of 60 to 70 percent, compared with the 30 to 40 of existing plants. There is still the problem of resource availability (something has to heat up those gases), but MHD represents a significant advance, although, at present, there are no operating plants.

One method of eliminating the plunder done to natural resources may be breeder reactors. Unlike the nuclear-power plants now in operation, they do not just burn up fuel but manufacture one fissionable material while consuming another. The scarcity of U-235, which the present nonbreeders use as fuel, makes development of economical reactors mandatory, and work is going ahead smoothly. A few breeder plants will be operational in about ten years. In both types of nuclear plants, nuclear power is used to make the steam that drives old-style turbines; that is, as a substitute for fossil fuels. The only problem this substitution solves is that of air pollution. There is no smoke. But the efficiency of energy conversion is actually lower than in conventional plants (30 percent *vs.* a still dim 40). The waste is in the form of heat: thermal pollution. If the entire national demand for electricity projected for the year 2000 were met by nuclear plants, approximately one third of the daily fresh-water runoff in the U.S. would be required as a coolant. A nuclear source linked to MHD mechanics would streamline the operation and eliminate a lot of that excess heat, but the most troublesome and dangerous by-product of nuclear fission—radioactive waste—would still be around.

There is another nuclear alternative; one that could be the perfect solution to the power problem. It is fusion, a process that charged hydrogen particles undergo in very special high-heat-pressure situations—something close to the core of the universe. The sun and the hydrogen bomb are brought to you through the courtesy of fusion. When scientists first set out in pursuit of fusion, they called the effort Project Sherwood, because—one story has it—someone answered the question "Wouldn't it be nice if we could achieve fusions" with a happy "It sure would." The first experimental reactor was called a *perhapsatron*. The early, lighthearted efforts began to yield results and the United States, Great Britain and the Soviet Union jointly declassified their research and pooled resources. This unusual and hopeful cooperation bore fruit, and physicists now believe they can make controlled nuclear fusion, the ultimate and perfect energy source, into something you will someday thank for your warm apartment and well-lit city.

A sustained fusion reaction depends on many factors. At the tremendous temperatures involved, materials assume properties that are so elusive that scientists have to refer to a fourth state of matter and call it plasma. A sustained reaction depends on the confinement of this plasma. Gravity does this job for the sun; physicists use electromagnetic bottles. Until recently, plasma could be magnetically contained only for a few split seconds and at a density far below the level required for successful fusion. One researcher, David Bohm, estimated the minimum time necessary, and from then on, the problem became beating Bohm's theoretical time. The Soviets have come close and convinced most skeptics that there are no barriers to creating a sustained fusion reaction.

Once this is accomplished, a powerful and clean (relative to present fission techniques) energy source will be available. The original plan was to use the high-temperature reaction to heat a core that would transmit its energy to conventional generating machinery. Now scientists believe they may be able to take the high speed charged particles from the reaction and convert them directly into electricity, thus breaking through the limits of machine efficiency and heat tolerance.

Fusion plants, once they become available, can be safely located near or in cities. The heat generated by such plants would be used to warm homes or offices—or even cool them, using essentially the same technique that makes refrigerators work on a gas flame. There would be enough surplus heat after that to distill and purify sea water and sewage. Finally, the in-city fusion plant could operate a fusion torch to solve the nastiest of environmental problems: garbage. The fusion torch, burning at its incredible temperatures, will break refuse down into its original elements for recycling.

Breath-taking as all this is, there are doubters: very crucial doubters who are funding research into controlled fusion with exceeding parsimony. The United States currently spends $30,000,000 annually on fusion research. That is roughly one percent of the space budget. However, economics may, paradoxically, be the salvation of fusion-generated power. The engineering requirements for fusion plants are tremendous and expensive; fission would be the bookkeeper's choice at this time. But fission plants, because of their danger and adverse effects on the environment, must be located far away from populated areas. Their remote siting increases the cost of transmitting and distributing the electricity they generate. A fusion plant, close to or in the city, could drive this expense way down. This savings may be the decisive factor when the power companies sit to consider the merits of fusion *vs.* fission.

It's all remote, but there is a long list of breakthroughs that have occurred in this century, of visions made into reality. Another factory sitting in the middle of your town may not sound like an exciting prospect, even if that plant heats your house, purifies your water, runs your record player and disposes of your garbage. But there is something else to consider. If fusion can do all the things its advocates claim it can, there won't be as many of those looming, stressed-steel towers running off monotonously in all directions, holding up power lines. There won't be as much goop in the air, either.

THE SOIL CONSERVATION SERVICE

Mr. FULBRIGHT. Mr. President, the recent article in the Arkansas Gazette of April 4 by Mr. Leland DuVall concerning the work of the Soil Conservation Service is very perceptive and profound. I believe it is worthy of the attention of the Members of the Senate and the public, 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:

EFFORTS OF SCS DESERVE ATTENTION CRUSADERS GETTING

(By Leland DuVall)

One of the little ironies woven into our system of ethics is the tendency of honor the reformed reprobate while downgrading the "ninety and nine who need no repentance." The rejoicing is inspired by the successful search for the lost coin, the finding of the missing sheep or the return of the prodigal son while the money in the piggy bank, the flock in the fold or the older brother who stayed home and did all the necessary work generally are ignored.

A variation of the theme crops up repeatedly in the currently-popular movement to "save" or even "restore" the environment. The campaign has achieved the proportions of a fad and has swept up a motley collection of instant ecologists and self-proclaimed expert environmentalists who suddenly have discovered—or have been told by others who are equally misinformed—that the people of the United States are destroying their environment. Since a movement of this nature relies heavily on catch phrases and clever slogans, the leaders insist that we are living in "the decade of environment."

(For the record, concern for the preservation of the environment, with special emphasis on the the conservation of natural resources, actually is one of the more pressing problems of society. The issue here is whether the emphasis and attention should go to those who are doing the job or to those who, having so recently discovered that a problem exists, are expending their energies on composing slogans and delivering raucous speeches in which they warn of impending disaster.)

In keeping with the established ethic, the

federal government is on the verge of killing the fatted calf to celebrate the return of the less-than-penitent prodigals—followers of the fads, politicans who sense that the wind has shifted and is blowing off the garbage dumps, municipalities that still pollute the streams with their sewage but are ready to change and corporations that, until recently, thought little about the disposition of waste—but there is little chance that the groups and organizations that have been engaged in the work for many decades will get so much as a kid with which to make merry.

Reduced to dollars and cents, this means there is little indication that the established conservation agencies are having to battle for their "usual" appropriation (and may end up struggling along with reductions).

The system of soil and water conservation districts—supported by the technical staff of the Soil Conservation Service—is by no means a Johnny-come-lately in the conservation business. The districts were the creation of pioneer conservationists and their accumulated information constitutes the best and most comprehensive collection of knowledge on the subject that can be found. Membership is composed of the nation's (rural) landowners who control an extremely high percentage of the total area of the United States. These people have more reason to be concerned about the environment than just about anyone else because deterioration automatically brings reduced production.

The subject came up for discussion recently when a group from Arkansas, composed of farmers and professional conservationists, made their pitch to the state's delegation in Congress and to representatives of the SCS in the Agriculture Department. (Neither the SCS group nor the senators and congressmen who attended the luncheon meeting really needed to be convinced about the justice of the appeal.)

William A. Ratcliffe of Sweet Home, president of the Arkansas Association for Conservation Districts, was the spokesman for the group. Other members were Monroe Samuel of Hope, a member of the Board of Directors of the National Association of Conservation Districts; Homer Hall of Ozark, vice president of the West Central Area of the Arkansas Association of Conservation Districts; Jack Gibson of Dermott, vice president of the Southeast Area; Andrew Whisenhunt of Lewisville, vice president of the Southwest Area; Keith Jackson of Little Rock, executive director of the Arkansas Soil and Water Conservation Commission; John Gibson of Dermott, attorney for the Commission, and Einar Roget, state conservationist with the SCS.

"It is indeed ironic," Ratcliffe said, "in this day of unprecedented public concern for the state of our environment that technical and financial assistance to conservation districts has not kept pace with needs and a further widening the gap is threatened. I am disturbed, too, about the creation of new organizations to cope with problems which the districts are uniquely equipped to handle. Across Arkansas and the nation, districts skilled in the techniques of helping people solve [conservation and environment] problems at the gross-roots level are organized and eager for a larger share of the action. For the past 13 years, we have worked in an effective partnership with the Soil Conservation Service in programs for the care and development of natural resources. Recently, our efforts have been hampered severely because of the inadequate level of appropriations to the SCS."

Ratcliffe reviewed the shortfalls in appropriations for specific projects designed to improve the environment generally and preserve and restore soil and water resources. Here are some examples of funding needs, under Public Law 566, of projects that would make important contributions in their areas:

The Cedar-Piney Creeks Watershed, which would establish a multiple-purpose reservoir and supply water to Danville, Havana and Belleville: A new industry at Danville (100 persons employed) depends on this water supply for future growth.

The Galla Creek project in Pope County would provide water for Atkins and Pottsville and also would make a major contribution to a wildlife area. Water from the reservoir would be used to flood lowlands downstream for waterfowl. (Atkins voters last week approved an increase in their water and sewer rates to finance the town's share of the $3 million cost.)

Other projects in various stages of development, the completion of which will depend on federal funding, include Little Mulberry Creek (for a water supply for Mulberry), Big Creek in Craighead and Greene Counties and Muddy Fork of the Illinois River in Washington County.

These are a few of the many examples of resource development in which the districts and the SCS have acquired considerable competence. In the areas of conservation and improvement of the environment, the districts have played active roles in stabilizing and restoring the topsoil, slowing the runoff of surface water, reducing sediment pollution of streams and lakes, trapping water in ponds (87,367 in Arkansas alone), resetting trees on thousands of acres, helping reduce forest fires (woods burning once was an accepted practice in Arkansas and many other states), improving wildlife habitat (134,754 acres in Arkansas are under management programs), improving wetlands for wildlife (53,000 acres in Arkansas) and establishing and managing millions of acres of grassland.

FOREST SERVICE RESPONDS TO BOISE CASCADE AD ON THE MINAM

Mr. HATFIELD. Mr. President, in my home State of Oregon, tremendous support exists for enlarging the existing Eagle Cap Wilderness by the addition of the Minam River drainage. As my colleagues here today remember, last year my bill, S. 1142, added about 82,000 acres in the Minam drainage. This bill passed the Senate unanimously last fall.

This session of Congress, I reintroduced my Minam River proposal, and hope it can be considered soon. I first introduced legislation calling for preservation of this beautiful area in 1968, and I hope that this session of Congress will bring my hopes and the hopes of thousands of Oregonians to fruition. I certainly was pleased by the introduction of a bill similar to mine by Congressman AL ULLMAN, in whose district the Minam lies. I have talked with Congressman ULLMAN about the Minam, and I know he is aware of the great support for creating a Minam River Wilderness in his congressional district.

Recently, Boise Cascade, a forest products company with timber interests in Northeast Oregon, ran a full-page ad in the local papers in the area, lamenting the potential projected loss of jobs in the area, the decrease in taxes, reductions in the allowable cut, and other items they feared would occur if the Minam was set aside as a wilderness area. I will discuss at a later date in greater detail the various pros and cons of the Boise Cascade proposal. The company certainly has a right to its position, and, in fact, it supports extending the Eagle Cap Wilderness into a portion of the area covered in my bill. This act, if approved, would reduce both the jobs and taxes that Boise Cascade mentions in their ad, and they acknowledged this.

In my opinion, the entire Minam should be preserved as a wilderness area. When I introduced my bill this year, I discussed some of the reasons I believed supported setting aside this beautiful, pristine area.

Following publication of the Boise Cascade ad in question, the LaGrande Observer, a newspaper very near the Minam in Northeast Oregon, interviewed the respected Wallowa Whitman National Forest Supervisor John Rogers. I know John Rogers, and I certainly respect his opinion. His comments on the Boise Cascade ad shed some light on the situation in the area, and I ask unanimous consent that the LaGrande Observer interview of March 26, 1971, be printed at this point in the RECORD.

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

FOREST SERVICE EYES BOISE CASCADE, PATTERSON ESTIMATES

(By Gary Eisler)

Wallowa Whitman National Forest Supervisor John Rogers said today "I'm afraid the whole Minam thing is botched up."

Rogers made his remark regarding the recent Boise Cascade Corp. advertising campaign against protection of the Minam in wilderness status and Rep. E. E. "Ed" Patterson's recent mail poll on the Minam.

According to Rogers, Boise Cascade's and Patterson's estimate of 90 jobs being lost with the deletion of 10 million board feet are according to 10 year old computations and Boise Cascade's own calculation of allowable cut. But he cautioned that the Forest Service has no official calculation of the allowable cut from the Minam area.

Rogers said the Minam will be deleted from the allowable cut for the next 10 year forest management period regardless of wilderness status. He added that with the new forest inventory it is possible there will be an increase in total allowable cut despite noninclusion of the Minam into calculations.

"I don't have any idea where they got ten million board feet," he said. "Perhaps they have computed it from our statistics."

"No one at present has an accurate computation of allowable cut in the Minam," said Rogers.

"Anyone can make a calculation of allowable cut," he said, "with their own ground rules."

Rogers said he can't dispute Boise Cascade's calculations of allowable cut from the Minam because the Forest Service won't have an estimate on the area for at least another six months.

Rogers said the Forest Service computes allowable cut on different rules than private timber companies. He said the Forest Service allows 120 years for regeneration under its present management plan. Private timber companies, on their own property, often allow only half as long.

"They would like us to use a shorter rotation," he said, "but I don't think we will go to short rotation based on their assumptions."

Rogers predicted a slight overall increase in the allowable cut, despite deletion of the Minam area from such computations. Forest growth has increased since the last inventory in 1957–58, and the Forest Service had

reclassified the immense volume of lodge pole pine as commercial timber.

This possible increase in allowable cut comes despite an actual decrease in commercial forest land because of a Forest Service redefinition of commercial and operable forest land. The new definition will be reflected in the figures from the 1967-68 inventory.

Rogers said, in effect, that there will not be the predicted loss of 90 jobs, as was stated by Boise Cascade in their advertising campaign and Rep. Patterson in his questionnaire.

He said that if all Boise Cascade's computations about the Minam were correct and the old job-timber formula still held true, 90 jobs that would have been created by including the Minam in the allowable cut in the next management plan would not be created.

Rogers said that in the upcoming timber management plan, the Minam River area will be calculated separately from the rest of the forest. The allowable cut will be calculated from the remainder of the forest, according to Forest Service management plans, regardless of wilderness status.

Patterson asked registered voters: "Coming back to the Minam River Canyon question, it is estimated that adding 115,000 acres to the Eagle Cap Wilderness area would mean the loss of 90 timber industry jobs. If this were the case, would you favor or oppose making this land a Wilderness Area?"

Patterson next asked, "All in all, how would you rate the present quality of the living environment in this area?" and ". . . how would you rate the condition of the economy in this area?"

Boise Cascade's and Patterson's estimate of 90 jobs derived from a 1963 report, according to Donald Flora, Ph.D. of the Pacific Northwest Experiment Station in Portland. He said the calculation was of nine jobs per million board feet of timber based on 1960 research. The nine men per million was calculated for Eastern Oregon and Washington. In the Williamette Valley area, in estimated 20 men earn a years living per million board feet. The difference between areas, according to the report, is that wood products are further refined into finished products in the Williamette Valley area. Were the wood more intensively utilized here, he said, there would be more employment.

Flora also cited a joint Forest Service Pacific Northwest Experiment Station, Oregon State Forestry study that is to be released soon that notes movement of timber. The report indicates that twice as much Wallowa County timber is removed to be processed elsewhere than is processed there. According to Forest Service figures, only slightly more than two men per million board feet earn a year's living from only felling logs.

In 1968, 2,176,000 board feet of Wallowa County logs were transported to Umatilla County to be processed, and 35,279,000 were shipped to Union County. This left only 16,992,000 of Wallowa County logs that were processed in Wallowa County.

According to figures used by Boise Cascade to compute estimated loss of jobs from the Minam, fully 259 jobs have been lost to Wallowa County through rough processing of their logs in Union and Umatilla Counties. The number of jobs lost is even higher if calculations were made on the number employed in other parts of the state, doing finishing work on Wallowa County's lumber.

Flora of the Forest Service Experiment Station also said the decrease of mills in Wallowa County reflects an area wide trend. While there were once seven mills in the county, supporting a greater, population, now there is only one big mill at Joseph.

According to Stuart Hannah, recreation assistant for the Wallowa Whitman, allowable cut figures are deceptive regarding the Minam.

"It's not as simple as some people make out," he said: "They can't base jobs on timber they can't get." Hannah said there are many areas in the Minam that could not accept a road. He said cost of getting the timber out would possibly be higher than the value of the log.

"They would have to use ballon logging to do an acceptable job of management on much of the commercial timber," he said, "and there are other areas that they could do nothing on without damage."

ON GETTING OUT OF VIETNAM

Mr. PELL. Mr. President, at this time as we are searching for various ways to bring to a conclusion our involvement in Vietnam, I was particularly struck by the thoughts of Ambassador Charles W. Yost.

Ambassador Yost, has had a long and remarkably distinguished record in our Foreign Service, winding up with the rank of career ambassador and serving as our ambassador in many posts. He was called out of retirement to serve as our delegate to the United Nations and is immensely well qualified to express views of diplomacy on the world situation. However, because he has been in the administration until recently, he has not been able to express himself as he might.

It is for this reason that I ask unanimous consent that Ambassador Yost's words be inserted in the RECORD at this time as I think they will be of interest to my colleagues.

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

A FIVE-STEP PLAN FOR GETTING OUT OF VIETNAM

(By Charles W. Yost)

In 1968 I prepared for the Carnegie Endowment on International Peace and the Council on Foreign Relations a paper in which I urged that the recently commenced negotiations in Paris be used to seek a political settlement which, I pointed out, would require "substantial and painful concessions" by both sides.

It was perfectly clear that Hanoi would not accept a settlement which left the Thieu-Ky government in power indefinitely or which provided for elections to be carried out by that government, even with some international supervision. There is a strong tendency among Asian voters, even in relatively free elections, to accept "the mandate of Heaven"—that is, to vote for the party in power. To Hanoi, elections managed by the present Saigon government would mean loss of all they have fought for so long and so hard. This was obviously unacceptable.

My paper suggested, therefore, that we explore seriously and urgently in Paris whether the North Vietnamese would accept a neutral interim government to carry out elections, a government from which both the Thieu partisans and the National Liberation Front would be excluded, or, alternatively, both included, but in a minor role. If this were possible, I thought an immediate cease-fire could be brought about and the war rapidly wound down. If Hanoi insisted on an interim government which the NFL would clearly control, that would be unacceptable to our side and the negotiations would fail.

This paper was just about to be circulated to the members of the two organizations which sponsored it, when I was offered by the incoming Nixon administration the post of U.S. Ambassador to the United Nations. The first request which was made to me after I accepted the post was that this paper not be circulated. It was clearly inconsistent with the policy which the administration intended to follow.

ADVICE NOT SOUGHT

During my two years' service with the administration I was not involved in any way in the formulation or execution of its policy toward Southeast Asia. My advice was never asked on any substantive aspect of the problem nor was I involved in any National Security Council deliberations on it. I therefore watched from the sidelines with growing apprehension and heartache the prolongation of our military effort in Vietnam far beyond what seemed to me a rational or justifiable point.

In October, 1969, I was moved to submit a memorandum to the administration in which I made this argument as strongly as I could. I urged that we either "bring about a drastic change in the character of the Saigon government as a basis for political settlement" or, if that was considered to be unacceptable, that we "substantially accelerate troop withdrawals without a political settlement."

I never received any response to this memorandum. On the contrary, the Paris negotiations were allowed to degenerate into a charade and troop withdrawals continued at the same deliberate pace which in April, 1971, still leaves 300,000 American troops in Vietnam.

Even the announcement by the President of slightly accelerated withdrawals would leave about 180,000 Americans there at the beginning of 1972, nearly seven years after our major involvement in the war began.

It was and still is quite clear that, despite the Nixon Doctrine and the commitment to "Vietnamization," the President and his national security adviser, Dr. Henry Kissinger, continue to believe that "victory," in the sense of the maintenance of power of the Thieu-Ky government, can still be achieved, and that continued substantial U.S. participation in the war for this purpose is not only acceptable, but necessary.

"GLOBAL STRUGGLE"

They contend that all their military actions, both defensive and offensive into Cambodia and Laos, are designed to reduce American casualties, to protect American forces as they withdraw and to secure the release of American prisoners of war. Actually, there seems little doubt that, if the administration were prepared either to accept a political settlement involving a change in the Saigon government or to fix a proximate date for the total withdrawal of U.S. forces, the North Vietnamese would be only too willing substantially to reduce hostilites, as well as to release all U.S. prisoners by the time U.S. withdrawal is completed.

It appears more likely that the reasons why the President and Kissinger are preoccupied with at least the appearance of victory in Southeast Asia are: (1) the simplistic conception, stamped on their minds in their politically formative years and never relinquished, of an apocalyptic bipolar global struggle between communism and the "Free World" in which any setback to either side anywhere threatens critically the delicate balance of power everywhere; (2) their fear that the loss of South Vietnam, after the expenditure of so much American blood and treasure in its defense, would produce a domestic political upheaval in the U.S. which would discredit their administration and throw the Republican Party into the arms of its right wing; and (3) the panic which seems to overcome any American president at the thought of being the first "to lose a war."

"HUMILIATION"

These deeply felt emotions are, I suspect, much more decisive with the President and Kissinger than are the more prudent con-

sideration which led them to proclaim the Nixon Doctrine. They cannot yet bring themselves to renounce military "options" involving U.S. forces which they still hope will preserve the status quo in South Vietnam and which the American public could still be persuaded to tolerate.

The President has, partly by the exercise of his rhetoric, persuaded himself, as President Johnson did earlier, that the "loss" of South Vietnam, however it came about, would be an intolerable "humiliation," would cause the U.S. to be considered by both foes and friends "a pitiful helpless giant," and would fatally blot the reputation in history of the President who presided over it.

Actually, of course, the more leaders use this sort of langauge in public the more they create the atmosphere which could make it self-fulfilling. It is at least as reasonable to contend that the U.S. has, after six years of massive engagement itself and a vast buildup of the ARVN, far more than fully met any obligation it might have had to self-determination in Vietnam. If the government of South Vietnam cannot in 1972 maintain itself without U.S. military involvement, it is unlikely to be able to do so in 1973 or at any time thereafter.

Moreover, it would now seem to be demonstrated that no practicable expansion of the war is likely to be profitable or even tolerable. The Cambodian "incursion" last year and the Laotian "incursion" this year, while they produced marginal tactical advantages, have had two much more prejudicial strategic consequences: (1) They have seriously overextended the South Vietnamese forces which we have been trying to prepare to defend their own country, and, in the Laotian case, have badly damaged their morale; (2) they have so aggravated U.S. public dissatisfaction with the whole Southeast Asian enterprise that, as the polls indicate, a majority of Americans now wish to withdraw almost immediately. Under these circumstances no further expansion of the war, concerning which the President still seems determined to keep his "options" open, lies within the realm of political reality.

TRAGIC HISTORY

In this connection, neither the administration nor the public has faced up to the role present and future, of U.S. air power in Southeast Asia. The impression is, however, emerging that the massive way in which it has been used in South Vietnam since 1965, and in Laos and Cambodia more recently, is not only indecisive and often counterproductive in a war of this character, but is so undiscriminating between combatant and noncombatant, so devastating to the lives and livelihood of friends more than of foes, so cruel and inhuman in its scale and consequences, that is unjustifiable under either the laws of war or the laws of common humanity.

In summary, in light of all this tragic history and these inexorably accumulating facts of life, what should the United States do now about getting out of Southeast Asia? I would propose the following five steps.

1. We should promptly and publicly fix a date for the total withdrawal of all U.S. military forces from South Vietnam—subject only to North Vietnamese agreement to commence releasing U.S. prisoners as soon as the date is fixed and to complete the release of all prisoners before withdrawal is completed. This date should preferably be Dec. 31, 1971, but, if this should turn out not to be logistically feasible or if agreement on the release of prisoners could not be obtained soon enough, it might be March 31 or even June 30, 1972, but certainly no later.

GENERAL TRUCE

2. At the same time that we fix a date for withdrawal we should propose a general cease-fire, to take effect at once or at any time prior to completion of withdrawal. We should not, however, make withdrawal conditional on a cease-fire. Acceptance of a general cease-fire would mean that the status quo throughout South Vietnam, and perhaps Laos and Cambodia as well, would be frozen while the Americans are withdrawing. It seems unlikely that such a freezing for a period of many months would be acceptable to either North or South Vietnamese. On the other hand, after a date had been fixed for U.S. withdrawal, local cease-fires to facilitate withdrawal might be quite feasible.

3. Before announcing a fixed date for U.S. withdrawal, we should offer the South Vietnamese government a last opportunity to negotiate a political settlement on the only basis on which it might conceivably be negotiated—that is, an interim government acceptable to both sides to carry out elections. Obviously, if Saigon were willing to try to negotiate such a settlement, it would have a better chance of doing so successfully while the Americans are still militarily present in Vietnam and participating in the Paris negotiations. Since, however, I very much doubt that the Thieu-Ky government would agree to negotiate a settlement of this kind, even faced with the prospect of early U.S. withdrawal, I should not suggest delaying for this purpose for more than one month announcement of a terminal date for U.S. withdrawal.

NEW CONFERENCE

4. We should, simultaneously with this announcement, propose to all participants in the Geneva Accords of 1954 and 1962 return to the full application of those accords, with such modifications as changed circumstances require or as seem desirable to all concerned, but specifically including withdrawal of all foreign forces (including North and South Vietnamese) from Laos and Cambodia and reaffirmation of the neutralization of these two countries. One modification of the accords which would be most desirable, if it could be obtained, would be the reaction of more effective supervisory machinery than the old international control commissions. If a new Geneva conference were necessary to accomplish these ends, as it very likely would be, such a conference, with the same or larger participation, should be convened as soon as possible. The conference could also concern itself with Vietnam, if the governments of both North and South so desired, but it would not necessarily do so.

5. We should at the same time reiterate the offer we have made in the past to contribute substantially to a program of economic rehabilitation, reconstruction and development in North and South Vietnam, Laos and Cambodia, to be carried out preferably under United Nations auspices.

Achievement of the objectives proposed under these five points seems to me realistic and practicable. Achievement of the objectives apparently still being pursued by the administration seems to me an empty fantasy, the continued pursuit of which under present circumstances would be disastrous to the security, welfare and moral character of the American people.

EIGHT AMERICAN ERRORS

The direct and massive U.S. military involvement in Southeast Asia beginning in 1965 was grossly disproportionate to any national interest the United States had in the area, and soon proved to be prodigiously damaging to the welfare of the Vietnamese and Laotian people. There are many reasons why this highly motivated but disastrous miscalculation by U.S. leadership occurred. In my view, eight major errors of judgment caused us to get in so deeply:

1. The first was the belief that Communist China had in the 1950s and 1960s both the intention and the capability to extend its dominion beyond its borders, especially southward either through invasion or, more probably, through "wars of national liberation" which it would inspire and support. In the cooler light of hindsight, we can now note that, with the exception of the war in Korea, which was certainly felt to be defensive, and the war in Vietnam, which derives almost wholly from Vietnamese rather than Chinese inspiration, Communist China has shown little intention or capability of involving itself directly or indirectly in military adventures outside its borders.

2. The second mistake in judgment, the "Domino Theory," was the belief that Southeast Asia outside Vietnam was acutely vulnerable to wars of national liberation or to subversion and takeover, that if South Vietnam fell others were almost certain to follow. This error arose from an undiscriminating extrapolation of the situation in South Vietnam, which had for 10 years prior to 1954 been deeply infested at the grassroots with Communist cadres, to the rest of Southeast Asia which had not been penetrated to anywhere nearly such a degree. Of course, the extension and conduct of the war in recent years have made Laos and Cambodia much more vulnerable to takeover than they were in the 1950s.

3. The third error in judgment was the belief that North Vietnam, if partially or wholly victorious in the south, would serve thereafter as a compliant instrument of Communist China. Actually, as the history of the past 25 years has amply proved, only the Yugoslav Communists have rivaled the North Vietnamese in stiff-necked recalcitrance and independence.

4. The fourth error was in imagining that NATO could be duplicated in Southeast Asia and in setting up there a purported military coalition which was in fact only a facade for unilateral U.S. support of several weak countries. Nevertheless SEATO had the effect of committing the U.S. to a deeper and more formal involvement in Southeast Asia than was wise, without in fact significantly increasing its capabilities there.

5. Perhaps the most decisive mistake made in Vietnam and, for a time, in Laos was, on the one hand, U.S. insistence that regimes it supported be 100 per cent anti-Communist and anti-neutralist and, on the other, its failure effectively to insist that the support it so unstintingly provided these regimes be used to carry out reforms which might have given them an expanding popular base.

6. The sixth mistake arose from the extravagant faith in "counterinsurgency" which swept Washington in the early 1960s. Based on the correct assessment that Communist aggression was henceforth more likely to take the form of insurgency than of massive attacks across frontiers, it nevertheless enormously over-estimated the capability of U.S. forces, no matter how thoroughly trained for this purpose, to conduct this highly sophisticated and acutely political type of warfare in environments where language, customs and physical conditions were so wholly alien to them.

7. The seventh error was also a military one: U.S. insistence on organizing and training most of the Vietnamese forces, from 1954 on, to fight a European or Korean-type war rather than to counterinsurgency. Serious efforts have been made in recent years to correct this error, but even now the ARVN is still trained to fight with massive air and artillery support, which obviously will be far less effectively available when the Americans depart.

8. The final error of judgment occurred repeatedly after our massive involvement, when we so often neglected or fatally compromised potential opportunities for negotiation, either for ephemeral military advantage or for fear of causing trouble with and for the Saigon government.

NUTRITION PROGRAM FOR THE ELDERLY

Mr. PERCY. Mr. President, on Tuesday of this week I testified before the Labor-HEW Subcommittee of the Senate Appropriations Committee, which is

now holding hearings on the second supplemental appropriations bill for fiscal 1971. I stated my intention to propose an amendment to this bill to provide $1.7 million to enable the Administration on Aging to continue funding for 1 additional year a program of 18 demonstration projects designed to improve nutrition services for the elderly.

In 1968, $2 million was appropriated to initiate this special program of research and demonstration projects. Thirty-two grants were made, and 18 projects are still in operation throughout the country, although 17 of the 18 are due to expire by the end of this fiscal year and the last one on October 24.

These nutrition projects differ from community to community and serve a variety of socioeconomic and ethnic groups. In addition to providing the elderly with nourishing meals, the program has one broad goal—to overcome the social problems underlying inadequate diets among older people. John B. Martin, the very able Commissioner on Aging, has noted the Administration on Aging's "conviction that a sense of belonging and other psychological and social values accrue from the pleasures of mealtime and from eating with others." Indeed, the opportunities for increased socialization which occur in these projects are as important to the older participants as the nutrients they receive.

A report issued by the Administration on Aging points out that, "Raising the income level would not motivate the aged person to cook for himself alone; it would not help the invalid to shop; it would not alleviate the feelings of loneliness, rejection, and apathy; it would not help the aged person to understand the need for a nutritionally adequate diet, or how to achieve it."

For these reasons, all of the nutrition programs under title IV of the Older Americans Act have certain common elements thought necessary to meet the real needs of the elderly. These are: First, a reaching out into the community to locate those most in need of the program; second, the building of nutrition education into the project; and third, provision for a variety of ancillary social services.

The projects due to expire over the next months are located in the following places: Phoenix, Ariz.; Los Angeles, Calif.; Denver, Colo.; Washington, D.C.; St. Petersburg, Fla.; Emmett, Idaho; Chicago, Ill.; Olive Hill, Ky.; Roxbury, Mass.; Detroit, Mich.; Jackson, Miss.; Helena, Mont.; Walthill, Nebr.; New York City; Cincinnati, Ohio; and Salt Lake City, Utah. Over 14,000 meals a week are served to senior citizens in these programs.

Permit me to take special note of the Chicago project, which is one of the largest and most successful. Almost 2,000 people were fed 12,941 meals in December 1970 in 31 different locations in the city of Chicago. A total of over 3,400 elderly persons are registered participants. The cost of meals to the elderly, depending upon their income, is 45, 65, or 80 cents. The program is centrally administered by the Division for Senior Citizens of the City's Department of Human Resources, but it makes economical use of established community agencies and organizations.

From all indications, these nutrition projects have been immensely successful not only in providing hot meals to many senior citizens who might otherwise be hungry and malnourished, but also in facilitating the delivery of other social services, in fostering social interaction, and in meeting the emotional needs of the aged. Interim reports are unanimous in noting that many lonely, isolated elderly men and women have regained a zest for living largely because of these communal dining programs.

These programs were established on a temporary basis for the purposes of research and demonstration. I realize that some permanent program needs to be established, and I am a cosponsor of legislation which will accomplish this objective.

But it will take time for Congress to act on this proposal and for a new program to be implemented. I am deeply concerned that in the interim these valuable demonstration projects will be terminated without any alternative provisions being made. If we discontinue these services to our senior citizens, we will lose the organizational structure, valuable expertise, and experienced manpower needed as the basis for a permanent program.

I am very troubled by the possibility that some elderly people may now go hungry if we fail to fund the existing projects through passage of my amendment. We are all dedicated to eliminating hunger and malnutrition in all segments of our population. Why should we abandon a successful program that is accomplishing a part of this task?

The cost—$1.7 million—seems a small price when we consider what it will mean to the elderly. Compared to the amount of Federal funds needed to provide institutional care for the elderly, the expenditure is minuscule.

In recent testimony before the Senate Select Committee on Nutrition and Human Needs, Commissioner Martin said:

> There is no data on the extent to which the costs of these programs (Medicare, Medicaid, Mental Health) are increased by malnutrition among older Americans, but there are good reasons to believe that an investment in improving the nutrition of this age group would be substantially offset by savings in other publicly financed programs.

Mr. President, the case for extending these demonstration projects seems overwhelming. It is made even more persuasive when one hears directly from participants in these programs—and I have had letters from hundreds of senior citizens who participate in the Chicago nutrition project, from the directors of the projects, and others as well.

I had the privilege of meeting a number of these dedicated directors when I addressed the annual membership luncheon of the National Council on the Aging and announced my intention to work for renewed funding of the program. I asked them to provide me with details about their projects which I could pass along to my colleagues.

I ask unanimous consent that the material on the demonstration nutrition projects be printed in the RECORD.

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

DEPARTMENT OF HUMAN RESOURCES,
Chicago, Ill., March 15, 1971.

Hon. CHARLES A. PERCY,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: Thank you for your inquiry of March 9, 1971 regarding the Chicago Nutrition Program for Older Adults. The third and final year of this research and demonstration project is funded on a matching basis by the City of Chicago and the Administration on Aging (Title IV of the Older Americans Act) of the U.S. Department of Health, Education and Welfare (Grant Number 93–P–75028/5–03).

You and your staff will be interested to know the impact this project has had in meeting the needs of Chicago's elderly for improved nutrition, nutrition education, socialization and supportive services.

Almost 2,000 people were fed 12,941 meals in December, 1970. A total of over 3,250 elderly are registered participants served in 31 sites in the City. The cost of the meals to the elderly, depending on their income, is 45¢, 65¢, or 80¢. The program is centrally administered by the Division for Senior Citizens, but makes economical use of established community agencies and organizations for the housing of individual sites and other purposes. The Chicago program is the only project, of the 31 funded by the Administration on Aging, which functions on a city-wide basis.

The project has demonstrated the feasibility of a city-wide food and services delivery system for the elderly. As a result, community support is gathering momentum. Increasingly numerous requests for the development of new sites and the maintenance of the existing sites reach the Division for Senior Citizens from the elderly of all ethnic and socio-economic backgrounds, from church groups, social agencies, community organizations, etc. Such requests unfortunately cannot be honored due to the restrictive characteristics of the research and demonstration grants such as level of funding, requirements of the research design, and most critically the grant termination date.

It is therefore regrettable that just as the program's benefits are beginning to surface and to become known to the community, the project is faced with a grant termination date on June 28, 1971. The needs that the program meets will not go away. Indeed, they will grow in direct proportion to the elderly's growing awareness of their rights.

Although a program of this scope cannot be maintained without Federal support, we have been able right along to persuade a number of the cooperating community agencies to absorb part of the program cost. We are seeking city support for the maintenance of at least a skeletal program after the grant termination date. We are exploring all other Federal funding sources which may now or in the near future salvage this critical service for Chicago's elderly. These efforts, however, represent tactical delays. Without assured Federal and/or State and local support, phasing out of the service from the community is inevitable and will contribute to the bitterness of the elderly who are well aware of the low priority generally assigned to them.

Solutions to the problem could be developed in three steps. First, temporary program and grant extensions might be assured by securing authorization from the Administration on Aging to utilize the project's accumulated Federal surplus (matched by the equivalent city surplus) for the period immediately following the grant's termination date. Secondly, although research and dem-

onstration projects are usually given a fast time limit, *continuation* has occurred in the past when sufficient interest has been expressed and justified by the appropriate persons. Thirdly, timely enabling legislation and adequate appropriations must ultimately represent the only permanent solution. The latter step should take cognizance of the potential legislative resources existing or proposed for the U.S. Department of Agriculture, Housing Urban Development, (since many sites operate in CHA senior citizens buildings) as well as for the Administration on Aging or other Divisions of the U.S. Department of Health, Education and Welfare.

We would welcome your support in pursuance of these three steps, failing which our hopes of maintaining the program are nil and we may anticipate further pleas from Chicago's elderly.

Pertinent material is enclosed. If you have any questions or require additional material, please feel free to write or call me. Any assistance you can render will be greatly appreciated and acknowledged.

Every good wish for a successful session.

Sincerely,

ROBERT J. AHRENS,
Director, Division for Senior Citizens.

WESTERN IDAHO COMMUNITY ACTION PROGRAM, INC.,
Emmett, Idaho, April 6, 1971.

Hon. CHARLES H. PERCY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PERCY: Thank you for holding the press conference following the luncheon meeting at the National Council on Aging session on March 31.

We certainly appreciate having the opportunity to speak on behalf of our meal programs. Also, your presentation at the luncheon was tremendous and I only wish I could relay all of it to the people in Idaho.

Enclosed please find information concerning our Title IV HEW Demonstration Grant on nutrition. There are four meal programs under this grant in Washington, Payette, Gem and Valley Counties. Each Senior Advisory Committee has written a letter about their specific meal program in their county. We serve approximately 670 meals per week in the four counties. The grant pays for outreach aides, cooks, project director, secretary, part of the raw food costs, repairs on kitchen equipment, and part of the rent and utilities in some sites.

We have tried repeatedly to spin this off to existing organizations or local government. Even though they are interested and sympathetic, they do not see fit to stretch and include the Senior programs in their budgets. Consequently, our only asset is the Seniors themselves and this place a considerable burden on them. But, if the Title IV project could possibly be extended for another year, it would be a great help to our Seniors in Western Idaho and to all 32 such programs over the nation.

Thank you Senator Percy for introducing the bill for extension of Title IV Nutrition Demonstration for another year. Also, for your concern and efforts on behalf of the Older Americans.

Thank you again.

Sincerely,

LEONARD D. HARBISON,
Executive Director.

EMMETT, IDAHO,
April 6, 1971.

IVAN SIMONSEN,
Director of Senior Services, Western Idaho Community Action Program, Emmett, Idaho

DEAR SIR: It has been brought to our attention that some of our national legislators are concerned about the nutrition programs in the country. We could write a book of personal testimonials on the worth of the program. We feel that we are not able to continue unaided, and urge you to use all the influence of your office, to give these responsible men the moral and statistical support necessary. We are certain if our governing body is made aware they will respond to this great need.

This is not a personal request but an expression of hope from 268 eager participants of this community.

Respectfully Yours,

HOWARD CAYFORD,
President, Gem County Seniors.

APRIL 6, 1971.

SENIOR SERVICE DIRECTOR,
Emmett, Idaho

DEAR SIR: It is hard for us as Seniors to put into words just how we feel about our Senior Citizen Program. It has enriched all of our lives to the extent that we now have a real zest for living. The meal program has been a tremendous tool to get us together around a table twice a week. Besides the good we get from the nutricious meals we also have such a grand time socially.

We love to work and volunteer in the program and we do what we can and proud that we are able to do so, however because of our age and most of us are in the low income bracket it is going to be a financial burden almost impossible to carry. If we have to provide all the funds for the program we fear that we will have to close our doors. Another year of funding from HEW would be a wonderful help to us. Please do all that you can to help bring this about.

Sincerely,

H. C. KARTCHNER,
Chairman of the Senior Advisory Committee.

STAR, INC.,
Greenwood, Miss., April 7, 1971.

Senator CHARLES PERCY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: The Food and Nutrition for Aged Program, operated under AoA Title IV, provides a daily meal at 10¢ per person for 200+ aged, poor black persons in the Mississippi Delta rural region. In this area the average income of the aged poor black is $650.00 or less per year, or about $54.00 per month. These aged poor blacks subsist mainly on welfare or private donations, as being mainly tenant farmers in their working years, they have not qualified for social security.

Our research and demonstration project for the three funded years was to develop, through a meal served in a social setting, the techniques, methods, and services to bring the aged, poor, rural, persons from isolation into the mainstream of family and community life, and to develop techniques and methods for teaching nutrition education to the aged poor in our rural area.

Evaluation shows our goals are being successfully reached. However, without federal funding our meals will cost close to $1.00, an impossible fare for the rural aged poor, some of whom have to seek private donors for the present 10¢ per meal payment. Without federal financing of our program, these aged rural poor whom we now serve will be once more abandoned, living in the dehumanizing misery and poverty of their country shacks.

Sincerely yours,

LEOLA G. WILLIAMS,
Project Director.

PROJECT CAFE,
New York.

Of the approximately 450 participants in the CAFE program (averaging 150 per day), we estimate that 20% have monthly incomes below $135, another 50% below $185 (the food stamp eligibility standard), and another 25% below $250.

Our demonstration goal for the three year funded period was to see if the participants could form a non-profit cooperative, so that they could carry on the business end of the program when federal funding ended. CAFE Co-op has just been legally approved by the State of New York.

But here is our problem. Without federal funding, the price of the meal will jump from 65¢ to a minimum of $1.30. This will automatically exclude those who need the service most: those living in furnished rooms, who can't afford a main meal of the day except in places like ours; widowers who have no one to cook for them; those whose income is near the poverty level; and those on Public Assistance.

GERTRUDE W. WAGNER,
Director, CAFE.

URBAN LIFE CENTER,
HENRY STREET SETTLEMENT,
New York, N.Y., April 1, 1971.

Hon. CHARLES H. PERCY,
U.S. Senate, New Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: I was happy to meet with you and attend a press conference with you yesterday, March 31, 1971, and to share your concern about the impending termination of funding for Title IV Programs under the Older Americans Act.

Our demonstration runs from May 1, 1968 to April 31, 1971, so we will soon be forced to decrease the services we currently provide to aged people. The grant provides a daily weekday lunch at the Good Companions Center for 50¢, which is half of the days Welfare allowance for food in New York City. The lunches are served in a group setting providing warmth and companionship, complemented by a full program of recreational and social services. The program also offers frozen weekend meals, and a hot meal delivery service for the homebound. A group of elderly volunteers provide the homebound meal delivery service, and several elderly participants are employed as kitchen and dining room aides. On the average, 150 elderly are served by the luncheon program each weekday; and we have served 375 elderly persons since the beginning of the year.

We feel that the elimination of the luncheon program at the Good Companions Center will be very burdensome to many of our participants—regular and non-regular. If the elderly were no longer able to eat a low cost, hot and nutritious meal in a warm setting among peers, their lives will be greatly encumbered and much less fulfilling. Their human contact will be diminished. Alienation and loss of self-respect will come when they realize that the most impoverished minority in America is again receiving a diminution of services. Appetites will become poorer, they wil suffer from poorer diets, with poorer health as the most likely outcome, many will return to eating from garbage cans. I have no doubts that many of our clients will acquire greater amount of health care, and many will have to turn to nursing homes or extended care facilities.

There is much more to be said, but I have tried to be brief. I am sure that you share my feelings that human problems should receive a higher priority, with the aged receiving the care they need to remain active and healthy members of the society.

Sincerely,

EDWARD J. KRAMER,
Director of Services to the Aged.

SAM'S—(SERVE A MEAL TO SENIORS),
Denver, Colo., April 6, 1971.

Senator CHARLES H. PERCY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: I am hopeful that you will be able to attach a request to continue the Title IV Nutrition Projects for the Aged to some piece of promising legislation. The one-year limit should make it attractive to the Administration, and thereby ensure more support. I feel sure that Senator

Dominick and Senator Allot would help you in this effort.

It is unusual to find a research and demonstration idea that has become so important to so many people. In fact, so important, that it must be continued. Those of us who work with these projects daily are convinced we have found an answer to one of the most nagging social problems we face today. We must continue our work because to discontinue our efforts would be devastating to too many people.

Our project here in Denver has become part of the lives of at least 800 senior citizens, who find in us, not only a good meal for a price they can afford, but also a place where they are received with dignity and friendship. A reason *not* to withdraw from a society that does not seem to want them.

Senator Percy, we are grateful beyond words for your interest in the older people of our nation. Anything we can do to assist you accomplish your goal, we will do, and please call on us. We have several hundred senior citizens here in Denver who will write letters supporting any legislation you propose. Enclosed is a brief statement of what would happen to our participants if the SAM'S project were to end.

With my best wishes for your success.

Sincerely,

(Mrs.) LUCILLE H. REED,
Project Director.

SAM'S—(SERVE A MEAL TO SENIORS)

The SAM'S (Serve a Meal to Seniors) project, in Denver, Colorado reaches into the lives of at least 800 senior citizens. The project started with one location in the downtown area, hoping to reach the isolated elderly, no matter what their income. Twenty-six attended the first meal. Now there are seldom less than one hundred each day, at that location. In addition, meals are now served at five other locations, and attendance is growing everywhere we serve.

The reason for this growth is obvious. The acceptance of our program by the participants themselves is the most important factor. We are answering a proven social need in a dignified way, one which offers the senioir citizens a chance for involvement. For many of our participants, the SAM'S program is their only social contact, for these people have withdrawn from other, more frustrating endeavors. Many times we have seen isolated, lonely people respond to the warm atmosphere of a good meal with their peers.

If our project were to stop now, we know that many of our participants would suffer nutritionally, for our research indicates that the SAM'S meal is the major portion of their dietary intake each day. Besides those who suffer nutritionally are those who suffer emotionally. What value can you place on a smile of welcome? What is the real worth of a friend's hand-shake to an isolated, rejected human being? Who can purchase a sense of well-being, or a feeling of being wanted and needed? *And*, when something we love is taken away, such as a gracious place where we may share a meal with our peers in dignity, would not the natural response be one of anger and *further* withdrawal from a society which does not want us?

The SAM'S project was intended to prove that senior citizens can run a program themselves with a minimum of supervisory help. In line with this belief, 46 senior citizens are employed part-time, proving usefulness and dependability. Twelve senior citizens have served on our advisory board for the past three years, assisting with policy decisions, and seven senior citizens will form a board of directors when SAM'S incorporates, thus proving that old age does not necessarily mean inability to manage.

The SAM'S project must not discontinue. The purpose of the research was to seek a proper answer. How frustrating to the older Americans involved if the research finds this answer, but the answer cannot be used for lack of funds.

DEPARTMENT OF PARKS
AND RECREATION,
Detroit, Mich., April 1, 1971.

Senator CHARLES H. PERCY,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: Our sincere appreciation is extended to you for your efforts to initiate emergency legislation to continue the Senior Citizens Food and Nutrition program currently funded under the Older Americans Act. Margheritta Loud, who represented Detroit at the Press Conference, called me from Washington to give us the encouraging news. She indicated that you would like to know more about our program.

There is no doubt that this is one of the finest programs ever devised which provides direct services to the elderly. Our "Food and Friendship" program provides hot noontime meals along with social recreational activities, nutrition education and counseling, a visiting program for the shut-ins, and free transportation to and from the participating centers, doctor's offices and clinics.

Our service area includes two inner-city housing projects and several churches and recreation centers where census data indicate large numbers of low income elderly persons. In a *six* month period from July to December 1970, close to 3,000 meals were served, 1,100 persons took advantage of the transportation service, 843 visits were made to the homebound, 490 enjoyed the potluck dinners and 1,136 participated in the nutrition education program. An additional 124 persons enrolled in our Weekend Dining Club.

The true measure of the program is extremely difficult to define. We can only tell you that we have observed attitude changes of our Seniors toward themselves and toward others. Feelings of dignity and self-worth and a friendly rapport with other members of the group are now evident. Their interest in community affairs is renewed. They eagerly seek information on shopping trips, menu planning and consumer news.

Perhaps the best way to explain their feelings about the program is to include with this mailing, letters we have received urging continuation of the program.

We will make every effort to lend our support in every way we can and will contact our Michigan representatives to urge them to do the same.

Sincerely,

MARGARET A. HOSSACK,
Senior Citizen Program Coordinator Secretary, Mayor's Senior Citizen Council.

SUCCESS STORIES OF ROCKY MOUNTAIN DAILY DINNER CLUBS

AOA TITLE IV

Case studies

I. When we started this Dinner Club three years ago we contacted an elderly bachelor living in a small shack near the airport. First he came to dinner very reluctant because he thought he didn't have the right clothes, but he came and often brought a friend. Soon his property was bought by the airport, everyone was happy for him. About every three months he would go on a drinking spree and get very ill. After he started coming to the dinner club, he had very few such sprees. He has a pick-up truck and hauls wood and helps others who need to move. We feel that we have helped by being available when he needed companionship and doesn't have to use the bottle to drown his loneliness.

II. Three weeks ago the center leader called to say that one man came to dinner and looked very ill, eyes glassy and he didn't talk coherent. They talked him into seeing a doctor that afternoon and two Senior Citizen friends called on him that next day to make sure he had something to eat. He had a bad throat infection so it took a week or so to get him to feel up to par. Charlie felt wanted and decided to take his medicine and get well. Now all the Senior Citizens watch over him and give him the will to live.

III. A month ago I was called about a 70 year old lady whose son was home and he was concerned about his mother who he was getting out of the hospital with a broken pelvis and is now bed ridden. His father is unable to care for her and the neighbors were taking him meals. I told the son we would take dinners to them and would call around to find someone to clean up the house and give the mother other help that was needed. In desperation I called the Welfare and they were able to send in a homemaker for three weeks. We are again looking for steady help for this family. The couple are so happy with the dinners and are so gracious to the center aide. We will keep in touch with this family to help them stay in their own home.

IV. This summer we have lost two of our shut-ins. They stayed at home and enjoyed the meals brought to them. We feel that our dinners and callers were a big help to their morale and to their friends and relatives.

V. One of our shut-ins is partially paralyzed. She has a small home with rental property. We deliver her meals everyday. She does not want to sell her property because she hopes to be better soon. The aide that takes in the meal often goes back to help her clean and goes grocery shopping for her. She is getting better everyday.

VI. Not all the reactions to our meals are good. Several of the people who used to eat here regularly have complained about the food. We encourage them to come on the days we prepare the meal at the center. Our menus are not repeated for five weeks, also we try to change them with the season. We also encourage them to ride downtown and eat at another eating place, but they soon come back.

Other criticism we have is from people who do not eat with us. Rumors do flourish among Seniors. When we hear this we ask them to come as a guest then they can see for themselves. We've asked the Dinner Clubbers to submit their favorite foods so that we can plan to fix their favorite meal for them. We work very hard to help the program along.

VII. One lady who has been crippled for four years by a stroke is picked up daily and brought to the daily dinner club. She says she has to get up and dress and she has only been ill once, she was delivered her meal at home for one week and was back to the center happy again. She tells everyone it is her life.

VIII. One man who has been an alcoholic felt he had nothing or no one to live for had started coming with a friend. He now dresses up everyday and is delighted with the fun, plays cards and has an interest in others, not the bottle. He tells other seniors this is the best therapy—to be involved. He enjoys the meetings and other activities of the Senior Citizens.

IX. We have a couple who come to dinner everyday. She says she is able to cook at home but her husband, who had a stroke needs to be with people. He is a very well educated man and has many hobbies. He seems to have great interest in others, reads many books and tells others about them. We feel that the meal is secondary if the person has someone to eat with and talk to. We have many others who can and will testify that the dinner is the highlight of their day and life.

X. Mrs. Mary Burkard is an 86 year old widow. She lives alone in a low cost housing area. She is delighted with the Senior Citizens

Dinner Club which delivers a dinner to her every weekday at noon. She likes the food and eats well. Mrs. Burkard is quite concerned about the discontinuance of this service.

XI. Mr. and Mrs. August Sparing live in their own home, they are in their 80's. Mrs. Sparing suffered a cracked pelvis recently and can not move without using a walker. Mr. Sparing is ill and quite feeble. They are afraid that the meals will be discontinued, each feels that the one good meal a day is the only thing they really have to look forward to each day.

XII. Emma is 79 years old, a permanent fixture of downtown Helena. Every one knows and loves her. She has never had a Social Security card, she lives in an old shack with no water or indoor plumbing. Emma walked in for dinner one day shortly after we started the dinner club. She enjoyed the meals and the games, she goes to the Drop-in Center because she enjoys the people and warmth. Last year she was missed for two days from the drop-in center and daily dinner club. Everyone was concerned when we couldn't locate her at home. At that time we were having a blizzard with weather below 30° and 54 inches of snow. She has a habit of walking out to the cemetery—Her story was soon told on radio and television and the Lewis and Clark Search and Rescue Unit decided to hunt the drifts along the roadside. Her neighbor went to the store and heard all the commotion about Emma. She said Emma was in bed at her home for she had come to her three nights before with a bad fever. She had no radio or television so she had not heard of our concern. We forget many of our Senior Citizens do not have radio's or televisions. We feel we have made Helena more aware of what can happen to a person living alone in our city.

XIII. When this program first started we did an intensive house to house survey to invite the older people to come. We found Henry, 96 years old living on the third floor of an old railroad rooming house. He had a small gas heated stove to cook from. The first year he didn't miss a day, he walked down and seemed interested in everyone. He had a bad cough in the winter and it was hard for him to eat, so we got him to the doctor. With the daily meals he functioned very well. One day we missed him at dinner and an aide went to check on him. He had fallen, he is almost blind. He was taken to the hospital then to a convalescent home. He had made many friends so had many visitors. He died last fall, he had found friends who cared through the dinner club.

XIV. We still have Nellie on our take out list. She has a meal everyday, she lives alone in a low income apartment house in downtown Helena. One day when the aide took a meal to her, she found her on the floor cold and very hurt. An ambulance was called and she was taken to a hospital with a broken hip. She remembers falling and doesn't know if she was there more than one night, but she knew that the aide would be there with the noon meal on Monday. She is out of the hospital and enjoys her meal very much.

XV. Mary Faucette lives in back of her upholstery shop and was very self supporting. One day a meal was taken to her and she didn't answer the aides knock, but the aide could see Mary on the bed. Finally the aide got in to find Mary unconscious. She had taken an overdose of pills. After she got out of the hospital she was fine for a few months. One day the aide found her on the floor, she said she had been there since the evening before. She broke her arm and hip, but is back at home with a nurse that comes in once a week and a homemaker from Welfare. Mary is in her own home now and we take her meals in as we did before.

XVI. Goldie lives in an old apartment house. She has a lovely apartment inside, she had a small stove and no refrigerator so she didn't eat correctly. She used a cane and could hardly get around, but she had been a lady of means and had nothing left when her husband died. She collected her Social Security and sat in her apartment with her leg getting worse with arthritis. We took in her meals and soon talked her in to trying to get out and come to the dinner club. She did this and soon threw away her cane. She heard of the Foster Grandparent Program and started working again. She never missed a day and has been able to make enough to bring her up to living standards. She is happy and healthy and joins in with all the Senior programs that she can.

XVII. A month ago one of the Urban Renewal workers came into the City Annex Dinner Club and told us he had found an elderly lady in a room across the street, she had moved back into an apartment that had been condemned. She was sick in bed and had arthritis in her legs, also no food or heat. We take her dinners and one aide takes her meals on the weekends. She talked someone into putting in a gas heater and hot plate to cook on. We hope to get her moved into a better place, but she says she wants to be close to the action. She says she will come to dinner soon. She is up now and can use her crutches.

XVIII. Mae was found when we first started taking meals in. She is an Indian lady that owned a little restaurant in Boulder, Montana. She became ill and the doctor diagnosed it as diabetes and advised her to watch her diet. She disregarded the doctor's advice. She lost one leg and was in the hospital long enough to use up the money from the sale of her business, home and car. When she came out of the hospital, she was put on welfare and watched closely by her doctor to see that she ate correctly. She was old enough to get social security.

She lived in a run-down low-income apartment. Eventually she lost her other leg, and became dependent on others. We often got her out of the apartment in the wheel chair, down to the daily dinner club where she could enjoy the people and dinners. She enjoys playing cards and got along fine for a while, but within the next four months she lost an eye and this made it difficult to do any fancy work, read or watch television. Mae moved from one apartment to another as each one was too hard for her to get around.

One move she made she had to have furniture and through the Director and the VISTA enough living room and bedroom furniture was found so she could be comfortable. In the past three months Mae has moved to Stewart Homes, a low-income housing project, where she has a ramp for her wheel chair and she hopes to be able to enjoy the lawns, trees and being out of doors.

She is on welfare and gets food stamps, but this is not enough for her to buy fresh fruits, vegetables, meat, etc., so she can maintain her diabetic diet. We have been delivering her meals free for the past two years trying to help her be on her own.

COMMUNITY SERVICES COUNCIL,
SALT LAKE AREA,
Salt Lake City, Utah, April 9, 1971.

Senator CHARLES H. PERCY,
Senate Office Building
Washington, D.C.

DEAR SENATOR PERCY: The Title IV nutrition project being conducted in Salt Lake City, Utah, makes use of the public school cafeteria facilities for serving noon meals to the elderly.

Two hundred fifty-one persons participate in the program in an average month. Last year 526 individuals were served during the year.

We are presently working with the Salt Lake City School District and the Salt Lake County Department of Social Services to determine the means for continuing the program upon termination of federal funding. No workable solution has been arrived at to date.

If the project is not continued, there will be many lost souls who have come to depend on the program, not only for meals, but also for the social contact and the educational and enrichment activities provided after lunch in the schools. We know that many of the older people would simply sit at home until personally urged to join another senior citizens' group and be provided with transportation. No other program for the elderly in this area emphasizes the nutritional aspect as does this Project.

Cordially,

FREDERICK E. KEEFER,
Director, Adult Nutrition Activity Program.

SOUTH COUNTY SENIOR CENTER, INC.,
Edmonds, Wash., April 6, 1971.

Senator CHARLES H. PERCY,
Senate Office Building
Washington, D.C.

DEAR SENATOR PERCY: Your active interest in the problems of the retired person is appreciated not only by myself and the senior citizens I represent, but by the others who attended the NCOA meeting last week.

I attended your press conference at the Statler-Hilton because I knew hot lunch and nutritional programs were to be emphasized. I have directed the South County hot lunch and health services program funded by O.E.O. through the Emergency Food and Medical Services for the past two years. This program is due to be eliminated this year.

I concur with the intention of the administration that Title IV Research and Demonstration monies and Emergency Food and Medical monies were not to be considered on-going programs and a cut in both funding levels is to be expected.

My point now is that both programs served their purpose well in bringing to light the crying need and absolute value of such hot meal services. Efforts should be directed towards the establishment of an on-going meals program with funding that does not diminish or run out with time.

My next point refers to the added importance of a hot meal program as it becomes a part of a total multi-purpose concept, such as I have demonstrated in my Center. Direct health services, health and nutrition education, employment services, transportation assistance, information and referral, continuing educational opportunities, outreach services to those confined to home, utilization of senior citizen talent for service to the community, social and recreational opportunities are all components of a broad picture in which each program enhances the other and increases the value to the senior citizen.

The 600 lunches we serve per week throughout the County reach both rural and urban areas. I have found no better way to encourage the lonely, isolated poor and deprived senior citizens to avail themselves of help than through an invitation to share a hot meal with others. They soon participate in these other programs which are available and friends are made and life once more becomes enjoyable and meaningful instead of the previous day-to-day lackluster existence.

I hope and pray that the importance of nutrition and health programs for senior citizens is recognized and that we will see the implementation of new programs. With your efforts involved I know that a greater potential of possibilities will exist.

Sincerely,

(Mrs.) SALLY WREN,
Director.

SELF-DETERMINATION IN SOUTH VIETNAM

Mr. FULBRIGHT. Mr. President, no episode in our Vietnam experience more clearly illustrates the emptiness of our claim to be supporting self-determination

in South Vietnam than the episode of Tran Ngoc Chau. Unfortnately, the matter has now been almost forgotten. Recently, however, Elizabeth Pond, the very fine Far East reporter of the Christion Science Monitor, analyzed the case in an article appearing in the May issue of the Atlantic. Among those who have forgotten Tran Ngoc Chau—for understandable reasons—is the U.S. Ambassador in Saigon, who apparently has made no effort to hold South Vietnamese President Thieu to the promise which he reportedly made to the Ambassador, that he would respect the Vietnamese Constitution in dealing with Chau. As matters now stand, President Thieu, in holding Chau in prison, is ignoring both his own Constitution and the Vietnam Supreme Court.

I ask unanimous consent that Miss Pond's article be printed in the RECORD.

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

SOUTH VIETNAM—THE TRAN NGOC CHAU AFFAIR

(By Elizabeth Pond)

In early 1970, the Thieu regime convicted a prominent South Vietnamese congressman, Tran Ngoc Chau, and jailed him. Technically, Chau's offense was having contact with a brother who was a North Vietnamese spy (despite the fact that Chau was trying to get his brother to defect to the South Vietnamese side). Actually, Chau's offense was that he challenged President Thieu politically.

There is nothing new in the persecution of political dissidents in South Vietnam. But there is something new in the American Embassy's virtual support for repression of a dynamic and effective anti-Communist leader of national stature, one who had worked closely with the Americans.

Judged by traditional American standards, the Chau case is an unhappy precedent in this period of American withdrawal from Vietnam. It suggests that going along with Thieu is more important than justice.

Chau is now in a cell in Saigon's Chi Hoa prison. There Thieu wants him to remain, and there he remains, despite two Supreme Court rulings to the contrary. A mandarin turned democrat; an idealist turned unsuccessful martyr; a former Viet Minh turned Diem loyalist turned disillusioned admirer of American virtues; a passionate nationalist; an honest, proud, stubborn, sentimental person, Chau is a quintessential—and forgotten—man in the middle.

In one sense the case of Deputy Chau is by now a dead issue. It is six months since the definitive Supreme Court ruling that Chau should be freed. And Chau continues to languish in Chi Hoa unremembered. Even his bid for political martyrdom has fizzled. Yet the Chau affair does live on, for it effectively charts the evolving political landscape.

In brief, Chau was convicted and jailed not for being a former Viet Minh (which he was), or pro-Communist (which he was not), but for not informing on his brother, who Chau knew was a spy. Out of so many South Vietnamese with brothers on "the other side," Deputy Chau was the one prosecuted because he crossed Nguyen Van Thieu politically—and because he was weak enough for Thieu to crush as an example to other, more powerful rivals.

Several legal and political issues arose in the course of the Chau affair as it stretched out over 1969 and 1970. The legal issues, as defined by the South Vietnamese Supreme Court, involved violation of Chau's parliamentary immunity; unconstitutional jurisdiction over a civilian case by a politically malleable, no-appeal military field court; and President Thieu's disregard of Supreme Court decisions.

Politically, the outcome of the Chau case confirmed, for the present, Thieu's supremacy in Saigon. But perhaps more significantly, it revealed the U.S. preference for stability over legality in South Vietnam.

CHAU'S RISE

Characteristically, for he is an independent man. Tran Ngoc Chau quit the Viet Minh in 1949. By then he had become disenchanted with the Communist take-over of the Viet Minh resistance, and with Communist murder of competing nationalists. He began making a name for himself in the early 1960s, when he was appointed province chief of Kienhoa in the Mekong Delta of South Vietnam. In this period, just prior to and after the assassination of President Ngo Dinh Diem, South Vietnam was in chaos, with the government losing one district and one battalion a week. Kienhoa had been a longtime Viet Minh-Viet Cong stronghold, yet Chau increased government control in the provinces from 15 percent to 57 percent of the population, according to a cautious American estimate at the time.

He did not accomplish this feat by military victories. Instead, he buttressed the existing leadership of the religious groups—Buddhist, Hoa Hao, Cao Dai, and Catholic—as the only strong social structures apart from the South Vietnamese Army and the National Liberation Front. Simultaneously, Chau provided channels for the population to improve its lot. He allowed villagers to bring complaints directly to him, and then acted immediately to rectify injustices. He experimented, too, with a prototype of what would become the Revolutionary Development cadres—the paramilitary defense, intelligence, and pacification workers in villages and hamlets.

His ideas caught on, and Revolutionary Development, funded and sponsored by the American CIA, was established as a national program. At the end of 1968, Chau was appointed national training director. (Contrary to some news reports, this job, plus the routine contact he had as a province chief, was Chau's only association with the CIA. He was never an American intelligence agent.)

At the training center Chau soon found himself in conflict with the powerful CIA. In vain Chau wished the Americans to be less obtrusive than they were. In vain he wished the RD village teams to emphasize redress of villagers' grievances rather than intelligence gathering. Within six months, the arguments became so acute that Chau resigned as director of training.

Not unnaturally, Chau's discontent with heavy-handed American influence in Vietnam, and with the government of the flamboyant Premier Ky, led him into politics. In 1967 he ran for deputy to the Lower House from Kienhoa, collecting one of the largest votes received by any elected deputy.

The future looked hopeful. Nguyen Van Thieu, with whom Chau had been friendly in earlier days when they were both junior army officers under Diem, had by now supplanted Nguyen Cao Ky as top man in Saigon. Chau expected improvements, and he counted himself basically pro-government.

Thieu and Chau began to fall out sometime during 1968. The Tet offensive and its aftermath prompted Chau to think about a political settlement to the war. Specifically, Chau was one of the first to suspect that the Tet offensive would prove to be the last straw for the United States, and he felt that Washington would henceforth try to disengage from Vietnam.

He believed that the United States would now be interested only in containing the military and political situation long enough to withdraw without the appearance of defeat. But he was convinced that the kind of short-term political stability that this implied—based on government in Saigon by right-wing militants—would doom South Vietnam to Communist take-over in the long run. Chau therefore began to argue that Thieu should reach out for the support of other non-Communist nationalists. The hypersuspicious Thieu, who preferred a fragmentation that he could control to a political unity that might be wrested from him, did not agree.

As Chau's ideas evolved and crystallized, he began speaking out more and more on issues of pacification, political settlement, and de-Americanization of the war. He advocated a more flexible policy of accommodation, not with Communists, but with nationalist groups (like the Buddhists) that were shut out of Saigon's political life.

He strongly opposed national or even provincial coalitions with the Communists. Among other reasons, he simply did not think that the Communists should be handed a position at the national level that they could not attain in votes. Better to accommodate them at the local level, he thought, than to let them into the central government. His ideas of accommodation thus were conceived in terms of granting the NLF positions as hamlet or village chiefs in those localities where the Front was already dominant. (Although heretical at the time, this proposal envisaged less of a national voice for the NLF than did Thieu's final election offer of 1969.)

Chau began in the late 1968-early 1969 period to demand peace talks among the three Vietnamese forces—Saigon, Hanoi, and the NLF—without the Americans. He proposed a meeting between parliamentary delegations of North and South Vietnam. Neither the North Vietnamese nor Thieu liked the suggestion.

Chau's fall was swift. His brother Tran Ngoc Hien was arrested by the South Vietnamese in April, 1969. Hien, a high-ranking Communist agent, had for five years headed a strategic intelligence cell which reported directly to Hanoi. The cell's primary task was political evaluation of long-range trends, opinions, and motivation in the South. (Chau would argue in his defense that it would have been different if Hien had been carrying out sabotage or terrorism, but that since Hien was only a political observer, Chau could not betray his own brother by having him arrested. Besides, Chau added, Hien might well find out in his explorations how strong the Saigon government really was and so advise Hanoi.)

Chau met with Hien eight times between 1965 and 1969, and this association soon came out in the interrogation of Hien. Chau, who as a youth had idolized his older brother Hien, was the more emotional about these meetings. He considered Hien a brother first, a Vietnamese patriot second, and a Communist only third. Hien, a disciplined Communist cadre and an older, brighter version of Chau without Chau's sentimental streak, did not reciprocate the feeling. He always considered Chau to be a "target" in this period, never a brother.

On an intelligence level, the deductions each brother drew from the other probably evened out. Hien astutely perceived political shifts in Chau and Chau's associates at various key points. Chau strengthened his very sound conviction that the pacified areas in South Vietnam must be truly secured, with forces not spread too thin. It cannot be said that Chau gained any advance knowledge of the Communist general offensive of 1968, but the wisdom of Chau's approach was borne out. Chau also had visions, never to be realized, of the two brothers becoming significant intermediaries in peace negotiations.

For half a year after the arrest of Hien, the Chau case lay dormant. Then in October, 1969, Chau rashly accused Nguyen Cao Thang, Thieu's liaison man with the Lower

House, of buying votes. This was a dangerous act. Thang was a powerful figure, much feared in Saigon, a man who had gradually become Thieu's most important political adviser—and a man who handled important political and personal funds for Thieu. Thang was a shrewd and wily businessman who had made his fortune in the lucrative pharmaceutical trade. He dealt with anyone it was profitable to deal with, and it was rumored that this included the Communists. He was said, too, to have made private soundings at one point on behalf of Thieu for some sort of political deal with the Communists.

Even if Chau had not had a Communist brother in Saigon's hands, his attack on Thang would have been enough in itself to incense Thieu. And Chau's defiance of Thieu was soon compounded by a more important stirring in opposition ranks. In November, Generals Duong Van Minh and Tran Don called for a popular referendum and began to talk publicly, if vaguely, about a "third force," accommodation, "reconciliation," and other phrases that smacked of coalition and a toppling of Thieu.

FORTRESS

In 1969, American withdrawal was the central political fact of South Vietnam, and it was just a question of time before it would alter the basic context of Vietnamese politics. The Americans had hoped that their disengagement would instill a sense of crisis in both pro-regime and independent Vietnamese nationalists, and convince them that they had to pull together against the Communists for self-preservation.

Until the end of 1969, Thieu did leave open the option of cooperation with a broad spectrum of non-Communist nationalists—either deliberately or just because his natural style was a network of intricate maneuvers that never committed him to any one person or any one course. But as the U.S. troops pulled out, Thieu pulled in as if to a fortress to the right-wingers, the Northern Catholics, and the Army, rather than reaching out to less hard line elements.

Previously, Thieu had contained the more left-leaning figures by ignoring them and leaving them to their own divisiveness. Now, however, he began to take Minh and Don seriously. If unchecked, the two generals could easily become the focal point for vast public war-weariness and discontent with rising prices—and latent anti-Americanism.

But it would have been awkward for Thieu to attack Minh and Don directly. The easygoing Minh was popular in the South. Both men were still the residual heroes of the 1963 coup. Most important, both had a considerable potential following in the Army.

Tran Ngoc Chau, however, was an altogether different matter. He presented an inviting target just when Thieu needed one. The President could crack down on Chau to symbolize his new toughness and issue the appropriate warning to would-be third-force opposition, to anyone tempted to make a separate deal with the Communists (or the Americans) at Theiu's expense. And this could be done, it appeared, without stirring up an unmanageable backlash.

At this point, for some reason, Thieu moved beyond a rational political tactic and became personally observed with punishing Chau. The Saigon political world and province chiefs throughout the country took Theiu's rage as weakness rather than strength. There was a backlash after all.

To summarize the ensuing kaleidoscopic developments, Thieu asked the National Assembly to strip Chau of parliamentary immunity so that he could be prosecuted (a move allowed by the Constitution if three-fourths of Chau's peers approved). The Lower House balked. Government officials responsible to Thieu, therefore, goaded the National Assembly by unloosing a paid mob of about seven hundred to riot in the legislative chambers. Still the Lower House dragged its feet. So Nguyen Cao Thang decided to circulate among deputies an undated petition asking for Chau's prosecution. Thang reportedly boasted to friends that he spent ten million piasters (about $80,000) to get signatures. And money was supplemented, according to numerous deputy accounts, by blackmail and intimidation. By February, 1970, by hook or by crook, Thieu had a document authorizing trial of Chau.

In March the III Corps Mobile Military Field Court, a court created by Diem to try political dissidents, sentenced Chau to ten years of imprisonment and hard labor.

Chau's final words in court were defiant. "I have served the country twenty-three years, an officer in the field who received medals on the battlefield," Chau said vehemently. "These last few days I came to the courtroom wearing black pajamas. You can say I am Communist or you can say I am an agent of the CIA because Revolutionary Development cadres wear black pajamas. But I wear black pajamas as a symbol of a good Vietnamese citizen. When I die, I ask the favor of being buried in a military cemetery." Chau's lawyers appealed the case to the Supreme Court. In May the Supreme Court ruled that Chau's conviction was indeed unconstitutional and said further that the whole mobile military field court was unconstitutional. In October the Supreme Court decided that Chau should be freed.

In response, Thieu replaced the Chief Justice of the Supreme Court and got the legislature to pass new laws that effectively renewed the same old military field court. Chau remains in prison under increasingly severe conditions. He has been allowed to see no visitors except his wife for the past four months, and such information as dwindling contacts with him provide indicates that he is allowed little exercise and has been in a state of depression since the final Supreme Court ruling.

THE AMERICAN HAND

Significantly, throughout the entire Chau affair, the American Embassy in Saigon approved Thieu's actions by praising him with very faint damns. The Embassy first gave Thieu *carte blanche* in July, 1969, when it imposed a gag rule on those American officials who had been close to Chau. (The Americans who knew him best were his most ardent supporters.) They were not to see Chau, nor were they to discuss the case with any outsider, whether Vietnamese official or American journalist. This was serious. At one point, according to a Foreign Service Officer in the Saigon Embassy, Ambassador Ellsworth Bunker delivered a personal ultimatum to John Vann, an old Vietnam hand, the American head of pacification in the populous Mekong Delta, and a staunch defender of Chau: if Vann talked to one more reporter about Chau, he would be summarily fired.

Then, in its own reporting to Washington, the Embassy consistently downplayed the significance of the affair and glossed over the illegalities to which Thieu was resorting in his pursuit of Chau. Curiously, it even portrayed Chau as favoring coalition with the Communists, though Chau had never advocated any such thing. And in political and diplomatic circles in Saigon, the Embassy circulated the view that Chau was himself pro-Communist. Thieu therefore came to assume, quite correctly, that he could imprison Chau without incurring any American reprisals.

Why did the American mission in Saigon, which has long been searching for committed, independent, non-Communist leaders of Chau's caliber, back off so totally on as unambiguous a political issue as it is ever likely to have in Vietnam? Why did it ratify yet one more instance of the cannibalization of leadership that has plagued South Vietnam ever since its inception? The answer would seem to reside in a failure of perception, reinforced by policy considerations.

To begin with, neither Ambassador Bunker nor his major advisers on the case, the Embassy political counselor and the CIA chief in Vietnam, had much affinity for the complexities of Asian politics. Bunker is a gentleman, an American aristocrat, a successful businessman, an able negotiator and compromiser. But that is not to say that he is a politician. His instincts favor "hard" military analysis over "soft" political analysis.

The then political counselor, Martin Herz, was described by his subordinates as being in the older-style State Department mold. He was accredited to the Thieu government, credulous of what the Thieu government said, suspicious of what government opponents or independents said. The CIA chief was a brilliant technician in intelligence, in the view of some American officials who know his work, but, like his colleagues, was simply not a political animal. And Chau's past squabbles with the CIA hardly recommended him to the local head of the agency.

Thus, when these men were given questionable information about Chau, they believed it instead of challenging it. Bunker accepted the opinion that Chau really was pro-Communist. And he apparently accepted, at least in part, Thieu's hints that army generals were pressing him to be tough with Chau and might even try a coup if he did not respond.

Furthermore, given the tensions created by American withdrawal, Bunker was unwilling to squander, on minor issues, what leverage the United States had over Thieu. To him it would have been wrong to risk so much for some abstract consideration of legality, or for some chimera of broadened political participation. Stability was the important desideratum. Chau was just the unfortunate man in the middle who got in the way.

In the short run, South Vietnamese stability probably was strengthened by the imprisonment of Chau. And yet, in the long run, Thieu's handling of the Chau affair led to a serious ebbing of confidence in the President's judgment, control, and predictability. Latent discontents burst forth in the period after the Chau trial. They were contained, and Thieu's rivals were silenced, but it was an augury of developments that may be expected any time Thieu again seems to be showng weakness or misjudgment. And the opportunities for Thieu to fumble will increase when his real power base—American military forces in Vietnam, and will to back him up—dwindles.

SUPPORT PROGRAMS

Mr. THURMOND. Mr. President, the General Assembly of South Carolina has passed a concurrent resolution memorializing Congress to continue price supports and other aid programs to tobacco farmers.

This resolution calls attention to the alarming fact that legislation is pending in Congress which would discontinue tobacco supports and other aid programs beginning with crops to be harvested in 1972.

Mr. President, the importance of the tobacco industry to the economy of South Carolina and to the economy of this country cannot be measured. In addition, legislation which would abolish these self-supporting programs would cause a tremendous loss of revenue to the Federal Government in taxes.

Mr. President, on behalf of Senator HOLLINGS and myself I ask unanimous consent that this resolution be printed in the RECORD.

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

A CONCURRENT RESOLUTION MEMORIALIZING CONGRESS TO CONTINUE PRICE SUPPORTS AND OTHER AID PROGRAMS TO TOBACCO FARMERS

Whereas, pending legislation is now before Congress which would discontinue tobacco supports and other aid programs beginning with crops to be harvested in 1972; and

Whereas, this has been a self-supporting program and if this legislation is enacted it would mean a tremendous loss of revenue to the Federal Government and would severely cripple this one hundred million dollar industry; and

Whereas, tobacco has for many years been one of South Carolina's main sources of revenue and the discontinuance of these programs would bring irreparable damage to the tobacco farmers of this State, particularly the smaller growers.

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

That the Congress of the United States is hereby memorialized to take such action as it deems necessary in order to continue the price supports and other aid programs to tobacco farmers.

Be it further resolved that copies of this resolution be forwarded to each United States Senator and each member of the House of Representatives of Congress from South Carolina and to the Clerk of the United States Senate and the Clerk of the United States House of Representatives.

IMPROVED POSTAL SERVICE

Mr. McGEE. Mr. President, a few days ago the Postmaster General announced the introduction of a new postal service designed to guarantee overnight delivery for airmail letters mailed to a destination within 600 miles from the place of mailing. I was glad to see this new policy develop; it caught the attention of the television newscasters; perhaps the most apt comment was by Harry Reasoner, who said that such timely delivery restores postal service to the level that was common in 1935.

The irony of his remark is that while many Americans look back fondly on the good old days of efficient and prompt mail delivery for 2 cents a letter, you do not have to go back very far to find overnight delivery of first-class mail and airmail to be commonplace. The bold new program proposed by the Postmaster General is considerably less than the mail service which the public received and relied upon in 1967 and 1968. When the present postal administration came into office in 1969 and announced that the archaic post office needed to be converted into a Government corporation, it also proceeded to dismantle piece by piece the best mail delivery service the country had ever known—overnight delivery of first-class mail. So I think that in honoring the "fairness doctrine" it is incumbent upon me as chairman of the Committee on Post Office and Civil Service to make known what the situation was compared to what it is proposed to be.

In 1967, upon the specific instruction of the Senate Committee on Post Office and Civil Service, Postmaster General Larry O'Brien introduced a new air taxi and airlift program on a nationwide basis to insure overnight delivery, or at least 2-day delivery, of all first-class mail. With remarkable efficiency and effectiveness, the rank-and-file officers and employees in the Bureau of Transportation and International Services established an intricate network of transportation patterns to move first-class mail from the post office where it was mailed to airports where it was dispatched either on a "space available" basis on the next scheduled air carrier going out or by a special "air taxi" air carrier on contract basis.

The program was an outstanding success. Regular first-class mail dropped into the mail chute at 5 o'clock in the afternoon here in Washington could be delivered the next morning to offices and residences clear across the country. The cost to the mail user for that service was 6 cents. In the past 2 years, the Post Office Department, in its continual quest for reductions in operating cost, has intentionally destroyed most of that prompt and efficient delivery. Airlift and air taxi operations for mail destined to a destination not greater than 750 miles away has been discontinued. Thus, within-State delivery overnight has come to an almost complete stop. First-class mail matter entered at Dallas, Tex., for instance, destined to El Paso, Tex., a distance of 630 miles, no longer is entitled to receive airlift transportation. Instead, it is carried by a star route highway contractor and there is no possibility that a 5 o'clock letter can be delivered the next day.

The ABCD same-day delivery program instituted by Postmaster General J. Edward Day in 1963, which virtually guaranteed delivery within the city of any business letter mailed before 11 o'clock in the morning, was discontinued, as was the afternoon delivery on business routes. Special delivery services were changed by increasing the postage stamp cost by 50 percent and reducing the service to a regular route carried not more than four times a day.

The new "managed mail program" discontinued the distribution of first-class mail between 6 p.m. and 6 a.m. and reduced the number of employees working mail on the weekends. Prior to this new efficiency, first-class mail was given immediate and continual handling 24 hours a day in order to insure next day delivery wherever possible. Pickup schedules for street mailboxes have been reduced in many cases to one pickup a day and that by a letter carrier on his regular route rather than a special messenger.

The sum of it all is that what the American people got from the archaic Post Office Department in 1967 and 1968 for 6 cents will now be offered by the new businesslike, efficient U.S. Postal Service for 11 cents. I have never enjoyed being critical of the management of Federal agencies unless evidence convinced me that the policies and practices of the agency should and could be revised to benefit the public. It is easy to complain about poor mail service, but it is extremely hard to do anything about it. Unfortunately, what the present postal administration is doing about mail service seems to be a conscious, deliberate effort to reduce the costs of running the Post Office to the point that the Postmaster General can say he is breaking even regardless of the kind of postal service provided. Unfortunately, the real price paid for the pursuit of that illusive goal is poor postal service, poor public relations, poor congressional relations, and the growing conviction in the average American's mind that the Post Office simply does not do the job.

The committee warned the Post Office Department against this policy last year when, in our report accompanying the Postal Reorganization Act, we specifically disapproved the discontinuance of air taxi and airlift programs—proven winners for good postal service. Our recommendations for continuing that policy were disregarded. In fairness to the committee and the public, the Postmaster General might consider amending the language of his recent press announcement to say that after 2 years of constantly declining postal service, the U.S. Postal Service has decided to reinstitute the practices of the archaic Post Office Department regarding mail transportation, except that now you will pay twice as much for the same service.

OPPORTUNITIES IN ENVIRONMENTAL CAREERS

Mr. FONG. Mr. President, the period of April 18 through 24, has been proclaimed by President Nixon to be Earth Week, 1971. In urging the 50 Governors' cooperation, the President wrote:

> The difficult decisions before us must be wise ones, and I hope that Earth Week will see educational institutions of all levels considering ways in which the learning process can best foster understanding of environmental needs and opportunities.

This week also has seen the publication of a new vocational guidance manual, "Opportunities in Environmental Careers," written by Odom Fanning, a well-known science writer, who has served as public affairs officer of the National Council on Marine Resources and Engineering Development and as a consultant to the Council on Environmental Quality. He was editor-in-chief of the First Annual Report on Environmental Quality, submitted to the Congress by the President last August, and he is author of an earlier vocational guidance manual, "Opportunities in Oceanographic Careers."

Mr. Fanning's new book is aimed at young people. It identifies 655,990 environmental management jobs today and predicts an increase to 1,181,800 by 1980, close to a doubling in a decade.

I have no doubt that Mr. Fanning's prediction of environmental manpower needs from now until 1980 is close to the mark. And yet I foresee many problems in achieving our national goals in the environment. To achieve the desired progress in ecology, we must strengthen our economy. To make progress, we must strengthen our technology.

Americans can take pride in this Nation's role of leadership in trying to preserve our world environment. In this connection, I was disappointed to learn

this week that the NATO Conference on the Environment, meeting in Brussels, failed to accept a U.S. proposal to prevent dumping of any and all wastes into the world's oceans. We must continue to press for universal accord on that and other environmental reforms. Such reforms are investments in the only ecosystem we will ever have. The President so wisely stated:

The challenges of the future clearly require that each and every week be Earth Week.

THE FOSTER GRANDPARENT PROGRAM

Mr. BURDICK. Mr. President, in spite of the success of the many programs for the elderly initiated under the Older Americans Act, the administration has proposed a $7 million cutback in the HEW budget for these programs.

Three million dollars of this cut is to be made in the foster grandparent program, one of the most successful and innovative of all elderly programs. Foster grandparents are low-income citizens over 65 years of age who spend 4 hours a day with an institutionalized child, the majority of whom are mentally retarded, providing love and attention on a rare one-to-one basis. For this work they receive a small stipend, meals on the job, and transportation expenses. Although these elderly citizens receive only a minimum wage, the income is often enough to keep them financially independent.

The foster grandparent program then, aids the elderly, aids and relieves our understaffed mental hospitals, and contributes to the growth and development of thousands of mentally retarded children. The President has proposed cutting the foster grandparent program by one-third.

I have received a great deal of mail about this program. One letter, however, was especially touching. It was written by the mother of a mentally retarded child. Her daughter is not lucky enough to have a foster grandparent at this time, although she is on a waiting list for one. If the President's recommendations are adopted, this little girl will never receive the special care and attention of a foster grandparent. I recommend that every Member of Congress who has any concern for the mentally retarded and for the elderly read this thoughtful and touching request for the continuation of the foster grandparent program, and I ask unanimous consent that it be printed in the RECORD.

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

MARCH 30, 1971.

DEAR SENATOR BURDICK: I have never written anyone in public office before, but now I feel I must.

My letter is in regard to the planned cut in the National Foster Grandparent Program budget. Why does the government always seem to scrap the very good programs it starts? Why deprive the retarded?

Our daughter Lynn Marie was 6 on March 11. She has resided at the Grafton State School since May 4, 1970. Our only consolation in this heart-breaking decision to part with our only girl, was the fact that she would get the proper care from dedicated, trained or otherwise interested and loving people. People who could guide her to reaching her full potential as a brain-injured child.

Her name has been on the foster grandparent list since her arrival last May. She has not received a foster grandparent because there are not enough of them.

They do wonderful work. It is a rewarding relationship for both the retarded and the older persons who have no one else to give their extra time and love to.

A one-to-one relationship is the best possible hope for the retarded. They do the best they can at the Grafton State School, but I've been there often enough to know and see for myself how terribly under-staffed they are.

My daughter is in a 40 patient ward. Most times there are 2 attendants per shift for those 40 girls. But many times there is only 1 woman, due to illness or other reasons, and when the one woman takes a few minutes to eat they open the doors to both 40-girl wards on Lynn's floor and one attendant is many times in charge of all 80 girls. This is about as remotely removed from a one-to-one relationship as you can get.

These children can not speak for themselves to let you people in government know how much they need and deserve love, attention, care and teaching. In all good conscience, if government has one, I can not understand why these very special people at the Grafton State School and other similar institutions must bear the brunt of Budget cuts.

When I think of all the government money spent for war, a moon rocket, or the missile sites here in North Dakota, I cannot help but think how all that money could more than adequately supply the much needed people to care for and teach all the retarded for the rest of their lives.

Sincerely,

MRS. EDWARD STOLTMAN.

TRIBUTE TO MRS. WILLIAM F. BUCKLEY

Mr. THURMOND. Mr. President, there recently appeared in the State newspaper in Columbia, S.C. a feature story on one of South Carolina's loveliest and most distinguished ladies, Mrs. William F. Buckley.

Mrs. Buckley resides in her beautiful 117-year-old estate, Kamtchatka, in Camden, S.C. She is the mother of eight living children, 48 grandchildren and one great-granddaughter—one of her sons being our most able colleague, Senator JAMES L. BUCKLEY of New York.

Mr. President, it is indeed a privilege for me to consider this great lady a personal friend. The true gage of her greatness is her charming personality, which exemplifies the finest attributes of Southern womanhood.

Mr. President, I ask unanimous consent that this article entitled, "A Famous Mother Loyal to Family and to the South," which appeared in the State newspaper on April 18, 1971, be printed in the RECORD.

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

A FAMOUS MOTHER LOYAL TO FAMILY AND TO THE SOUTH

(By Charlotte Wyndham)

Mrs. William F. Buckley, mistress of the aesthetically beautiful 117-year-old estate, Kamtchatka, in Camden, is the picture of a truly southern lady . . . soft, friendly and outgoing.

Despite her years of living in Europe and New England and her famous family's Ivy-League polish, she is quick to interject, "Oh, my dear, yes, I'm Southern down to my toes on both sides of my family. My family fought in the War-Between-the-States . . . on the side of the South."

Aloise Steiner Buckley was born in New Orleans in 1895 into a family steeped in traditional Southern proprieties. "We were not wealthy," she said modestly, "but we never lacked for anything. I had music lessons, learned to ride (my mother was an outstanding horsewoman), made my debut and attended Sophie Newcomb College."

It was at this point her education was interrupted by romance. Thirty-six-year-old, venturesome Texas lawyer and oilman William Frank Buckley asked for her hand after one week of courtship.

He had to be properly introduced to the Steiner family, and when they realized the seriousness of the couple's intent, they discreetly made inquiries of the young man's character from his family priest in Austin, Tex.

With the approval of both families they were married and took up residence in Mexico, where Will Buckley was engaged in oil speculation and politics. It was the latter that cost them their first fortune and nearly Mr. Buckley's life. He backed the "wrong" man during an insurrection, and was not only ordered out of Mexico, under the penalty of death, but lost every cent of property and investment he had.

"That was 1922, and my husband, 41 years old, settled us in Connecticut (Great Elm, the 11 bedroom, 205-year old home Mrs. Buckley still maintains), and he started all over again in New York."

While Mr. Buckley was re-amassing his fortunes in oil, Mrs. Buckley was having babies. At almost any point of the Buckley chronicle, Mrs. Buckley would recall, "I was having a baby, as usual." She had a total of ten, much to the joy of her husband. "My husband loved children," she said. "He felt it was a gift of God to have a child.

"My husband was quoted often as saying that the order in his life was: first, God, then country, then family, and then, no one."

Asked how she felt about having such a large family, 5-feet-2 Aloise Buckley said delicately, "Encouchments were always very difficult for me, but I never resented one of them. Our children grew up knowing that each one was wanted and loved."

Undaunted by her ever growing family, Mrs. Buckley packed up the children and nurses and moved about the world with her husband. They were in Paris in the fall of 1929 with six of their children when the stock markets crashed in New York.

"My husband decided we should stay in France. It was cheaper to live there, and more important to him, the children could have the benefit of a sound, cultural education. He had them tutored in everything from languages to music. He was a great believer in education.

They returned to Connecticut in time to save the baronial home from being taken by unscrupulous lawyers from Mexico, who still held a grudge against her husband.

Somehow, along the routes of the Buckleys' world travels, they visited Camden, (the exact reason escapes Mrs. Buckley now), and they fell in love with the town and the people. In 1938 they bought the home built in 1854 by Col. James Chesnut.

"It was greatly in need of repairs," Mrs. Buckley said, "but my husband bought it for me when I discovered it had a ceiling high enough to hang the chandelier that had been willed to me by a friend from Mexico. The chandelier had hung in the Mexican embassy in Paris during the reign of Maximillian."

"We had great fun remodeling and furnishing the home, which we called, Kamt-

chatka. We had a man come down from New York to assemble and hang the chandelier from the main staircase ceiling. Besides pieces we had collected from around the world, my husband bought at auction the furniture of William Randolph Hearst and had it sent down. The gardens, with ten sloping terraces in front, were designed by my husband."

A special living room on the second floor has among portraits and snapshots of the family, a baby grand piano. Mrs. Buckley, a student of the piano since the age of seven, said, "If my son Bill were to come into the house now, he would take me by the arm straight to this room to play a Bach or Mozart concerto with him."

Kamtchatka has become a second home for the Buckleys. Its 10 bedrooms, seven baths and surrounding cottages can just about take care of the eight remaining children, 48 grandchildren and one great-granddaughter.

William Buckley, Sr., after his first stroke in 1955, spent more and more of his time in Camden. He built an office close to the main house and worked there in between trips to New York. After his death in 1958, he was buried in the little Quaker cemetery near the home. Mademoiselle, the French governess who was with the Buckley children for 26 years, is also buried there.

FAMILY HAD SETBACKS, SUCCESSES

"Ma," as Mrs. Buckley is known to her children (and as "Mimi" to her in-laws and the children's nurses), has always been content to stay in the shadows of the successes of her illustrious husband and children ("always," she emphasized).

For instance: Mr. Buckley, in a tongue-in-cheek letter to Bill Jr.'s future in-laws in 1950, said, "My wife, while entirely too gentle to attempt fraud, is nevertheless too loyal to condone this exposure of her children."

Daughter Aloise wrote in explanation of the trials of putting out the family newspaper, "Greimschatka" (a combination of Great Elm and Kamtchatka) . . . "My third feat may seem an anticlimax, but, believe it, it called for careful planning, bold tactics and subtle execution. I convinced Mother (she's so sweet, you know) . . . that Lulabelle, John (eldest son) and Ann's ill-fated beagle, was responsible for all but two spots on the living-room rug."

Again from Aloise: "The illnesses and accidents are now past and forgotten (in looking back over the early family crises); the callouses on Mother's knees will take a little longer to wear off."

And perhaps the funniest and truest in spirit of loyalty is the story her children tell of her when son Bill's first book, "God and Man at Yale," (which sister Aloise said he wrote out of jealousy over sister Priscilla's new job and brother Jim's new house).

"Mother had assigned herself a daily beat covering Fifth Ave. from 25th to 92nd St. and back down Madison to 25th. At each store she passed, Mother entered nonchalantly flipped through a best-seller or two and asked the clerk if he had a really fine book she'd heard of called something like, "Man and God at Harvard." The author's name sounded like William F. Butler Jr. or something.

"If the clerk answered no, she was able to launch into her carefully rehearsed lecture. Unfortunately for Mother's regal arches, the clerk usually answered yes. Those of us who know Mother know that her conversation may be loony but never lame, so inevitably, she bought the book and resumed her trudge down the Avenue, sometimes accumulating 18–20 pounds of literature in a couple of blocks. How many of the 27,000 sales were accounted for by my mother is her secret. There are several locked closets in her room, though."

Then in a perhaps more poignant child-to-mother episode, son James phoned her from New York this past year to tell her he had decided to run for the U.S. Senate, and asked her simply, "to pray for me."

Aloise Steiner Buckley belies her 78 years. Sitting in one of her splendidly furnished living rooms, she struck a familiar pose of tilted head and frequent open smile that son Bill has found fame for on television. (The two bear a remarkable resemblance.)

She has the almost forsaken gift (which her husband said was lost in Western culture) of listening to people. She gives the impression that she would by far rather hear what others have to say than speak herself.

Urged to sit through the more than three-quarters of a century of much happy living ("I've been lucky"), Mrs. Buckley reminisced on subjects close to her heart.

On the notoriety of her family: "Goodness, I don't know why anyone would be interested in writing about us . . . we're so dull."

On her husband: "We had a life-long love affair. No one could surpass him in business deals. We were both happy people . . . never moody. Our children grew up in an atmosphere of love and knew they were wanted."

"On occasions when I became cross with my husband . . . like the time he wanted me to move with all the children to England and I didn't want to . . . he listened gently to my compaints, but we moved to England."

On raising her children: "My husband was the disciplinarian . . . usually by memoranda written to them while he was away, with carbon copies sent to other members. Large families tend to discipline each other. I listened to my children's arguments and usually agreed with the last one, hoping they would not confer with the others.

"I never had favorites, although the children always said I favored Jim. It was only that Jim and I had a relationship of the heart . . . he tended to favor me. I had other, equal relationships with the rest of the children. My oldest daughter Aloise and I were closer in age and very good friends.

"When the children were teen-agers, and we were living in the country in Sharon, Conn., my room had the buzzer, so that when they each got in at night, they would ring my room and tell me they had gotten home safe and sound. The next morning, I would tell my husband that such and such a child got in quite early." (She smiled over this little deceit that so many mothers practice.)

On her faith: "My husband used to say, 'I depend on Aloise's faith.' I guess I was born with faith. My husband went through many perilous times . . . loss of money and threats on his life . . . but I never despaired.

" I remember one time when he was speculating for oil and had no money to begin operations. He asked me to pray. I went to church and simply prayed, 'Lord, Will doesn't know what to do; I don't know what to do, but You do.' The next day, Will made a bold gamble and got financial backing to begin drilling.

"When I lost my daughter Maureen at age 31 in 1964 and my daughter Aloise in 1967 . . . both suddenly with cerebral hemorrhages . . . I looked to the Church for strength. I would go into a little church in Spain, where my son Reid and his family live, and let out all my tears before my Lord. When I left I felt better.

"I don't understand it all, but I have faith that God has a plan for us all, and it is good."

On people: "I can honestly say I've never hated anyone in my life. I have disliked certain people, but I've never allowed myself to hate. Hate is inward destruction."

About criticsm of her children: "I usually won't listen to it and I certainly don't answer it. My children usually try to protect me from it anyway."

On changes in the Church: "I do not like any of the modern changes in the Church. I can't conceive of a nun dressed in secular clothes or even the litany translated to English, let alone the modern 'jazzed' up Masses. The translations from the Latin are just awful. Why not learn the beauty of Latin? Why not look to a nun in long black habit as the source of inspiration and confidence? I concede that the day will come when priests will give up their celibacy, but what will happen to confession then?"

On the future: "I used to say that having lived 76 years I didn't want to see what the future was going to bring, but now, I've changed my mind. I can't but believe that God's in His Heaven, and all's right with the world."

Today finds Mrs. Buckley wrestling still with the week's menus. ("Although I don't care a bit about food.") After following days of hectic schedules, she longs to be alone . . . just to sit by the fire and read.

Even alone, however, she is surrounded by faithful servants who have been with her for 30 years or more . . . Ella Whitaker, the intuitive waitress who knows how to set, serve a table and decorate with a word, "company," or "family;" Leslie and Elizabeth Carlos, chauffeur and maid, and Jeff Boykin, butler. They all travel with Mrs. Buckley to Connecticut in the spring and return south after Thanksgiving.

INCOMPLETE PROTEST

Mr. DOLE. Mr. President, I have noted with some interest the presence of a number of Vietnam veterans in Washington this week. Washington is, of course, no stranger to demonstrating veterans, but this group has emphasized the distinction that they are the first group to protest against the very war in which they served.

They have further stated that their protest in Washington is particularly directed at those who are responsible for the war in Indochina. This is all very well and good. These citizens are within their rights to give voice to their convictions and their consciences, and they have defended these rights in a far-off and troubled corner of the world.

I would, however, suggest that the demonstrators may be committing a substantial error of omission in their demonstrating. They say they are here to confront the "responsible parties," so they have marched on the Pentagon, they have marched on the Congress and they have marched on the Supreme Court.

MISDIRECTED DEMONSTRATIONS

I find some illogic in the direction of these expressions toward President Nixon, Secretary of Defense Laird and the rest of this administration. It is difficult to understand discontent with those who have turned around the course of the war, who have stopped the escalation, who have reduced the number of American forces in Vietnam by half and who are firmly committed to total and complete disengagement from South Vietnam.

Many, including myself, are impatient for the day when the American casualty rate reaches zero. We are impatient for the last American soldier to board the last homeward-bound airplane. We long for the day when the last shot is fired in anger in Southeast Asia—and throughout the world.

But it is difficult to understand why this President and this administration

are being derided, criticized, and scorned in the face of the progress they have made by effecting a fundamental reversal of our national course in Indochina.

Likewise, it is hard to see the validity of the protest directed at our judicial system for failing to declare our conduct of the Vietnam war to be contrary to the Constitution. Our involvement in that conflict may have been wrong from the beginning. It was certainly escalated and prosecuted incorrectly. But the war, especially since August 7, 1964, has had clear and repeated constitutional sanction.

CONGRESSIONAL RESPONSIBILITY

August 7, 1964, was, of course, the date on which the Congress passed the joint resolution, granting the President authority "to take all necessary steps, including the use of armed force" in pursuing his policy in Southeast Asia. Popularly known as the Gulf of Tonkin resolution, this blank check grant of power was subsequently reiterated by the authorization and appropriation of funds to support our forces in Southeast Asia.

This brings me to the point that this week's demonstrators appear to be committing an error of omission. While the demonstrations of these veterans who are opposed to the Indochina war are closest to their mark in approaching the Congress as a responsible party, they are somewhat amiss in their selection of individual Members of Congress, particularly in the Senate, against whom to vent their opposition and displeasure. It seems they are leaving out several "responsible parties."

When you come down to the nub of the matter, it was the Gulf of Tonkin resolution which the previous administration relied on as a virtual declaration of war and which was used as the fundamental authority for sending these protesting veterans and more than half a million other American fighting men to Vietnam.

VIRTUALLY UNANIMOUS SUPPORT

The Gulf of Tonkin resolution passed the House of Representatives and the Senate with but two opposing votes. Every Member of today's Senate and House, who was serving in either body in 1964, voted for it's passage or was recorded in favor of passage. And the junior Senator from Kansas voted "aye" as a Member of the House at that time.

So I would suggest that when sectors of the public, whether veterans, nonveterans, Democrats, Republicans or Independents, set out in search of responsible parties for the Vietnam war, they should be fully aware of the reach and scope of that responsibility. It was virtually the entire 87th Congress which passed that resolution, and it is those individuals—particularly those who are now serving in the 92d Congress—who bear the responsibility for the consequences.

Mr. President, I ask unanimous consent that excerpts from the CONGRESSIONAL RECORD showing the votes on the Gulf of Tonkin resolution be printed in the RECORD at this point.

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

The SPEAKER. All time has expired.

The question is on the motion of the gentleman from Pennsylvania (Mr. MORGAN) that the House suspend the rules and pass House Joint Resolution 1145 with an amendment.

Mr. MORGAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 416, nays 0, answered "present" 1, not voting 14, as follows:

[Roll No. 210]

YEAS—416

Abbitt, Abele, Abernethy, Adair, Addabbo, Albert, Alger, Anderson, Andrews, Ala., Andrews, N. Dak., Arends, Ashbrook, Ashley, Ashmore, Aspinall, Auchincloss, Avery, Ayres.

Baker, Baldwin, Barrett, Barry, Bass, Bates, Battin, Becker, Beermann, Belcher, Bell, Bennett, Fla., Berry, Betts, Blatnik, Boggs, Boland, Bolling, Bolton, Frances P., Bolton, Oliver P., Bonner, Bow, Brademas, Bray, Brock, Bromwell, Brooks, Broomfield, Brotzman, Brown, Calif., Brown, Ohio, Broyhill, N.C., Broyhill, Va., Bruce, Buckley, Burke, Burkhalter, Burleson, Burton, Calif., Burton, Utah, Byrne, Pa., Byrnes, Wis.

Cahill, Cameron, Carey, Casey, Cederberg, Celler, Chamberlain, Chelf, Chenoweth, Clancy, Clark, Clausen, Don H., Clawson, Del., Cleveland, Cohelan, Collier, Colmer, Conte, Cooley, Corbett, Corman, Cramer, Cunningham, Curtin, Curtis.

Daddario, Dague, Daniels, Davis, Ga., Davis, Tenn., Dawson, Delaney, Dent, Denton.

Derounian, Derwinski, Devine, Diggs, Dingell, Dole, Donohue, Dorn, Dowdy, Downing, Dulski, Duncan, Dwyer.

Edmondson, Edwards, Elliott, Ellsworth, Everett, Evins, Tenn.

Fallon, Farbstein, Fascell, Feighan, Findley, Finnegan, Fino, Fisher, Flood, Flynt, Fogarty, Ford, Foreman, Forrester, Fountain, Fraser, Frelinghuysen, Friedel, Fulton, Pa., Fulton, Tenn., Fuqua.

Gallagher, Garmatz, Gary, Gathings, Giaimo, Gibbons, Gilbert, Gill, Glenn, Gonzalez, Goodell, Goodling, Grabowski, Grant, Gray, Green, Oreg., Green, Pa., Griffin, Griffiths, Gross, Grover, Gubser, Gurney.

Hagen, Calif., Haley, Hall, Halleck, Halpern, Hanna, Hansen, Harding, Hardy, Harris, Harrison, Harsha, Harvey, Ind., Harvey, Mich., Hawkins, Hays, Healey, Hébert, Hechler, W. Va., Henderson, Herlong, Hoeven, Hoffman, Holifield, Holland, Horan, Horton, Hosmer, Huddleston, Hull, Hutchinson.

Ichord, Jarman, Jennings, Jensen.

Joelson, Johansen, Johnson, Calif., Johnson, Pa., Johnson, Wis., Jonas, Jones, Ala.

Karsten, Karth, Kastenmeier, Keith, Kelly, Keogh, Kilburn, Kilgore, King, Calif., King, N.Y., Kirwan, Kluczynski, Knox, Kornegay, Kunkel, Kyl.

Laird, Landrum, Langen, Latta, Leggett, Lesinski, Libonati, Lindsay, Lipscomb, Lloyd, Long, La.

McClory, McCulloch, McDade, McDowell, McFall, McIntire, McLoskey, McMillan, Macdonald, MacGregor, Madden, Mahon, Mailliard, Marsh, Martin, Calif., Martin, Mass., Martin, Nebr., Mathias, Matsunaga, Matthews, May, Meader, Michel, Miller, Calif., Miller, N.Y., Milliken, Mills, Minish, Minshall, Monagan, Montoya, Moore, Moorhead, Morgan, Morris, Morrison, Morse, Morton, Mosher, Moss, Multer, Murphy, Ill., Murphy, N.Y., Murray.

Natcher, Nedzi, Nelsen, Nix, O'Brien, N.Y., O'Hara, Ill., O'Hara, Mich., O'Konski, Olsen, Mont., Olson, Minn., O'Neill, Osmers, Ostertag.

Patman, Patten, Pelly, Pepper, Perkins, Philbin, Pickle.

Pike, Pilcher, Pillion, Pirnie, Poage, Poff, Price, Pucinski, Purcell, Quie, Quillen.

Rains, Randall, Reid, Ill., Reid, N.Y., Reifel, Reuss, Rhodes, Ariz., Rhodes, Pa., Rich, Riehlman, Rivers, Alaska, Rivers, S.C., Roberts, Ala., Roberts, Tex., Robison, Rodino, Rogers, Colo., Rogers, Fla., Rogers, Tex., Rooney, N.Y., Rooney, Pa., Roosevelt, Rosenthal, Rostenkowski, Roudebush, Roush, Roybal, Rumsfeld, Ryan, Mich., Ryan, N.Y.

St. George, St Germain, St. Onge, Saylor, Schadeberg, Schenck, Schneebeli, Schweiker, Schwengel, Scott, Secrest, Selden, Senner, Sheppard, Shipley, Short, Shriver, Sibal, Sickles, Sikes, Sisk, Skubitz, Slack, Smith, Calif., Smith, Iowa, Smith, Va., Snyder, Springer, Staebler, Stafford, Staggers, Steed, Stephens, Stinson, Stratton, Stubblefield, Sullivan.

Taft, Talcott, Taylor, Teague, Calif., Teague, Tex., Thomas, Thompson, La., Thompson, N.J., Thompson, Tex., Thomson, Wis., Toll, Tollefson, Trimble, Tuck, Tupper, Tuten.

Udall, Ullman, Utt.

Van Deerlin, Van Pelt, Vinson.

Waggonner, Wallhauser, Watson, Watts, Weaver, Weltner, Westland, Whalley, Wharton, White, Whitener, Whitten, Wickersham, Widnall, Williams, Willis, Wilson, Bob, Wilson, Charles H., Wilson, Ind., Winstead, Wright, Wydler, Wyman, Young, Younger, Zablocki.

NAYS—0

ANSWERED "PRESENT"—1

Powell.

NOT VOTING—14

Baring, Beckworth, Bennett, Mich., Hagan, Ga., Jones, Mo., Kee, Lankford, Lennon, Long, Md., Norblad, Passman, Pool, Siler, Vanik.

So (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

The Clerk announced the following pairs:

On this vote:

"Mr. Beckworth and Mr. Baring for, with Mr. Siler against."

Until further notice:

"Mr. Passman with Mrs. Kee.

"Mr. Lennon with Mr. Lankford.

"Mr. Hagan of Georgia with Mr. Long of Maryland.

"Mr. Pool with Mr. Vanik."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. FULBRIGHT. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 1145, as a substitute for the Senate joint resolution.

The PRESIDING OFFICER. The Chair lays before the Senate a joint resolution coming over from the House, which will be stated by title.

The joint resolution (H.J. Res. 1145) was read twice by its title.

The PRESIDING OFFICER. Is there objection to the present consideration of the House joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The joint resolution is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the joint resolution.

The joint resolution was ordered to a third reading, and was read the third time.

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

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

Mr. FULBRIGHT. Mr. President, I ask for the yeas and nays on the House joint resolution.

The yeas and nays were ordered.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution pass?

On this question the yeas and nays have been ordered; and the clerk will call the roll.

The legislative clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from South Carolina [Mr. JOHNSTON] and the Senator from Georgia [Mr. TALMADGE] are absent on official business.

I also announce that the Senator from New Mexico [Mr. ANDERSON] and the Senator from Massachusetts [Mr. KENNEDY] are absent because of illness.

I further announce that the Senator from Nevada [Mr. CANNON] the Senator from Pennsylvania [Mr. CLARK], the Senator from Oklahoma [Mr. EDMONDSON], the Senator from Missouri [Mr. SYMINGTON], and the Senator from Texas [Mr. YARBOROUGH] are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico [Mr. ANDERSON], the Senator from Nevada [Mr. CANNON], the Senator from Oklahoma [Mr. EDMONDSON], the Senator from South Carolina [Mr. JOHNSTON], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Missouri [Mr. SYMINGTON], the Senator from Georgia [Mr. TALMADGE], the Senator from Texas [Mr. YARBOROUGH] and the Senator from Pennsylvania [Mr. CLARK] would each vote "yea."

Mr. KUCHEL. I announce that the Senator from Pennsylvania [Mr. SCOTT] is necessarily absent and, if present and voting, would vote "yea."

The result was announced—yeas 88, nays 2, as follows:

[No. 520 Leg.]

YEAS—88

Aiken, Allott, Bartlett, Bayh, Beall, Bennett, Bible, Boggs, Brewster, Burdick, Byrd, Va., Byrd, W. Va., Carlson, Case, Church, Cooper, Cotton, Curtis, Dirksen, Dodd, Dominick, Douglas, Eastland, Ellender.

Ervin, Fong, Fulbright, Goldwater, Gore, Hart, Hartke, Hayden, Hickenlooper, Hill, Holland, Hruska, Humphrey.

Inouye, Jackson, Javits, Jordan, N.C., Jordan, Idaho, Keating, Kuchel, Lausche, Long, Mo.

Long, La., Magnuson, Mansfield, McCarthy, McClellan, McGee, McGovern, McIntyre, McNamara, Mechem, Metcalf, Miller, Monroney, Morton, Moss, Mundt, Muskie, Nelson, Neuberger, Pastore, Pearson, Pell.

Prouty, Proxmire, Randolph, Ribicoff, Robertson, Russell, Salinger, Saltonstall, Simpson, Smathers, Smith, Sparkman, Stennis, Thurmond, Tower, Walters, Williams, N.J., Williams, Del., Young, N. Dak., Young, Ohio.

NAYS—2

Gruening.
Morse.

NOT VOTING—10

Anderson, Cannon, Clark, Edmondson, Johnston, Kennedy, Scott, Symington, Talmadge, Yarborough.

So the joint resolution (H.J. Res. 1145) was passed as follows:

"Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and

"Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations jointed with them in the collective defense of their freedom; and

"Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

"SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

"SEC. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress."

THE FACTS SHOULD BE KNOWN

Mr. DOLE. I feel it is important for protesters, nonprotesters and all concerned citizens to be aware of these facts. I was quite surprised today, while visiting with members of the protesting veterans group, to learn that many individuals were totally unaware of the Gulf of Tonkin resolution, much less its role in the history of our Southeast Asia involvement. I am hopeful that a wider awareness of these facts will enable this group and others like it to better understand the nature of the war against which they have so vigorously dissented.

THE DRAFT AS INSTITUTIONAL RACISM

Mr. HATFIELD. Mr. President, a great deal of the debate regarding the desirability of an all-volunteer Armed Force has revolved around the question of the possibility of its putting an "unfair burden" on the poor and the black. Although proponents of this argument have not come forth with any evidence to support their thesis, the argument still has some emotional appeal and at first glance may well seem valid.

Aside from the fact that every study with which I am familiar, including most notably the report of the President's Commission on an All-Volunteer Armed Force—the Gates Commission—invalidates this argument—and aside from the fact that this perspective is the height of paternalism—I would like to draw the attention of my colleagues to a study which concludes that virtually any draft system works toward the detriment of the black.

Paul T. Murray, assistant professor of sociology at Fisk University is the author of the study and supports the following assertions: First, "Even if every local board was all black, the current disproportion of black draftees would not be significantly reduced as long as members remained obedient to national directives;" second, "Within the Selective Service System, the major sources of institutional racism are the standards for deferment," particularly student deferments, conscientious objector status, and hardship and dependency deferments; third, another "major source of inequity in the draft lies in the medical standards for induction—whites consistently receive nearly 50 percent more deferments than do blacks;" fourth, "Only one source of deferments works to the advantage of the black registrant"—the mental qualification for induction.

Although one might argue that various internal reforms conducted over an extended period of time might significantly eliminate these inequities, by the time they were effected they would no longer be relevant to men who are dying in combat today and for at least the next year or two. I would agree with Mr. Murray, the author of the study, who concludes:

> The best way to eliminate this racism is to abolish the draft altogether . . . Those opponents of draft abolition who argue that an all-volunteer Army would be predominantly poor and black fail to realize that the current draftees are also disproportionately poor and black . . . Continuation of the draft would only perpetuate the handicaps forced on the poor and the black draftees.

To argue for internal reforms within the Selective Service System in order to somehow save the poor and the black is not only factually contradictory but, even if true, too little too late.

Mr. President, I ask unanmious consent that the study by Asst. Prof. Paul T. Murray be printed in the RECORD.

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

LOCAL BOARD COMPOSITION AND INSTITUTIONAL RACISM

The draft is hardly a popular institution in contemporary America. It has been denounced from a wide variety of political perspectives: it facilitates American imperialism in Vietnam; it deprives young men of their personal liberties; it favors the rich at the expense of the poor; it places life and death decisions in the hands of a few middle-aged men who are unsympathetic with today's youth. In February, 1967, critics of the draft received new ammunition for their attack upon the Selective Service System. Not only was the System taking young men to fight an unjust war in Vietnam, it was also an instrument of American racism. Black militants such as Stokeley Carmichael and other members of the Student Non-Violent Coordinating Committee had made this charge in 1966, but when the report of the National Advisory Commission on Selective Service was released it was given official documentation. The report stated that in October, 1966, only 1.3% of the 16,632 local board members were black. As might be expected, this systematic exclusion of blacks was most prevalent in the South. Alabama, Arkansas, Louisiana, and Mississippi had no blacks serving on local boards. But this exclusion was not confined entirely to the South. Indiana, Kansas, and New Jersey also had no black representation.

The publicity surrounding the release of these findings generated much concern in the Selective Service National Headquarters. Not only was the news damaging its already tarnished public image, but the charge of systematic exclusion of blacks from local boards was being used as a legal defense by black draft resisters. Among others, Muhammed Ali and SNCC leader Cleveland Sellers had refused induction into the Armed Forces and were using the issue of black exclusion in their court case. Drawing on the precedent of Supreme Court decisions on the systematic exclusion of blacks from jury duty, this approach seriously threatened to disrupt the operations of the draft. If the argument of systematic exclusion was upheld, the actions of many all-white local boards would be automatically invalidated and blacks would have a legally sanctioned reason for refusing induction.

In response to this threat, the Selective Service System suddenly discovered a strong

commitment to equal opportunity for blacks. The System embarked on an earnest program to recruit blacks for local boards. Surprisingly, there was relatively little opposition to this effort. Even such previous strongholds of white supremacy as Georgia, South Carolina, Mississippi, and Alabama joined the rush to appoint black local board members. By June 30, 1970, there were 1,265 Negroes serving on local boards in the Selective Service System, or 6.7% of all local board members. Although not yet at the 12% figure of blacks in the total U.S. population, this number represents a six-fold increase since 1966 and is steadily increasing. Before long it appears that the Selective Service System will be successful in eliminating the systematic exclusion of blacks from local boards.

Aside from blocking a potential legal defense for black draft resisters and removing an embarrassing source of public criticism, what has been the effect of appointing blacks as local board members in the Selective Service System? Has their appointment eliminated all traces of racism in the operation of the draft? Does the black registrant now fare better in the draft than he did in 1966? One way to answer these questions is to look at the statistics on non-white inductions collected by the Department of Defense. If the absence of blacks on local boards increased the chances of black registrants being drafted, then the significant increase in black board members should result in a decrease in the proportion of black draftees. If the appointment of blacks to local boards insures equal treatment for all draftees, then blacks should not be drafted out of proportion to their numbers in the civilian population. These hypotheses, however, are not supported by the evidence. In 1966, when only 1% of local board members were black, 12.4% of all draftees were non-white. In 1970, when nearly 7% of local board members were black, 15.8% of all draftees were non-white. Instead of declining, the proportion of black draftees has dramatically increased from 1966 to 1970. While blacks were drafted in rough proportion to their numbers in the civilian population in 1966, blacks are now drafted substantially in excess of this proportion. Clearly, the appointment of blacks as local board members in the Selective Service System has not appreciably affected the racist operation of the System.

To explain this apparent contradiction, we must examine the position of local board members within the Selective Service System. The local boards meet once or twice a month usually for a period of two to three hours. At these meetings they spend most of their time deciding changes in draft classifications. A large majority of the cases which they act upon are of a routine nature and are automatically passed at the suggestion of the local board clerk. The bulk of board members' time is devoted to those cases in which the registrant is making a personal appearance to appeal his classification. Most of these appeals are made on grounds of conscientious objection, hardship, and, until recently, occupation. Thus, only a very small proportion of all reclassifications receive any close attention from local board members. In effect, they are made by the clerk of the local board. Although they can exercise wide discretion in certain cases, such as conscientious objection, the actions of local board members must follow the regulations of the Selective Service System. Although there may be variation from board to board, these classification decisions are primarily guided by national standards. Even a deliberate conspiracy on the part of local board members to draft as many blacks as possible would have little effect within the limitations of the guidelines established by the System. On the other hand, even if every local board was all-black, the current disproportion of black draftees would not be significantly reduced as long as members remained obedient to national directives. The reason for the disproportionate numbers of black draftees must be found in sources other than the composition of the local board.

The rapid increase in the number of black local board members is probably the best indication that this is a relatively powerless position. Most local board actions are routine and classifications are made by the clerk who is a full-time employee in contrast to the local board members who serve without compensation. Many observers have remarked that the clerk of the local board actually wields most of the power which is legally entrusted to the local board. However, the exclusion of blacks from the compensated positions within the Selective Service System has not received nearly as much attention as the exclusion of blacks from local board membership. Selective Service figures on full-time compensated personnel as of November 30, 1970, indicate that 447 Negroes are employed full-time by the System out of a total of 6,527 full-time employees. This figure represents 6.85% of all full-time compensated personnel, approximately the same proportion of black local board members. However, there is a considerable difference in the geographic distribution of these employees. Three hundred and thirteen of the 447 black Selective Service employees (70%) are employed in New York, District of Columbia, Illinois, California, and Michigan. In the South blacks are still almost completely excluded. Of 1,779 compensated personnel in 12 Southern states, only 32 or 1.8% are black. The System has had considerably greater success in appointing blacks to local boards. There are 448 blacks currently serving on Southern draft boards, 9.2% of all local board members.

The exclusion of blacks from compensated positions within the System may have a slight effect on the number of black draftees, but, as in the case of local board members, this is not a major reason. The cause of the disproportionate number of black draftees must be sought at the national level. Ultimately, it is the regulations of the Selective Service System and the standards of the Armed Forces which determine the number of blacks who will be drafted.

Within the Selective Service System, the major sources of institutional racism are the standards for deferment. It is generally recognized that the provision for student deferments works to the advantage of white registrants. Since fewer blacks attend college or participate in apprenticeship programs, they are less able to use this means of avoiding the drafts. Although many college students are forced to enter the Armed Forces following their graduation, they have been able to postpone military duty for four years. During this time, they have gained the necessary qualifications which will enable many of them to obtain officers' commissions. Others take advantage of this time to look for loopholes in the System. The college deferment has enabled many youths to choose their period of military service. Young men who were eighteen in 1966, when the Vietnam fighting was greatest, have been able to avoid the draft by going to college until their graduation in 1970 when the level of combat deaths had declined considerably. The elimination of deferments for graduate students has removed one source of racism in the draft, but this inequity will not be totally eliminated until all student deferments are abolished.

A second classification which works to the advantage of whites is the conscientious objector (CO) status. Although CO's are a small proportion of all Selective Service registrants, they are overwhelmingly white. Not only are the traditional pacifist churches almost entirely white in their composition, but the college deferment enables many white youths to develop both the philosophical and procedural sophistication needed to gain conscientious objector status. The nearly complete absence of draft counseling facilities on black campuses and in black communities compounds this inequity.

Hardship and dependency deferments are the final major classification granted by the Selective Service System. Based upon the social and economic conditions of blacks in the United States, one would expect a large proportion of blacks in this category. However, the greater sophistication of draft age whites may affect even this source of deferment. Since the Selective Service System does not collect data by race, it is impossible to determine whether or not this classification also works to the advantage of white registrants.

The elimination of occupational deferments has removed one major source of racial inequity in the Selective Service System. However, as long as any deferments remain, they will probably be used to the advantage of white registrants. Middle class white college students have become highly skilled in manipulating the regulations of the System. Most blacks are excluded from the sources of this sophistication and accordingly suffer from any system of deferments.

A second major source of inequity in the draft lies in the medical standards for induction. Men who are considered to be physically unfit for military service are given either an I–Y or an IV–F deferment. In case of obvious impairments, the local board may make this decision, but in most cases the men are forwarded for examination to the Armed Forces Examination and Entrance Stations (AFEES). Here they are subjected to the military examination which has been immortalized by Arlo Guthrie in "Alice's Restaurant." Many medical surveys have shown that the poor receive much less medical care than affluent Americans and when treated they receive poorer quality of care. Thus, one would expect that since a larger proportion of blacks are poor, more blacks would receive deferments for medical reasons. However, this is not the case. Whites consistently receive nearly fifty percent more medical deferments than do blacks. From 1950 to 1966, 21.9% of the whites were rejected at the physical examinations while only 14.5% of the blacks examined were rejected. In recent years, the total rejection rate has increased, but the racial disparity remains. For Fiscal Year 1970, 34.6% of the whites examined were rejected on medical grounds, but only 24.5% of the blacks were rejected for similar reasons. Bernard D. Karpinos of the Surgeon General's Office cites two reasons to explain this difference: 1) the less frequent exposure of lower class youths, i.e. blacks, to medical care which makes them less aware of their physical ailments and denies them the medical records on which many medical deferments are based, and 2) the greater sophistication of middle-class youths, i.e. whites, with regard to the medical standards for deferment. Ironically, the rate of medical disqualification increases in direct proportion to the educational level of the men examined.

Since the Army medical standards include a wide variety of ailments as grounds for rejection, nearly all resourceful young men can discover some medical condition which would be grounds for medical deferment. All that is needed is a knowledge of Selective Service requirements, a sympathetic physician, and sufficient money to purchase the services of a physician. On all three counts, black youths are at a serious disadvantage.

Only one source of deferments works to the advantage of the black registrant. This is the mental qualification for induction. Since 1950, all men entering the Armed Forces have had to make a score at a specific level on the Armed Forces Qualification Test (AFQT). Although the level for rejection has changed from time to time, the proportion of blacks who fail this test has consistently been four times greater than the proportion of white failures. From 1950 to 1966, 54.1% of the blacks examined were rejected for deficient education, but only 18.6% of the whites were rejected for this

reason. Since 1965, the Armed Forces' educational standards have been lowered on several occasions. Although blacks are still rejected in larger proportions than whites, the total rejection rate has been reduced substantially. In Fiscal Year 1970, 5.3% of the whites examined were rejected for low scores on AFQT while 29% of the blacks were rejected for this reason. Despite this high rejection rate, the absence of other deferments insures that a large proportion of the draftees will be black. Among the men found physically and mentally qualified, more blacks are drafted. A 1964 survey conducted by the Department of Defense showed that among qualified men aged 26 to 34, 30.2% of the blacks had been drafted in comparison to 18.8% of the whites. If the same survey were conducted today, this disparity might be even greater due to the reduced educational standards.

Other Armed Forces' programs also contribute to the disproportionate number of black draftees. The virtual absence of blacks from the Army National Guard and Air National Guard gives white youths a monopoly on this means of avoiding the draft. The same is true for the various Reserve programs of each of the Armed Forces. The under-participation of blacks in the various ROTC programs and the absence of these programs on many predominantly black campuses is yet another reason for the disproportionate number of black draftees.

Although all but one of the above mentioned sources for avoiding the draft work to the benefit of white youths, they cannot explain the sudden and dramatic increase in the number of black draftees after 1966. The non-white induction figures shown in Table I reveal that from 1966 to 1967 the proportion of black draftees increased from 12.4% to 16.3%. Since 1967, the proportion of non-white draftees has remained at nearly this level. The major reason for this increase is Project 100,000. This program, begun in 1966, lowers the standards for induction and enlistment so that men who previously would have been rejected on medical or educational grounds are now accepted. Ninety-two percent of these "new standards men" came into the Armed Forces as a result of the lower educational standards. Of the first 246,000 men who were included under this program, 47% were draftees and 41.2% were non-white. Without Project 100,000 blacks would have been approximately 11% of all draftees. During this period the "new standards men" were 13% of all inductions.

TABLE I.—ARMED FORCES INDUCTIONS, JUNE 1952 TO NOVEMBER 1970

Calendar year	Total inductions	Nonwhite inductions	Percent nonwhite
1952 [1]	242,602	37,974	15.65
1953	470,545	60,827	12.92
1954	252,785	22,120	8.75
1955	151,943	13,877	9.13
1956	152,651	15,534	10.17
1957	138,339	17,036	12.31
1958	142,009	16,358	11.51
1959	96,094	10,553	10.98
1960	86,395	11,845	13.71
1961	119,020	17,790	14.94
1962	81,319	14,111	17.35
1963	119,159	18,673	15.67
1964	111,955	16,961	15.14
1965	232,014	31,060	13.38
1966	382,396	47,504	12.42
1967	228,743	37,336	16.27
1968	296,251	44,642	15.06
1969	284,924	45,691	16.03
1970 [2]	155,404	24,537	15.78
Total	3,726,074	542,293	14.47

[1] June to December.
[2] January to November.

Source: Qualitative Distribution of Male Enlistments, Inductions, and Rejections, DD–M(M)663.

When Project 100,000 was introduced Secretary of Defense, Robert S. McNamara, explained that his plan to "salvage" 100,000 men a year through the Department of Defense was an important part of the anti-poverty effort. "The poor of America," he said, "can be given an opportunity to serve in their country's defense, and they can be given an opportunity to return to civilian life with skills and attitudes which for them and their families will reverse the downward spiral of human decay." Adam Yarmolinsky, the McNamara assistant who is often credited with originating the program, defended the program in similar terms. He concluded that the men who served under this program would return "to civilian life with new confidence in their ability to contribute to civilian society."

The noble rhetoric associated with the introduction of this program masked its primary purpose. At a time when the manpower needs of the Vietnam War were rapidly increasing, this program took the pressure of the draft off of the "more vocal" elements of the population. Although there was never a shortage of manpower, poor whites and blacks were inducted in the place of college students to reduce protests against the draft and provide the Armed Forces with a more manageable manpower supply. Any training these men received was purely incidental to their primary function to serve as combat soldiers. The "new standards men" received no special training. They were allowed greater time to complete the normal educational cycles, but after that time they were treated no differently than any other soldiers. The skills which these men acquired can be inferred from their military occupational specialties. Thirty-seven percent of the "new standards men" were assigned to combat specialties. This compares with 23% of the men in a control group. Among Negro "new standards men" in the Army the percentage in combat specialties reached 45%.

If this program was being implemented solely from altruistic motives, then it would not have been necessary to draft the "new standards men". But participation in this program has never been voluntary. Nearly half of the men who have entered under the lower standards have been draftees. Project 100,000 has always been primarily a method for enlarging the military manpower pool. This was done at the expense of the poor and the black to the advantage of the white and the affluent. Any social benefits which may result from this program will be completely secondary and entirely unrelated to its primary purpose of protecting the sons of the middle-class from the draft and Vietnam.

The introduction of blacks to serve as local board members will no doubt reduce blatant examples of individual racism in the Selective Service System. The equitable representation of all segments of the population in the system is a worthy goal and should not be abandoned. However, those who are concerned about the fate of blacks in the draft should not abandon their efforts once an equitable proportion of blacks has been appointed to local boards. Another more important problem remains—the pervasive institutional racism of the draft. As we have shown, the actions of the local board members are of relatively little consequence in determining the number of blacks who are drafted. Even if all members of the Selective Service System were black, the number of black draftees would not be appreciably reduced as long as they followed the present regulations. To fight solely against the exclusion of blacks from local boards misdirects the energies of those alarmed about racism in the Selective Service System. Such individual efforts will have little more effect than a garden hose against a forest fire. Protests of individual cases will only be effective if they can serve as a means of education to transform the issue from one of individual racism to one of institutional racism.

Short of entirely abolishing the draft, several steps can be taken to relieve inequities in the current draft system. (1) A program of intensive lobbying should be conducted to support the proposal submitted to Congress to eliminate all student deferments. (2) Draft counseling facilities must be made as available to black youths as they are to white youths. This means the establishment of draft counseling centers on black campuses and in black communities. Draft age blacks must be made aware of the existing opportunities for deferment and appeal. (3) The Armed Forces physical examination should be seriously overhauled. Reliance on prior medical history should be made secondary to complete, thorough, and impartial examinations at the induction centers. Black physicians should be recruited to participate in these examinations. (4) Project 100,000 should be made completely voluntary. Men who are eager to enlist in the Armed Forces should not be prevented by an arbitrary educational standard. However, these men should be allowed to weigh the advantages of military service themselves.

Of course, the best way to eliminate this racism is to abolish the draft altogether. This one step would remove the need for several separate reforms. Those opponents of draft abolition who argue that an all-volunteer Army would be predominately poor and black fail to realize that the current draftees are also disproportionately poor and black. These men are now bound in a form of involuntary servitude. The pay they receive can hardly compare with their potential earnings in the civilian economy, even in a time of recession. Continuation of the draft would only perpetuate the handicaps forced on the poor and the black draftees. Simple justice demands that these men receive an adequate income, especially when all men do not have to serve. If the draft can be considered a tax in kind, it is an extremely regressive levy. Instead of falling most heavily on those able to pay, it penalizes those who can least afford it. Blacks and the poor should not be victimized any longer by this unjust system of taxation.

Many arguments support the abolition of the draft, but the elimination of institutional racism should be the most persuasive.

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THE RAILPAX INCONSISTENCY BETWEEN MONTANA AND WASHINGTON

Mr. METCALF. Mr. President, I have spoken before on behalf of adequate Railpax train service to and through the six largest cities in Montana in addition to the northern route chosen for the new corporation's trains. I must raise the subject again because it is time to point out the inconsistency in logic employed by Railpax when making their route selections.

Railpax said one reason the northern—or Hi-Line—route through Montana was chosen was that it would save an hour between Chicago and Seattle. Frankly, I do not think an hour makes a difference. I do not think a person really notices whether he is on a transcontinental train for 40 or 41 hours. Nevertheless, that was the logic used by Railpax in selecting only the northern route in Montana.

In the State of Washington, it was different.

I have found that Railpax has chosen the slower route west of Spokane, thereby negating any time-saving which might result from using the northern Montana route.

Mr. President, I ask unanimous consent to have printed in the RECORD a listing of the two Washington routes in question.

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

ANALYSIS OF TRAIN SCHEDULES WEST OF SPOKANE, WASH.

The following route, which is 396 miles long, has been chosen for Railpax trains:

Read down					Read up	
The Mainstreeter	North Coast Limited	Miles from Chicago			North Coast Limited	The Mainstreeter
2 19	11 40	1,922	Lv.	Spokane ar.	11 29	4 25
a2 41	----------	1,938	+	Cheney	----------	3 52
f3 29	----------	1,987	+	Ritzville	----------	f2 58
g4 26	----------	2,032	+	Connel	----------	g1 56
5 08	2 25	2,067	Ar.	Pasco [1]	8 49	1 15
2 45	2 55	2,067	Lv.	Pasco ar.	7 00	----------
4 50	6 30	2,286	Ar.	Vancouver lv.	3 22	----------
5 30	7 00	2,299	Ar.	Portland (Un. Sta.) lv.	3 00	----------
5 23	2 50	2,067	Lv.	Pasco [2]	8 24	1 05
5 33	----------	2,070	+	Kennewick	----------	12 55
6 18	----------	2,107	+	Prosser	----------	h12 15
h6 49	----------	2,138	+	Toppenish	----------	h11 46
7 23	4 35	2,157	Ar.	Yakima [1]	6 49	11 24
7 28	4 39	2,157	Lv.	Yakima ar.	6 44	11 19
8 23	5 34	2,193	Lv.	Ellensburg [3]	5 40	10 21
f8 55	----------	2,218	+	Cle Elum	----------	9 53
f9 59	----------	2,252	+	Lester	----------	f8 53
f10 08	----------	2,260		Maywood	----------	f8 40
f10 33	----------	2,275	+	Kanaskat	----------	f8 16
11 05	8 02	2,295	Ar.	East Auburn lv.	3 05	7 50
11 10	8 09	2,295	Lv.	East Auburn ar.	2 59	7 45
11 45	8 45	2,318	Ar.	Seattle (P.T.) [1]	2 30	7 15
P.M.	A.M.	----------		(King Street Station)	P.M.	P.M.

[1] Car leaves.
[2] Car arrives.

Trains take 7 hr 25 min; 8 hr; 8 hr 40 min and 8 hr 15 min Spokane-Seattle

The below listed route, which is 330 miles long, will not have train service under Railpax:

Read down					Read up	
Western Star	Empire Builder	Miles from Chicago			Empire Builder	Western Star
27 Daily	31 Daily				32 Daily	28 Daily
P.M.	P.M.	----------	Lv.]	[Ar.	P.M.	P.M.
2 30	10 50	1,879	-----	Spokane	11 10	6 15
4 48	1 20	2,002	-----	Ephrata	8 59	45
5 07	----------	2,018	+	Quincy	----------	3 15
6 00	2 35	2,054	Ar.	Wenatchee Lv.	7 53	2 20
6 10	2 45	2,054	Lv	Wenatchee Ar.	7 45	2 05
e —	----------	2,065	+	Cashmere	----------	e1 45
e —	----------	2,073	-----	Peshastin	----------	e —
e —	----------	2,076	-----	Leavenworth	----------	e —
				CASCA DE TUNNEL 7.79 MILES IN LENGTH		
e —	----------	2,161	+	Monroe	----------	e —
e —	----------	2,168	+	Snohomish	----------	e —
9 14	6 05	2,176	Ar.	+ Everett Lr.	4 45	11 10
9 25	6 20	2,176	Lv	Everett Ar.	4 45	10 50
d9 50	d6 47	2,191	+	Edmonds	b4 16	b10 31
10 30	7 30	2,209	+	Seattle [1]	3 45	10 00
P.M.	A.M.	----------		(King Street Station)	P.M.	P.M.
----------	----------	Ar.]		(P.T.)	[Lv.	----------

[1] Car.

Trains take 8 hr 59 min; 9 hr 5 min; 9 hr 10 min; and 9 hr 26 min Spokane-Seattle.

Mr. METCALF. Mr. President, as can be seen, Railpax has chosen a route between Spokane and Seattle via Yakima which is 396 miles in length, or 66 miles longer than the 330-mile route via Wenatchee.

The four trains running on the Wenatchee route travel the 330 miles in as little as 7 hours and 25 minutes, while the fastest train on the Yakima route takes 8 hours and 59 minutes. This means that the fastest Railpax trains will most likely take an extra 1 hour and 34 minutes between Spokane and Seattle. I point out that the difference between the present Mainstreeter schedule via Yakima—9 hours and 26 minutes—and the Empire Builder schedule via Wenatchee—7 hours and 25 minutes—is 2 hours and 1 minute. If Railpax does not insure that its passenger trains have priority over freights, is it not reasonable to suggest that Railpax trains might even be 2 hours longer via Yakima?

Railpax says the reason it took this longer route is that a greater population will be served in the State of Washington. I have no doubt that Washingtonians should be served and I am asking equal treatment for Montana.

Instead of fomenting a mini civil war in Montana by pretending that it had to choose either the northern or southern route, Railpax should admit that there were two other alternatives that would have been acceptable to all Montanans. First, Railpax could have run all of the trains; of those to be discontinued, only one has ever been the subject of a discontinuance proceeding before the Interstate Commerce Commission. Second, Railpax could have elected an alternate day service on both routes.

If we employ the Railpax logic, we might run a train through Montana's population centers on alternate days with service on the Hi-Line, adding an hour to the southern route service as was done in Washington. But, if Railpax wanted, it could save that hour by operating the train through the shorter route in Washington.

One last point. At a cost of $100,000 the fledgling corporation has changed its name from Railpax to Amtrack. I believe the observation in yesterday's hearing cannot be improved on: Congressman SKUBITZ told Mr. David Kendall that he would have advised them, without charge, to retain the name Railpax and for just $50 he would have advised them to adopt red, white, and blue as their colors. The Congressman added that he hoped their contract negotiations with the railroads were more economical than those with Madison Avenue.

But a change of name, however expensive, will not change the image already received in the public's mind. Amtrack is ignoring the public as did the railroads for so many years. If Amtrack repeats the mistakes of the railroad industry—and they have begun by ignoring vast sections of the country—then Amtrack will be equated with other railroad names like Penn Central and New Haven. No amount of money spent for image making will cure Amtrack's basic problem—a lack of responsiveness to the needs of the traveling public.

It is interesting to note the dictionary defines "amtrack" as an amphibious vehicle, a sort of floating tractor of uncertain parentage.

I hope this does not indicate that after years of tossing passenger service overboard, Congress has now made it possible for the railroad industry to stand aside and let the passengers go down with the amtrack.

SELF-DETERMINATION FOR THE INDIANS

Mr. HANSEN. Mr. President, on April 18, Senator PAUL FANNIN delivered the keynote speech at the 18th annual Arizona Town Hall, where he discussed the present circumstances of the American Indian and his seemingly permanent relationship with the Federal Government.

Senator FANNIN's State of Arizona is home for some 200,000 American Indians—more than are living in any single other State. He is experienced in the area of Indian affairs, because he has worked closely with the citizens of his State and has taken a more than routine interest in the influence of the Government in the lives of Indian citizens.

In his April 18 speech, Senator FANNIN talked about a goal that is compatible with the objectives of Indian citizens, and is becoming more compatible, at long last, with the objectives of the Government. I speak of Indian self-determination.

The Senator pointed out that two things will help the Indians achieve self-determination: education and economic viability.

He said much more than this that should be of interest to us all, as shapers of the programs which so intimately affect the lives of all American Indians. So that other Senators may read the text of what I believe to be an outstanding speech on the plight of Indian citizens, I ask that Senator FANNIN's remarks be printed at this point in the RECORD.

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

REMARKS BY SENATOR PAUL J. FANNIN

The title of this 18th Arizona Town Hall, "The Arizona Indian People and Their Relationship to the State's Total Structure," is really a mouthful. The only thing I can think of that would make it more complex is for someone to try to translate this into Navajo.

It is, however, apropos that we have a complex title for this mission. The subject we are examining is complex and involved. We will not find any easy answers.

Monumental misunderstandings have been the rule in the relationship between the Indians and non-Indians since the first explorers crossed the desert. These misunderstandings persist today.

On one hand we have Indian cultures and traditions dating back thousands of years. On the other hand we have the youthful, ambitious state of Arizona with less than six decades of experience in the business of self-government.

Indians have good reason to be puzzled and distrustful. They can cite numerous examples of deceit and broken promises stretching over four centuries of contact first with the Spaniards and then with settlers from that strange, new nation known as the United States.

Non-Indians generally are equally as puzzled when they try to relate to the Indians. They can't understand why the average Indian demonstrates little desire for the "good life" of suburban America.

We are not here to study Indian history, but it is appropriate to consider how we got where we are today.

At least 10,000 years ago, the ancient ancestors of the Hopis, Pimas, Papagos and Humans were living in what is now Arizona. About 1,000 years ago the Navajos and Apaches migrated here.

This land was well-inhabited by Indians when the Spaniards first showed up in the early 16th Century.

These Spaniards brought horses and sheep, gave the Indians a knowledge of working with metal and wool, and spread the Christian religion.

In the middle of the 19th Century, the United States took over Arizona territory by conquest and purchase. Skirmishes with some bands of Indians went on for 30 years before the last of the tribes, the Chiricahua Apaches, capitulated in 1886.

It is important to note that of all the reservations in Arizona, the only one established by a Senate-ratified treaty was the Navajo. This treaty in 1868 established a 3.5 million acre reservation—but that reservation has grown to about 24,000 square miles.

All was not conflict and war in the territorial days in Arizona. Settlers around Phoenix had a good relationship with Indians such as the Pimas who provided shelter in their villages for overland travelers. These Indians also helped provide wheat for the Army, they helped in building new irrigation ditches where the Hohokam had once dug so many years earlier, and some Indians helped build railroads and dams.

This goes to illustrate that there were a great many differences between the traditions, attitudes and experiences of the tribes in territorial Arizona.

In the early days the Indians did not have a state of Arizona to relate to. Their dealings were with individual settlers and with the vague and distant but very powerful United States government.

The federal government from its inception had an Indian program. This cost the fledgling nation $27,000 for the years 1789 to 1791.

As the nation grew, the cost went up.

In 1869 the Bureau of Indian Affairs spent about $7 million and had 400 employees to help watch over 289,778 Indians under federal jurisdiction.

One hundred years later, the BIA appropriation reached approximately $250 million and the staff exceeded 16,000—all of this to carry out federal programs for about 366,000 Indians living on trust land or nearby. In addition, the Department of Health, Education and Welfare spends about $150 million per year and has more than 6,000 people working on Indian programs.

Another $75 million annually is spent on Indian programs by other government agencies such as the Office of Economic Opportunity, Small Business Administration, Department of Housing and Urban Development, Farmers Home Administration, Rural Electrification Administration, Forest Service, Bureau of Sport Fisheries and Wildlife, Bureau of Commercial Fisheries, Geological Survey and Department of Labor.

In all, the government spends about one-half billion dollars annually on Indian programs. This expenditure is greater than the total reported per capita income of reservation Indians by more than $129 million.

This clearly illustrates that the federal government has been concerned with the Indians and has provided considerable sums of money.

Nevertheless, after more than 180 years of programming and billions of dollars in expenditures, we must face the sad facts of Indian life.

Drop-out rates for Indians are twice the National average.

The average educational level is less than six years of school.

Unemployment is ten times the National average.

Unemployment is as high as 80% on some reservations.

Average family income is $1,500.

80% of Indian families have incomes below the poverty level.

The health of Indian people is 20 to 25 years behind the general population.

Average age at death is 44, which is one-third less than the National average.

Infant mortality is almost 50% higher than the general population.

The tuberculosis rate is eight times as high.

The suicide rate is twice as high.

This, in simple terms, is the scope of the problem that we are facing.

Just what have we learned from the many years of hard experience? We have at least gained the knowledge of what will not work.

Early attempts to force certain tribes to relocate and to learn new ways of life were as futile as they were inhumane.

Efforts to apply the melting pot theory to force Indians into the mainstream of American life have failed.

Paternalism on the reservations has been a mistake on one extreme; the attempt to integrate Indians rapidly into urban areas was bad judgment in the other direction.

The realization has come that it is difficult if not impossible for the non-Indian to determine precisely what is best for the Indian. And even if the government were to come up with the perfect solution, it would not be successful unless the Indian were given a voice in arriving at the answer.

For all the differences in our cultures, the Indians and non-Indians have one thing in common—this is the insistence on a chance to help in the decision-making process.

It is somewhat amazing that it has taken our government so long to realize this need.

This is one of the lessons from our own colonial history.

"No taxation without representation" was one of the cries in colonial America.

Notice that the protest was not simply over the matter of taxes. The important part concerned representation.

Heaven only knows that once the colonists won control of their own affairs, they immediately started levying new taxes—and we haven't stopped yet.

Objective historians point out that much of what the British did in colonial America was for the benefit of the Americans, and that most of the regulations and taxes were justified. What the British failed to do was consult with the colonials.

Just as American colonials sought a voice in determining their own affairs, American Indians have long sought the same right.

All of which brings us to the Nixon Administration policy of self-determination.

President Nixon reaffirmed our national dedication to the ideal of freedom when he announced the new federal policy on July 8, 1970. The President pledged that the Administration would provide for self-determination and not termination

Last month Vice President Agnew reaffirmed this policy in a speech to the National Congress of American Indians at Kansas City. The Vice President said the time has come to achieve a partnership between the American Indians and their government "that is productive and worthy of our highest efforts."

The policy of the Nixon Administration is to give Indians the maximum opportunity to manage their own affairs and to determine their own destiny.

This necessarily means that the federal government will loosen the apron strings so that Indians will be allowed to have more freedom than ever, even if it means they will make mistakes. On the other hand, the government is pledged not to push the Indians—not to terminate the trust relation-

ship. In a sense, the federal government is trying to offer the Indians the best of all possible worlds—an opportunity to govern their own affairs but with continued protection for those who are not either ready or willing to go it alone.

This is a difficult concept for some old-line federal bureaucrats to accept. Self-perpetuation is a strong instinct in bureaucracies.

I have spent this time talking about federal policy for a very good reason. What the federal government does is of prime importance to both the Indians and the State of Arizona. All three are so closely entangled in the scheme of government that they must all be considered together.

For the moment, however, let's try to look at the Indian people and their importance to the State of Arizona without bringing in the federal government.

Arizona possibly has more Indians than any other state in the nation—perhaps as many as 200,000. This estimate includes both Indians living on and off reservations.

Although only a small percentage of the Arizona population lives on Indian reservations, the 22 reservations account for about 26 percent of the land in Arizona.

Economic development during the first half of this century largely bypassed the reservations. The Phoenix, Tucson, Yuma, Flagstaff regions have thrived as they have presented the most alluring prospect for the development of Arizona's very scarce privately owned land.

Economic progress eluded the reservations for several reasons. The federal government did little to encourage outsiders to come onto the reservation; Indians themselves had little awareness or interest in attracting industry prior to World War II.

Now all this is changing.

With a dwindling supply of privately owned land in the state, attention has turned to the abundant economic potential for Indian lands. Five reservations—the Salt River, McDowell, San Xavier, Gila River and Yavapai reservations—all are adjacent or close to cities undergoing dramatic expansion. On the Navajo Reservation, urbanization is taking place at six major locations and numerous smaller locations.

The time is upon us when the reservation lands and the Indian people can claim their share of the wealth that comes from economic development. During the next 20 years, we should see the integration of these resources into the state's overall economy without depleting the Indian land base.

This integration must be built on trust and cooperation.

We must work together, Indian leader and state official, to establish a full economic partnership. This is to the advantage of all concerned.

The State of Arizona has ever practiced the paternalism of which the federal government has been guilty. Indians will complain, and with justification, that the opposite has been the case, that the state has not demonstrated enough concern for the welfare of the Indian. There are reasons for this. First of all, for many years the people of Arizona were struggling against great odds just to maintain their own existence in what was to our pioneering forefathers a harsh and at times cruel land. This is the root of much of our heritage of independence. In the beginning, the Indians themselves were really at an advantage because they had survived and even prospered on occasion over thousands of years in Arizona.

It is a shame that some of the cooperation between Indians and the early white settlers has since evaporated. The stereotype of the hostile and savage Indian too long dominated the national image of the Red man.

For many years the Indians and the other people of the territory of Arizona were virtually in the same relationship with the federal government—both the Indians and territorial residents were in effect wards of the government.

By the time Arizona became a sovereign state, the federal Indian bureaucracy was well entrenched. The federal government had fairly well pre-empted the state as far as responsibilities for the Indians were concerned. Thus, Arizona's state government was neither orientated toward nor capable of providing for the Indians in the manner of the federal government.

Arizona has assumed more responsibility during the past two decades. In the 1950s we created the State Commission on Indian Affairs. Arizona has established a commitment to work with the Indians for the benefit of those on and off the reservations. This commitment is growing.

The basic challenge to the Indians is economic development. This is the key to self-help, and the key to meaningful self-determination. The more economic independence the tribes gain, the more alternatives they will have in deciding their own destiny.

It takes a sound economic base for any society to make a better life for its members. Good housing, modern sanitation, effective education, and social progress all have a price.

It also is evident that anyone—Indian or non-Indian—must be willing to make some sacrifice to gain the benefits of 20th Century America. It does no good to give a man a house. If he has not had to work for it, chances are he will not take care of it. Charity is not progress. The Indian people do not basically want charity. However, the paternal approach over a long period of time has made it appear they do—and the Indian has suffered everlasting criticism on this score.

Indian leaders themselves are now saying that they need opportunities rather than any additional subsidies.

Let me quote to you from a speech made last February 25th to the Phoenix Community Council by Peter MacDonald, Chairman of the Navajo Tribal Council. Here is what Mr. MacDonald said:

"The basic challenge for the Indian is economic development. Our task is to transform our reservations into self-sufficient and dynamic centers of 20th Century life."

The Navajo chairman said that the reservations must end their colonial status, that they must develop to the point that they can provide not only raw materials but finished products for the American marketplace.

Chairman MacDonald continued, and I quote: "To achieve this economic revolution we need your active assistance as partners. We need development capital. We need technical assistance. We need businessmen as partners to assist in the development of small businesses, both on and off the reservation." I am still quoting: "To become full economic partners, we also need understanding and help from federal, state and local governments. *I am not talking of additional subsidies,* I am talking of wise legislation that will create new opportunities for Indians to help themselves."

Chairman MacDonald noted that the Nixon Administration policy of self-determination would provide Indians with the opportunity of taking over Administration of their own affairs. This would include direction of Indian hospitals and education and the regulation of traders on the reservations.

Allow me to quote further from the Navajo chairman's very good speech. He said of the new federal policy: "It offers Indians control of their own destiny. We are ready to accept that responsibility."

The Chairman said that less progress had been made at the state and local level, and he suggested that this probably is due to a lack of understanding. He said the Indians are not a drain on the taxpayer's dollar, that the reservations provide oil, coal, timber and electric power that is essential to the state and that they contribute to the tax base.

In exchange, MacDonald said, "we ask only that the Arizona Legislature adopt wise policies that will give us the necessary latitude for accelerated economic development."

Another respected spokesman for American Indians followed a similar theme last month at Kansas City in addressing the National Conference on Self-Determination. The speaker on this occasion was Barney Old Coyote, a Sioux Indian from Montana. He declared that Indians are not interested in promises that can't be kept. Speaking for the Indians, Mr. Old Coyote said:

"They want no more rhetoric, they want no more promises, they want no more philosophizing—they want action, they want concrete programs, but more importantly, they want a demonstration of good faith that they are going to participate in the process of making decisions involving or affecting them and to do this through the Indian community's own elected leadership."

Mr. Old Coyote expressed the hope that self determination would enable Indians to make things happen without the interminable waiting that is the fashion of Indian affairs.

Quoting further, Mr. Old Coyote said: "Through self-determination, through the understanding of the government and through a partnership approach with the government, we can now begin the formidable task of changing the direction of Indian affairs in this country. We need to realign our thinking before we realign our efforts and our mechanisms. We, as Indian people, need to be mindful of the trends and tendencies of this country if we are to remain a viable part of the American community."

These are encouraging statements by two of the most respected Indian spokesmen in the nation. They say that Indians are ready to take over responsibilities and to move forward on their own initiative.

One of the first steps in this direction is to evolve plans for the internal development of the reservations. The federal and state governments can and should be a party to, but not dominant in, the formulation of such plans.

There are excellent examples of Indian self-help with government aid.

The Gila River has the only Model Cities program on any Indian reservation.

The Salt River Reservation initiated the first 710 Urban Planning Program in Arizona, cooperating with the City of Scottsdale in using the same planner.

There are more than seven industrial parks on Arizona reservations funded by the Economic Development Administration. There is an Indian Development District of Arizona which is designed to promote reservation developments.

Two of the effective tools helping Indians help themselves are the Revolving Loan Fund and the Indian Business Development Fund. Both are major contributors to economic developments in Arizona. There is $25 million in the revolving credit fund. The Bureau of Indian Affairs want to add another $25 million and in addition provide for $200 million in loan guarantees and interest subsidies. These additions will head Indian borrowers in the direction of banks and other private lenders. Currently Arizona Indians have loans exceeding $3.5 million.

The Indian Business Development Fund received $3.4 million this year. It provides grants of venture capital to allow Indians to borrow from private sources. The fund gen-

erated $5 million from the Small Business Administration and $11 million from banks.

This money has gone for such things as a small machine shop on the Salt River Indian Reservation and a trucking business on the Navajo Reservation.

Another economic tool is the "Buy Indian" contract. This allows federal contracting through unilateral negotiations between the BIA and corporations which are more than half Indian. On the San Carlos, Gila River, Salt River and the Hopi reservations individuals or corporations have undertaken road construction and maintenance contracts as well as building construction and repair.

On the Salt River reservation, three tribal members recently borrowed more than $100,000 from the revolving loan fund and joined with a group of non-Indians in leasing large portions of land in the agricultural reserve. This is the first time that Indian farming, other than "tribal enterprises," has taken place there in years.

Government aid is giving Indians in all parts of Arizona the means to develop their reservations and create jobs. Two weeks ago the Economic Development Administration approved a $196,000 grant to help develop an industrial park on the Yavapai Reservation.

Enterprises in the Indian Development program are many and varied. They include the manufacturing of fishing boats on the Colorado River Reservation; ski facilities at Fort Apache; canoe trips on the Colorado River with headquarters at Fort Mojave; experiments in vegetable growing at Fort Yuma . . . the list goes on and on. The Navajos and White Mountain Apaches have shown great energy in developing tribal enterprises.

As these enterprises grow, so must the relationship between the tribal governments and the state government. No reservation is an island. Decisions made by the tribal government can have drastic effects on the state economy. The Indian Reservations are rich in resources, such as the coal being mined at Black Mesa. There is oil, copper, and other minerals on the reservations. The tribes are proving that it is possible to develop these resources and at the same time preserve their land.

State legislation and state policy can help the Indian enterprises to flourish, or cause them to strangle. State cooperation will return dividends for everyone in Arizona.

It is not surprising that the Indians of Arizona have shown such keen interest in economic development in the past decades. They have long been in the forefront of administration of their own affairs. The Navajos in the late 1940s and the early 1950s started to use royalty monies to provide municipal services to their people. They have a tribally funded police force, utility development, and social services system as well as industrial development, mining and timber units.

It was the Salt River Indians that in 1968 became the first tribe to take over a substantial number of BIA services under contract. They since have replaced nine federal employees with tribal slots and presently are expending $183,000 of the BIA's budget under contracts.

Indians will gain in independence as the tribes contract to take over reservation services now provided by the federal government itself.

The same progress that is being made in economic development and self government on the reservations also is possible in the field of education.

At the federal level we have the proposed National Board of Regents for Indian Education Act of 1971. (That's a title almost as complex as the one we have for this Town Hall.)

This bill which I am cosponsoring would encourage Indian communities to establish school boards to assume control and operation of federal schools serving the children in such communities.

The bill authorizes an eleven member national board of regents for Indian education to provide leadership and an organizational framework for establishment of a new Indian education program. Within four years of enactment, the board of regents would assume full operational responsibility of the federal school system currently administered by the Bureau of Indian Affairs.

Arizona state education officials also are proposing a plan which would give Indians the opportunity to take responsibility in the education of their children.

This would provide for a state Division of Indian Education staffed with capable Indian personnel who would develop a program.

The objective would be to increase educational opportunities for Indian children.

As part of this plan, there would be consultations with tribal councils to determine the educational needs and priorities of each local district.

This division also would conduct workshops to help Indians prepare for the responsibilities of serving on school boards. It would provide for curriculum guidance and teacher education shaped to the needs of Indian education.

Federal funding has been requested to implement this program.

Over the years BIA schools have been the focus of much criticism. There has been a tendency for more and more Indian students to enroll in the public schools when they have had such an opportunity.

It would appear to be the right time for the BIA to turn their schools over to the state system. This would require continued federal funding, of course, since the basic support for the state system is the property tax, and Indian land is not taxable.

One problem which could arise in the future is the financing of Indian students in the state junior college system. As the numbers grow, the burden on the state of Arizona will increase considerably.

At this point I might point out that the opportunities for Indians to attend college are increasing. The new campus site for Navajo Community College was dedicated five days ago. We also have the Scottsdale Community College located on Salt River Reservation land.

As I said earlier, my remarks have been concentrated on the problems of economic development and education for good reason. These are two essential areas where we must have progress before we can expect any lasting solution to other problems such as health and welfare.

If industry is developed on the reservation, the Indians will be able to work in an environment much more compatible than that found in the big city. Indian management should be able to make the necessary adjustments in working schedules and conditions to fit in with the Indian temperament and cultural background. And reliable employment is the only adequate solution to welfare problems both for Indians and the general American public.

Both education and economic development are essential to improved Indian health. Economic development will raise the sanitation standards of those Indians living on reservations; education will give these Indians the required knowledge to care for themselves and their families.

You may be interested in the bio-satellite proposal that I have been working on to help improve health care for the isolated reservation dwellers. The idea is to set up mobile units manned by Indian para-medical personnel. These mobile units would have television and other electronic equipment. An Indian patient on the reservation could be examined at the mobile unit, and the electronic equipment would provide data instantly to consulting doctors in Tucson or Phoenix. These doctors could then diagnose the case and either prescribe treatment or advise the patient where to go for further examinations and treatment. If this idea can be implemented, it could be applied to health care across the nation.

There are many other problems that we will want to discuss here during the next three days. For example, we will want to explore the problems faced by Indians who chose to move to the cities.

In closing, I would like to re-emphasize several points.

First, I believe that the new federal doctrine of self-determination will give the Indians the opportunities to become full partners in the government and economy. Indian leaders themselves have said that they are ready to assume the responsibility of shaping their own destiny.

Cooperation between the tribes and state government is a key element. Working together, both the Indian and non-Indian can prosper. Hostility or militancy in either quarter will cost us much more than we can afford. Our goal at this Town Hall is to develop suggestions that can foster the needed cooperation.

NEED TO REPLACE MEDICAID WITH FHIP

Mr. HANSEN. Mr. President, I would like to add my voice in support of this bill. In my opinion, one of its most important features is that it would provide for the replacement of much of the medicaid program with a new family health insurance plan.

For many years, medicaid has been criticized as a haphazard system, one that contains many inequities. For example, 16 States now get 80 percent of all medicaid money and two States, California and New York, get 30 percent of Federal funds though they have only 20 percent of the poverty program. Twenty-five States provide medicaid payments for the medically indigent, people who need medical but not financial assistance; 23 do not. Two States have no medicaid programs at all.

Eligibility requirements for medical assistance also vary widely from State to State. In New York, a medically indigent family of four which has an income of less than $5,000 is eligible for medical assistance. In Maryland, the corresponding figure is $3,200. Here, in the Nation's Capital, the cutoff point for medical assistance is $3,560. Beyond this, benefits differ from State to State. Thirty-nine States cover home health services, 11 do not. Twenty-six States cover physical therapy, 24 do not. I could go into such differences at great length, but I think the point has been made. The availability of basic health services to those citizens who cannot afford them should not depend on which State they live in.

The family health insurance plan on the other hand would apply to all eligible citizens across the country, and the definition of eligibility would be uniform

nationwide. For example, the income cutoff for a family of four would be $5,000. But the income cutoff under the family insurance plan would not be the same as under medicaid. It would be far more humane and equitable. Under present law, a family moving up in income from just below the cutoff point to just above it would move from full medicaid benefits in that State to no benefits at all. This factor encourages families to stay below that cutoff income level. The family health insurance plan would enact a graduated schedule of premium charges, deductibles, and coinsurance payments, so that the family would assume a greater share of the costs as its income rose. In addition, medicaid suffers from other defects that now plague our failing welfare system. Coverage is provided when husbands desert their families, but is often eliminated when they come back home and work. In States which include the medically needy, any income above the eligibility level for the medically needy must be spent for medical care before the individual or family is eligible for medicaid.

These problems would not exist under the proposed family health insurance plan. For the first time, families headed by a low-earning, part-time, or self-employed, or unemployed male would be eligible for medical assistance nationwide. Eligibility would not depend on receipt of cash assistance. The spend-down provision, which forces families back to the poverty level when illness strikes would not apply, since all families with income below the cutoff point would be eligible for protection. Families above the cutoff point are presumably working full-time and would be covered under title I of the bill, the National Health Insurance Standards Act.

Each family which includes one or more members not entitled to medicare hospital insurance or to health insurance under the National Health Insurance Standards Act would be entitled to coverage under the family health insurance plan provided that total annual family income does not exceed specified limits and that total family resources do not exceed $1,500. These income limits range from $2,500 for one-member families to $7,000 for families of seven or more members. Deductibles and coinsurance would vary in accordance with the income class of eligible families.

In each calendar year, each covered member of a family would be eligible for coverage of 30 days of inpatient hospital care—or equivalent days of extended care or home health services—emergency services, outpatient and inpatient physicians' services, and other services. Also covered would be well-child care, with the number of occasions of such care being limited by the child's age, routine eye examinations for children under 12 years of age; and maternity care, family planning services, and related drugs and devices.

Provision is made for families to choose to receive covered services through a health maintenance organization. To insure that providers give adequate service to beneficiaries, the Federal Government would contract with local committees to review local practices and to insure that adequate care is being provided in exchange for Federal payments.

Do we need health insurance protection for low-income families? In 1969, 22.4 percent of all households in this Nation had incomes of less than $4,000. At the same time, the average health bill per person was $324. And low-income families tend to have more health problems. Obviously, these low-income families cannot afford the $324 or more per person that is needed to keep family members in good health.

Medicaid has not done the job. It has encouraged families to keep incomes low. It has not provided uniform coverage across the Nation.

Our low-income citizens deserve a better medical care system; they have a right to a better medical care system. We must not allow good health to become a luxury for those who can afford it. Gentlemen, I urge that you join me in support of the National Health Insurance Partnership Act of 1971.

Mr. President, on February 25, 1971, I introduced S. 987, legislation which has become known as the medicredit concept of meeting our Nation's health needs. The legislation introduced today by the distinguished and able senior Senator from Utah is consistent with the concepts developed under medicredit. While the two proposals may differ in some details, it is the principle that is important.

Medicaid has not met the health needs of the American people in a sufficient manner. I am convinced that medicredit and the family health insurance plan are reasonably effective means of replacing the medicaid program.

Over the next several months, the Congress will be considering many health care proposals. Certainly no legislation will be enacted in its original form. The medicredit and family health insurance plan offer much, and I urge my colleagues to study the provisions of these proposals closely in our efforts to provide the American people with a health program that meets their needs.

SECRETARY ROGERS' ADDRESS BEFORE ASSEMBLY OF THE OAS

Mr. JAVITS. Mr. President, in the near future, I will be making a report to the Senate on my recent visit to Mexico City where, with U.S. Ambassador McBride, who did the translating, I met with President Luis Echeverria. I also will be making some observations on the first regular session of the General Assembly of the Organization of American States—OAS—which is presently meeting in Costa Rica.

I wish to call the attention of my colleagues to the major Latin American policy statement made in San Jose by Secretary of State Rogers. The Secretary's statement thoroughly reviews the evolution and present status of our Latin American policy and addresses itself to important legislation which will soon be submitted to the Congress. In his speech, the Secretary pinpoints that "Latin America particularly needs an open market in the United States" and that "perhaps the most important single initiative we have taken in the trade field was our decision to advocate—and urge the other developed countries to accept—a liberal system of generalized tariff preferences." The Secretary then noted that the European Common Market has set a target date of July 1 for implementation of its system, the Japanese Diet has approved implementation for not later than October 1 and that most other developed countries have already obtained authority or will seek it soon.

Concerning the U.S. proposal, the Secretary of State then stated before the ministerial representatives of all the nations of the Organization of American States and the observers of many other foreign nations that—

> Action on generalized preferences will require Congressional approval. The President has asked me immediately on my return from this meeting to initiate consultations with members of Congress with a view to early introduction of legislation to grant to developing countries generalized tariff preferences on a wide-range of products, including the 500 items requested by Latin America. The Administration will make a concerted effort to secure enactment of this legislation.

I am convinced, Mr. President, that this generalized preferences legislation is a key element in our future relations with the nations of Latin America and with the developing nations of the world generally.

The importance of the generalized preferences scheme was signaled further since the Secretary General of the United Nations, U Thant, stated in Costa Rica:

> And it is to one of your most forward-looking and forceful statesman-economist, Don Raul Prebisch, that we owe the design of a world-wide economic development strategy and of a system of preferences for the products of all developing countries, instead of a fractioning of the world into separate preferential economic groups.

In my view, Secretary General U Thant covers the key question which must be considered when the Congress debates the generalized preferences scheme. This question is whether it is in the U.S. national interest for a fractioning of the world into separate preferential economic groups or whether the U.S. interest would be best served by joining with other developed nations in extending generalized preferences to the developing world.

Mr. President, I ask unanimous consent that Secretary of State Rogers' address be printed in the RECORD at this point.

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

STATEMENT BY THE HONORABLE WILLIAM P. ROGERS

This meeting of the General Assembly is the first one of the organization's leading bodies to be held in Central America since regular sessions began 81 years ago. It is time that we met in Central America. This

year marks the 150th anniversary of Central America's successful declaration of independence. It is most appropriate that our meeting is in Costa Rica, a country renowned equally for its beauty, the hospitality of its people, and especially for the strength of its democratic institutions.

Since the first inter-American meeting in 1890, support for the inter-American system has continued to broaden. Today we have a newly strengthened and reorganized institution. We who are fortunate enough to represent the member states here today have a special responsibility to contribute to the success of this institution. Today I reaffirm the willingness of the United States to play a useful and constructive role in that endeavor. That is the policy President Nixon stated in 1969 when he reaffirmed our commitment to the inter-American system and to the compacts which bind us in that system. That is the message the President asked me to underscore to this assembly today.

The work of the Organization of American States contributes importantly to economic and social progress. It also plays a valuable part in resolving political problems in the hemisphere. The peace-keeping role of the OAS in the El Salvador-Honduras conflict demonstrated the continued vitality of our collective security machinery under the Rio Treaty.

Our adoption in February of a convention making terrorism against foreign officials an extraditable crime also aided the cause of a peaceful hemisphere. Just this week I sent to the President the formal papers required for transmitting that convention to the United States Senate. I hope that, in time, all the members of this organization will sign and ratify it.

OAS meetings are occasionally marked by stresses and disagreements, as the differences we had over the terrorism convention demonstrated. Such dissent, however vigorous, is not a sign of weakness but is a sign of vitality—and, in a sense, of confidence. The hemisphere is not homogeneous. The member states of this organization are changing and becoming stronger, each in a way compatible with its social and cultural background.

An Organization of American States open to different points of view can help assure that change comes peacefully and with due regard to each other's views.

The involvement of the United States in Latin America—for reasons of history, geography, politics and economics—has always been close.

In the 1930's with the Good Neighbor Policy the United States began to turn our close relations into more fully cooperative ones, reversing some of our previous attitudes toward our role in the hemisphere. In the Alliance for Progress we have been seeking together to bring greater substance and closer cooperation to efforts in hemispheric development.

More recently, the United States became convinced that the continuing demand for social change and the growing spirit of nationalism in the hemisphere required still further policy changes. We knew that the countries of the hemisphere wanted to decide for yourselves which road you would follow. We knew that you wanted to direct your own destinies and assume fully your own responsibilities, true to your own cultures, personalities, and social dynamics. It was on this basis, we believed, that the more balanced and reinvigorated partnership urged by President Nixon could be achieved, while still preserving the historically close mutual relationship.

This is the object of the policy the United States is now pursuing.

It is a policy of continued close association. It is also one of support for full sovereign equality.

We want no hegemony. We have no desire for an inward-looking hemisphere. We are, therefore, seeking to act on four basic principles:

First, that the problems that affect the hemisphere are the concern of all its states.

Second, that initiatives in the hemisphere must be the responsibility of all.

Third, that the interest of other nations in productive and supportive cooperation with Latin America is to be welcomed.

Fourth, that the growing interest—and participation—of Latin American countries in global, as well as in hemispheric, affairs gives an important new dimension to this organization.

We believe these principles are a guide to a new kind of U.S. relationship with Latin America. They are not a prescription for abandonment, or for withdrawal from commitments or obligations. It is in character, rather than in fundamentals, that our association with Latin America is changing. It is a policy merely altered to meet the changing policies of your countries.

A moment ago I said that the United States welcomed the interest of other nations in supportive and constructive cooperation with Latin America. Increased cooperation from West European countries, Canada and Japan has already been helpful. Each member state—of this Organization—must, of course, judge carefully, particularly as the problem has been highlighted by recent disclosures, which nations are prepared to play a constructive role in this hemisphere—a role which gives full recognition to sovereign rights—and which nations follow a policy of seeking to undermine and subvert those rights.

How do we intend to implement the four basic principles to which I have referred?

In the economic sphere we support proposals for a larger hemispheric role in setting assistance goals. We favor a greater reliance on multilateral cooperation in development and trade. We welcome the constructive economic interest in the hemisphere of those outside it such as the European states and Japan, just as we welcome Canada's stated intention of drawing closer to the states and institutions of the hemisphere.

During the rest of the century the process of social and economic modernization in this hemisphere will continue to bring with it a stronger sense of nationalism and in some instances disruptive political changes. Some of these developments may well cause short-term problems. But we recognize that in the long run many of these changes will contribute to the constructive and necessary process of social and economic growth.

In the modernization process a certain amount of trial and error will be inevitable. While we naturally expect fair treatment for our interests, we seek to avoid overreaction to short-term problems to the detriment of our long-term relationships and we are ready to engage in cooperative efforts to mitigate the problems which arise in the process.

The decade of the 1970's is already seeing its share of political and social tensions, both in Latin America and in the United States. We hold many social problems in common—the pressures of population, the decay in our cities, the unrest of our young people, and inadequate income levels for sections of our population.

In recent years such stresses in the hemisphere have increasingly produced pressures against representative institutions. The United States has a clear preference for democratic systems and procedures—in this hemisphere as elsewhere. We recognize, nevertheless, that other countries must choose their own political systems, governments, and policies. The Organization of American States now embraces governments with several political systems, governments with differing philosophical orientations, and governments with policies often differing from ours. With all these governments the United States will continue to work as cooperatively as possible.

Thus the policy of the United States is based on our conviction that in the years ahead friendship and confidence within the framework of this Organization will consolidate political relationships in the hemisphere to our mutual benefit. As has been pointed out by many of my colleagues, our economic relationship in the next few years will be equally vital.

The importance to Latin America of its trade with the United States is obvious. We buy a third of Latin America's exports and supply two-fifths of its imports. This trade is also important to the United States. It is about a seventh of our total international trade.

While Latin America's exports to the United States have continued to grow in quantitative terms, the U.S. share of all Latin American exports has dropped from 42 per cent in 1959 to 32 per cent in 1969. This reflects in part a healthy growth of new markets for Latin American exports, notably in Japan. Even more significantly, it reflects an increase in trade among Latin American and Caribbean countries themselves. The hemispheric initiatives which created the Latin American and Caribbean Free Trade Areas, the Central American Common Market, and the Andean Group all illustrate this trend.

The Common Market here in Central America, for example, has had notable successes. While there are current differences over the future of regional integration, I am confident that the Central American States will be able to work them out. The United States is ready to continue its assistance to the Common Market, as well as to encourage regional initiatives in Central America and elsewhere in the hemisphere.

Despite the welcome trend toward diversified export markets, Latin America particularly needs an open market in the United States. We remain committed to a policy of freer trade, and we are, as you know, giving special attention in our approach to generalized tariff preferences to products of particular interest to Latin American countries. We are continuing to work for the elimination or reduction of trade barriers in regional as well as international forums.

Perhaps the most important single initiative we have taken in the trade field was our decision to advocate—and urge the other developed countries to accept—a liberal system of generalized tariff preferences. The European Common Market has set a target date of July 1 for implementation of its system. The Japanese Diet has approved implementation for not later than October 1. Most other developed countries have already obtained authority or will seek it soon.

The United States Government has decided, in large part because of the consultations within this Organization, to include in our own preference system some 500 products requested by Latin American countries. The total value of U.S. imports of these items from Latin America in 1969 was $650 million.

Action on generalized preferences will require congressional approval. The President has asked me immediately on my return from this meeting to initiate consultations with members of Congress with a view to early introduction of legislation to grant to developing countries generalized tariff preferences on a wide range of products, including the 500 items requested by Latin America. The administration will make a concerted effort to secure enactment of this legislation.

While the figure is necessarily rough, we estimate that under this legislation the share by value of Latin American exports entering the United States free of duty, would rise from almost 50 per cent to over 60 per cent.

More important, in addition to products currently traded, new opportunities would be created for many other products for which Latin America has, or may develop, an export capacity.

In addition to preferences other steps will be necessary as well, not all of them concerned with external barriers. As my government subjects its policies to continuing examination, it will be necessary for the Latin American countries to review their policies and practices with an eye to encouraging export development. The United States is ready to increase our technical and financial assistance to promote this development.

Economic growth is the product, not only of trade and assistance policies, but also of judicious investment. The key to higher standards of living is production. The source of production—and the most basic source of development—must inevitably be investment. No matter how much public assistance developed countries make available, long-term economic growth will depend heavily on private investment—domestic and foreign. Foreign investment provides needed capital. It serves to transfer the technology and scientific knowledge critical to the development process. It also increases export earnings.

In his report to the Inter-American Development Bank last year, Raul Prebisch noted that foreign investment has a unique contribution to make in the development of the exports Latin America needs for acquiring foreign exchange. We believe this is true. In 1968, the most recent year for which we have figures, we estimate that export sales by U.S. affiliates located in Latin America accounted for over a third of Latin America's total exports of manufactures.

It is often claimed that foreign investment, in intent or in fact, deprives developing countries of their wealth. Our own experience is that natural resources, if rationally developed under fair terms, contribute more to a country's development than if left undeveloped. Each country must, of course, determine for itself the pace at which to transform natural resource wealth into other useful forms of property.

In the past, foreign private investment, including that from the United States, tended to be concentrated in extractive industries, but this has changed. The book value of private U.S. direct investment in Latin America amounted at the end of 1969 to $13.8 billion. Of this total, mining and smelting account for less than 15 percent and petroleum for only just over 25 percent. The remaining 60 percent is in manufacturing, trade, and other non-extractive categories. The largest single amount, nearly 33 percent, is in manufacturing—an investment of $4.3 billion which provides about 500,000 jobs.

The allegation that is sometimes made, that foreign investment particularly seeks out weak developing countries, is not correct. Two-thirds of U.S. direct international investment, and almost all portfolio investment, is in developed, not developing countries. If there is a problem in the distribution of private capital abroad, it is a problem of encouraging it to go to developing countries where it can help in economic development, not one of keeping it out.

Our belief in the value of private foreign investment for economic growth does not mean an indiscriminate policy of pressing such investment upon other countries. Developing nations must weigh for themselves the relationship between foreign and domestic investment. The decision must be theirs. The United States also shares the Latin American view that foreign investment should be related to development criteria. Indeed, long-term investment is by its very nature developmental.

My government is sympathetic to new approaches toward a healthy investment relationship. As I said in my recent report on foreign policy: "Our own investors, both established and prospective, will need to organize their enterprises in ways that are compatible with the legitimate economic and social aspirations and standards of their hosts." At the same time it must be recognized that a favorable investment climate requires conditions of consistency and stability, and that new formulas cannot be applied retroactively to existing enterprises without in many cases damaging future prospects.

Development assistance—with trade and investment, the third focus of our economic policy—continues to be required in the hemisphere both for economic purposes and purposes of human betterment. I am aware of expressed concerns that the Alliance for Progress may be dying, that our commitment to assistance for Latin American development may be weakening, that the proposed reorganization of our aid programs may signify decreased assistance.

Reference has been made by the Secretary General to declining levels of financial cooperation. However, today United States economic flows to the hemisphere remain at substantially the same high levels as over the past five years—though we are putting more through multilateral channels. And loan terms are explicitly concessional—averaging well less than half of the cost of our own industries and enterprises must pay. The policies which he suggests are policies on which we are seeking to act: a policy of large-scale "multilateral" financial cooperation, and "a trade policy that encourages development."

Let me state categorically: the commitment of the United States to assistance for Latin America is undiminished. Our reorganization of foreign assistance, far from lessening that commitment, is intended to make it possible for us to fulfill it more effectively.

As part of that reorganization, we seek to divert larger shares of our assistance into multilateral channels. While our bilateral assistance is somewhat below the peaks of the mid-sixties, our multilateral commitments have increased and, as I have said, our total U.S. assistance has remained at substantially the same high level. The Inter-American Committee on the Alliance for Progress, in its first review of U.S. economic policy, judged the trend toward the use of multilateral channels as highly beneficial. The Committee also recognized that the United States had complied with the financial assistance and the objectives defined at the beginning of the Alliance for Progress.

Between 1963 and 1970 international institutions increased their lending to Latin America four-fold. Today they account for well over half of all economic assistance to the hemisphere. As a result, total assistance is greater now than ever before. In fiscal 1970 economic assistance allocations to Latin America by the three primary donors—the U.S. bilateral programs, the Inter-American Development Bank, and the World Bank group—reached almost $2.2 billion, more than in any other year. With the addition of bilateral assistance from other countries, plus United Nations and European Economic Community programs, the total assistance to Latin America was about $2.7 billion, also a new high.

A regional institution—the Inter-American Development Bank—is fast becoming the major source of development funds for Latin America. It has increased its lending commitments from $394 million only three years ago to $681 million last year. President Nixon has asked Congress to authorize $1.8 billion as the U.S. share to make possible a further increase in the Bank's lending by 50 percent in the next three to four years. Part has been authorized; the President has strongly urged approval of the rest this year.

The multilateral framework offers an opportunity for development priorities to be worked out jointly with Latin American countries themselves. In this process the Inter-American Committee on the Alliance for Progress is playing an important role, a role which my Government hopes will become greater. Multilaterialism also facilitates the participation of other developed countries, thus increasing the sources of loan funds. In particular, we would like to see the Inter-American Development Bank broaden the financial participation of other developed countries.

The United States will also, of course, continue its bilateral programs. In the last fiscal year these totaled $750 million, about half in aid development assistance and half in agricultural commodities, long-term Export-Import Bank loans, Peace Corps assistance, and educational and cultural exchanges.

I have concentrated today on the broad problems demanding cooperation among us. In concluding I would like to refer to some other developments which should engage our attention.

President Nixon has pledged a new dedication to improving the quality of life in the Americas. Within the Alliance for Progress the United States now hopes to give greater emphasis to areas like education, agriculture, and health areas which relate directly to the basic concerns of people.

There are other human concerns which the Organization of American States can itself usefully investigate. Unemployment—particularly as it affects young people—the increasing pressures on our cities, and the threats to our environment are problems to which we all must respond. Future meetings of the Inter-American Economic and Social Council should address these important issues.

The limitation of armaments, already suggested by other delegations, is a question which this assembly will consider. The United States would be glad to cooperate in discussions on this Latin American initiative in any way the other members think appropriate.

I would also like to emphasize the great extent to which our cooperation can be advanced on specific bilateral issues. My government, for example, has been endeavoring to eliminate outdated impediments to its bilateral relations by resolving old problems arising from territorial questions. We have announced that we are prepared to recognize Honduran sovereignty over the Swan Islands. We have agreed with Nicaragua to terminate a 1914 treaty assigning us the right to build a canal across that country. We have negotiated with Mexico a permament solution to boundary questions which plagued our relations for more than 100 years.

The economic and political policies I have described underline the enduring support by the United States for the Inter-American system. They affirm our continuing commitment to the hemisphere's economic development. They embody an approach broad enough to accommodate the political diversity which now characterizes Latin America. They reflect an abiding desire for close and constructive relations with all governments which share the same desire.

In friendship and with respect I will close with these observations.

The challenges facing the members of this organization are great. Continuous constructive attention to these challenges requires the highest levels of understanding in our Inter-American relationships. Effective action to meet these challenges will best be encouraged if all of us emphasize the mutuality, rather than the differences, in our interests.

Last week President Nixon entertained the diplomats of our countries at the White House. He defined our relationship as a governmental and personal one of long standing based on trust and confidence. I believe

that we can develop further that "personal" relationship in a way which will contribute to making the rest of the century in our half of the globe a time of peaceful cooperation and effective progress.

ORDER OF BUSINESS

The PRESIDING OFFICER. Is there further morning business?

SENATE RESOLUTION 101—USE OF THE MALL BY VIETNAM VETERANS

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. ALLEN) The Senator from Montana will state it.

Mr. MANSFIELD. Has the hour of 12 o'clock arrived?

The PRESIDING OFFICER. In 30 seconds.

Mr. MANSFIELD. I suggest the absence of a quorum, not to exceed 30 seconds.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and there will be a call of the quorum for 30 seconds.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. I ask that the quorum call be rescinded.

The PRESIDING OFFICER. Without objection it is so ordered and, at this time, under the previous order, the Chair lays before the Senate, Senate Resolution 101, coming over under the rule, which the clerk will state.

The ASSISTANT LEGISLATIVE CLERK. To express the sense of the Senate that the Vietnam veterans' request to use the Mall be granted.

The PRESIDING OFFICER (Mr. ALLEN). Under the previous order, the distinguished Senator from Michigan (Mr. HART) is now recognized for not to exceed 15 minutes.

Mr. HART. Mr. President, I have a modified version of my resolution at the desk and I ask that it be stated.

The PRESIDING OFFICER. The clerk will please state the modification.

The assistant legislative clerk read as follows:

Whereas, the Vietnam Veterans Against the War have requested permission from the Superintendent of National Parks to stay overnight on National Park Service grounds known as the "Mall Area" during the period of their presentation of their views to their elected representatives here in Washington through Saturday, and

Whereas, the request has been denied and the government has obtained an injunction against the requested use of the Mall Area to camp. It is hereby resolved that the sense of the Senate is that the Superintendent of National Parks and the Secretary of the Interior should permit the Veterans to sleep on the Mall, subject to the other limitations in the reinstated order of the District Court, and that the Department of the Interior also seek any modificaion of the outstanding order it has obtained necessary for such authorization to be granted by the Department, so that the Vietnam Veterans may effectively petition the government during this period.

The PRESIDING OFFICER. The resolution is so modified.

Mr. HART. Mr. President, it is my hope that the Senate will be permitted to vote this afternoon on my resolution, Senate Resolution 101, expressing the sense of the Senate that the Superintendent of Parks and the Secretary of the Interior seek a modification in the court injunction to permit the veterans to sleep on the Mall at night, subject to other limitations in the district court's order. The period from noon to 12:15 today has been set aside for consideration of my resolution. I will seek the yeas and nays at the close of my remarks.

Let me stress two points regarding my resolution.

First, the resolution is neither a rebuke to, nor an interference with the judiciary. Remember that neither the court of appeals, nor the Chief Justice, individually, nor the full Supreme Court gave any indication whatsoever of the reasons on which their respective decisions were based; and there are many possibilities. In any event, the litigation has determined, if anything, only that the Superintendent of the Park Service was acting within his discretion in opposing the veterans' request to sleep on the Mall. None of this derogates one iota from the ability of Congress to make known its views as to the legislative policy which the National Park Service regulations are supposed to implement.

There is no time to seek congressional review of these regulations. But we can express the sense of the Senate that a peaceful effort to petition their representatives by Vietnam veterans who have fought, and in some cases been wounded, in the service of their country, and who wish to sleep peacefully on the Mall at night in this brief period is not the kind of activity which Congress intended the Park Service to prohibit under regulations governing camping on national park grounds. It should be remembered that the Park Service has concluded in the past that groups such as the Boy Scout Jamboree could sleep on the Mall without hindering national policy on the use of the park grounds in Washington and that the Park Service has presently agreed that it would be appropriate and reasonable for these veterans to congregate on the Mall at night.

I have modified my resolution to ask the Department of Interior to seek any modification of the injunction it has obtained necessary to permit the Superintendent to grant this permission.

Second, under the district court order as interpreted by the Department of Justice, the veterans may mill around, sit or stand during the evening on the the Mall and, believe it or not, are not barred from falling asleep there during the day. Thus we are asked to believe that our national park policy is preserved if these men are forced to keep their eyes open and not lie down. We are asked to believe that their peaceful sleeping at night on the Mall is more of a disturbance of the normal public use of the park than will be their singing, or walking around in the park, or their sleeping there during the day when most tourists come.

Clearly, such logic approaches the point of inanity.

One more point, Mr. President. It is true that some, although not all of the veterans may have violated the terms of the reinstated district court order last night by sleeping. Many complied fully.

But we, in the Senate, can try to change the circumstances so that these young men will not face that painful moral choice of civil disobedience again.

The following Senators join me in sponsoring the resolution:

Senators BAYH, BROOKE, CASE, CHURCH, CRANSTON, EAGLETON, FULBRIGHT, GRAVEL, HARRIS, HARTKE, HATFIELD, HUGHES, HUMPHREY, INOYUE, JAVITS, KENNEDY, MANSFIELD, MCGOVERN, MATHIAS, METCALF, MONDALE, MONTOYA, MOSS, MUSKIE, PELL, RIBICOFF, STEVENSON, WILLIAMS, and TUNNEY.

Mr. JAVITS. Mr. President, will the Senator from Michigan yield to me for 30 seconds?

Mr. HART. I yield.

Mr. JAVITS. I am one of the cosponsors. It is a fact, is it not, that any Member can kill this resolution by talking it to death or just by getting a quorum call which will last for 10 minutes or so; is that not right?

Mr. HART. I thank the Senator from New York for making that point so clear.

Mr. JAVITS. The purpose of the author of this resolution is to protect the right to petition at this place under suitable relations, up to and including Saturday, and that he limits the time expressly in the "whereas" clause; is that not correct?

Mr. HART. That is right.

Mr. President, I have concluded. I would ask for a voice vote in support of the resolution for which there are now a bipartisan group of 30 sponsors.

The PRESIDING OFFICER (Mr. TALMADGE). The question is on agreeing to Senate Resolution 101——

Mr. THURMOND. Mr. President——

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. GURNEY. Mr. President, I object.

Mr. THURMOND. Mr. President, I object.

The PRESIDING OFFICER (Mr. ERVIN). Objection is heard. The clerk will continue to call the roll.

The assistant legislative clerk continued to call the roll.

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

Mr. JAVITS. Mr. President, reserving the right to object, and I shall not object, is it a fact, I ask the——

Mr. BYRD of West Virginia. Mr. President, I make the point of order that there can be no debate. I asked unani-

mous consent that the order for the quorum call be rescinded. The Senator may object.

Mr. JAVITS. Mr. President, will the Senator allow me to make a parliamentary inquiry?

Mr. BYRD of West Virginia. Mr. President, the Senator cannot make a parliamentary inquiry until the quorum call is called off.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from West Virginia that the order for the quorum call be rescinded? The Chair hears none, and it is so ordered.

Mr. JAVITS. Mr. President——

The PRESIDING OFFICER. The time allotted for the consideration of Senate Resolution 101 having expired, the resolution goes to the calendar.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The PRESIDING OFFICER. Pursuant to the previous order of the Senate, the Chair lays before the Senate the unfinished business which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

Mr. JAVITS. Mr. President——

The PRESIDING OFFICER. In view of the fact that the unfinished business has been laid before the Senate and the amendment of the Presiding Officer is the pending amendment, the Chair asks to be excused from further service as Presiding Officer so that he may discuss the amendment as its sponsor.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, for the purpose of raising parliamentary inquiries, I ask unanimous consent that there be a 5-minute period for that purpose, without interfering with the time allotted for the consideration of the pending amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, is it a fact that a quorum call was put in and because of the objections to terminating that quorum call, the elapse of time as a result substituted the business of the Emergency School Aid Act for the business of the Hart resolution?

The PRESIDING OFFICER (Mr. ALLEN). The quorum call, of course, was for the purpose of ascertaining if a quorum was present. The time allotted under the previous order for the consideration of Senate Resolution 101 was 15 minutes, covering a period from 12 noon to 12:15 p.m. Inasmuch as the quorum call was in process, there could be no further consideration of Senate Resolution 101 during the quorum call.

Mr. JAVITS. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. The resolution, therefore, went to the calendar, and is it then the parliamentary situation that in order to be called up again it must be motioned up, subject to debate in the Senate?

The PRESIDING OFFICER. The Senator is correct, except at certain times it could be called up. It has to be after an adjournment of the Senate.

Mr. JAVITS. I thank the Chair.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate resumed the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

The PRESIDING OFFICER. Who yields time?

Mr. ERVIN. Mr. President, I yield myself such time as I may use.

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate?

The ACTING PRESIDENT pro tempore (Mr. METCALF). The Senate will be in order.

Mr. ERVIN. Mr. President, S. 1557, in its provisions and implications, is one of the most drastic legislative proposals ever made before the Senate. The bill is designed to fragmentize and divide the States and localities, putting some of the areas of the country into one category and other areas of the country into another category.

The bill is also designed to transfer from local officials in the States or subdivisions of the States falling into one of the categories, to one nonelected Federal official, the Commissioner of Education, the ultimate power to exercise control over the primary and secondary public schools of the areas falling into one of the two categories.

The bill is also designed to violate both the establishment and the freedom of religion clauses of the First Amendment in two different ways; namely, first, by transferring from the officials of church schools to the Commissioner of Education the power to control certain aspects of education in those church schools; and second, by authorizing the expenditure of tax moneys for the support of religious institutions.

The bill does not contemplate the use of force to effect these overall objects of fragmentizing and dividing the country and centralizing in a single nonelected Federal official, the Commissioner of Education, the power ultimately to control primary and secondary education in the areas of the Nation falling into one of the categories into which the country is to be divided. On the contrary, it undertakes to do this in the same manner in which the betrayal of Christ by Judas was accomplished; namely, by using Federal money to bribe State officials and local officials to surrender the control of public schools to the Federal Government acting through the Commissioner of Education.

Unlike the case of Judas, the bill does not contemplate there is going to be any silver used to accomplish this purpose, because the Nation has no silver; it contemplates that this purpose is to be solved by inflated paper dollars taken out of the Federal Treasury, which now has a hole in it approximately $400 billion deep.

At the present moment the United States is virtually being torn asunder by many forces which tend to divide our people. This bill would add to this division. I said it proposed to fragmentize America by dividing all areas of America into two categories.

One of these categories is the area inhabited by minority groups within the purview of the definition set forth in section 12(8)(A), which appears on page 36. That section states:

(8)(A) The term "minority group" refers to (i) persons who are Negro, American Indian, Spanish-surnamed American, Portuguese, or Oriental; and (ii) (except for the purposes of section (4), as determined by the Secretary, persons who are from environments in which a dominant language is other than English and who, as a result of language barriers and cultural differences, do not have an equal educational opportunity, and (B) the term "Spanish-surnamed American" includes persons of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry.

Mr. President, great areas of this country are inhabited almost exclusively by persons who are not members of minority groups within the purview of that definition. In these areas of this Nation live millions of American school children who are just as much entitled to assistance out of the Federal Treasury as the schoolchildren who inhabit the areas of this Nation in which substantial minority groups reside.

I have offered an amendment, amendment No. 44, which would do away with the provisions of the bill, which fragmentize and divide America. It would do away with the provisions of the bill which undertake to centralize in the Federal Government the power to control primary and secondary education, which, under our system of government, rightly belongs to the local communities.

It would do away with the provisions of the bill which propose that the Members of this Congress violate the oath of office which each of them has taken to support the first amendment.

My substitute would extend absolute equality to all areas of this Nation and to every school child in this Nation, regardless of the race, religion, or national origin of that child.

The pending bill provides, in effect, in section 4(a)(1) on page 4, that virtually all the money authorized to be appropriated by the bill shall be spent in a limited number of States, because it provides that—

The Commissioner shall apportion to each State for grants and contracts within that State an amount which bears the same ratio to such sums as the number of minority group children enrolled in elementary and secondary schools in that State bears to the number of such children in all the States...

Under that provision, many States of this Union—and I would say to the present occupant of the chair (Mr. METCALF), particularly in the western part of this Nation, and particularly in the mountain regions—would obtain nothing under this bill except a minimum of $100,000 out of the amount authorized to be appropriated of $1.5 billion.

My amendment would strike out all the provisions of the bill which are designed to divide and fragmentize the American people, which are designed to reserve to some areas of this country the right of self-government in school matters, and to take away from other areas of this country the right of self-government in school matters.

It would also obviate any possible violations of the first amendment.

It would provide that the money would be divided on the basis of equality, not only in the various States of our Nation but also in our possessions. It sets forth that 3 percent of the money is to be allotted among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific islands according to their respective needs, and that 97 percent of this money is to be allocated to the States on the basis of the number of the children in each of the States as compared with all of the children in all of the 50 States.

The result is that, under the substitute, every State would receive an equitable share of the money, and the possessions would receive equitable shares of the money, and they would receive it without any Federal strings attached to it, to be used by them for such educational purposes as they find needful or desirable in their respective boundaries.

One of the great tragedies of the present day lies in the fact that we have so much sectional legislation directed to the South. The truth is that this bill, in its overall purpose, is a bill which is designed to reconstruct the educational systems in some of the States by giving Federal control of those educational systems to the Commissioner of Education.

It is one of the unfortunate things in our national life now that 103 years after General Lee surrendered at Appomattox, many politicians in the United States are unwilling to admit Southern States back into the Union on a basis of equality with the other States.

This bill is fundamentally applicable to the South. To be sure, there are certain areas outside the South where there is a concentration of minority groups as defined in this bill, but the overall purpose of the bill is to continue a course of action which has been in progress for 103 years—that is, to reconstruct the South.

When the Constitution was under consideration, the Father of the Constitution, James Madison, stated what was true then, what is just as true now, that the concentration of power in any government or in any branch of any government is inimical to the preservation of liberty. It was for that reason that this Nation adopted a Constitution which divided the powers of government between the Federal Government and the States. They did this because they were conscious of the truth that people in local communities know better the problems of their respective communities and how those problems should be solved than public officials in offices on the banks of the Potomac River.

There are some comments on this point in an opinion of the Supreme Court written by the late Justice Burton, in the case of *Bute* v. *Illinois*, 333 U.S. 640, 650–653. Justice Burton said:

> One of the major contributions to the science of government that was made by the Constitution of the United States was its division of powers between the states and the Federal Government. The compromise between state rights and those of a central government was fully considered in securing the ratification of the Constitution in 1787 and 1788. It was emphasized in the "Bill of Rights," ratified in 1791. In the ten Amendments constituting such Bill, additional restrictions were placed upon the Federal Government and particularly upon procedure in the federal courts. None were placed upon the states. On the contrary, the reserved powers of the states and of the people were emphasized in the Ninth and Tenth Amendments. The Constitution was conceived in large part in the spirit of the Declaration of Independence which declared that to secure such "unalienable Rights" as those of "Life, Liberty and the pursuit of Happiness . . . Governments are instituted among Men, deriving their just powers from the consent of the governed, . . ." It sought to keep the control over individual rights close to the people through their states. While there have been modifications made by the states, the Congress and the courts in some of the relations between the Federal Government and the people, there has been no change that has taken from the states their underlying control over their local police powers and state court procedures. They retained this control from the beginning and, in some states, local control of these matters long antedated the Constitution. The states and the people still are the repositories of the "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, . . ." The underlying control over the procedure in any state court, dealing with distinctly local offenses such as those here involved, consequently remains in the state.

I emphasize the following passage:

> The differing needs and customs of the respective states and even of the respective communities within each state emphasize the principle that familiarity with, and complete understanding of, local characteristics, customs and standards are foundation stones of successful self-government. Local processes of law are an essential part of any government conducted by the people. No national authority, however benevolent, that governs over 130,000,000 people in 48 states, can be as closely in touch with those who are governed as can the local authorities in the several states and their subdivisions. The principle of "Home Rule" was an axiom among the authors of the Constitution. After all, the vital test of self-government is not so much its satisfactoriness weighed in the scales of outsiders as it is its satisfactoriness weighed in the scales of "the governed." While, under the Constitution of the United States, the Federal Government, as well as each state government, is at bottom a government by the people, nevertheless, the federal sphere of government has been largely limited to certain delegated powers. The burden of establishing a delegation of power to the United States or the prohibition of power to the states is upon those making the claim.

Mr. President, when this bill is reduced to its final analysis, it represents an effort to purchase from local governments in the South and a very few areas outside the South the power which our constitutional system of government gives them to operate their local primary and secondary schools.

The Constitution gives the Federal Government no power to operate primary and secondary local schools. It is a power reserved to the States; and it is just as wise and just as necessary that that power remain with the States today as it was when it was reserved to the States. We now have, instead of 48 States and 130 million people, as was the case when Justice Burton wrote the opinion, 50 States and over 200 million people.

The advocates of the bill say: "Oh," we are not going to take this by force. We are just going to buy from local officials, by grants of Federal moneys and by contracts with State officials, the powers which our system of government rightly gives to them, and vest them in one Federal official sitting in an office on the banks of the Potomac River."

Mr. President, it is just as bad to take by bribery the powers of the localities as it is to take them by force.

As a North Carolinian and as a representative of the people of North Carolina, which State would receive a tremendous amount of money under this bill, I resent the feeling which prompts bills of this nature. Essentially, it is that the people of North Carolina and the people of these other areas, which are put in one category in this bill, do not have enough character or enough intelligence to manage their own affairs, and that the management of their affairs must be transferred, either by force or by the persuasive power of filthy lucre, to the Federal Government.

This bill provides that nobody can get any of this money except those localities which have a population composed in part of minority groups. It provides that they cannot get this money unless they file an application with the Commissioner of Education; and it provides that they cannot get it in that case unless they set forth in their application what they propose to do with the money, and obtain the approval of the Commissioner of Education.

I shall not go into the details, but the bill provides, among other things, that by this method the Commissioner of Education, who has the power to pass upon these applications, shall make the grants or the contracts upon applications which are required to set forth certain purposes or activities. Among these are the curriculums of the schools, the right to pay the salaries of administrators, the power to make provisions for the education of teachers, the power to pay the salaries of teachers, the power to make provision for repairing or remodeling school buildings, and virtually all other powers now vested in local school boards in the States falling into one of the categories created by the bill.

I do not think that the Constitution of the United States should be circumvented by the beguiling use of filthy

lucre. I think that the interests of this Nation require that all States be put on an equality; that some of the States should not be singled out from the other States on the theory that they are not capable of managing their own affairs; and that the equality of the States should not be varied in any manner, even by the beguiling use of Federal funds.

"Oh," my brethren will say, "the local people are going to specify in these applications the purposes for which these funds are to be used," which, as I have stated, are just about as broad as the purposes for which State moneys can be expended and in the case of church schools more broad.

The Senator from North Carolina is not ignorant of the facts of political life and the results they produce in cases of this kind. The power to pass on applications is exercised by the Federal officials who used it to determine what the application is to contain. So the result of this bill would be to vest in one Federal official the ultimate power to control the operation, the management, the hiring of teachers, the assignment of teachers, and the assignment of schoolchildren in both local schools, and in church schools.

I do not think it is any business of the Federal Government to undertake to say what shall be the racial composition of church schools. That is the business of those schools and those who control them. Yet, precisely under this bill, the Federal Commissioner of Education would acquire by indirection the power to determine the racial composition of student bodies in church schools.

I sincerely hope that the Senate of the United States will be true to the constitutional system that divides the powers of government between the Federal Government and the States and leaves to the States, including such States as some of the authors of this bill may think are somewhat benighted, the power to conduct their own school systems. I think the Senate of the United States ought to recognize, by adopting my amendment, that local affairs such as the employment of teachers, the assignment of children to schools, and the determination of the curriculums of schools can be best settled by the people in the localities in which the people of America live, move, and have their being. I cannot imagine a greater tragedy that could befall this Nation than to concentrate the control of primary and secondary education, even in part, in a Federal official in an office on the banks of the Potomac River and to take it away from the States and their communities.

I urge the Senate to adopt my substitute amendment and put all the States on an equality and leave the control of primary and secondary schools in the local authorities, and divide this money so that every school child in America, whether he lives in an area inhabited by minority groups or in an area inhabited by other Americans, will have the benefit of the largess of the United States.

I yield the floor.

APPOINTMENT BY THE VICE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. METCALF). The Chair, on behalf of the Vice President, pursuant to Public Law 86-420, appoints the Senator from Florida (Mr. GURNEY) to attend the 11th Mexico-United States Interparliamentary Conference, Mexico, May 27 to June 1, 1971.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

Mr. PELL. Mr. President, I yield myself as much time as may be necessary.

As chairman of the Subcommittee on Education of the Senate Committee on Labor and Public Welfare and manager of the bill, I am compelled to oppose the amendment of the Senator from North Carolina (Mr. ERVIN).

I do this with mixed feelings since that amendment proposes to authorize $1.5 billion in the next 2 years for general aid to education. I have been in favor of general aid to education and hope that, within the foreseeable future, we will be able to authorize appropriations for general aid. When and if that occurs, I would hope that any general aid we have is in addition to funds we already have authorized under present law rather than in lieu of those funds. The same point arises in connection with the Ervin amendment. If the amendment were in addition to the desegregation program authorized in the committee bill, I would be hard pressed to oppose it. However, the manner in which the amendment is before us diffuses the proposed Federal programs away from the specific purpose of overcoming minority group isolation which is the purpose of the committee bill.

Moreover, the question of whether or not we would get appropriations is of paramount importance here. The administration has committed itself to requesting $1.5 billion for the purpose of the committee bill. This commitment does not apply to a general aid approach. Although there has been no flat statement on the part of the administration that they would not request funds for general aid, it is my opinion that the likelihood of such a request is small.

I would also say that, if the Senate were to adopt the amendment offered by the gentleman from North Carolina, it would be in effect repudiating the committee system which we have established and tried to honor in the Senate. A program with an authorization of $1.5 billion is of such magnitude that the Committee on Labor and Public Welfare ought to have the opportunity to study the language of the proposal.

I would think that if the amendment proposed by the Senator from North Carolina was offered as a separate bill, it would not be difficult for our committee to support it.

The Senator from North Carolina mentioned one further point, he alleged that this bill was designed to fragmentize the United States, I cannot agree with that point. The funds which could be appropriated if this bill becomes law are expected to be utilized by States all over the country. I have high hopes that my own State of Rhode Island, while not receiving a substantial share, will voluntarily participate.

I did a very quick computation to see how accurate the statement was that it was designed to fragmentize the country, and I find that of the 68 percent—now 69 percent, in view of the elimination of legal fees section—of the funds which are allocated, to the States, and that amounts to a billion dollars—a little more than one-quarter, $271 million, is allocated to the States of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia. The remainder of the country, I am delighted to say, will benefit to the amount of $726 million.

So these funds are not designed—as was the original bill proposed by the administration—to concentrate on the Southern or border States; but it is designed to be of benefit to the country as a whole, and rather than increasing the fragmentation, it should work to reduce fragmentation.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. PELL. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged equally against both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Who yields time?

Mr. ERVIN. Mr. President, I yield to the distinguished Senator from Alabama such time as he may require.

The ACTING PRESIDENT pro tempore. The Senator from Alabama may proceed.

Mr. ALLEN. I thank the distinguished Senator from North Carolina.

Mr. President, I rise in support of amendment No. 44, offered by the distinguished senior Senator from North Carolina (Mr. ERVIN), for whom I have so much admiration and who certainly is the most distinguished authority on the law of the Constitution in this Chamber, in the entire Congress—and, for that matter, in the Nation.

The Nation has suffered by not having a man of the caliber of this distinguished Senator on the Supreme Court Bench. It is the Nation's loss that many years ago he was not asked to serve on the U.S. Supreme Court.

Mr. President, this amendment, which is in the nature of a substitute because it changes the language of the bill in its entirety and substitutes new language after the enacting clause, would remove the objections that many of us have to the bill under consideration.

The supposed purpose of the bill, as originally introduced, S. 1557, was to enable school districts, North and South, to desegregate their school systems.

One of the many troubles with the bill is that, of necessity, there must be read into the bill the present national policy with regard to the desegregation of the public schools.

What is that national policy?

Is it a single policy?

No, far from it. It is a dual policy and the existence of that dual policy of necessity is read into and has become an integral part of the bill itself. Certainly, following the decisions of the Supreme Court handed down on Tuesday, it has become more evident that there is a dual school policy. But that dual school policy calls for the immediate desegregation of the public schools in the South, whereas, at the same time, it protects, defends, and fosters the continued existence of segregated schools in areas outside the South.

Only this week, in debate on the floor and in colloquy with the distinguished Senator from Minnesota (Mr. MONDALE), the junior Senator from Alabama asked him the question as to segregation in the public schools in areas outside the South, is segregation more prevalent, less prevalent, or about the same as it was 5 years ago.

He said that everyone knows there is more segregation outside the South in the public schools today than there was a year ago, that there is more now than there was 2 years ago. Yes, I say that segregation is gaining by leaps and bounds in areas outside the South, whereas it is rapidly vanishing in the southern region of this country.

So, under this bill, if the Federal dual school policy is read into the bill, we have the southern schools, under court order and under rulings and plans of the Department of Health, Education, and Welfare, required to desegregate now—"now" is the word they use time and time again on the Supreme Court.

Mr. ERVIN. Mr. President, will the Senator from Alabama yield for a question?

Mr. ALLEN. I yield.

Mr. ERVIN. Does not this bill provide for the use of this money in three areas; first, where there is a Federal court decree requiring desegregation; second, where there is an HEW plan requiring desegregation as a condition of receiving funds under the Civil Rights Act of 1964; and, third, voluntary desegregation?

Mr. ALLEN. That is correct; yes, sir.

Mr. ERVIN. Does not this bill go far beyond the requirements of the equal protection clause of the 14th amendment?

Mr. ALLEN. Yes; very definitely.

Mr. ERVIN. Does not the distinguished Senator from Alabama agree with the Senator from North Carolina that the only forced desegregation known to America is in southern schools?

Mr. ALLEN. Very definitely.

Mr. ERVIN. So that this bill is to be used for forced desegregation in the South while our northern brethren are not to be desegregated in any manner unless they voluntarily agree to it?

Mr. ALLEN. That is exactly right. That is the point I am seeking to get across.

Mr. ERVIN. So it is, fundamentally, in its ultimate analysis, a bill to finance forced integration in the South and to require nothing of the North except voluntary action.

Mr. ALLEN. The Senator is exactly correct. Another thing that I would like to point out to the distinguished Senator from North Carolina is that if a school district in the South applies in good faith under the allocation to its respective State, it submits a plan concerning what it intends to do with the money afforded by the grant. They seek in good faith to comply with everything that the court and the HEW seemingly require. However, the Commissioner can then find some flaw. He can find that they had conveyed some property to a private school or had not quite come up to the standards he wants in another respect. He can then throw the application out.

It reminds me somewhat of the old character in Greek mythology, Tantalus, from whom the word tantalize comes.

Tantalus was in Hades. One of his punishments was to suffer the torments of continual hunger and thirst. Just out of reach above his head, luscious fruits grew. The waters of the river of Hades, in which he stood up to his neck, receded when he stooped to drink.

So the schools that are seeking in good faith to comply with the edicts of the court and of HEW might desegregate in every particular as the court or HEW would have them desegregate, but the court or HEW might find some little aspect of their plan that does not comply with their notion of what the school district should do. They can then deny the application.

In northern school districts—and I will use that term loosely and apply it to all areas outside of the South—there is a carrot approach to the grant system. There is nothing mandatory about it. They award them to these districts that make some efforts to comply with the voluntary plan. A northern school district might come out with some voluntary plan providing for shifting a very few students from one school to another. They would then come in and apply for a large grant. However, in the southern school districts, I say to the distinguished Senator from North Carolina, there is a carrot and a stick approach in that the southern school districts are forced to, and they do, desegregate; and possibly in order to get this grant they would take certain actions that they would not ordinarily take. However, if they do not comply, the stick and the power of the Federal court is going to be applied to the southern school districts only.

Mr. ERVIN. Mr. President, in other words the Senator from Alabama is making the point that both the carrot and the stick will be applied to the South.

Mr. ALLEN. Largely a stick, I dare say.

Mr. ERVIN. So, if the South does not take the carrot, it gets the stick; however, the North does not get anything except the carrot. And if they do not like carrots in the North, there will be no desegregation of the schools?

Mr. ALLEN. The Senator is exactly correct.

I commend the Senate for the action it took on yesterday concerning the Dominick amendment in striking out the $15 million that would have been allocated to private attorneys throughout the country, and I dare say that most of them would have been in the South, though not necessarily residents of the South. They could be people who come to the South to stir up litigation against school districts.

The proposal to appropriate this $15 million shows the character of the thinking, I say to the distinguished Senator from North Carolina, that has gone into the pending bill when they would provide for a fund of $15 million to award attorneys to harass school districts. They would pay these attorneys for stirring up litigation.

The school districts are already spending more time preparing plans and resisting efforts to force plans upon the school districts. They are so busy answering questionnaires and filling out forms and going to Federal court and communicating with HEW that they do not have the time to educate the children in the school systems.

It is quite obvious that the Supreme Court could not care less about educating schoolchildren. HEW obviously cares nothing about educating schoolchildren. These are sociological experiments. The welfare of the children is given very little thought. However, the supposedly beneficent act of the mixing of bodies is what is taken into account. And we are placing less and less emphasis upon education and more and more emphasis upon sociology.

The amendment offered by the distinguished Senator from North Carolina (Mr. ERVIN) would take the same amount of money provided in the bill—the Senator is not trying to cut 1 cent off this authorization. We should bear in mind that the pending bill is an authorization bill rather than an appropriation. The Senator's amendment would take the same amount $1,500,000,000, and authorize the expenditure of $500 million the first year and $1 billion the next year. It would allocate it among the States to spend for educational purposes.

The Senator knows that this is not too different in some respects from some of the revenue sharing that we hear about, the special revenue sharing. The President, of course, has suggested the sum of $5 billion this year for revenue sharing with State and local governments, supposedly without strings attached, if that could be possible, and $11.5 billion for special revenue sharing in which 130 Federal programs are folded into six programs.

One of those is education. I believe that the six programs are law enforcement, manpower training, rural development, urban development, transportation, and education.

This $11.5 billion would be divided in

those six areas. So this would, in effect, be a type of revenue sharing. That is exactly what it would be. The President asked for revenue sharing. The President and his administration have said that they are for S. 1557.

Each side on many controversial bills coming before the Senate has come in from time to time with a letter from someone close to the President. One will say he favors and the other will say he opposes the measure. I do not see either letter yet. Possibly we will get a letter before the Senate later on both sides. The President is said to favor S. 1557, and there being some questions about whether the President's special revenue-sharing measure is going to pass, it would seem to me that it might be likely that he might favor this as revenue sharing for the purposes of education, because that is what it would be.

Mr. ERVIN. Mr. President, will the Senator yield for an observation?

Mr. ALLEN. I yield.

Mr. ERVIN. I was rather surprised to hear my good friend from Rhode Island say that the President wants this bill. It seems to me that my amendment is right down the President's alley. It provides for revenue sharing.

Also, every time the President runs for office or comes to North Carolina for the purpose of persuading North Carolinians to vote for Republican candidates he says he is in favor of the neighborhood schools and that he is against the busing of students to promote integration; and yet this bill would authorize the Commissioner of Education to say to Southern States, "You cannot get this money unless you deny to your children the right to go to a neighborhood school, and bus them vast distances to integate schools elsewhere."

I can hardly understand that as being part of the President's strategy as he announces it in the South.

Mr. ALLEN. It is hard to visualize that strategy.

Possibly we will see both letters before the day is out, one advocating and one opposing.

The amendment, which the junior Senator from Alabama supports, would divide this money among the States on the percentage of the proportion of schoolchildren in that State to the overall number of schoolchildren throughout the Nation. It would be not too different, I assume, from the percentage of the overall population. Possibly there would be some difference, but we are supposed to be thinking about schoolchildren and not sociological problems and solutions.

The money, under the amendment of the Senator from North Carolina would, in effect, be revenue sharing, to which the President is so strongly committed; and this measure, if passed, could very easily take the place of the special revenue-sharing bill for education.

This money could be spent at the local level by local people who know the needs of their children. You know, Mr. President, there is a great need in Charlotte and Mecklenburg for money for buses because the Supreme Court has just upheld the district court ruling in that matter.

I was outraged by the opinions handed down by the Supreme Court on Tuesday. They finally answered these questions that the Chief Justice posed back on March 9, 1970, in which he said that the Supreme Court had failed to answer three questions in all their decisions, starting in 1954.

He said they had failed to cover the ground on the matter of whether a fixed or any particular racial balance could be required in the desegregation of schools. He said they had not answered the question of whether school district lines should or could be restructured to accomplish the desegregation process, and whether transportational busing could be used to carry out the desegregation process.

Well, I believe on Monday the junior Senator from Alabama pointed out the failure of the Supreme Court to answer these questions and called on it to answer them; and he will not say that the Supreme Court accommodated his request for an answer, but by coincidence they did hand down the decision the very next day and left very little doubt as to what their conception of the law is as regards to southern schools.

It is quite obvious that the thrust of their decisions in these cases is that as to desegregation of southern schools anything goes, no matter how vicious it is. We saw in a memorandum of the opinion, and as it came across on the news service we have in the lobby, that it is not necessary to have racial balance in order to properly desegregate.

The PRESIDING OFFICER. The time of the Senator from North Carolina has expired.

Mr. PELL. Mr. President, I would be glad to allocate some of my time to the Senator.

The PRESIDING OFFICER. The Senator from Rhode Island has 54 minutes remaining.

Mr. PELL. How much time would the Senator like: I would be glad to allocate 20 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 20 minutes.

Mr. ALLEN. Mr. President, I will close in another 2 minutes.

Apparently the ruling of the Supreme Court, and I notice that the Chief Justice emulated his predecessor in arrogating to himself the right to write these opinions and to get a unanimous decision of the Justices, was that racial balance quota is a pretty good way to start, not necessarily to apply racial balance, but if that figure is used as a starting point, that is all right—so racial balance is all right, busing is all right, and changing district lines is all right

The amendment offered by the distinguished Senator from North Carolina is a revenue-sharing bill. It will allow money to be spent at the local level by local people. For that reason the junior Senator from Alabama supports the pending amendment.

I thank the distinguished Senator from Rhode Island.

Mr. ERVIN. Mr. President, I would like to ask the Senator from Rhode Island to yield to me briefly so that I may make a unanimous-consent request.

Mr. PELL. I am glad to yield to the Senator from North Carolina.

Mr. ERVIN. Mr. President, I ask unanimous consent to have printed in the RECORD a tabulation showing how much money each State of the Union would receive under my substitute amendment.

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

STATE ALLOTMENTS UNDER SENATOR ERVIN'S AMENDMENT NO. 44

	Total	
	100 (percent)	$1,500,000,000 (dollar amount)
Alabama	1.751	25,477,050
Alaska	0.171	2,488,050
Arizona	.954	13,880,700
Arkansas	1.009	14,680,950
California	10.248	149,108,400
Colorado	1.198	17,430,900
Connecticut	1.408	20,486,400
Delaware	.289	4,204,950
District of Columbia	.320	4,656,000
Florida	3.112	45,279,600
Georgia	2.445	35,574,750
Hawaii	.401	5,834,550
Idaho	.397	5,776,350
Illinois	5.125	74,568,750
Indiana	2.684	39,052,200
Iowa	1.445	21,024,750
Kansas	1.119	16,281,450
Kentucky	1.549	22,537,950
Louisiana	1.835	26,699,250
Maine	.526	7,653,300
Maryland	1.984	28,867,200
Massachusetts	2.567	37,349,850
Michigan	4.752	69,141,600
Minnesota	2.028	29,507,400
Mississippi	1.164	16,936,200
Missouri	2.266	32,970,300
Montana	.381	5,543,550
Nebraska	.717	10,432,350
Nevada	.278	4,044,900
New Hampshire	.346	5,034,300
New Jersey	3.230	46,996,500
New Mexico	.621	9,035,550
New York	7.578	110,259,900
North Carolina	2.598	37,800,900
North Dakota	.320	4,656,000
Ohio	5.283	76,867,650
Oklahoma	1.394	20,282,700
Oregon	1.049	15,262,950
Pennsylvania	5.139	74,772,450
Rhode Island	.409	5,950,950
South Carolina	1.408	20,486,400
South Dakota	.362	5,267,100
Tennessee	1.961	28,532,550
Texas	5.890	85,699,500
Utah	.662	9,632,100
Vermont	.245	3,564,750
Virginia	2.351	34,207,050
Washington	1.782	25,928,100
West Virginia	.870	12,658,500
Wisconsin	2.165	31,500,750
Wyoming	.189	2,749,950
Puerto Rico, Guam, etc	3	45,000,000

Source: State percentages figured from estimates of school statistics, 1970–71, p. 27.

Mr. DOMINICK. Mr. President, it is my understanding that the pending amendment offered by the distinguished Senator from North Carolina would provide general assistance to local educational agencies. As we all know, the administration has submitted six proposals for special revenue sharing, one of which would provide a source of flexible funding to local school districts for elementary and secondary education. Much as I appreciate the Senator's early endorsement of this general aid concept, I feel it incumbent upon me to point out that the Ervin amendment is not the

administration's education revenue-sharing proposal. It would appear that the senior Senator from North Carolina agrees with me that local educational agencies require greater flexibility in determining responses to their particular needs than existing categorical programs permit.

I would be very pleased to have the Senator from North Carolina join me in supporting the administration's revenue-sharing proposal. However, I do not believe it should substitute for the bill we are considering today. The special educational needs of children attending racially isolated schools or those undergoing desegregation cannot be ignored. I am firmly committed to the special aid that would be provided to such children through the provisions of this bill.

The pending amendment would redirect all the funds authorized, and is thus entirely inconsistent with the intent of the legislation.

I therefore urge my colleagues to reject the Ervin amendment.

The PRESIDING OFFICER. Who yields time?

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

Mr. ERVIN. Mr. President, I am reluctant to object, but I want to get enough Senators here so I can get a rollcall vote.

Mr. PELL. Would the Senator like it to go live?

Mr. ERVIN. I am not going to object, but we ought to have enough Senators here to ask for the yeas and nays.

The PRESIDING OFFICER. Does the Senator object? Debate is not in order during a rollcall.

Mr. ERVIN. I would like to have a rollcall.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. PELL. No, no—a rollcall now?

Mr. ERVIN. No; I want to ask for the yeas and nays.

Mr. BYRD of West Virginia. Mr. President, has the quorum call been rescinded? Does the Senator from North Carolina object?

Mr. ERVIN. No; I do not object; but I would say this——

Mr. BYRD of West Virginia. Mr. President, a statement is not in order while a quorum call is in progress.

The PRESIDING OFFICER. Is there objection?

Mr. ERVIN. No; I do not object.

Mr. BYRD of West Virginia. Mr. President, is a quorum call in progress?

The PRESIDING OFFICER. Without objection the quorum call is rescinded. The Senator from Rhode Island has control of the time.

Mr. PELL. Mr. President, I would like to assure the Senator from North Carolina that I will support his efforts to have a rollcall vote when the time comes. I think that in a few moments our colleagues may be closer to the floor, and we will then be able to get the necessary number.

I have listened carefully to the arguments and the discussion of the Senator from North Carolina, who is a far more learned man in the law than many of my colleagues who are lawyers, and I myself am not a lawyer. I have also listened to the arguments of the Senator from Alabama. But nevertheless, I remain convinced that the bill we have reported to the Senate, while not a perfect bill, does, in the last analysis, have provisions which will bind and cure our Nation rather than to further fragmentize it.

One of the reasons I favor it, as opposed to the bill offered by the administration, is that instead of all the funds apparently going to one part of the country, other areas outside the Confederacy would also benefit.

For that reason, I continue to press my objection to the amendment of the Senator from North Carolina.

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.

Mr. ERVIN. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. Who yields time?

Mr. BYRD of West Virginia. Mr. President, it is my understanding that only the Senator from Rhode Island has time, so the time would be charged against the Senator from Rhode Island.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield?

Mr. BYRD of West Virginia. The Senator from Rhode Island does not have the floor to yield.

The PRESIDING OFFICER. The Senator from Rhode Island is the only one with the floor.

Mr. BYRD of West Virginia. The Senator from Rhode Island is not standing. He does not have the floor.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield for a quorum call?

Mr. PELL. I yield for a quorum call, absolutely.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the quorum call be rescinded.

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

Mr. PELL. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from North Carolina. 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 (after having voted in the negative). On this vote I have a live pair with the distinguished Senator from Georgia (Mr. GAMBRELL). If he were present and voting, he would vote "yea." If I were permitted to vote I would vote "nay." Having already voted in the negative, I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), and the Senator from Washington (Mr. MAGNUSON) are necessarily absent.

I further announce that the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Wisconsin (Mr. NELSON), the Senator from Oklahoma (Mr. HARRIS), and the Senator from South Carolina (Mr. HOLLINGS) are absent on official business.

I further announce that, if present and voting, the Senator from Oklahoma (Mr. HARRIS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Washington (Mr. MAGNUSON), and the Senator from Indiana (Mr. BAYH) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT) is absent by leave of the Senate on official business.

The Senator from Kentucky (Mr. COOPER) is absent on official business.

The Senator from Arizona (Mr. FANNIN) and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from South Dakota (Mr. MUNDT) would vote "nay."

The result was announced—yeas 22, nays 60, as follows:

[No. 45 Leg.]

YEAS—22

Allen	Goldwater	Spong
Byrd, Va.	Gurney	Stennis
Cannon	Hansen	Talmadge
Cotton	Jordan, N.C.	Thurmond
Eastland	Long	Tower
Ellender	McClellan	Young
Ervin	Pastore	
Fulbright	Sparkman	

NAYS—60

Aiken	Griffin	Muskie
Anderson	Hart	Pearson
Baker	Hartke	Pell
Beall	Hatfield	Percy
Bellmon	Hruska	Prouty
Bennett	Hughes	Proxmire
Bentsen	Inouye	Randolph
Bible	Javits	Ribicoff
Boggs	Jordan, Idaho	Roth
Brock	Kennedy	Saxbe
Brooke	Mansfield	Schweiker
Buckley	Mathias	Scott
Burdick	McGee	Smith
Case	McGovern	Stevens
Cook	McIntyre	Stevenson
Cranston	Metcalf	Symington
Curtis	Miller	Taft
Dole	Mondale	Tunney
Dominick	Montoya	Weicker
Fong	Moss	Williams

PRESENT AND GIVING A LIVE PAIR AS PREVIOUSLY RECORDED

Byrd, W. Va., against.

NOT VOTING—17

Allott	Fannin	Jackson
Bayh	Gambrell	Magnuson
Chiles	Gravel	Mundt
Church	Harris	Nelson
Cooper	Hollings	Packwood
Eagleton	Humphrey	

So, Mr. ERVIN's amendment was rejected.

Mr. PELL. Mr. President, I move that the vote by which the amendment was rejected be reconsidered.

Mr. BYRD of West Virginia. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 53

Mr. STENNIS. Mr. President, I call up my amendment No. 53 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be read.

The assistant legislative clerk proceeded to read amendment No. 53.

Mr. STENNIS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. Amendment No. 53 is as follows:

On page 1, between lines 4 and 5, insert the following new section:

"POLICY WITH RESPECT TO THE APPLICATION OF CERTAIN PROVISIONS OF FEDERAL LAW

"SEC. 2. It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964, section 182 of the Elementary and Secondary Education Amendments of 1966, and this Act, shall be applied uniformly in all regions of the United States in dealing with conditions of segregation by race whether de jure or de facto in the schools of the local educational agencies of any State without regard to the origin or cause of such segregation."

On page 1, line 6, strike out "SEC. 2. (a)" and substitute "SEC. 2A. (a)".

The PRESIDING OFFICER. Who yields time?

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

Mr. President, let me say to the membership that I think this is a highly important amendment. It has far-reaching implications. Most of the Members of this body are familiar with the debate on it last year. It passed this body by a vote of 56 to 36, which was a considerable margin in this field of legislation. It came out of conference, however, in altogether different shape, form, and manner, and the intervening time of a year has made the amendment even more applicable and important.

I agreed yesterday afternoon to a limitation of time for this debate, with the idea that the consideration of the bill might otherwise be completed. I plead with my colleagues to stay for at least a few minutes and get a statement as to what the real situation is, or at least what the issue is, and see if we can put this matter in proper focus.

The issue is a matter of policy, just as it was last year, and the amendment is identical to the amendment passed by the Senate last year, with the addition of three words which makes it apply to this bill. It is limited to a matter of policy in the desegregation of schools, so far as withholding of money is concerned and the administration of the Civil Rights Act of 1964 and the Education Act of 1966. It does not apply to or limit the courts in any way. It does not affect any case pending in court or any case that may come up in court. It is purely an administrative matter and it is binding on the executive branch of Government to the extent of a statement of policy.

It is not necessary to assert the facts here as to the extent of the vigorous prosecution of the idea of desegregating schools in the South. I do not come today to complain about that. I have no bill of indictment to lay at anyone's feet. But the facts have all been admitted. They have all been put into the record as relates to States beyond the South. What has happened in the last year has been put in the record.

One fact is that in the South now there is a considerably higher percentage of the attendance of minority children in schools that are desegregated than is true in States beyond the South. In many of the States beyond the South they have actually gone backward since this matter was up in the Senate 14 months ago. Segregated conditions in schools beyond the South have increased. We have the figures to show this. I have already put them in the record. That fact has been admitted by the proponents of the bill. They have admitted it to be correct. The proponents of the bill agree that the figures are correct. They do not contradict anything that has been put in the record about conditions of the various schools beyond the South.

The fact is that in many States there have been recall elections held where desegregation plans were proposed. The people, under the laws of those States or cities, filed recall petitions and got an election and voted out of office the members on the school boards who voted in favor of the desegregation plans. The case was more or less dropped there. That happened in Denver. It happened in many places. In the course of this debate I shall cite them in more particulars. Those matters are not denied at all.

The proponents of the bill say it is designed to destroy segregation whether it is, on an historical basis, de jure or de facto. They say that is one of the purposes of the bill. I shall read a quotation from our distinguished friend from Rhode Island, quoting him to that effect. The Senator from Minnesota has addressed himself to this matter. The record shows he agreed with the facts.

What are we going to do? Not a single case has been taken for decision by the Supreme Court, and therefore not a single one has been decided, which touches on the proposition of so-called de facto segregation beyond the States of the South. I do not say that in any criticism of them. I cannot understand why in the world they have not taken at least some of these cases and decided the matter, rather than confine their activities to the South, but I cite the fact that they have not done it.

I made a speech a year ago pointing out four cases in particular that had been to the Supreme Court that raised the question of segregated school conditions beyond the South. In every one of them, they turned it down. In one of those cases they turned the case down without even hearing it. Lawyers know what they mean when they say "writ of certiorari denied." That means they considered it to a degree, but would not hear it. One of those cases was Deal against Cincinnati Board of Education, certiorari denied, Case No. 369 F. 2d–55 (6th Circuit) 1966; 389 U.S. 847, 1967.

That case is back in the Supreme Court now, and has been for a year, and has not been passed on one way or the other. No writ has been denied and no writ has been granted. I do not know why in the world anything like that is happening, but it is happening and it is conclusive proof that the judicial branch of the Government, at the highest level, is not doing one thing about the problem of segregated schools beyond the South.

We all know what they have done this week. I am not attacking them, but they have borne down with all the might that they had upon them, with an augmented, demanding, immediate total pattern of desegregation for the South.

All my amendment says is that it is the policy of the legislative branch that this operation, or whatever you want to call it, shall be applied throughout the Nation the same way, whether the history is de facto, so-called, or de jure, so-called. That is all. That is all the amendment says, and with all deference to everyone, I cannot see how in the world a person who is really standing for desegregation can stand up here and oppose this amendment; because, again with all deference, he would be saying, "I favor it, but I do not favor it for my State." That is what it comes to.

I do not blame any Senator for representing his State. There is plenty of evidence—I have referred to it in a passing way—that the people in many of the States beyond the South do not want these plans of integration. They do not want to bus their children from one side of a city to another. They do not want a school board that even begins to try to put into effect a plan of that kind; and they exercise their privilege at the voting booth, and recall those who try to do something about it, their own officers. Some of the States have gone so far as to pass laws saying that there shall be no busing under State law; that there shall be a freedom of choice by these parents.

I do not see anything to indicate that the Department of Justice is stirring itself to get those laws outside the South set aside, or to overcome them in any way, and I speak with all deference to everyone; but to show how one sided this matter is, they went down to Atlanta, five members of the President's Cabinet, acting in good faith, I am sure, celebrating there the integration, to a great extent, of the Atlanta schools, and they issued

statements, and so forth, complimenting the people; and the people deserve credit for trying to live up to these mandates.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. STENNIS. I yield myself 10 additional minutes.

But, Mr. President, they have not been celebrating anywhere else—Chicago, Boston, Pittsburgh, Philadelphia, Denver, Los Angeles, or New York City—about integrating their schools, because they are not doing anything about it there. And I have not read anything about these Cabinet level officials going to those places and trying to do something about it. I do not attack them personally; they are fine people. Two of those men who went to Atlanta were former Governors of Massachusetts. One of them is Secretary of Health, Education, and Welfare now, and is a splendid man. But they are having trouble, unfortunately, more trouble in Boston than in Atlanta, and they have not been to Boston to try to enforce the law there. In many cities of the North and West the voters in elections recalled the trustees who tried to put in such a plan.

What are we going to do about it? Congress passed the Civil Rights Act, and it was voted for in good faith. It has been interpreted in many ways—many ways—to give the de facto group a way out; and the courts, to a large degree, so far have backed them up. The Supreme Court of the United States, by inaction, has backed them up.

What is the matter with this proposal? Why should not Congress light just one little lamp that might shed some light whereby the officials could find their way? I believe there has been so little activity beyond the South, and so many years have passed and so many promises have been made, that somewhere down the line there should be a slowdown signal, and I think Congress is one branch of the Government that at least can light that little candle. It is very small. Some say this proposal does not have any meaning.

Well, if it does not have any meaning, it will do no harm. But I think it does have meaning. I think there is a great principle behind it. If these minority children are entitled to a fully integrated school as a matter of right or a matter of American principle, then they are being discriminated against.

By whom? By Congress. By the executive branch. If this is a right that Brown against Board of Education decided, then those children are being discriminated against knowingly and willfully, and without proper excuse.

Or, there may be a few statistics here to show that they asked for some men, have asked for additional workers, and that it works a hardship there. But let me tell you, if they really want to go after this matter beyond the South, they can do it.

We opposed it, yes. Everyone did. That is human nature. It is being opposed everywhere else, or almost everywhere, just as strongly as it ever was in the South.

What are we going to do about this? Mr. President, I charge that the executive branch has been inactive, and I think the admitted facts prove it—not only this administration, but the previous ones. They were just as bad. I had a conference 4 or 5 years ago with the then esteemed Secretary of the Department of Health, Education, and Welfare. The late Senator Russell was in that conference, and former Senator Hill. We were given a definite promise that a constitutional amendment along this line was going to be put into effect. A promise was made, and it was not kept.

I do not charge that Secretary with willful misrepresentation. He might have been prohibited from carrying it out. Another one made the same promise. Mr. Finch, later Secretary of the Department of Health, Education, and Welfare, said there was massive segregation beyond the South that ought to be attacked. I have already referred to Mr. Richardson, the esteemed and able gentleman who is presently the Department of Health, Education, and Welfare Secretary.

I believe if they are going to integrate these schools, they need some help. I refer to the Supreme Court with proper deference, but I cannot understand why they have not at least considered these four cases that have been pending there, or were pending so long, from outside the South, involving the question of de facto segregation. That was all set out by me in a speech in the CONGRESSIONAL RECORD, volume 116, part 11, page 14098. This case from Cincinnati has been back before the Supreme Court since I made that speech, and is lying there now, unanswered and undecided, with no decision whether they are going to get their writ.

They decided another case just this week, a major case; in fact, four of them, from the South, all at one time, and they bore down and actually approved the idea of willful quotas.

Willful quotas, in these integration cases; that was something that was promulgated to high heaven during the passage of the civil rights law as not being the intention, the wish, or the desire of the sponsors. But over and over again, we come down, now, in the interpretation, to that. In the Charlotte, N.C., case, there is nothing to avoid that. They even established and approved a lower court decision which said the purpose was to set up these quotas, and then went on to set them.

This is a problem for the whole Nation, for those who believe that. But what about a sense of fairness?

What about a sense of fairness to these minority children? How are you going to answer this? What is the reason, the logical reason, and, in a sense, the fairness that can be given to these minority children?

This does not set any timetable. It does not call for any drastic action. It just says that the policy applied by HEW ought to be nationwide. What is the real reason? What is the trouble? What is the opposition?

I tell you right now—you criticize the South on many scores. But while we have been going further on this integration, the areas beyond the South have been doing more than standing still. They have not been standing still. They have been going backward, marching backward, on this very problem. I do not want to punish them. I do not want anything drastic. But I want a little light here on this subject, that Congress would just run up a signal and say that we believe in a sense of fairness to those minority children, at least; that if we are going to have a policy in one part of the country on this matter, we ought to have it throughout the Nation.

Here is another thing, Mr. President: The people in the South have cooperated and have supported the idea of supporting the law and integrating. Teachers, administrators, school trustees, and parents buried themselves in this problem. What about a little fairness for the idea, the whole concept, of dramatically changing our entire school system? They tried not only to keep from violating the law but also to keep the public schools open—the public schools—to keep them going, and going on a quality basis. What about a little fairness to them? And this is no small point—to those of us who have had the burden in connection with that problem. Year after year after year they have been told what they had to do, and they have been trying to do it. Now it has even come to the point where there are quotas for them, but nothing for the rest of the country.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The time of the Senator has expired.

Mr. STENNIS. I yield myself 5 additional minutes.

Nothing has been required for the rest of the country except a little token effort, which just amounts to 4, 5, or 6 cases having been filed. Do we approve of that? I do not think we do. The membership here does not approve it.

If we can just separate this matter from the emotional side, from the sectional side, and really make education paramount, we can solve this problem and pass this amendment, and maybe be on our way—maybe.

I know a little about the history of the kind of legislation in this bill. I am a member of the Committee on Appropriations. It is a fact that when this measure was first introduced—not this bill, but when the first bill of this kind was introduced—it was actually justified and written up in such a way that it would apply only to the South. There could not be anything more conclusive of the fact that that is what they were shooting at, anyway. The bill was not even planning any integration except in the South.

In the subcommittee room, on my motion, that record was changed to make it apply throughout the Nation. That was the first small bill. Later, when it came here and it came to putting penalty clauses in it, I made a point of order, and it was thrown out. But it came back with another in a few days. The genesis of it goes back to the original bill. This was conceived in the mind of someone—it was not even going to apply to the North. The Senator from Arkansas (Mr. MCCLELLAN) called it right there, at that table, as soon as he read it. He said, "This is bribe money."

This has grown now, and I do not attack those who favor the bill and have worked on it so hard. But I tell you right now, enough is enough of this unfairness to a great segment of the minority children of this country.

Who can explain away the striking illustration here of all three branches of this Government being guilty either of inaction or of dodging or of doing nothing with respect to this problem outside the South? I would like to hear what real, logical reasons, based on commonsense, the opponents have with respect to this amendment. I have said repeatedly that it does not contradict the bill. It goes along with the bill. One of the authors of the bill has said that this is to wipe out the distinction between de facto and de jure discrimination. It does not limit the courts. Now, what is the matter with the bill?

Mr. President, I reserve the remainder of my time, and I yield the floor.

Mr. PELL. Mr. President, I have listened to the argument of the Senator from Mississippi, whom I respect tremendously. He is as much an authority on this subject as one can find. Actually, I find myself somewhat caught in a crossfire between experts on civil rights law on both sides of the issue, from both parties.

As I see it, to try to simplify it, there is already in the law and in court decisions a difference between de jure and de facto segregation. As I understand it, de jure segregation has been ruled unconstitutional by the Supreme Court; and so far, I am informed, there never has been such a ruling by a Federal court concerning segregation de facto, segregation which grows out of housing patterns and economic circumstances, not because of administrative rulings.

What I think is needed is a separate bill, to be handled by the Committee on the Judiciary, because this is a civil rights matter. Such a bill would say that in the future, de facto segregation is illegal; or, in lieu of that, a court decision to this effect could achieve the same end result. But I am not sure that tacking this amendment on to this bill is the way to handle the problem.

Actually, our bill seeks to go to the very problem that concerns the Senator from Mississippi. It seeks to go at the problem of de facto segregation by making it possible on a voluntary basis for those areas to secure help in desegregating and integrating its school systems.

Mr. President, I yield the floor.

Mr. TOWER. Mr. President, I am very concerned with the recent Supreme Court ruling concerning the duties of a formerly segregated school system in converting to a unitary one. Likewise, I am vitally concerned with what we are doing here today, debating the one Federal standards amendment and its far reaching implications. I regret very much that the Supreme Court refused to go along with the approach that President Nixon had suggested, which would have allowed the school districts in the South to achieve a unitary school system with a minimum amount of disruption of the educational process. I had hoped at least that the Supreme Court would define what a unitary school system was. In both of these matters, I have been very disappointed. The Supreme Court has granted the district judges extremely broad equitable powers, without giving the school districts which might be the subjects of such powers any definite guidelines on how they might conform to the mandate to institute a unitary school system. Where the Court had sought to end uncertainty, it has created only despair.

Mr. President, during every debate that we have had on this matter and every time in this body that I have had the opportunity to express my belief, I have spoken for and fought for the basic concept of freedom of choice and the neighborhod school. The "bizarre" approach of the Supreme Court to this problem, to use its own term, could destroy the school systems in formerly segregated areas. Already, the so-called white academy has begun to flourish. Quality education is suffering from "bizarre" approaches to the question of how to achieve a unitary system.

It is becoming increasingly clear that it will be incumbent upon this Congress to define what constitutes a unitary school system. The Supreme Court has consistently avoided its responsibility in this area; and, up until now, we in Congress have not acted, even though many, including myself, have urged that we do so. We will need some thoughtful analysis before we can decide ultimately what constitutes a unitary system. What the Court has refused to do for seventeen years, we cannot hope to do in a few days in an emotionally charged situation. This much, however, is clear, Mr. President, whatever policy we adopt will have to apply to the Nation as a whole. We can no longer tolerate the luxury of having a dual policy on what is a unitary school system. The distinction between de facto and de jure segregation was dismissed last year by this body during the debate on this very same amendment. With that precedent in mind, we cannot now retreat from the progress we have made. Indeed, we must go forward and exhort whoever may be the conferees on this bill to insist that this language be maintained in this bill, for better no bill at all than a measure which would perpetuate an injustice that this body in a decisive 56-to-36 vote rejected just a few months ago.

With the adoption of the Stennis amendment, when this Congress takes up the matter of what constitutes a unitary school system, we can treat the problem as a nation as a whole, not as segments of a nation. Segregation de facto has every bit as much impact on the learning process as segregation de jure. As we affirmed last year, the time for treating the South as the proverbial whipping boy for racial problems has long passed. Let us now reaffirm this belief, and then we can proceed to the larger question of what constitutes a unitary school system. Every section of the Nation can make a contribution as to what should constitute our national policy. I urge my colleagues to again support this amendment as a sincere method of improving race relations in this great Nation of ours.

ORDER OF BUSINESS

Mr. STENNIS. Mr. President, I ask unanimous consent that 3 to 5 minutes be allowed to the Senator from Minnesota (Mr. HUMPHREY) for a special purpose, the time to be charged equally against both sides.

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

VISIT TO THE SENATE BY MEMBERS OF THE GERMAN BUNDESTAG

Mr. HUMPHREY. Mr. President, we are very privileged today to have as guests in the Senate members of the Bundestag of the Federal Republic of Germany. The Bundestag is their parliament. These gentlemen are members of the Committee on Agriculture in the Federal Republic's Parliament.

They have been meeting today with Members of the House of Representatives as well as Members of the Senate. Senator AIKEN and Senator YOUNG have been hosting these gentlemen in the Senate.

I have been privileged to be with them for a short period of time.

I shall not try to mention the name of each one of our visitors at this time but ask unanimous consent that a list of our guests be printed in the RECORD.

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

1. Karl Bewerunge: Christian Democratic Union (CDU), Farmer Deputy Chairman of the Agricultural Committee and Head of the Delegation.
2. Dr. Hermann Siemer: CDU, Businessman and Farmer.
3. Georg Ehnes: CDU, Farmer.
4. Werner Marquardt: Social Democratic Party, Germany (SPD), Employee.
5. Heinrich Welslau: SPD, Mayor.
6. Dr. Willi Fischer: SPD, former County Executive.
7. Wilhelm Helms, Free Democratic Party (FDP), Liberal, Farmer.
8. Dr. Horst Gerold, Landgerichtsrat Secretary of the Agricultural Committee.
9. Max Salzberger: Oberregierungsrat (1st Secretary), Office for Parliamentary Relations in the German Federal Department of Agriculture.
10. Hans H. Hagemann, Philadelphia, Pa., Guide and Interpreter.

Mr. HUMPHREY. Mr. President, let me yield now to the distinguished senior Senator from Vermont (Mr. AIKEN) for any comments he may wish to make.

Mr. AIKEN. Mr. President, I merely want to add my word of welcome to our visitors from the Bundestag who are members of the agricultural committee in their country. We are very glad to have them here.

I was surprised to find that they have agricultural problems just as we do. I thought we were the only ones, but it appears that they have the same problems, too.

Our guests are here for a short visit to Congress and to our Department of Agriculture, trying to learn something about our troubles, as much as they can.

Mr. HUMPHREY. I thank the distinguished Senator from Vermont.

Mr. President, it is always a pleasure to share mutual concerns and mutual problems. This group from the Federal Republic of Germany has also been meeting with representatives of the Department of Agriculture, acquainting themselves with many of the challenges we face in this country in our agricultural economy.

In my view, these exchanges are valuable and we welcome these distinguished gentlemen who serve their country so ably.

Mr. President, I ask that these gentlemen from the Federal Republic of Germany now stand so that we may give them a good, old-fashioned American welcome.

[Applause, Senators rising.]

Mr. HUMPHREY. Mr. President, let me express my thanks to the distinguished Senator from Rhode Island (Mr. PELL), the manager of the bill here today, and to the distinguished Senator from Mississippi (Mr. STENNIS), for their courtesy in arranging this time.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

Mr. PELL. Mr. President, I yield myself as much time as I find necessary.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The Senator from Rhode Island may proceed.

Mr. PELL. Mr. President, what the bill seeks to do is to reduce de facto segregation which so concerns the Senator from Mississippi, but it does so on a voluntary basis.

Actually, one of the beauties of the bill as opposed to the House-passed measure in the last Congress is that it applies to all sections of the country. The fact of the matter is exactly what the Senator from Mississippi says, that in the last Congress the bulk of that money would have gone to a single section of the country; but in this bill one finds the money spread around; and, actually, as I read into the RECORD earlier, the States of the Old South; namely, Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia, would be eligible for about one-quarter of the money, or $271 million of the total of almost $1 billion allocated to the States would be spent. This means that almost three-quarters, or $726 million, would be spent for the very purpose of eliminating de facto segregation in the other parts of the country.

While this is voluntary, it would seem to me to be a good first step. I would like to see the time come when Congress, in its wisdom, would pass a civil rights measure along the lines proposed by the Senator from Mississippi, or when the Supreme Court would make a ruling to that effect the Senator from Mississippi is absolutely correct, the situation in the North with regard to racial isolation has been getting worse and the situation in the South has been getting better. But I think the way to handle it is, one, to do it through the approach of the bill that we have, unencumbered and unamended, on a voluntary basis; and, second, to face up to the issue and pass it as a civil rights measure.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

QUORUM CALL

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

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. STENNIS. Mr. President, I yield 5 minutes to the distinguished Senator from Connecticut (Mr. RIBICOFF), or such additional time as he may require.

The PRESIDING OFFICER. The Senator from Connecticut may proceed.

Mr. RIBICOFF. Mr. President, I rise in support of the amendment of the distinguished Senator from Mississippi (Mr. STENNIS). This amendment is the same amendment I supported last year which passed the Senate 56 to 36. It sets forth the declaration of a national school integration policy for this Nation in the North as well as in the South.

Some argued last year that the Stennis amendment was only a declaration of policy and did not implement any affirmative program in the North. Many of these same Senators yesterday voted against a program that would implement this declaration of policy and begin for the first time a program of school integration in the North. Nonetheless, I continue to support the Stennis amendment for I feel it is critical for the Senate to declare at least a policy of ending segregation in the North as well as in the South.

As the Supreme Court has made clear this week, southern schools are desegregating under the mandate of the 14th amendment to the Constitution.

Nothing this body, nor the President, nor the executive branch can do will stay or slow the implementation of that mandate. The Supreme Court made it clear over a year ago that insufficient or inadequate plans proposed by the Justice Department or the Department of Health, Education, and Welfare would be summarily rejected by the courts. Therefore, the Stennis amendment's declaration of policy in no way will lead to a slowdown in the South, but hopefully will encourage school desegregation activities throughout other areas of this country.

Time is running out in this country if we are ever to arrest the division of this Nation into two separate and unequal societies.

No one has stood on this floor this week to advocate a segregated society or support segregated education. No one has risen on the floor this week to dispute the 1970 census figures, documenting the increasing racial separation in this country between the suburbs and the central cities. No one has rejected the recent HEW figures showing the existence of more segregated education in the North than in the South.

The question is what are we going to do about this crisis? The amendment proposed by the Senator from Mississippi would at least declare a policy of integration in the North as well as the South. This would be a small but still significant step forward and I will vote for his amendment.

Mr. President, I yield the floor.

Mr. STENNIS. Mr. President, I thank the distinguished Senator from Connecticut.

Mr. EASTLAND. Mr. President, there are a number of amendments which should be made to the pending bill. This is very important legislation. It would authorize the appropriation of $500 million for the fiscal year ending June 30, 1972, and the appropriation of $1 billion for the fiscal year ending June 30, 1973.

One of the amendments that should certainly be adopted is the one that has been offered by my colleague from Mississippi. The Stennis amendment would provide that there be a national school policy applied equally to all States, localities, regions, and sections of the United States. The adoption of this amendment would help to eliminate the use of the "double standard," which has resulted in the requirements for the integration of the public schools being given a very stringent application in the South and a very lenient application elsewhere.

The Federal courts have held that zoning is permissible in the North, East, and West, but that southern schools must bus children to overcome racial imbalance. This is wrong, and it is discrimination in its worst form. Unfortunately, this policy toward the South has been approved by the Supreme Court in Swan against Charlotte-Mecklenburg Board of Education, handed down on April 20, 1971.

The courts justify this discriminatory treatment on the basis that racial separation in the northern, eastern, and western schools is a result of residential patterns. They label this "de facto" segregation. On the other hand, they claim that the racial separation in the southern public schools is a result of State legislation requiring it. They label this "de jure" segregation.

We all know that this is a distinction without a difference. We know that the so-called fortuitous housing patterns of the North, East, and West are the results of long-established customs, habits, and traditions sanctioned or permitted by State and local governments. Indeed, until a few years ago this discrimination

was required by agencies of the Federal Government such as the Federal Housing Authority and the Veterans' Administration.

These housing patterns did not just happen. They exist because the law sanctioned or permitted them to exist and grow.

We also know that most States in the North, East, and West had laws which required or permitted racial separation in the public schools. These laws were widespread in the 19th century, and in many of these States existed into the 20th century.

This distinction between de facto and de jure segregation is meaningless. It should not be used to discriminate against the South.

In the unfortunate opinion of the Supreme Court of the United States in the case of Brown against Board of Education, which amended the Constitution of the United States and took away from the States and localities the right to operate the public school system, the Court discussed the impact on colored students of racial separation. The harmful impact on these children, which I believe the Court erroneously found, is the basis for the holding of the case. The Supreme Court stated this harmful impact in the following words:

> To separate them from others of similar age and qualifications solely because of their race generates 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.

I have never been able to understand how a 10-year-old colored student in a public school in Harlem, Watts, or South Chicago, is expected to look around and see nothing but black faces in his classroom and say to himself: "This kind of racial separation does not hurt me because the State of Illinois does not have a law requiring me to attend all-black schools. I should not feel hurt by this racial separation because it is the result of housing patterns that just accidentally developed."

Perhaps the Federal courts and some of my colleagues will attribute this much wisdom, knowledge, and sophistication to a 10-year-old child, but I cannot.

I have long contended that the Federal courts have consciously or unconsciously followed a policy of applying one rule of law to the Southern schools and another rule of law to the schools in the rest of the country. It is up to Congress to eradicate this type of regional discrimination.

The adoption of the Stennis amendment as it is written and not watered down to perpetuate the unjust de jure-de facto distinction, will help to achieve this objective.

Unfortunately, Congress is not without guilt on this issue of regional discrimination. There are provisions in the pending bill as reported by the Committee on Labor and Public Welfare which would increase the regional discrimination which has been suffered by the South.

I refer specifically to section 5(d)(2)(A)(i), which states in essence that no local educational agency shall be eligible for assistance under the act if after August 18, 1970, it has received assistance under the paragraph heading "Emergency School Assistance" in the Office of Education Appropriations Act, 1971, and it has caused to exist or occur or has permitted to exist or occur, any transaction, practice, procedure, or policy described in the following categories:

First. Any local educational agency which has transferred—directly or indirectly by gift, lease, loan, sale, or other means—real or personal property to, or made any services available to, any nonpublic school or school system—or any organization controlling, or intending to establish, such a school or school system—without prior determination that such nonpublic school or school system, first, is not operated on a racially segregated basis as an alternative for children seeking to avoid attendance in desegregated public schools, and, second, does not otherwise practice, or permit to be practiced, discrimination on the basis of race, color, or national origin in the operation of any school activity;

Second. Any local educational agency which has had in effect any practice, policy, or procedure which results—or has resulted—in the disproportionate demotion or dismissal of instructional or other personnel from minority groups in conjunction with desegregation or the conduct of an activity described in section 5, or otherwise engaged in discrimination based upon race, color, or national origin in the hiring, promotion, or assignment of employees of the agency—or other personnel for whom the agency has any administrative responsibility;

Third. Any local educational agency which has in conjunction with desegregation or the conduct of an activity described in section 5, had in effect any procedure for the assignment of children to or within classes which results in the separation of minority group from nonminority group children for a substantial portion of the school day; or

Fourth. Any local educational agency which has had in effect any other practice, policy, or procedure, such as limiting curricular or extracurricular activities—or participation therein by children—in order to avoid the participation of minority group children in such activities, which discriminates among children on the basis of race, color, or national origin.

This section goes on to provide that any local educational agency which is ineligible for assistance by reason of the above provisions may make a special application for waiver of its ineligibility to the Secretary of Health, Education, and Welfare. Such application for waiver of ineligibility shall include such information and assurances as the Secretary shall require by regulation in order to insure any practice, policy, or procedure, or other activity resulting in the ineligibility has ceased to exist or occur and include such provisions as are necessary to insure that such activities do not reoccur after the submission of the application.

It is further provided that only the Secretary can grant such a waiver of ineligibility and that such waiver will not take effect prior to 30 days after receipt of a notice of intention to grant the waiver by the chairman of the Committee on Labor and Public Welfare of the Senate and the chairman of the Committee on Education and Labor of the House of Representatives.

The effect of this language, of course, forces a number of public school districts in the South to go through the onerous procedure outlined above of obtaining a waiver of ineligibility in order to receive funds under the act, while at the same time exempt school districts in other parts of the Nation from its stringent requirements. There can be no doubt but that these four categories were drafted in language to catch some southern schools and exempt the schools elsewhere. It reminds me of the language of the Voting Rights Act of 1965 which, while not naming any States, was concededly drawn up to cover five Southern States and a portion of North Carolina and not to cover the rest of the States in the country.

It is also similar to the Voting Rights Act in that it looks to a date in the past and visits punishment for alleged misconduct as of the past date. It is not unreasonable to characterize such legislation as punitive. Remedial legislation looks to the future and undertakes to redress wrongs in the future. Punitive legislation looks to the past and punishes for alleged past misconduct.

My feeling that this is punitive legislation directed at the South is reinforced by the omission of a number of categories which could have been added to the four which are enumerated in the act.

For instance, if we are to have the four categories which are directed toward the southern school districts, then why should it not be provided that no local educational agency which as of August 18, 1970, has received assistance under the emergency school assistance provisions and has since that time engaged in such practices as overloading predominantly black schools, spending less money per pupil in predominantly black schools than in other schools of the district, allowing or permitting school zone lines which had the purpose or effect of causing racial separation in the school system to continue to exist, and planning for or locating new schools in such places as to maximize racial separation in the public schools.

One obvious answer is that such provisions would adversely affect public schools outside the South. The resulting public outcry would be heard even in the Halls of Congress.

The language of the Voting Rights Act of 1965 which admittedly singled out certain Southern States for coverage was justified by many of its proponents on the basis that the covered States were where the problem of voter registration by black citizens existed and that since the rest of the country did not have that particular problem, there was no need to

apply that law to the other 44 States. Even this argument, spacious as it was and is, does not apply to the pending legislation. It is beyond doubt that the fact of racial separation in the public schools is more acute outside the South than in the South. This is graphically illustrated by a statement made by my colleague from Mississippi on the floor on April 14, 1971. Senator STENNIS used figures supplied him by the Department of Health, Education, and Welfare. The figures he presented are so striking that they bear repeating here:

In the 32 northern and western States, there is a total enrollment of 29.2 million, of which 2.9 million, or 9.8 percent, are Negro students and, of these, 27.7 percent attended majority white schools and 72.3 percent attended predominantly minority schools; 57.4 percent of the Negro students are in 80- to 100-percent segregated schools; 50.7 percent are in 90- to 100-percent minority schools; and 30.6 percent in 99- to 100-percent minority schools.

In the 11 southern States, there is a total enrollment of 11.7 million students, of which 3.2 million, or 27.2 percent, are Negro students, as compared with 9.8 percent in the North and West. However, 38.1 percent of the Negro students in the 11 southern States go to majority white schools, compared to 27.7 percent in the schools of the North and West. It follows that 61.9 percent of the Negro students in the 11 Southern States attend predominantly minority schools, compared with 82.3 percent in the North and West; 41.7 percent of the Negro students are in 80- to 100-percent minority schools, as compared with 57.4 percent in the North and West; 1,042,803, or 32.7 percent, of the Negro students in the 11 southern States attended 90-to 100-percent segregated schools, as compared with 1,283,370, or 44.8 percent, in the North and West; and 26.6 percent of the Negro students in the southern schools are in 99- to 100-percent minority schools, as compared with the 30.6 percent in the Northern and Western States. It is only in the 100-percent minority segregated school that the numbers and percentages are higher in the South than in the North and West—341,354, or 11.9 percent, in the North and West, compared with 587,172, or 18 percent, in the South.

Of course, it should be remembered that many Northern and Western State school districts make a practice of token desegregation in order to get away from 100-percent black schools. Washington, D.C., which although classified with the southern and border State schools, is an excellent example of such tokenism. With a Negro student enrollment of 94 percent, it reported that only 27.8 percent of its Negro students are in 100-minority schools.

So, the old argument about making the law apply to where the problem is cannot be used to justify the singling out of alleged practices of some southern school districts for special punitive treatment.

I would think that no one today would doubt the fact that some school districts in the North, East, and West have indeed engaged in acts and practices which had the purpose or effect of increasing racial separation in the public schools. A number of cases have been taken to court on this issue, and in some instances the courts have made specific findings that school districts outside the South have committed such acts and practices. We may be certain that the cases taken to court represent only the tip of the iceberg. The Legislation Reference Service of the Library of Congress has furnished me with a list of some cases decided in the Federal courts in the States outside the South which involve the question of whether school officials in the North, East, and West have engaged in such acts and practices. I ask unanimous consent that a list of these cases be printed in the RECORD at this point.

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

LIST OF CASES

Barksdale v. *Springfield School Committee*, 237 F. Supp. 543 (D. Mass. 1965), Vac'd 348 F. 2d 261 (1st Cir. 1965).

Taylor v. *Board of Education* (New Rochelle), 191 F. Supp. 181, 195 F. Supp. 231, Aff'd 294 F. 2d 36 (2nd Cir. 1961).

Sealy v. *Department of Public Instruction*, 159 F. Supp. 561 (E.D. Pa. 1957), Aff'd 252 F. 2d 898 (3rd Cir.), Cert. denied U.S. 975, 1958.

Clemons v. *Board of Education*, 228 F. 2d 853 (6th Cir.), Cert. denied 350 U.S. 1006 (1956).

Blocker v. *Board of Education* (Manhasset), 226 F. Supp. 208 (E.D. N.Y. 1964).

Craggett v. *Board of Education* (Cleveland), 234 F. Supp 381 (N.D. Ohio 1964).

Webb v. *Board of Education* (Chicago) 223 F. Supp. 466 (N.D. Ill. 1963).

Brache v. *Board of Education* (Hempstead), 204 F. Supp. 150 (E.D. N.Y. 1962).

Evans v. *Buchanan*, 207 F. Supp. 820 (Del. 1962).

Henry v. *Godsell*, 165 F. Supp. 87 (E.D. Mich. 1958).

United States v. *School District 151* (Cook County, Illinois), 404 F. 2d 1125 (7th Cir. 1969).

Mr. EASTLAND. Mr. President, in some of these cases, a determination was made that the school officials had not engaged in discriminatory acts and practices; in other cases it was held that they had so acted.

For instance, the U.S. Court of Appeals for the Second Circuit affirmed certain findings of the district court pertaining to the operation of the schools of New Rochelle, N.Y.:

A major finding of the court below was that the defendant School Board had deliberately created and maintained Lincoln School as a racially segregated school. This crucial finding is, we conclude, supported by the record. Thus, around 1930, an area of several blocks, occupied by whites, was carved out of the Lincoln District and added to the Daniel Webster District, even though this area was adjacent to the Lincoln School and was a relatively long distance from the Webster School. When Negroes later moved into this area it was restored to the Lincoln District. In addition, children from the predominantly white Rochelle Park within the Lincoln District were removed from that district and assigned to the Mayflower school. It also appears that until 1949 the Board allowed white children within the Lincoln District to transfer to other schools, with the result that Lincoln School in 1949 was 100 per cent Negro. The defendants sharply attack the testimonial evidence received on this issue; but the basic facts just recited, which appear incontrovertible, support the finding and leave as the vital problem the later conduct of the Board and its present responsibility for the conditions stimulated prior to 1949.

On January 11, 1949, the Board adopted a policy of refusing further transfers and of admitting new students only to the school of the district in which they reside. This policy of attendance at the school of the district of residence, the "neighborhood school policy" or NSP, had been in existence for some time, but with the amelioration provided by the system of permissive transfers; henceforth it was to be applied with complete rigor. While it did mean that a small number of white children were retained in the district, yet it served to fix the Lincoln School as a segregated one, so that it is now 94 per cent Negro. . . .

The Manhasset, N.Y., school case involved a situation in which zone lines were used to foster racial separation in the schools. The U.S. District Court made the following findings and conclusions, which would doubtless be applicable to many other school districts:

The defendants deny that the continuance of the rigid neighborhood school policy, permitting no transfers under any circumstances, discriminates against the Negro elementary school student population. They hark back to the original, innocent delineation of the Valley area in 1929 as justification for its continuance. They contend that, because the original delineation of the lines of this area was not racially motivated, it must follow that its continuance is beyond the scrutiny of the Fourteenth Amendment; in other words, what they are doing in the 1960's must be tested in the light of what they or their predecessors did in 1929.

The defendants are, and for several years have been, fully aware of the total separation of the entire Negro elementary school population from over 99% of their white contemporaries. With knowledge of this fact, were they to prescribe today the attendance area lines which now exist could such action be justified by the normal criteria supporting the neighborhood school policy? Were the Board to create out of the total District one disproportionately small attendance area, provide a school for a disproportionately small student body composed almost entirely of Negro children and representing 100% of the Negro student population of the District, and couple such action with a rigid no-transfer policy—were the Board to take such action today would it not be reasonable to regard it as a rather ingenious device to separate the races, protestations to the contrary notwithstanding? Could such attendance lines, if drawn today, be insulated from the Fourteenth Amendment merely because the bylaw or rule of the Board did not mention the word Negro, but, rather, was cast in terms of residence?

The defendants argue that the cause of this racial separation in the District differs from that in Brown; that, here, the Negroes have segregated themselves by moving into the Valley area voluntarily in order to benefit from and enjoy the dual attractions of low-rent housing and a good, conveniently located school for their children. True it is that they have taken up residence in the Valley area under no compulsion of law but, rather, under that of the purse. Considering the disparity in socioeconomic levels within the District, their selection of the Valley was only Hobson's choice.

On the facts of this case, the separation of the Negro elementary school children is segregation. It is segregation by law—the law of the School Board. In the light of the existing facts, the continuance of the defendant Board's impenetrable attendance lines amounts to nothing less than state imposed segregation. . . .

And, the U.S. Court of Appeals for the Sixth Circuit, in deciding the Hillsboro, Ohio, school case, made the following statements of fact and conclusions of law:

There is no controversy as to the material facts of the case. There are three elementary schools in Hillsboro, Ohio: Washington, Webster, and Lincoln. Washington and Webster Schools have 12 regular elementary classrooms each, with one teacher assigned to each room and teaching one grade in the room. For approximately 15 years prior to September 7, 1954, the Webster and Washington Schools have been attended exclusively by white children.

Lincoln School has four classrooms, two of which are in use as regular classrooms. It has long been maintained exclusively for Negro children and it has two full-time Negro teachers who teach six elementary grades in two rooms. On September 8, 1954, Lincoln School had an enrollment of 17 Negro children.

"Segregation of school children according to race or color is not permitted under Ohio law.

* * * * *

The Hillsboro schools in part have complied with the Ohio law. The High School in Hillsboro is attended by both Negro and white children. The segregation of pupils in the 7th and 8th grades was discontinued by the Board in 1951. But the long-standing segregation in Lincoln School still exists. On September 7, 1954, plaintiffs, colored children of elementary school age, were registered, three in Webster and four in Washington School, and each assigned a seat in a classroom. Immediately thereafter the schools were closed for several days, and on September 14th plaintiffs were reassigned to Lincoln School.

On September 13th the Board established school zones for the City of Hillsboro. This was the first school zoning ever set up for Hillsboro schools. The resolution of the Board divided the city into three school zones, Washington, Webster and Lincoln. The Lincoln zone was divided into two completely separated parts, one in the northwest and one in the southeast section of the city. Three of the plaintiffs who live in the southeast part of the Lincoln zone have to pass by the Washington School in order to reach the Lincoln School. The Lincoln School is not in the Lincoln zone, but in the Washington zone.

* * * * *

The District Court held that the establishment for the first time in Hillsboro of a zoning system with a gerrymandered district set up in two separate parts, designed to embrace practically the entire colored population of the city, was brought about as a subterfuge to segregate children who had been admitted to Webster and Washington Schools.

Although the pending legislation does not spell it out, it is reasonable to suppose that the investigations and findings of ineligibility to be directed against the southern school districts will be made by employees of the Department of Health, Education, and Welfare. It is significant that the Secretary of Health, Education, and Welfare would not be permitted to delegate his authority to issue a waiver of ineligibility, but that he would be permitted to delegate his authority to make a finding of ineligibility.

Past experience has clearly shown that many of the employees of HEW who are sent to the southern schools to investigate them are extremely unsympathetic to the local problems that they encounter. I do not think the southern schools could expect fair treatment from such persons. Yet, the pending legislation as written would turn them loose again.

Certainly the findings of courts as to the acts and practices of school districts in the North, East, and West are entitled to greater weight than some ex parte determination of an HEW bureaucrat as to acts and practices in the southern schools. In a court proceeding, unlike HEW proceedings, both sides are afforded the opportunity to put on full proof and receive a fair and impartial hearing.

In the face of all this, the pending legislation, as written, would continue to perpetuate regional discrimination. I strongly urge that the provisions for a cutoff of funds be stricken from this bill. If this is not done, then the least that should be done is the addition of a number of categories which might actually apply to public schools outside of the South. If we are to have a national policy, then let us truly have a national, not a regional, application of the law.

QUORUM CALL

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

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

Mr. PELL. Mr. President, I yield 10 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 10 minutes.

Mr. JAVITS. Mr. President, if I could have the attention of the distinguished sponsor of the amendment, I would greatly appreciate it because what I am about to say, I think, is of great pertinence to the position taken by the Senator from Mississippi.

Mr. President, it will be remembered that when the extension of the Elementary and Secondary Education Act was up for consideration before the Congress last year, the Senate adopted an identical Stennis amendment. When it came out of conference with the House of Representatives, it was in a form which took account of the existing state of law.

The so-called ESEA is a measure to which we devote roughly $2 billion a year. Its extension passed and became law on April 13, 1970.

The Senator from Mississippi (Mr. STENNIS) has pointed out that we had passed the Stennis amendment in exactly the form in which it was offered today. However, the key to the change which had been made in conference, reading from the law, section 2(b) of Public Law 91-230, is:

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to the law applied uniformly to de facto segregation wherever found.

This is a two-track plan. In other words, the Department of HEW, in the North or South, would pursue exactly the same route regarding de jure segregation, and the same route in the North and South regarding de facto segregation.

The reason why the managers of the conference changed the Stennis amendment and why the Senate went along with the change is stated in the statement of the managers on the part of the House. That reads:

It is stated that nothing in the section can be construed to diminish the problems and responsibilities of officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in Federal programs and activities required by Section VI of the Civil Rights Act of 1964.

The Stennis amendment, we felt—and we argued this and it was the argument which eventually prevailed—would have, if taken in good faith and administered in good faith, though it was only a statement of policy, tended to dilute and divert law enforcement because the problem of de facto segregation would be merged into the very much larger problem concerning the effort to correct violations of the law in the South and in any other part of the country where there was a violation of the law against segregation in a school system.

This was taken in good faith and actually carried out. Incidentally, this law that I have just read, the Stennis amendment as modified, is presently the law and the policy of the United States. It is contained in this law which I have read. It remains in effect until, I think, June 30, 1973. At any rate, it was for 3 years. It is in effect right now, even in the absence of the adoption of the Stennis amendment or any variance of this measure. This is declared to be the policy of the United States, and not just with regard to this particular statute for Federal aid to elementary and secondary education. It is not a field in which we have not legislated. We have already legislated.

As I say, the Stennis amendment was designed to provide enforcement of equal protection. The policy throughout the country was to combat such violations with enforcement of the law. With so many districts in the South which were still in violation of the law, the authorities have sought to do that. Since we passed this law in 1970, and as a matter of fact slightly before that, there have been and are quite a few compliance actions being taken in the North and in the West. There are presently 64 districts under review on enforcement proceedings by the Department of HEW.

I ask unanimous consent that a list of those districts that are still engaged in such review, prepared by the Department of HEW, be printed in the RECORD.

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

DHEW TITLE VI COMPLIANCE REVIEWS OF ELEMENTARY AND SECONDARY SCHOOL DISTRICTS IN THE 33 NORTHERN AND WESTERN STATES—REVIEW STATUS AS OF APR. 15, 1971

State and district name	Latest district visit	Internal report prepared	Review status
Arizona:			
Tempe	March 1971		Review in progress.
Tucson District No. 1	February 1971		Do.
Clifton	January 1971		Report being written.
Winslow	do		Do.
California:			
Pomona	November 1970		Do.
Delano Joint Union High	October 1970		Review in progress.
Delano Joint Union Elementary	do		Do.
San Francisco City Unified	July 1970		Review in progress. No report yet.
Sequoia Union High (Redwood City)	April 1969	July 1969	OCR negotiating with district.
Bakersfield City Elementary	October 1970	April 1969	Do.
Fresno City Unified	September 1970		Report being written.
Pasadena	June 1968	September 1968	Justice Department taking action.
Colorado:			
Loveland	April 1971		Review in progress.
Pueblo City	September 1969	January 1970	Report being reviewed by OGC.
Colorado Springs No. 11	April 1971		Review in progress.
Connecticut:			
Hartford	November 1969	July 1970	Report being reviewed by OGC.
Stamford	June 1970	November 1970	Do.
Waterbury	April 1968	May 1968	Justice Department taking action.
Illinois:			
Springfield	September 1968	February 1969	Recommended for further review.
Maywood	June 1969	December 1969	Do.
Cahokia Community	October 1969	April 1970	Report being reviewed in regional office.
Joliet	April 1969	October 1969	Recommended for further review.
Kankakee	January 1970	May 1970	Plan approved. District notified July 17, 1970.
Rock Island	September 1970		Report being written.
Indiana:			
East Chicago	February 1971		Review in progress.
Hammond	August 1968	October 1968	Recommended for further review.
Evansville-Vanderburgh	November 1970		Report being written.
South Bend	October 1969	May 1970	Report being reviewed.
Fort Wayne	February 1971		Review in progress.
Kansas:			
Kansas City	September 1968	September 1968	Recommended for further review.
Wichita	March 1970	March 1970	Hearing found noncompliance; appeal pending.
Massachusetts: Boston	October 1970		Review in progress.
Michigan:			
Westwood Community (Dearborn Heights)	April 1970		Report being written.
Pontiac	July 1968	September 1968	Review suspended because of court action.
Ecorse	February 1969	July 1969	Recommended for further review.
River Rouge	do	do	Do.
Saginaw	May 1970	January 1971	Do.
Flint	September 1970		Report being written.
Ferndale	October 1968	November 1968	Hearing found noncompliance; appeal pending.
Nebraska: Omaha	May 1970	January 1971	Report being reviewed by OGC.
New Jersey:			
Hoboken	February 1971		Review in progress.
Passaic	April 1969		Report awaiting further information.
Pleasantville	October 1969	July 1970	More information requested by OGC.
Perth Amboy	June 1969	October 1969	Recommended for further review.
Union Township	June 1968	July 1968	Problems settled by negotiation.
New York:			
Buffalo	February 1971		Review in progress
Utica	October 1970		Do
Lackawanna	June 1970	January 1971	Report being reviewed by OGC
Mount Vernon	February 1971	March 1971	Noncompliance letter sent to district March 24, 1971.
Monticello	March 1970	October 1970	Found to be in substantial compliance.
Poughkeepsie	June 1970	July 1969	Settled by negotiation.
Ohio:			
Springfield City	May 1969	December 1969	Report being reviewed by OGC.
Hamilton	November 1970		Report being written.
Lima	July 1969	February 1970	Report being reviewed in Washington office.
Warren City	November 1970		Report being written.
Toledo	October 1968	February 1969	Report under review by OGC.
Dayton	August 1970		Student assignment under further review. Teaching plan approved.
Canton City	August 1968	October 1968	Recommended for further review.
Middletown	May 1968	May 1968	Problems settled by negotiation.
Pennsylvania:			
McKeesport area	April 1968	June 1968	Desegregation plan accepted by State officials.
Penn Hills (Pittsburgh)	May 1967	May 1967	Problems settled by negotiation.
Utah: Ogden	November 1970	January 1971	Report being reviewed by OGC.
Wisconsin:			
Shawano	June 1969	December 1969	Recommended for further review.
Racine	July 1970	September 1970	Report being reviewed in Regional office.

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

Mr. JAVITS. Not yet. I would be very grateful to the Senator from Alabama if he would wait. The Senator knows that I never hesitate to yield. I will yield later, but I want to complete my argument and then I will gladly yield.

Mr. President, it will be noted from this analysis that the Department of Health, Education, and Welfare has nine districts actually in negotiation and 64 cases pending. There are nine cases actually in the enforcement process between Department and district, and the Justice Department has taken action in six. This is something which occurred within the last year or two.

The correlative set of figures to that, reflecting one of the other strong contentions of the Senator from Mississippi (Mr. STENNIS) and our beloved and departed colleague, the former Senator from Georgia (Mr. Russell) was that there should be some concentration of personnel charged with enforcing the civil rights acts in other parts of the country, as well as the South. That, too, has been accomplished.

We now have, of the personnel of the Office of Civil Rights in the Department of HEW, 80 operatives in parts of the country other than the South, and only 52 operatives in the South. That is a shift over the years.

Again, I am pointing out, in all deference and in all fairness, the work done in the struggle made by the Senator from Mississippi (Mr. STENNIS) and his colleagues.

Finally, and very critically, as it bears on this subject, which is a developing one, and the situation today may not be the situation tomorrow, I would like to call attention to the figures, which are important, on what is not so much segregation in violation of law, as segregated status. That is what the Senator from Mississippi has been arguing, and quite properly.

Mr. President, I ask unanimous consent to have printed in the RECORD the table to which I am about to refer.

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

TABLE I.—NEGRO PUPILS IN ALL DISTRICTS [1]—FALL 1968, FALL 1970

Number and Percent of Negro Pupils Attending Public Elementary and Secondary Schools

Geographical area	Total pupils	Negro pupils	Negro pupils attending: 0 to 49.9 percent minority schools — Number	Percent	80 to 100 percent minority schools — Number	Percent	100 percent minority schools — Number	Percent
Continental United States:								
1968	43,353,568	6,282,173	1,467,291	23.4	4,274,461	68.0	2,493,398	39.7
1970 estimated	44,774,679	6,723,950	2,206,521	32.8	3,378,231	50.2	1,076,033	16.0
32 North and West [2]:								
1968	28,579,766	2,703,056	746,030	27.6	1,550,440	57.4	332,408	12.3
1970 estimated	29,162,856	2,865,059	792,442	27.7	1,645,508	57.4	341,354	11.9
11 South [3]:								
1968	11,043,485	2,942,960	540,692	18.4	2,317,850	78.8	2,000,486	68.0
1970 estimated	11,738,916	3,187,684	1,215,089	38.1	1,328,137	41.7	587,172	18.4
6 Border + District of Columbia [4]:								
1968	3,730,317	636,157	180,569	28.4	406,171	63.8	160,504	25.2
1970 estimated	3,872,867	671,207	198,990	29.6	404,586	60.3	147,507	22.0

[1] Districts with fewer than 300 pupils are not included in the survey. 1970 figures are estimates based on latest available data and are subject to variation upon final compilation.
[2] Alaska, Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, Wyoming.
[3] Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia.
[4] Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, West Virginia.

Mr. JAVITS. Mr. President, let us take 1968 as a standard because I think it is a fair standard, and let us take schools where 80 percent to 100 percent of the students were black. I will come to lesser percentages in a moment. But in the 80–100 percent group, it appears in 1968 in the North and West the situation affected 57.4 percent of the minority group pupils. They were in the 80–100 percent minority impacted schools. In 1970 the figure is the same, 57.4 percent.

In 100 percent minority schools the figure in the North and West was 12.3 percent in 1968. In 1970 it was 11.9 percent.

Now, let us move to the South. In 1968, the percentage of minority students in 80–100 percent minority schools was 78.8 percent. In the roughly 2 years from 1968 to 1970 that percentage had dropped to 41.7 percent.

The Senator is correct in the conclusion that the percentage drop has been enormous and much greater than in the North and West, where it remains static. The reason is obvious. There were widespread violations of what was the declared law. I am not getting moralistic about this matter; we are dealing with the facts. That situation did not exist in the North. That situation persists today.

Mr. President, you still have the same degree of segregation in the North, and you obviously have a material decrease in the South because the law has begun to be enforced.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. Mr. President, will the Senator yield to me for an additional 10 minutes.

Mr. PELL. I yield 10 additional minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 10 additional minutes.

Mr. JAVITS. I thank the Senator for yielding. I requested 10 minutes so that I may then yield to whoever may wish to be yielded to.

Is it not right that we should redress law violations even if they affect only 41 percent as against the previous 78 percent? It is still a violation of the law and, therefore, those who suffer from it have a right to say, "When are we going to be relieved under this law?"

I would like to point out that this extends to completely segregated schools much more in the South than in the North because that was the social pattern, the official legal pattern.

We find in the North the figure for 100-percent black schools is 11.9 percent in 1970 and went down by a fraction of 1 percent from 1968, when it was 12.3 percent. Why? Because they did not have proven violations of law in the North, although they had de facto segregation.

In the South in 1968, 68 percent of the black students attended 100-percent segregated schools. I point out that this is 1968 and not 1955, and that the situation persisted for 14 years.

In 1968 there were 68 percent in completely segregated schools. The change occurred between 1968 and 1970 when the law really cracked down, and that, I think, is something that is a real tribute to the administration, although I do not give them all the credit; it took a while to tool up and to get sufficiently unequivocal court decisions to make desegregation a reality. They cracked down and the figure went down rapidly to 18 percent. But even that figure of 100-percent segregation is still substantially greater than what it is in the North and West.

In short, the violations of law have not completely ceased, by any means. If they had, why would we have these cases which were just decided by the Supreme Court this week?

Mr. President, that is the factual analysis which induced us in writing the policy for elementary and secondary education aid to write what we did; to wit, that we had a two-track system, but that the same policy and degree of enforcement would be carried through in the North as in the South. The two tracks were, first, enforcement of violations of law, and additionally, what we considered to be violations of policy.

Now, we come to this particular situation which faces us. Again, the amendment of the Senator from Mississippi is not confined to this act, I would say to him, if he had confined his amendment to this act, I could have a rather different attitude toward it because in this act for $1.5 billion we are trying to do everything we can about both kinds of segregation. However, he did not confine it to this act.

The Senator from Mississippi is simply rearguing the case of 1970 in his amendment. I beg Senators to read the amendment because it is terribly important with respect to the vote. The amendment does not apply to this act at all, except in context with other acts.

The amendment states:

> It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964,

That is one act. The amendment continues:

> * * * Section 182 of the Elementary and Secondary Education amendments of 1966,

That is another act. The amendment continues:

> And this Act, * * *

That makes a total of three acts and not just this one—

> shall be applied uniformly * * *."

So we have the same concerns exactly about this amendment that we did back in 1970.

I would look with much more sympathy on uniform application of the $1.5 billion. I say that with all respect to my colleague from Connecticut. He made a good argument, but it ran afoul of the fact that we are trying to do what he is trying to do. I hope and pray that we may get together on a long-range program. I say to the Senator from Mississippi that where he proposes what he tried to do in 1970, which is to hobble enforcement directed toward violations of law—we feel it should be hobbled by being dissolved in a much larger sea, which given the present state of the law as defined by the Supreme Court, includes conditions of a lawful character as well as those of an unlawful character.

Mr. President, I have one final point. I said yesterday and I say it again today. The Supreme Court has taken cognizance of what we are talking about. I am a lawyer and there are many other lawyers in the Chamber. Others may have different points of view. We have not yet closed the door on whether the Supreme Court will hold that what we do considers de facto segregation to be de jure segregation. Nor has the Supreme Court. They are approaching it in their own due time, step by step. This is what Chief Justice Burger said in the decision of Tuesday. I quote:

> We do not reach in this case the question whether a showing that school segregation is a consequence of other types of State action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree. This case does not present that question and we therefore do not decide it.

In short, the Court may very well go all the way with the Senator from Mississippi (Mr. STENNIS). It may hold that every form of segregation—including de facto segregation, as we now call it—is attributable to State action or Federal action. One has to get a building permit. There are zoning laws. There are police.

There are streets and traffic lights. If I were a Supreme Court Justice and I wanted to find that way, I think I could find many bases for making that decision. But the Court has not done it. When they find it, just as they have on de jure segregation, I will be just as passionate, no matter where it reaches, about giving that matter priority for enforcement. But the Court has not done it. Until the Court does it, I think it is our duty first to crack down on violations of the law.

So I sum up as follows: If the Senator from Mississippi would confine his amendment to this act, where we have a quite different purpose in mind, I would look at it with much more sympathy, but if it is intended to make prosecutions of violations of the law more difficult, I would oppose it. For that reason I oppose the amendment.

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

Mr. JAVITS. I yield.

Mr. MONDALE. As I understand the recent Supreme Court decision, it seems to contemplate two types of situations. The first is where there is segregation among the races and with respect to which it can be found that State or local school board policy resulted in such separation. The Supreme Court finds that where such official discrimination exists there is a violation of title VI, there is a violation of the equal protection clause of the 14th amendment, and then a host of remedies can follow to eliminate and overcome the results of such discrimination. But there is a second situation which the Court did not reach, where there may be a separation and segregation of the races, but not as a result of the acts of a school board, or even the acts of any other governmental agency.

But there are many instances where there is segregation today, which some people call de facto segregation, which, upon analysis, will prove in fact to have a basis in official discrimination.

Would the Senator from New York agree with that?

Mr. JAVITS. There is no question about that. I wish to read one sentence from the opinion, which appears on page 10:

> The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation—

I repeat, "State-imposed segregation."

Mr. MONDALE. That is what the 14th amendment says.

Mr. JAVITS. Exactly.

Mr. MONDALE. "No State shall."

Mr. JAVITS. Exactly.

Mr. MONDALE. It does not run to private, voluntary action; it runs only to State and local governments, official acts. Unless one is willing to say that all separations of the races today have underneath them some official act of local or State government, there may be cases of segregation in which there is no constitutional, legal remedy under the present law. Is that correct?

Mr. JAVITS. The Senator is correct.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JAVITS. Mr. President, will the Senator yield me 5 additional minutes?

Mr. MONDALE. I yield 5 minutes to the Senator.

Mr. JAVITS. Mr. President, how much time do we have left?

The PRESIDING OFFICER. Forty-six minutes.

Mr. MONDALE. That being true—and that is why I oppose the Stennis amendment as presently written—the amendment of the Senator from Mississippi might be construed to say there shall be a uniform national policy as to all segregation, whether it is the result of official discrimination or whether it is the result of acts which the laws now do not and cannot reach constitutionally.

Mr. JAVITS. Exactly.

Mr. MONDALE. What worries me is this: It could be argued, if this became law, that the Attorney General and the Secretary of Health, Education, and Welfare could be told, "Do not seek a remedy against an instance where there is official discrimination unless you can also tell me how you can uniformly find the same kind of remedy available to eliminate segregation which does not have an official basis."

The way it reads, I believe that argument might be made.

I think there is some honest disagreement among many Senators on this issue, but I believe many would take it to mean just that. It could be taken to mean not a national policy of enforcement, as some argue, but a national policy of nonenforcement. That is what worries me.

Mr. JAVITS. That is exactly right.

Mr. MONDALE. Having said that, I agree wholeheartedly with what many of our Southern colleagues have said about the failure of the Justice Department and the failure of the Department of Health, Education, and Welfare to pursue a national policy against enforcement of official discrimination wherever it would be found.

The Justice Department has brought very few actions outside the South. HEW has put into effect administrative procedures in the East and the West. However, they have not done anywhere near an effective job. Partly it is the fault of the Congress for not giving them the resources, and partly as a result of not stating, as our own responsibility, the need for a national policy of enforcement.

Would the Senator agree that if Senators are trying to have a national policy of enforcement for elimination of discrimination, and to achieve a uniform policy in the North, South, East, and West, they would have no difficulty obtaining the support of the Senator from New York or the support of the Senator from Minnesota?

Mr. JAVITS. There is no question about that, Mr. President, and I even went so far, though I have not received the consent of Senators handling the bill, of my saying that if this kind of approach were confined to this bill, I would see a great deal of merit to it. That is what we purport to do with this bill. We want this money used to combat all types of segregation, whether de facto—racial isolation—or de jure.

As a matter of fact, with or without the Stennis amendment, even if it were so confined, the division of the moneys which the Senator from Minnesota (Mr. MONDALE) enforced, in the way we worked it out, does that. The money goes for stable, integrated schools in all parts of the country. It goes for programs to improve educational achievement of children in minority group isolated schools, whatever their region. It goes for educational parks, of which we specify at least one conducted on an inter-district basis. So we do that. The money is earmarked for that purpose. It could be used for no other. So no one could object to a statement of policy which is exactly that. But when one combines, as the Senator from Mississippi (Mr. STENNIS) does, the enforcement policies as to title VI of the Civil Rights Act of 1964 with the effort to deal with de facto segregation, there I must oppose it.

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

Mr. JAVITS. Would the Senator allow me to say one thing before I forget it? The administration is opposed to the Stennis amendment, and I would like to read the letter of the Secretary of Health, Education, and Welfare on that score. I shall not read the personal references, though they will all be in the RECORD:

> The bill in its present form is supported by the Administration. We oppose all the amendments currently before the Senate, which have been offered by Senators Ervin and Stennis, because they have not received consideration comparable to that given the bill itself and because they would undermine the purposes of the bill.

Mr. ERVIN. Mr. President, would the Senator read the part pertaining to the Senator from North Carolina?

Mr. JAVITS. I repeat:

> The bill in its present form is supported by the Administration. We oppose all the amendments currently before the Senate, which have been offered by Senators Ervin and Stennis, because they have not received consideration comparable to that given the bill itself and because they would undermine the purposes of the bill.

Mr. ERVIN. In other words, that letter states in effect that the administration is opposed to the amendments which I have offered to prevent violation of the first amendment.

Mr. JAVITS. Mr. President, I really cannot debate that issue. The administration just opposes the amendments, I assume, of which it had notice. If the Senator has any new ones, that is another matter.

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

Mr. JAVITS. Mr. President, I ask unanimous consent to have the letter printed in the RECORD.

Mr. STENNIS. Mr. President, I object until I know whose name is signed to it.

Mr. JAVITS. I beg the Senator's pardon. I hand the letter to the page boy, so he may show it to the Senator from Mississippi.

Mr. STENNIS. Well, I am sorry. I cannot read it, but I judge, since it is on the letterhead of the Secretary of Health,

Education, and Welfare, that it is the signature of Mr. Richardson.

Mr. JAVITS. Well, the first name is Elliot.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, if the Senator has any objection to the letter, I will read it.

The PRESIDING OFFICER. Is there objection? Without objection, the letter will be printed in the RECORD.

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

THE SECRETARY OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., April 22, 1971.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: Let me take this opportunity to thank you again most sincerely for your constructive help in developing the Emergency School Aid legislation now being debated by the Senate. Your assistance is especially appreciated in defeating the Ribicoff amendment yesterday.

The bill in its present form is supported by the Administration. We oppose all the amendments currently before the Senate, which have been offered by Senators Ervin and Stennis, because they have not received consideration comparable to that given the bill itself and because they would undermine the purposes of the bill.

We stand ready, of course, to provide any assistance you may need during the remainder of the debate on the bill.

With kindest regards,

Sincerely,

ELLIOT RICHARDSON,
Secretary.

Mr. ERVIN. Mr. President, I would like to ask the Senator a question.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JAVITS. Mr. President, does the Senator from Minnesota wish to give me a little more time?

Mr. MONDALE. Not right now.

Mr. JAVITS. Not right now? Very well.

The PRESIDING OFFICER. Who yields time?

Mr. ERVIN. Mr. President, will the Senator from Mississippi yield me 1 minute?

Mr. STENNIS. I yield 2 minutes to the Senator from North Carolina.

Mr. ERVIN. I would like someone who is in the confidence of the President to ask the President to explain to the American people why he advocates a bill to violate the first amendment, but is very much concerned about the enforcement of the 14th amendment.

The PRESIDING OFFICER. Who yields time?

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

I have listened very closely to the Senator from New York, and I appreciate his arguments and his reasons. I know they are offered in good faith. But as to his suggestion that we limit my proviso to the money in this bill alone, I could not accept that, because there is a principle involved here. This amendment has already passed the Senate by a vote of 56 to 36, in its present form, applied to other laws. So it is no stranger to the Senate. It was well known when Senators passed on it before, and they knew what they were doing.

So, now, to come along and limit it to this bill, which has a spurious parentage, as I pointed out awhile ago—the first ones just applied to the South, anyway—is hardly acceptable. But I appreciate the Senator's suggestion.

As to this letter from Mr. Richardson saying the administration stood solidly in opposition to the Stennis amendment because it had not been considered, that is ridiculous on its face. With all deference to Mr. Richardson, he has been Secretary of Health, Education, and Welfare, I believe, about 9 months. This amendment, 14 months ago, was debated in the Senate for days, off and on, and in a final debate for several hours. It was passed by the Senate, went to conference and was fully considered there, and fully rewritten. For someone to send a letter like this in here now is like a Russian ukase, saying, "We are against everything that has Ervin's name or Stennis' name." What about the Dominick amendment? I heard of no such objection on that one.

What is coming off here, if the administration can send to the legislative branch a letter like that? Mr. President, I resent it, and I think we all ought to resent it, especially on a matter that has been passed by this body after full debate and full understanding, 14 months ago, when this Secretary was not in office. With all deference to him, he knows something about the subject, from experience right in his own State. But if he knew more about it, I believe we would not have as much trouble on this issue.

Mr. President, the Senator from Minnesota is a very careful man, and I say that also about the Senator from Rhode Island, who is handling the bill. The Senator from Rhode Island said this, as shown on page 10747 of the RECORD, on April 19:

This measure does just what the junior Senator from Mississippi asks; it does away with the distinction between de facto and de jure, it says to the North and South you have problems which must be dealt with, and it provides a mechanism for a local educational agency to alleviate those problems.

That is why I say that this amendment is directly in line and direction and in harmony with this bill. This bill adopts the policy that the amendment tried to get adopted here 14 months ago. As the Senator from Minnesota, a man of the very highest character and honor, said here quite recently, on April 19, as shown on page 10760 of the RECORD:

The statistics presented by the Senator from Mississippi cannot be refuted, nor can it be accurately said by anyone in this Chamber that we have a uniform national policy on school integration or that the law is being equally enforced in all regions of the country.

I commend the Senator for his honor, his honesty, and his frankness. As he said, we do not fully agree on this amendment, but we agree on the facts, and he stated it more clearly and more forcefully than I could, about this situation that we have no national policy. On page 10764, the distinguished Senator said further:

I have pleaded with the Justice Department for a national policy, to do a better job of enforcing the law not only in the South but also in the North, East, and West.

So those are the hard facts. Let us not try to whittle them away. Let us not try to dodge them. Let us not get off in the field of semantics.

While I have admiration for the ability of the Senator from New York, as to his argument about the conference report language 14 months ago, I think it is reasonable to say that that language says, in loud, eloquent words, "We want things to continue like they are."

The PRESIDING OFFICER. The Senator's time has expired.

Mr. STENNIS. I yield myself 3 more minutes.

"We want things to continue like they are." And the language came in here at the end in a conference report on a bill that had a thousand points in it, and of course that is no place to get a test on the real sentiment of this body. The real sentiment of this body was expressed in that 56 to 36 vote that was taken in favor of this identical amendment, and I believe those are still largely the sentiments of this body on the merits. I do not believe any letter from the Secretary of Health, Education, and Welfare, sent in here at the last minute, apparently, saying that the administration is opposed to all these amendments and wants them defeated, that there is something the matter with them, will influence Senators to vote otherwise. I leave that up to the judgment of the Senate, but I think they called on the wrong body and the wrong personnel to just give carte blanche disapproval to amendments that Members of this body have asked their colleagues to consider on the merits.

Mr. President, I yield back such time as I may have remaining.

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

We have spent the last 3½ days discussing the civil rights issue. In the process, the Senate has rejected what I think are two of the most effective proposals ever to come before this body. Yesterday we rejected the attorneys' fee provision, which was designed to assure that the law is applied equally and uniformly, and to begin the task of eliminating official discrimination and desegregation in the North as well as the South. The Senate also rejected the Ribicoff amendment, which would have provided a metropolitan solution, with a deadline, for the problems of racial isolation.

Having twice voted against a national policy of effective law enforcement, we are now presented with a third approach—the amendment of the junior Senator from Mississippi. I fear this amendment could be construed as an endorsement of weakened enforcement throughout this Nation. The reason why I oppose it—and I know that the Senator from Mississippi and I disagree as to the import of this amendment—is that I fear it will be read as a policy statement calling for a national policy of nonenforcement.

I am pleased that the administration, which was neutral with respect to the

same amendment when it came before the Senate 14 months ago, has now taken a strong position opposed to it. I am grateful to the administration for that support. I commend them for their vision.

The amendment of the junior Senator from Mississippi may mean what I believe it means, that it calls for a uniform policy of vigorous title VI enforcement throughout the Nation. But there may be persons who choose to interpret it for their own ends, regardless of legislative history. What I think could be argued is this: Stay away from communities in the North and the South where there is obviously official discrimination separating the races. Do not bring lawsuits or pursue lawsuits in such environments, where there is a clear legal responsibility and a clear constitutional, legal remedy available, until you can find a remedy for the separation of races where there is no official discrimination, in which case there is no constitutional or statutory remedy, under the present state of the law.

Just the other day the U.S. Supreme Court, in the Charlotte-Mecklenburg case, made it clear, although they did not define the parameters, that the reach of the Constitution extends only to the point where official discrimination—that is, governmental action—has resulted in the separation of the races, and it does not extend beyond that to situations in which minorities live separately from the majority as a result of factors not related to governmental action.

The Stennis amendment might be construed by some to say that until there is a remedy which would bring about desegregation in those situations for which a remedy does not now exist, you should not pursue a remedy where a constitutional violation exists, for which remedies are to be found today. I think at best it would create confusion, and at worst it would be a powerful tool in the hands of those who are arguing for a national policy of nonenforcement.

I think the Attorney General once said that he thought the problem of illegal segregation existed widely in the North. I do, too. But what the Department of Justice has done with respect to official discrimination in the North is next to nothing. So I would agree with the Senator from Mississippi that it is time for Congress to act and to do what it can to assure uniform law enforcement throughout the country. But I do not wish to be misunderstood. There is a very serious law enforcement crisis in the South as well as the North.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MONDALE. I yield myself 3 additional minutes.

Let us look at what HEW and the Justice Department have done. The administration claims to have eliminated dual school systems in the South. Yet, 62 percent of southern black children are still in majority black schools. The administration is doing little or nothing to eliminate black schools, while it is claiming that "dramatic and unprecedented progress has been accomplished in school desegregation."

What is the administration doing about what some have called "second generation" discrimination within so-called desegregated schools, schools in which children go through the front door together but then are separated on the basis of race and are placed in separate classrooms? What is happening there? How many lawsuits have been filed by the Justice Department to reinstate the hundreds and possibly thousands of black teachers and school administrators who have been fired or demoted, as charged by the National Education Association?

The answer is only one or two such lawsuits. How many private segregation academies have been denied tax exemption? The answer is, with a single exception, only those which the Internal Revenue Service has been ordered to deny in case brought by private attorneys involving private schools in Mississippi. How many suits has the Justice Department brought to prevent segregated classrooms and segregated extracurricular activities in desegregated schools? Very, very few.

How many lawsuits have been brought by the Justice Department to restrain any transfer of public properties to private, segregated academies? None that I know of.

So, when I talk about a crisis of law enforcement, I say there is a serious one in the North. There is a serious one in the East. There is a serious one in the West. There is a serious crisis in the South. The question is whether we are going to have a full-hearted law-and-order approach to civil rights and to the protection of human rights in this country or whether we are not.

What causes me to oppose the amendment of the Senator from Mississippi—knowing, as I do, the good faith in which it is offered—is that I think it would be used to argue that until you can find a remedy for a situation for which there is no remedy today, under present Supreme Court decisions, you should lay off law enforcement in situations of official discrimination, throughout the Nation, where there is both a duty and a remedy to correct the separation of the races.

For this reason, Mr. President, I very strongly hope that we will follow the advice and the leadership of the administration and reject the amendment of the Senator from Mississippi.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, on my time, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. STENNIS. Mr. President, in the present situation, I intend to sum up for a few minutes.

The situation is still the same. Both sides intend to yield back their remaining time.

Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. STENNIS. Mr. President, just a quick summary. I hope that no Members of the minority party or anyone else will be misled by a letter. I doubt that the President ever saw the letter. I do not believe he knows it was written. That is just my opinion. The letter comes here and says:

> We are opposed to all amendments before the Senate which have been offered by Senators Ervin and Stennis.

What is the matter with those amendments?

They give the reason that they have not received considerations comparable to that given the bill.

Well, this amendment was before the Senate for days of debate 14 months ago and was passed by a vote of 56 to 36. Mr. Richardson was not even Secretary of HEW. Therefore, I believe that I know a little bit more about it than he does. He was Governor of Massachusetts where they have been having the same trouble. He did not solve it there, and I speak with great respect for him. But they have had trouble up there of a serious nature. I hope they do not have any more.

Let me tell the Senate that we do not want people saying there is no good in this amendment, that they are against it just by name and by habit. If Mr. Richardson is against it, that is because he stands for inaction and his unwillingness to do anything beyond the South. I hope that Senators will not be misled by that letter.

The State of Massachusetts passed a law, when Mr. Richardson was not Governor, with reference to integration, which provided that no school could have over 50 percent black enrollment, but it has not been enforced. I have been trying to get the figures from the Department of HEW for 7 months now about what did happen up in Boston, and I cannot get them. My letter might have gone in before he became Secretary. I am not attacking him. But it does seem strange that when they want to say something they will say it, and when they do not want to give anyone figures they do not do so. Someone down there knows about my letter. It has not been answered. That is what we are up against here. I know the Senate would not be guilty of muddying the waters. I know that the Senator from New York would not be guilty of muddying the waters. But this HEW letter is. I hope that the Senate will pay no attention to it.

UNANIMOUS-CONSENT AGREEMENT

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

Mr. STENNIS. I yield.

Mr. MANSFIELD. I ask unanimous consent that the vote on the pending Stennis amendment occur no later than 10 minutes from now, with the time to be equally divided between the sponsor of the amendment and the manager of the bill.

Mr. STENNIS. Mr. President, reserving the right to object—all right.

The PRESIDING OFFICER (Mr. HANSEN). Is there objection to the request of the Senator from Montana?

Mr. MANSFIELD. Mr. President, let me reduce that time from 10 minutes to 4 minutes, to be equally divided.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. MONDALE. Mr. President, I yield myself the remaining time.

The PRESIDING OFFICER. The Senator from Minnesota may proceed.

Mr. MONDALE. Mr. President, first, let me say that over the past 14 months there have been many opportunities to consider the issues addressed by the amendment of the Senator from Mississippi. Perhaps most significantly, the Supreme Court has issued a landmark decision on this matter. We did not have that decision before us when we dealt with the amendment 14 months ago.

The Supreme Court said that there is a Constitutional remedy and a legal remedy for situations where the races are separated because of official governmental action, North as well as South, but there is no such remedy and there is no such Constitutional protection and right as yet where the races are separated for reasons other than official government action.

Again the reason I oppose the amendment is that I think its net effect might possibly be to institute a national policy of non-law enforcement. Some will say that it means in effect, that until the Justice Department or the Department of HEW can figure out a remedy for desegregating the races where they are segregated but not as a result of official government action, the heat should be off with respect to all discrimination, and those who have practiced discrimination by official government action should not be prosecuted. There is today, I would support any resolution that would help bring about a national policy of law enforcement to overcome official discrimination, I fear that the amendment before the Senate will do more than good.

Is that, if the Senator's amendment is passed, it will be argued that since there is no answer to de facto segregation, as defined by the courts, there should be no action taken to eliminate de jure official discrimination and, thus, we would put both the Attorney General and the Secretary of HEW in a position where they would say, in the name of uniformity, that since we have no answer for the one area, there is nothing we can do in the other area.

I think, at best, that this amendment will confuse and obscure this Nation's law-enforcement policies in the field of civil rights. At worst, in the hands of an unwilling administrator, it could be used to stall and totally paralyze law-enforcement efforts in this field.

The PRESIDING OFFICER (Mr. HANSEN). The time of the Senator from Minnesota has expired.

Mr. STENNIS. Mr. President, I propose to take only another minute or two. I believe that the facts are understood. I have had an inquiry here about voting. I trust that the membership will remember the debate last year and remember how the Senate voted.

Let me point out that the opposition argument calls for a continuation of the old way. I believe that, unless something is done to change the situation, for years and years they will be prosecuting us in the South, being unwilling for the courts to dismiss the cases even after there has been a total pattern of integration; and, for years and years—perhaps 50 or 100 years—they will be doing nothing beyond the South except making excuses. New Senators and new Secretaries of Health, Education, and Welfare will be coming in here sending in letters at the last minute saying, "Do not vote for any amendment that disturbs the established order. We are getting along pretty well as we are. It is politically unsafe to go into further territory."

Mr. President, I hope that the amendment will be voted straight up or down. I hope that it will be voted up.

I thank the Senator from Minnesota for his many courtesies during this debate.

Mr. MONDALE. I thank the Senator from Mississippi.

Mr. STENNIS. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. HANSEN). The question is on agreeing to the amendment of the Senator from Mississippi.

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 (after having voted in the negative). On this vote I have a pair with the Senator from Georgia (Mr. GAMBRELL). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Iowa (Mr. HUGHES), and the Senator from Washington (Mr. MAGNUSON) are necessarily absent.

I further announce that the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Wisconsin (Mr. NELSON), are absent on official business.

I further announce that, if present and voting, the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. MAGNUSON), and the Senator from Indiana (Mr. BAYH), would each vote "nay".

I further announce that, if present and voting, the Senator from Florida (Mr. CHILES.), the Senator from Arkansas (Mr. FULBRIGHT) would each vote "yea".

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT) is absent by leave of the Senate on official business.

The Senator from Kentucky (Mr. COOPER) is absent on official business.

The Senator from Arizona (Mr. FANNIN), and the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

Also, the Senator from Maryland (Mr. BEALL), the Senator from Colorado (Mr. DOMINICK), and the Senator from Arizona (Mr. GOLDWATER) are necessarily absent.

If present and voting, the Senator from Colorado (Mr. DOMINICK), the Senator from Oregon (Mr. HATFIELD), and the Senator from South Dakota (Mr. MUNDT) would each vote "nay".

The result was announced—yeas 44, nays 34, as follows:

[No. 46 Leg.]

YEAS—44

Aiken	Dole	Montoya
Allen	Eastland	Pearson
Anderson	Ellender	Prouty
Baker	Ervin	Randolph
Bellmon	Fong	Ribicoff
Bennett	Gurney	Smith
Bentsen	Hansen	Sparkman
Bible	Hruska	Spong
Brock	Jordan, N.C.	Stennis
Burdick	Jordan, Idaho	Stevens
Byrd, Va.	Long	Talmadge
Cannon	Mansfield	Thurmond
Cook	McClellan	Tower
Cotton	McGee	Young
Curtis	McIntyre	

NAYS—34

Boggs	Kennedy	Roth
Brooke	Mathias	Saxbe
Buckley	McGovern	Schweiker
Case	Metcalf	Scott
Cranston	Miller	Stevenson
Griffin	Mondale	Symington
Hart	Moss	Taft
Hartke	Muskie	Tunney
Humphrey	Pastore	Weicker
Inouye	Pell	Williams
Jackson	Percy	
Javits	Proxmire	

PRESENT AND GIVING A LIVE PAIR AS PREVIOUSLY RECORDED—1

Mr. Byrd of West Virginia, against.

NOT VOTING—21

Allott	Eagleton	Hatfield
Bayh	Fannin	Hollings
Beall	Fulbright	Hughes
Chiles	Gambrell	Magnuson
Church	Goldwater	Mundt
Cooper	Gravel	Nelson
Dominick	Harris	Packwood

So Mr. STENNIS' amendment (No. 53), was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 55

Mr. COOK. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be read.

The assistant legislative clerk proceeded to read the amendment.

Mr. COOK. Mr. President, I ask unanimous consent that the further reading of the amendment may be dispensed with.

Mr. ALLEN. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue to read the amendment.

The amendment was read, as follows:

At the end of the bill add a new Section as follows:

"ATTORNEY FEES

"Upon the entry of a final order by a Court of the United States against a local educational agency, a State (or any agency thereof), or the United States (or any agency thereof), for failure to comply with any provision of this Act or for discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964, or the Fourteenth Amendment to the Constitution of the United States as they pertain to elementary and secondary education, the Court, in its discretion, upon a finding that the proceedings were necessary to bring about compliance, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

Mr. COOK. Mr. President, I offer this amendment for myself, the Senator from Michigan (Mr. GRIFFIN), the Senator from Minnesota (Mr. MONDALE), and the Senator from New York (Mr. JAVITS).

Mr. SCOTT. Mr. President, if the Senator will yield, I would like to be a cosponsor.

Mr. COOK. Mr. President, I ask unanimous consent to have the name of the Senator from Pennsylvania added as a cosponsor.

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

PROGRAM—ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. SCOTT. Mr. President, would the Senator yield further so I may inquire of the majority leader as to the order of business?

Mr. COOK. I yield.

Mr. SCOTT. I would now like to ask the distinguished majority leader how hard we are going to work. Are we going to work further tonight, and how long will it take us to get rid of this bill? I would like his expert opinion.

Mr. MANSFIELD. Mr. President——

Mr. BYRD of West Virginia. Mr. President, may we have order so the majority leader may be heard?

The PRESIDING OFFICER. The Senate will be in order.

Mr. MANSFIELD. Mr. President, the eternal optimist I think has come to a pretty pass. We will not finish the bill today. We will not finish the bill tomorrow. We have a reasonably good chance of finishing it on Monday.

Mr. President, I ask unanimous consent that when the Senate adjourns tonight, it stand in adjournment until the hour of 11 o'clock tomorrow morning.

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

Mr. MANSFIELD. Mr. President, it is the leadership's understanding, after talking with interested Members of the Senate, that there will be some votes on some Ervin amendments tomorrow. It appears to me, just giving a horseback opinion, that there may be a vote on the Cook amendment tonight.

It is my understanding that the distinguished assistant minority leader has an amendment which will be acceptable at least to the managers of the bill.

It is hoped that we will be able to vote on the Cook amendment tonight, if at all possible. I have been unable to get a time limitation. If possible, that is true on the Griffin amendment as well. If that is done, one of the Ervin amendments would be laid before the Senate and made the pending business for tomorrow.

It is my understanding, after talking with the distinguished Senator from North Carolina (Mr. ERVIN), that there will be rollcall votes tomorrow and that there will be rollcall votes on Monday. This is bad news, but that is the way the ball rolls.

Mr. SCOTT. Mr. President, if the distinguished majority leader will yield, as the eternal optimist, I can only say to him "Dum spiro, spero," which, translated from the Latin, I assure the Senator, means while I breathe there is hope.

Mr. MANSFIELD. Oh, I thought the Senator was referring to the Vice President. [Laughter.]

Mr. ERVIN. Mr. President, I propose to offer an amendment to the Cook amendment. Since I have not seen the Cook amendment and do not know exactly how to phrase my amendment, I do not think there is likely to be any vote on the Cook amendment tonight.

Mr. MANSFIELD. Well, that is that.

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 joint resolution (H.J. Res. 567) making certain urgent supplemental appropriations for the fiscal year 1971, and for other purposes.

HOUSE JOINT RESOLUTION REFERRED

The joint resolution (H.J. Res. 567) making certain urgent supplemental appropriations for the fiscal year 1971, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

Mr. COOK. Mr. President——

Mr. BYRD of West Virginia. Mr. President, may we have order? Persons are passing to and fro. Will the Chair ask aides and Senators to take seats?

The PRESIDING OFFICER. There will be order in the Senate.

Mr. COOK. Mr. President, I ask unanimous consent that the names of the distinguished Senator from West Virginia (Mr. RANDOLPH) and the distinguished Senator from Massachusetts (Mr. BROOKS) be added as cosponsors of the amendment.

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

Mr. COOK. Mr. President, I vehemently argued for the Dominick amendment yesterday because it established a precedent that I do not think had ever been established before, and that was that under no circumstance could the Federal Government relieve itself of attorneys' fees and costs in any case brought under title I if a judgment was rendered against the defendant, regardless of who that defendant might be, by a plaintiff.

I suggested, in my debate yesterday with the distinguished Senator from Minnesota (Mr. MONDALE), that if in fact the cost and a reasonable fee could be levied against a defendant who had in fact been accused, and a judgment rendered by the Federal Government, of violating any of the provisions of this act, I would be very much in sympathy with such a provision.

The reason why I say that, Mr. President, is very simple. This is the same thing that now prevails in section 204(b) of the Civil Rights Act of 1964 on public accommodations, title II, which reads:

SEC. 204(b). In any action commenced pursuant to this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

Also, in title VII of the Equal Employment Opportunities Act, section 706(k) reads:

SEC. 706(k). In any action or proceeding under this title, the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

I might also say that in the Civil Rights Act of 1968, under title VIII, fair housing, section 812(c) reads:

SEC. 812(c). The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney's fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

The precedent has been established three times by this body, and a majority of the Members of the Senate have established that precedent.

The difference between this amendment today and section XI originally in the bill, which was defeated yesterday, was the very issue of assessing attorneys' fees and costs, at the discretion of the court against the defendant, and not against the Federal Government.

There is another point in this, and it is that this is a separate section at the end of the bill. It does not set up any funds. It does not set up a fund of $15 million for attorneys' fees. It says, as it said in those three instances, in the Civil

Rights Act of 1964, the Equal Employment Opportunities Act, and the Civil Rights Act of 1968, that in the discretion of the court—and I might say in its discretion upon a finding that proceedings were necessary to bring about compliance—the court may levy a reasonable attorney's fee and costs against the party. That is the basis for this amendment. It is in complete compliance with my discussion yesterday with the Senator from Minnesota. It is not inconsistent at all with the position that I took yesterday in that we should not now or at any time impose upon the Federal Government the costs on the attorneys' fees for an action that in many instances the Federal Government might not even be a party to, an action in which in many instances the Federal Government is not a party, upon whom an order and a judgment of the Federal court is granted to a plaintiff. Consequently, I think this amendment covers the situation in a consistent manner in regard to the laws that are already on the books. That is the import of the amendment.

If there is no further discussion, I yield the floor.

Mr. PELL. Mr. President, I would like to ask the Senator a question.

As I understand the difference between the Senator's amendment and the amendment as originally in the bill, it is that the attorney's fees are now paid by the local agency, as opposed to the Federal Government. Is that correct?

Mr. COOK. Well, that is perfectly true. I might say to the Senator from Rhode Island, if the Federal Government is defendent, and if the Federal Government is found guilty of violation of this act, and it is in fact discriminating, then it is conceivable that the attorney's fees and the costs could go against the Federal Government.

Mr. PELL. But can an individual sue the Federal Government?

Mr. COOK. Under this title?

Mr. PELL. Yes.

Mr. COOK. Oh, yes. But the point of it is that, in most instances, the suit is brought against the local school board or State board of education, or whatever the name may be, and, under those circumstances, there is no reason that the costs and the attorney's fees should go against the Federal Government.

Mr. JAVITS. Mr. President, will the Senator yield for another question?

Mr. COOK. I yield.

Mr. JAVITS. It is a fact, is it not, that the amendment absolutely requires a finding by the court that the litigation was necessary to bring about compliance with the listed legal standards, as a condition for granting attorney's fees?

Mr. COOK. The Senator is exactly correct; and I quote one short line: "Upon a finding that the proceedings were necessary to bring about compliance."

Mr. JAVITS. So that you cannot have any kind of champertous situation, or any situation where administrative remedies were not available of before a suit was started, and then the effort was made to collect from the defendant for the attorneys' fees?

Mr. COOK. The Senator is absolutely correct.

Mr. JAVITS. I thank my colleague.

Mr. ALLEN. Mr. President, I was much impressed, yesterday, at the speech of the distinguished Senator from Kentucky (Mr. COOK) with regard to section 11 of S. 1557, providing for attorneys' fees. He spoke against that provision and in favor of the Dominick amendment to strike section 11 from the bill, as well as that portion of section 3, I believe, starting with line 22 on page 3, striking out the authorization of the $15 million appropriation for attorneys' fees.

I was so impressed with that argument that if I had not already been convinced that this provision for attorneys' fees was not in the public interest, I would have been persuaded by the merits of the argument presented by the distinguished Senator, because I agreed with him at that time and I agree today with his position yesterday that there should be no provision in this bill to provide a lawyers' relief fund for harassing local school bodies.

We were told by the distinguished Senator from Minnesota(Mr. MONDALE) that this bill was all sweetness and light, that we were going to do great wonders for the school systems of the North and South, we were going to provide for making grants to school systems, North and South, that were required by Court order to desegregate their school systems, that were required by HEW edict to desegregate their school systems, or that had a voluntary plan for the desegregation of their school systems.

We were assured—and naturally we took those assurances at face value—that all of this was purely optional, that no system had to apply for a grant, this was all for the benefit of these systems, to aid them in the desegregation process.

But we find now section 11 creeping back in, without a designation as to section; the Senator would just amend the bill to put in a new section which would be properly numbered, I assume, reinstating this very principle that the Senate on yesterday rejected by a substantial margin.

I do not feel that this is putting this system of aid to the desegregation process on a purely voluntary basis, on application by the school system involved, if we are going back to section 11.

The distinguished Senator from Kentucky will say, "Oh, we are not authorizing any $15 million." No; his amendment does not authorize $15 million, it has an unlimited ceiling—not out of the pocketbook of the Federal Government, however; it is out of the pocketbooks of the local school systems.

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

Mr. ALLEN. Yes; I am glad to yield.

Mr. COOK. Is it not just as much a fact that if such a suit were brought without this provision, the local system would pay the attorney, those funds would come out of the local school system, those funds would be paid by the taxpayers for a lawyer who is retained to represent the school board, and the court could conceivably render a judgment against the school board that it violated the law, but that attorney would still be paid by the taxpayers; is that not correct?

Mr. ALLEN. Yes; naturally the school board pays for its own counsel, and anyone employing counsel would be expected to pay for that.

I thought the Senator was going to inject some new information into the argument, rather than take over the floor to argue in lieu of the junior Senator from Alabama, who is seeking to make an argument. In due course, I shall yield the floor, and at that time the distinguished Senator from Kentucky, if there are no others who wish recognition, will have no difficulty in obtaining recognition.

So far as having a ceiling of $15 million to be paid by the Federal Government is concerned, under this proposal we would have the sky as the limit in the thousands of school districts throughout the country; and theoretically, we assume, some of these attorneys might go into areas outside of the South. We rather imagine there would be a few attorneys traveling up North as part of an attorneys' team bringing these suits. But we feel like most of them would be enjoying the balmy climes of the southern sections of the country when they filed their suits.

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

Mr. ALLEN. I yield.

Mr. ERVIN. There is nothing offered in the amendment of the distinguished Senator from Kentucky, however, to keep a carpetbagger from coming down South from other sections of the country, is there?

Mr. ALLEN. No.

Mr. ERVIN. In the hope of getting one of these fees?

Mr. ALLEN. Nothing whatsoever. I was hoping a little later, by an amendment which I might offer, to provide that these attorneys would have to be bona fide residents of the judicial district or circuit in which they filed the suit, to prevent this carpetbagging team from traveling all over the country filing these suits.

Mr. ERVIN. Will the Senator yield to the Senator from North Carolina for the purpose of enabling the Senator from North Carolina to offer an amendment to the Cook amendment, with the understanding that the Senator from Alabama will not lose his right to the floor?

Mr. ALLEN. Mr. President, I do ask unanimous consent that I might yield to the distinguished Senator from North Carolina for the purpose of offering an amendment, with the understanding that I not lose my right to the floor and that my resumption of remarks would not be treated as a second speech.

The PRESIDING OFFICER. Is there objection?

Mr. COOK. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ERVIN. Will the Senator from Alabama permit the Senator from North Carolina to make the observation that the Senator from Kentucky apparently is averse to having any amendments proposed to his amendment?

Mr. ALLEN. That seems to be the attitude of all. I have this letter from Secretary Richardson in which he said:

> The bill in its present form is supported by the administration. We oppose all amendments currently before the Senate.

That may be the amendment of the

Senator from Kentucky. I do not know. But it does go on with the telltale phrase "which have been offered by Senators ERVIN and STENNIS."

The Secretary would be against the amendment of the Senator from North Carolina, under this letter, so the Senator had better not offer it. Possibly, the distinguished Senator from Kentucky is acting for the Secretary in objecting to the Senator from North Carolina offering an amendment. But in due course the Senator will have an opportunity to offer his amendment, I am sure, because I do not believe that we are near a vote on this amendment.

Mr. President, resuming my brief remarks with reference to this amendment, we were told that this bill, S. 1557, was providing a method by which school districts, of their own volition, could come in and apply to the Federal Government for grants for the purpose of aiding them in the process of desegregating their present school system.

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

Mr. ALLEN. I yield.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that all the provisions of the Constitution are equally sacred?

Mr. ALLEN. Yes. They should be. I like some better than others, but they should have the same degree of enforcement.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that this bill provides for the use of tax moneys for the support of church schools?

Mr. ALLEN. Yes, very definitely.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that the Supreme Court has held in a number of cases that it is a violation of the first amendment to use tax moneys for the support of church schools?

Mr. ALLEN. Yes. That is certainly a well defined principle of law.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that if we are going to embark upon a policy of allowing attorneys' fees for people who secure decrees enjoining violations of the Constitution or recovering funds for violation of the Constitution, we should allow attorneys' fees for that purpose in like manner as for persons who sue for violations of the 14th amendment?

Mr. ALLEN. Yes. One would certainly be just as consistent as the other and just as proper as the other.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that it would be in order for the Senator from North Carolina to offer an amendment to the amendment offered by the able and distinguished Senator from Kentucky providing that there not only be recovery of fees in 14th amendment cases but also recovery of fees in first amendment cases?

Mr. ALLEN. One would stand on the same ground, whether high or low, as the other. Yes, I would certainly agree with the distinguished Senator.

Mr. ERVIN. I thank the distinguished Senator from Alabama for yielding for these questions. I should like to ask him whether he would accept the assurance of the Senator from North Carolina that the Senator from North Carolina intends to point out in detail the provisions of this bill which authorize the violation of the first amendment.

Mr. ALLEN. Yes. I hope the Senator will do that, and I certainly respect his stated intention.

Mr. President, resuming my remarks, which I hope will be rather brief, this bill as originally drafted had the lawyers' relief fund of $15 million in it, and the Dominick amendment cut out the payment of attorneys' fees for bringing suits. Actually, this lawyers' relief fund is really not germane to the stated purposes of the bill, because the purpose of the bill is to aid local public school systems and not to harass them. Harassment is exactly what we would get if this lawyers' relief fund is set up, whether it be by an appropriation of $15 million or whether it be by a blanket provision saying that the school district is going to have to pay for that attorney's fee.

We do not know in how many districts suits would be filed. There are several thousand districts. It appears that thousands of suits might be filed. I see nothing here to prevent multiplicity of suits in a single jurisdiction or against a single school system. All the lawyers, all the public service lawyers, all the lawyers who would care to file these suits, could get in and file as many suits as they saw fit and could collect a large fee on every one of them.

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

Mr. ALLEN. I yield.

Mr. ERVIN. The Senator from North Carolina desires to ask the Senator from Alabama if he does not accept as valid the old adage that what is sauce for the goose——

Mr. COOK. Mr. President, would the Senator use his microphone, so that I may hear?

Mr. ERVIN. The Senator from North Carolina desires to propound this interrogatory to the Senator from Alabama: Has not the Senator from Alabama heard the old adage that what is sauce for the goose is sauce for the gander?

Mr. ALLEN. Yes. That is familiar from my boyhood.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that the amendment offered by the able and distinguished Senator from Kentucky fails to comply with that old adage, in that it allows one side to recover attorneys' fees in the event it wins a case but does not allow the other side to hold that side responsible for attorneys' fees in the event it loses the case?

Mr. ALLEN. I have read the amendment very carefully, and no provision of that sort is provided.

Mr. ERVIN. Does not the Senator think that if the Senate should be so foolish as to adopt an amendment which is intended to reward ambulance chasers—I use that phrase in a figurative sense—it ought to contain a provision that those who defeat the ambulance chasers should recover their attorneys' fees, also?

Mr. ALLEN. Yes. I think that would be a fair provision. I see the application of the Senator's expression about sauce for the goose and the gander. I feel that is a really appropriate analogy.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that there should be a reciprocal obligation in this respect—even though the parties in these suits are to be southern officials, largely?

Mr. ALLEN. Yes, I think so.

Mr. ERVIN. Does the Senator from Alabama agree with the Senator from North Carolina that this amendment would have no application to the States outside the South, in that the courts do not recognize that there should be any desegregation suits outside the South?

Mr. ALLEN. It seems unlikely there would be many suits filed outside the South that would be prosecuted to a successful conclusion, which seems to be the requirement under the amendment, so that this would be a lawyers' relief fund, not necessarily for southern lawyers, the Senator from Alabama points out, but for lawyers from whatever section of the country who filed suits in Federal courts situated in Southern States, since suits would have to be filed, apparently, in a Federal court.

Whether that is so, I have not had an opportunity to study the amendment. It has not been printed. The suits, practically all of them, will be filed in the Southern section of the country.

So, Mr. President, no ceiling is set on the total amount of attorneys' fees that might be anticipated to be paid by Southern school districts.

It was estimated by the proponents of the bill that it would take $15 million in 2 years to pay these attorneys' fees. That is a provision of S. 1557 to which the distinguished Senator from Kentucky objected. So the junior Senator from Alabama feels that the distinguished Senator from Kentucky has not cut down on the amount that the attorneys would have to be paid. Only the source of the payment has been shifted from the back of the Federal Government—and it was bad enough there, and I opposed it at that point—but I certainly do not want to shift it over to the local school system. They are having a difficult time keeping the school doors open as it is. It is hard to get public support for public schools in Alabama and the South because of the condition the HEW and the Supreme Court have put the Southern school districts in.

Mr. ERVIN. Mr. President, will the Senator from Alabama yield for another question?

Mr. ALLEN. I am delighted to yield to the Senator from North Carolina.

Mr. ERVIN. Is not the fundamental argument made by the proponents of the bill that the school districts embraced within the purview of the bill are so poor that they are not capable of operating without Federal assistance?

Mr. ALLEN. Our people are willing to sacrifice to operate the school system. If the Federal Government would leave us alone and allow our people freedom of choice, we would be willing to make all sorts of sacrifices to give a proper education to our boys and girls. But the Federal Government is making it most difficult for us to get the proper public support for a public school system. I will be absolutely frank about that.

Mr. ERVIN. Is not one of the arguments for the enactment of this bill the fact that the school districts are rather poverty stricken and they need Federal funds in order to operate?

Mr. ALLEN. Yes; in many cases.

Mr. ERVIN. So this is a provision designed to make people, who are already poor, pay out additionally in educational costs.

Mr. ALLEN. That is correct. We find, under this system—and this is supposed to be a bill all sweetness and light for the public school system—we find in the South, applying for a grant to enable it to put through a desegregation plan, and then we find a commissioner turning down that application because possibly some time ago this public school system may have sold a desk or a broken-down bus to a private school, and yet the barratrous attorney would come along and file a suit claiming discrimination, and push that through to a final conclusion, and have the court set a large fee for his services, which would have to come out of the impoverished local school district.

So, if that is a voluntary type of grant system to aid desegregation, please deliver this Senator and the State and section that he represents from any such voluntary grant system that is all sweetness and light and the giving of grants to school systems to aid in the desegregation process. We want nothing of that. So, if we are going to have a system that provides, as the title of the bill calls for, "Emergency School Aid"—that is what we are supposed to be working on, an emergency school aid bill, what do they do? They come in with a lawyer's relief fund provision.

The junior Senator from Alabama, at one time, was a practicing attorney. He practiced law for over 30 years in his hometown. When he came to the Senate, he retired completely from law practice and has absolutely no connection with any law firm or business enterprise of any sort. His sole interest is in seeking to represent the people of his State and his Nation. But, he does not see how, by setting up a method for lawyers to have a lawyers' relief fund, that he is representing the people of his State and his Nation. He is not representing the schoolchildren of his State. He is not representing the patrons of those schools. He is not representing, as the distinguished Senator from North Carolina (Mr. ERVIN) has said, impoverished school districts—although he is representing them in many cases, but he certainly does not want to see them required to pay out large fees to lawyers who come in and harass them with lawsuits seeking compliance with the Civil Rights Act.

Mr. President, after the distinguished Senator from Kentucky, in the great tradition of one of his predecessors in the Senate from his State, Henry Clay, with his great oratory, convinced the junior Senator from Alabama—and if he was not already convinced, let me hasten to add there that this iniquitous lawyers relief fund should be stricken from the bill—the junior Senator from Alabama was happy to follow the leadership of his distinguished colleague in striking this iniquitous lawyers' relief fund from the bill. So, to his great surprise and chagrin, after following the leadership of the distinguished Senator from Kentucky in striking out this $15 million fund for lawyers, to find the distinguished Senator from Kentucky coming in the back door and seeking to have this fund set up in a different way.

Mr. President, the Senate has spoken on this subject, and the junior Senator from Alabama is happy to abide by the decision of the Senate in this matter—that is, the knocking out of the lawyers' relief fund provision—but he does not want to come in the back door and provide a more iniquitous approach to providing relief for lawyers.

It is passing strange to the junior Senator from Alabama why it is necessary to set up a lawyer's relief fund for lawyers who have a social consciousness, for lawyers who are interested in lending a helping hand to those who feel they are being deprived of rights the Constitution gives to them, why it is necessary to set up a $15 million lawyers' relief fund to prick their social consciousness.

They ought to have enough social consciousness to file these suits without hope of financial reward if they have the sort of social consciousness which one would expect them to have.

Why is it necessary to subsidize them to set up a champertous type of provision and barratrous type of provision to get them to come in and render this publice service? They do not have the social consciousness that one would expect them to have if it is necessary to subsidize their efforts with the amount of $15 million or a similar amount under the back door method.

There is no ceiling in the amount that would be paid. All they say is, "We are saving the Federal Government this $15 million. We have devised a way."

The Senate said, "We are not going to allow it." Yet, they come forward and say, "We have devised a way that we will not have to spend this $15 million."

The Senate spoke a moment ago. But now they are going a worse route, a more iniquitous route, Mr. President.

So, if we have got to pay the lawyers to prick their social consciousness, let us not do it through the small amount of funds that the local school systems receive. Why, the local school systems now are filling in forms and questionnaires, going to court, preparing to go to court, testifying, and going to the Federal buildings trying to find out what is expected of them so that they can make a bona fide effort to comply.

If we are going to set up a lawyers' relief fund to encourage litigation against the local school systems, when will they have time to teach the boys and girls?

Mr. President, many times the difference between whether a harassing suit is brought against a local school board or not would turn on whether a fee is is available for him under the provisions going to be paid to the lawyer. If money of this bill out of the local school system, we will find these suits filed.

Mr. President, in many cases those suits would not be filed by local attorneys. However, I can envision teams of so-called socially conscious attorneys, teams of dozens of lawyers, moving from State to State across the South with directories of local school systems and stopping off long enough to fill in a few blanks in the complaint forms they had prepared and turned out on a mimeograph machine. They just crank them out by the hundreds and leave a few blanks in them.

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

Mr. ALLEN. I yield for a question.

The PRESIDING OFFICER (Mr. MCINTYRE). The Senator from North Carolina is recognized for a question.

Mr. ERVIN. Mr. President, does not the Senator from Alabama recall that the Supreme Court had before it a case called NAACP against Button?

Mr. ALLEN. I do.

Mr. ERVIN. Button was the attorney general for Virginia, was he not?

Mr. ALLEN. The Senator is correct.

Mr. ERVIN. And Virginia, like all other States of the Union, has laws which forbid and make it illegal for attorneys to solicit business.

Mr. ALLEN. The Senator is correct.

Mr. ERVIN. And Virginia, like all other States, has laws making it a crime for lawyers to practice champerty and maintenance.

Mr. ALLEN. The Senator is correct.

Mr. ERVIN. That means to stir up lawsuits or unlawfully intermeddle in a lawsuit by assisting either party with the means to carry it on.

Mr. ALLEN. The Senator is correct.

Mr. ERVIN. Does not the Senator from Alabama know as a lawyer that under State laws lawyers can be disciplined and even disbarred and prosecuted for such practices?

Mr. ALLEN. I do know that, and many are.

Mr. ERVIN. Does not the Senator from Alabama recall that the record in that case disclosed that attorneys for the NAACP went into public meetings and in those public meetings solicited people to authorize them to bring lawsuits, and carried in their hands at these public meetings contracts to be signed by persons who were willing to have them bring suit for that purpose?

Mr. ALLEN. The Senator is correct. That is one of the things that the Senator from Alabama can envision happening again.

Mr. ERVIN. Mr. President, does not the Senator from Alabama recall that in that case Justice Brennan wrote an opinion which held, in effect, that the laws of the States prohibiting the solic-

iting of legal business and prohibiting champerty and maintenance did not apply to the NAACP.

Mr. ALLEN. The Senator is correct.

Mr. ERVIN. Those lawyers are able to solicit business at public meetings and have people employ them to bring suits for alleged violations of the equal protection clause.

Mr. ALLEN. The Senator is correct.

Mr. ERVIN. But those laws apply to all other attorneys.

Mr. ALLEN. The Senator is correct.

Mr. ERVIN. Mr. President, does not the Senator from Alabama recognize that if the amendment of the Senator from Kentucky is agreed to, we are about to allow these lawyers and these organizations such as the NAACP, to go into all the States, and solicit business, and practice champerty in the hope of recovering fees under this amendment.

Mr. ALLEN. I would definitely look for it and fully expect it. The Senator is correct.

Mr. ERVIN. So if this amendment were agreed to it would result in intolerable harassment of local school boards, would it not?

Mr. ALLEN. It would, indeed.

Mr. ERVIN. Most of the local school boards consist of members who merely serve out of a sense of duty. Is that not correct?

Mr. ALLEN. Yes.

Mr. ERVIN. There would be perhaps the greatest harassment ever suffered in view of the fact that the Supreme Court held on the 20th of this month that in some way or another the southern school board could not be absolved of the responsibility by ceasing to practice discrimination; that it could be absolved only if it could find some way to eradicate the last vestiges of State-imposed segregation.

Can the Senator from Alabama tell the Senator from North Carolina where there will be justice in recovering attorneys' fees against a school board which had abandoned all discrimination in the admission of children to schools under its jurisdiction, but which was incapable of discovering vestiges of former discrimination and eradicating them?

Can the Senator from Alabama tell the Senator from North Carolina what the Supreme Court means when it talks about vestiges of de jure discrimination?

Mr. ALLEN. No. I sometimes wonder, with all due respect to the Justices, if they clearly understand the chaos into which they have gotten the country.

Mr. ERVIN. Does not the Senator from Alabama recall the case of Green against the County School Board of New Kent County, Va.?

Mr. ALLEN. I do.

Mr. ERVIN. And did not the school board in that case abolish all forms of discrimination and establish a freedom of choice system in which they said to all the black and white children that they could attend either one of the only two schools that county had; and was not that system in effect for 2 years before any case reached the Supreme Court?

Mr. ALLEN. Yes.

Mr. ERVIN. And did not the Supreme Court say, notwithstanding that, and notwithstanding the fact that they had given complete freedom to all the children to go to any school they had, that they were guilty of a violation of the equal protection clause of the 14th amendment because these schoolchildren, to whom liberty was granted by the school board, had not elected to mix themselves to the satisfaction of the Supreme Court Justices?

Mr. ALLEN. The Senator is correct.

Mr. ERVIN. Can the Senator from Alabama tell the Senator from North Carolina any way in which Southern school boards under such decisions as that can avoid being penalized?

Mr. ALLEN. No; it seems difficult for them to pay a sufficient penalty.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that the only hope that was held out to southern school districts which merely practiced segregation before the Supreme Court was smart enough to discover for itself that the separate but equal doctrine was no longer a part of the law of the land, was the mere hope that at some time in the long distant future, just before the last echo of Gabriel's horn trembles into silence, they might be able to persuade some Federal judge that they had purged themselves from all the consequences of history and for that reason would be entitled to operate their school systems with the same lack of interference on the part of Federal courts that segregated school districts outside the South now have?

Mr. ALLEN. It might take that long. I hope not.

I would suggest that the Supreme Court, by taking the position apparently that the Federal Government is without power to proceed against any type of segregation that does not result from official action, in effect ruling that they cannot proceed against de facto segregation, may, in fact, be painting itself into a box because in many areas of the South school systems have become desegregated even to the point of approval by the Federal courts and by HEW.

Now, if the inhabitants of those school districts should move from those areas into an entirely new area and other citizens would join them, we would have a case of resegregation which would result in de facto segregation against which the Federal Government seems to take the position it cannot proceed.

So if all segregation, and this is possible, then becomes de facto segregation, we will not have any integration because they are not proceeding against integration of the segregation of the northern type; and if southern segregation becomes of the character of the northern-type segregation, where will we have integration?

Mr. President, you cannot get integration in the northern areas. They say they cannot integrate because it is not unconstitutional not to and it is not unconstitutional to integrate; it would not be unconstitutional if the school boards would transfer these pupils. They hide behind the shield saying, "we do not do anything because it is not unconstitutional not to do something, and it is not unconstitutional to do something." But they keep the blacks and the whites separate even though they subscribe to the doctrine of the Supreme Court in the 1954 decision that a child in a segregated school is in an inferior status; and yet they do nothing to break up this segregation because they say it is not unconstitutional not to do it.

We are going to see the Supreme Court painted into a box by its own action by saying they cannot reach what we will call de facto desegregation.

Mr. ERVIN. Mr. President, will the Senator yield to me for an observation with the understanding he will not lose his privilege of the floor?

Mr. ALLEN. I am delighted to yield to the Senator from North Carolina.

Mr. ERVIN. Do not the provisions of this bill indicate to the Senator from Alabama that those who support it think white southerners are very evil people?

Mr. ALLEN. Some would be of that opinion; yes.

Mr. ERVIN. That being so, can the Senator from Alabama explain why they want to spend $1.5 billion to compel black folks to associate with such evil people as the white folks of the South are?

Mr. ALLEN. That is a mystery to the Senator from Alabama. I appreciate the Senator's observation.

Now, Mr. President, continuing my brief remarks, the junior Senator from Alabama fails to see the voluntary aspect of this legislation. It is said to be voluntary because one does not have to apply for grants in aid of desegregating the school system, but the amendment offered by the distinguished Senator from Kentucky is not voluntary except in this respect: It is not voluntary as regards the local public school system. It is voluntary only as regards the lawyer looking for a fee out of a public body and at the expense of schoolchildren.

The ultimate losers are the schoolchildren of Alabama and the South. That is what the junior Senator from Alabama resents about this measure. This money is coming out of the skimpy pockets of the schoolchildren of Alabama and the South, because if the local school boards did not have to pay out these attorneys' fees, they could use the money for better instruction, better facilities, more books, educational aids; but this amendment would deprive the southern schoolchildren of some of their access to better education.

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

Mr. ALLEN. I yield.

Mr. ERVIN. Would the Senator not agree that the decision would punish little children by denying them the right to go to neighborhood schools and require them to be bused vast distances to schools other than their neighborhood schools, not because of any fault of the little children, but because some adults who happened to be school board members had not complied with notions of the Court—the undefined notions of the Court, I would say—about mixing children in the schools in proportions satisfactory to the undefined notions of the Supreme Court?

Mr. ALLEN. Yes; that would be consistent with that.

Mr. ERVIN. Does not the Senator recall that Scripture says the sins of the fathers are visited upon their children unto the third and fourth generation?

Mr. ALLEN. Yes.

Mr. ERVIN. And is not that what we are doing when we force children to be hauled in buses long distances to go to school? Is that not visiting the sins of the fathers upon their children?

Mr. ALLEN. That is correct.

Mr. ERVIN. Does not the Senator envision that the decision of the court in the Swann case, having to do with vestiges of former State-imposed segregation, is visiting the sins of the fathers upon poor schoolchildren unto the third and fourth generation, just as the Scriptures say?

Mr. ALLEN. Yes.

Mr. ERVIN. Is that not about the only similarity between these matters and the Bible?

Mr. ALLEN. Yes. The money for these fees would come from the schoolchildren of the South. There is no escape from that conclusion. That is the only place it could come from. It would come from the local school systems. The great bulk or the great majority of all the suits would be filed in the South, because of the limitations imposed by the Supreme Court. So this money would come from white and black students in the South. They cannot afford to pay these attorneys' fees. I am speaking for them when I protest the setting up of a lawyers' relief fund coming out of the schoolchildren of the South.

It is hard for us to provide a good education for our children in the South with the attitude of the Federal Government in well-nigh destroying our public school system.

In my own State of Alabama, HEW, and the Federal courts have ordered the closing of more than $100 million worth of school buildings. Over $100 million worth of school buildings have been closed in Alabama alone under edicts of HEW and the Federal courts.

Where is the money coming from to replace that? It is not going to be available in the school districts representing the schoolchildren if they are called upon from time to time to pay attorneys fees, to pay for suits brought against them.

The Senator from North Carolina mentioned the Green case, which went to the Supreme Court of the United States. Mr. President, can you imagine the fee that a court would set for bringing a suit against a school board, going from the district court to the circuit court of appeals to the Supreme Court? Can you imagine, Mr. President, the attorneys' fees that would be involved there—and that paid out of the pockets of the schoolchildren of that school district? Is that fair? Is that right? Is that proper? Is that what we want to do by statutory law of the Congress of the United States? I do not believe so.

What court sets this fee? The final order by a court of the United States. Well, if it went to the Supreme Court, it might be the one to set the fee. I do not know. The amendment does not say.

I would like to offer an amendment a little later on seeking to change the title from "Attorneys' Fees" to "Lawyers' Relief Fund." We have a relief fund for nearly everybody, and lawyers have not been neglected, but we are setting up a special one here that was estimated by the proponents of the bill at $15 million. I do not know; perhaps the Senator from Kentucky thought $15 million was too small. Perhaps that is the reason he was against the provision in section XI and the appropriation section. Perhaps that is the reason why he comes in with an amendment that does not even set a ceiling. The sky is the limit.

Well, the Supreme Court said Tuesday anything goes as regards desegregation of the public schools of the South. Then comes in this amendment. Anything goes as regards the fees. No dollar limitation. Take a case to the Supreme Court of the United States. It would be worth thousands and thousands of dollars.

This takes a final order by a court of the United States; so there would be no possibility, then, that an agreement could be reached that would obviate the necessity for the filing of a suit.

If these attorneys were genuinely interested in the welfare of the child, they would come in and talk the matter over with the school authorities, and say, "Look here, do you think you are complying with the law in this respect?"

I do not know where they are going to find school boards that have not been harassed to death already, but say they found one—and they will find many, of course—say they found one, and, in seeking to serve the best interests of the schoolchildren, they tried to get an agreement out of the school authorities that would be satisfactory to their way of thinking.

That will not happen under this amendment, because it takes the entry of a final order by a court of the United States against a local educational agency before this fee can be paid. So we will not find them going in and trying to work out an agreement, because they could not dip into the lawyers' relief fund if they worked out a settlement without going to court.

So we will find a multiplicity of suits filed by attorneys. In Alabama, we have reciprocity provisions whereby a lawyer can come into our State from outside the State and represent local clients. So I envision many teams being sent in from areas outside the South, armed with a Federal court statute that gives them a fee for harrassing a local school board.

They will come into a State, get themselves a directory of school systems—one county might have its schools organized in a county school system, such as they could conceivably have in our State, or there might be 200, 300, or 400 schools in a city system, right there in the same county seat. The attorney could take his mimeograph with him, crank out some of these complaints, get his clients to furnish their names, he would fill in the blanks and file the complaints with the Federal judge, and he would be well on his way to earning a fee to be paid out of the lawyers' relief fund, namely, at the expense of the schoolchildren of the South.

So I do not believe this is in the public interest. I know it is not in the interest of the schoolchildren. And here is a bill, as we pointed out earlier today, that, as regards the school systems outside the South, adopts a carrot approach. They give a carrot to the complying school board. They give a monetary benefit, a grant, to the complying school board. Not so with the southern school districts: the approach there is the carrot and stick approach, in that they are required by edict of HEW and the Supreme Court to desegregate now.

So the local school board is whipped with this stick at the same time that this carrot of the monetary benefit or grant is held out as an inducement. So the rules are not the same by any manner of means, because the southern district is required to comply and the northern district is not.

Mr. President, I believe there is an order that when the Senate concludes its business today, it will adjourn until 10 o'clock tomorrow morning; is that correct?

The PRESIDING OFFICER. Eleven o'clock.

Mr. ALLEN. The significant word is "adjourn"; is it not? We do adjourn?

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLEN. So that a new legislative day will start, and the junior Senator from Alabama will have an opportunity to speak twice on this amendment and twice on the amendment to be offered by the Senator from North Carolina; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLEN. That being true, at this time I yield the floor.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. McINTYRE). The Chair, on behalf of the Vice President pursuant to Public Law 86–420, appoints the Senator from Kentucky (Mr. COOK) to attend the 11th Mexico-United States Interparliamentary Conference, Mexico, May 27 through June 1, 1971.

Mr. ALLEN. Mr. President, was that date April 27, that the Senator from Kentucky is to be out of the city?

Mr. COOK. I think the Senator well recognizes that it was May.

EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal edu-

cational opportunities for all children, and for other purposes.

Mr. COOK. Mr. President, I have heard with a great deal of interest the argument of the Senator from Alabama, for whom I have a great deal of respect. I hope all Senators will read his remarks in the RECORD tomorrow, because I think his argument has been repeated in his remarks at least five times, repetitiously.

I might also say, Mr. President, because I feel it is only fair to say this, that we are under the rule of germaneness, and I might say I have listened now for 45 minutes to as many violations of the rule of germaneness in regard to the Supreme Court's actions, which have absolutely nothing to do with this amendment.

I might say further that the reason I objected to the amendment of the distinguished Senator from North Carolina, for whom I have all the respect in the world, as he knows that I have, was because I was rather put down by the Senator from Alabama, when I asked what I thought was a rather intelligent question and was told that somehow or other I had not added anything to the debate. I thought under the circumstances, because the two gentlemen in question, quite frankly, hold the floor for hours and hours, that I might find him in the same position. And now that I have the floor, I believe I might, Mr. President.

For instance, because I have heard that this will cost millions and millions of dollars, and that the two distinguished Senators feared that this $15 million we voted down yesterday would in fact be a paltry sum by comparison, I have requested from the Government information as to just how many attorneys' fees have been paid out since 1967 under the Equal Employment Opportunities Act, and under the Civil Rights Act of 1968. I think they will be rather shocked to find how little money has been spent in this regard. They think this is going to be just absolutely disastrous, that lawyers are going to move in by the thousands.

As a matter of fact, if they would suggest that only lawyers within the respective districts can bring these suits in their States, so that we might stop carpetbaggers going into the South—and, as a matter of fact, carpetbaggers going into the North—I would be perfectly willing to accept it. But this argument is that this just is going to cost money.

First of all, they say that you cannot settle these suits. The language yesterday was that you could not settle them. But in the language in this amendment, you can settle them. You can settle them, because if you fail to settle them and the school board pleads that it offered the opportunity to settle and offered the opportunity to solve that matter, they would come under the following language of the amendment: "upon a finding that the proceedings were necessary to bring about compliance."

Therefore, if it could have been settled, it would have been incumbent upon them to settle; and if they had failed to have done so, and the court was convinced that the school board was correct and had offered a fair settlement, a settlement that it would agree to, it could deny them any attorneys' fees or costs.

I might say, Mr. President, that I was delighted that—except that he had already made up his mind—the junior Senator from Alabama was totally and completely captivated by my argument yesterday; because if he had been, as he said—and he must not have been—he did not listen to all of it. Let me read from page 11343, in response to remarks by the distinguished Senator from Minnesota (Mr. MONDALE):

> Mr. President, to penalize that school district for violating the law and then to say, "Even if you are poor, if you violate the 14th amendment of the Constitution of the United States, if you violate the rules and regulations under the act, if you are using title I money improperly, you should not have to pay these fees," is rather like saying, "We know you are poor, but if you want to violate the law and continue this type of discrimination, we are not really going to make you pay for it, we are going to make somebody else pay for it."

I proceed:

> Mr. President, I can only say that on this matter I may be speaking as the junior Senator from Kentucky, and I may be speaking from the Republican side of the Senate, but I am also speaking, I hope, as a member of the bar, as a person who has a tremendous amount of respect for the law and what the law intends, and I see a situation whereby we could solve the problem by merely inserting the language that the costs and attorneys' fees will be charged against the losing litigant, and we will reach the same result. We can even charge that school district those funds——

Mr. President, I hope that I may have had some effort yesterday to convince him that that might be a fair approach. Apparently, I did not. As he stated, I have convinced him that my arguments were good and valid.

It is said that we are going to deprive these schoolchildren of these funds. I do not know of any school board attorney who is on a retainer, who is getting $1,000 a month or $2,500 a month and loses his case—the mandate comes down from the Supreme Court that his school district has lost the case, that he has to comply—I am not going to find very many of those lawyers who will fail to send a bill because they lost a case and say:

> All right, I didn't do a good job. Forget about the 500 or 600 hours I spent on the case. I'm not going to send a bill.

Certainly, he is going to send a bill. Is that going to deny those poor children a better education? Is that going to deny those poor children the facilities they want? This is a specious argument, and I think it is specious on its face.

So I can only say that here we have a matter in which you have to have a final entry of a judgment. We know there are no final entries of judgments made in the Supreme Court of the United States. The Supreme Court of the United States is not going to sit there and determine what a fee is. We know that a mandate from the Supreme Court comes down to the court that had the jurisdiction of the case and that they enforce that mandate.

After all, we are not talking about who is going to make this determination when we read this amendment. We, as lawyers, certainly ought to know when a final judgment becomes a final judgment and when a mandate comes down. These kinds of arguments are just a little difficult to take.

They are going to move in and crank up all these suits.

I might say, because I think the remark was made by the distinguished junior Senator from Alabama, that Elliot Richardson does not want any amendment on this bill; the administration does not want any amendments on this bill. I hasten to add that I voted for the Stennis amendment, and the Stennis amendment was adopted.

I might say to the distinguished Senator from Alabama and the Senator from North Carolina—and all of us voted for the Stennis amendment—that if in fact we believe the Stennis amendment and what it is supposed to represent, there will be no flood of lawyers from the North into the South. The southern lawyers will flee into the North to bring all these actions.

We voted for the Stennis amendment, which in fact established a policy that we all say should be in effect in this country. So the argument that, somehow or other, we are waiting with bated breath for all the carpetbaggers to come is now a rather specious argument.

This amendment is very simple. This amendment conforms with the language of the Civil Rights Act of 1964, it complies with title VII of the Equal Employment Opportunities Act, and it complies with the Civil Rights Act of 1968.

I do not mean to be repetitious, Mr. President, because I, somehow or other, just cannot keep the floor that long. But when I submit the amounts of money that have been paid out by the respective departments for legal fees, I hope that not only the two distinguished Senators who have been arguing that this is going to cost a fortune will be surprised but that all the other Members of the Senate likewise will be surprised.

This amendment says one very simple thing. It says that if it is necessary to bring an action by reason of the violation of this act and by realization of a violation of the act of 1964 and, I might add, the 14th amendment to the Constitution of the United States—and I would hope that the distinguished Senator, in his argument, would feel that if a mandate was brought down from even the Supreme Court of the United States to a local Federal district court that there was a violation of the 14th amendment to the Constitution of the United States, he would not think that that would be a champertous suit, that he would not think that if the courts up and down had concluded that there was a violation of the Civil Rights Act of 1964 or a violation of the Civil Rights

Act of 1968 or a violation of the 14th amendment to the United States Constitution or this act, that would be a champertous suit.

We are saying in this amendment that, first of all, it must be necessary to bring this action to a judgment within the discretion of the court before in fact these fees and costs could be allowed. That is what the language says:

Upon a finding that the proceedings were necessary to bring about compliance.

This is the substance of it. This is what we are saying. We are saying that the court can make a determination of what this is.

The Senator is saying that we are taking this away from the children and from poor school boards. Well, I might say—and I say very emphatically—that if a judgment is rendered that there has been a violation, if a mandate comes down that there has been in fact a violation, the school board should be compelled to pay those attorneys' fees and costs, whether they be rich or poor.

The 14th amendment to the Constitution of the United States was there long before we came to a conclusion that something should be done in the field of civil rights or something should be done in the field of discrimination in the school systems of the United States. We are not talking about something that was born yesterday.

So I can merely say that these arguments are fine, and I do not mind if we continue these arguments tomorrow. I do not mind if we hear all the same arguments repeated, if we go back to the mimeograph machine and crank out the suits again, if we go and have our meetings and we hold up our hands and try to get people to agree that, somehow or other, a suit should be brought. I do not mind if we go through that again. But I honestly think we ought to have that understanding.

I honestly think we ought to stick to the merits. I honestly think we ought to stick to the rule of germaneness. I honestly think we ought to dispose of it. If it is not to be disposed of, then let us honestly say so; because I think this is what we are here for.

I might say that if the two distinguished Senators who are here opposing this amendment wish to debate among themselves for hour and hour on end, I think it is no more than fair that they say so to the Members of the Senate, so that we can at least be fair and honest with our fellow Members of the Senate as well as those who either oppose it or are for it; because that is our job, that is our duty, that is our responsibility.

I do not think one has to look very far to determine what the language of this amendment is. One does not have to look very far to determine that a matter could be settled, that it is up to the court if one pleads that a settlement was perfected and then a lawyer refused to do it because he wanted to get his fee, and that the court would deny that fee.

I would hope, in all fairness, that the junior Senator from Alabama would even understand, as much as I opposed the $15 million yesterday and would oppose any figure today, that that $15 million was to be maintained until it was totally and completely expended, which could be 10, 20, or 30 years. It well may be a lawyers' relief fund. But I might say, I still do not know, but legal counsel for the school board, when he loses that lawsuit, will bill the school board for his time and effort and he is going to be paid. That might well be a kind of lawyers' relief fund.

Mr. ERVIN. Will the Senator from Kentucky yield for an observation?

Mr. COOK. I am happy to yield to the Senator from North Carolina.

Mr. ERVIN. It may not be germane, but I have always heard that ignorance of the law does not prevent the lawyer from getting paid.

Mr. COOK. I agree with that. I might say to the distinguished Senator from North Carolina that ignorance of the rule of germaneness, when it is in operation before the United States Senate, also falls in the same category.

Mr. ERVIN. If the Senator from Kentucky will yield for a question, can he tell me anything I have said that was not germane to this amendment?

Mr. COOK. If I had the opportunity to look at the record before tomorrow morning, I would be delighted to answer the Senator in full. I know that I shall find many items that the Senator mentioned which did not involve the rule of germaneness.

Mr. ERVIN. Could the Senator specify one now?

Mr. COOK. Oh, yes. When the Senator mentioned the little children and the quotation from the Bible and the court action, which had absolutely nothing to do with this amendment.

Mr. ERVIN. I believe it was absolutely germane. The Senator from Alabama pointed out that the money would come out of school funds of the school district which would have to pay; therefore the money would be paid out of funds to pay for the education of little children. That is germane, in my opinion.

Mr. COOK. I would suggest to the distinguished Senator from North Carolina that the rule of germaneness is in effect today until after 7 o'clock. I ask the majority whip, is that not correct?

Mr. BYRD of West Virginia. The Senator is correct.

Mr. COOK. Thank you, sir.

Mr. ERVIN. I will say to the Senator from Kentucky that the Senator from North Carolina was ignorant that the rules of the Senate had been changed for this particular day.

Mr. BYRD of West Virginia. That is correct.

Mr. COOK. Then a lawyer can get a fee for being ignorant of the law. I only repeat what the Senator from North Carolina said a moment ago.

Mr. ERVIN. I am glad to say to the Senator from Kentucky that ignorance of a change in the rule, made on the spur of the moment by a unanimous consent request, without the knowledge of the Senator from North Carolina, does not deduct anything or justify deducting anything from the salary of the Senator from North Carolina.

Mr. COOK. First of all, I do not really mean to pursue this argument at all. I might say, honestly, that I have the greatest respect for the distinguished Senator from North Carolina.

Mr. ERVIN. Let me say to the Senator from Kentucky that he has not offended me in the slightest. He has added to the joy of life.

Mr. COOK. I hope that I have not only done that but, I might say to the distinguished Senator, that I have at least covered my tracks.

Mr. President, let me say one other thing. This amendment of the Senator from Kentucky is not an effort to come in the back door. The Senator from Alabama has said that it was an effort to come in the back door. The Senator from Kentucky has never introduced a bill or an amendment that ever made any attempt to come in the back door. My position was established clearly on yesterday. I made my point clearly on yesterday, that if it were to be done in that manner, it would have to be acceptable to me.

The real unfair point on yesterday, the point I am sure the Senator from Alabama was talking about, was that it was absolutely the rankest type of legislation, to impose legal fees and costs upon the Federal Government when the Federal Government was not the violator. This I stand on. This I will always stand on. If, under these circumstances, it is necessary to bring a suit, if it is necessary to seek compliance under the 14th amendment to the Constitution, under the Civil Rights Act of 1965, or under this act, to bring an action and, if, in fact, that school district is held to be guilty and a mandate comes down, then they should have to make recompense for that mistake.

It is not that the person that came into the school district violated the law. It is not the idea of that person who filed that action seeking attorneys' fees. It is the idea of that person seeking one thing; namely, compliance with this act, compliance with the 1964 Civil Rights Act, and compliance with the 14th amendment.

I might add, I can only hope and certainly the Senator from North Carolina and certainly the Senator from Alabama and the Senator from Kentucky can hope that this, in fact, is what exists today, because we voted and we imposed upon this bill the Stennis amendment.

So, Mr. President, that is the import of this, the import of the $15 million. The import is not that we are, somehow or other, setting up a lawyers' relief fund. The import is that costs and attorneys' fees are to be put before the court as a matter for the court to determine. If, in fact, an action is brought which the court finds was absolutely necessary for the compliance with the acts involved and, as a result of securing a judgment,

and as a result of the mandate issuing therefrom, the attorney for those plaintiffs, who sought to see to it that the 14th amendment of the Constitution of the United States was imposed upon that school district, that the acts of legislation already passed by this body and its regulations were to be imposed on that school district, would be entitled to his costs, and that he would be entitled to attorneys' fees as determined by the court. If the court came to the conclusion, Mr. President, that it could have been settled or could have been resolved short of an order, then the court will deny any such fees and will deny any such sums, because the court would find that the proceedings were not necessary to bring about compliance.

It is that easy.

I do not see any great sums of money would have been expended. I do not see any great move for lawyers to roam all across the South or all across the North. I do not see any need for anyone to buy a second-hand mimeograph machine to crank out lawsuits. I think it would be futile. I think it is understood by Members on this floor that it also would be futile.

Mr. President, I yield the floor.

Mr. ALLEN. Mr. President, if the junior Senator from Alabama has offended the distinguished Senator from Kentucky by use of the phrase "back door approach," the junior Senator from Alabama assures the distinguished Senator from Kentucky that he certainly meant to suggest no possible, improper activity or approach of the distinguished Senator from Kentucky. He was merely using a metaphor to indicate the use by the distinguished Senator from Kentucky of an approach that was a departure from a mere amendment of section 11 which could have been made or attempted to have been made on yesterday to achieve the same result.

Rather than do that, the whole of section 11 was first deleted and then a new section with no number is now offered, and it was something of an indirect approach, and that caused the junior Senator from Alabama to use that metaphor to describe the actions of the distinguished Senator from Kentucky.

The PRESIDING OFFICER (Mr. BYRD of Virginia). What is the will of the Senate?

ORDER FOR TRANSACTION OF ADDITIONAL ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Pastore rule of germaneness now be lifted and that there again be a period for the transaction of routine morning business, with statements limited to 3 minutes.

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

ORDER FOR RECOGNITION OF SENATOR BYRD OF VIRGINIA TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow following the recognition of the two leaders under the standing order, the distinguished senior Senator from Virginia (Mr. BYRD) be recognized for not to exceed 15 minutes.

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

ORDER FOR RECOGNITION OF SENATOR COOK TOMORROW

Mr. BYRD of West Virginia. Mr. President I ask unanimous consent that, following the remarks of the distinguished Senator from Virginia (Mr. BYRD) on tomorrow, the very able Senator from Kentucky (Mr. COOK) be recognized for not to exceed 15 minutes.

TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW—ORDER FOR RECOGNITION OF SENATOR STEVENS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the remarks of the Senator from Kentucky (Mr. COOK) tomorrow there be a period for the transaction of routine morning business for not to exceed 30 minutes with statements therein limited to 3 minutes.

Mr. COOK. Mr. President, reserving the right to object, and I may not, would the Senator in addition to the 15 minutes graciously allotted to me, allot 15 minutes to the Senator from Alaska (Mr. STEVENS)?

Mr. BYRD of West Virginia. Mr. President, I so amend my request.

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

Mr. BYRD of West Virginia. Mr. President, following the remarks tomorrow of the able Senator from Alaska (Mr. STEVENS) the period for the transaction of routine morning business will occur in accordance with the request.

The PRESIDING OFFICER. The Senator is correct.

ANNOUNCEMENT OF POSITION OF SENATOR CHILES ON STENNIS AMENDMENT

Mr. BYRD of West Virginia. Mr. President, I wish to state that had the distinguished Senator from Florida (Mr. CHILES) been present today, he would have voted for the amendment offered by the Senator from Mississippi (Mr. STENNIS).

Mr. CHILES last week received a leave of absence from the Senate for several days for the conduct of official business and he is absent today on that official business.

The RECORD should show that and should also show that he would have voted for the Stennis amendment had he been present.

PERMANENT DISPLAY OF THE SENATE'S COLLECTION OF HISTORIC DOCUMENTS IN THE CRYPT OF THE CAPITOL

Mr. BYRD of West Virginia. Mr. President, on Tuesday of this week, the Commission on Art and Antiquities of the Senate inaugurated a permanent display of the Senate's collection of historic documents in the crypt of the Capitol. These papers record the highlights of the Senate's history and are of unique interest and significance. Many of them date back to the earliest years of the Republic and they include handwritten messages from many of the early Presidents.

We are indeed fortunate that the Commission on Art and Antiquities, chaired by the distinguished majority leader, has turned its attention to this veritable trove of Senate memorabilia. The display, which has been arranged by the Commission's distinguished and able curator, Mr. James Ketchum, is an excellent one and I commend it to the attention of every Member of the Senate.

I ask unanimous consent to have printed in the RECORD the remarks of the chairman of the Senate Commission on Art and Antiquities (Mr. MANSFIELD) and of the Commission's ranking minority member (Mr. PROUTY) on the occasion of the inauguration of this important exhibition.

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

STATEMENT OF SENATOR MANSFIELD

It has been said that we are a government of laws, not of men. It may be added that we are also a government of paper. The event which draws us together here today is not so much in celebration of that fact as it is a celebration of the survival of a few papers which make government meaningful.

What goes on display here today is but a minute distillation of the millions of documents which have bound this government together since its beginning. Each of these documents was selected for its intrinsic significance. Together, they serve to remind us, out of the profusion of the past, that the process of documentation is what gives permanence and continuity to the institutions of government. The ideas we carry in our heads and the agreements we reach in the give and take of political debate are of no use to the future unless they are accurately recorded and preserved.

The documentary record is of particular interest in the intricate relationship between the Presidency and the Senate. Born of Constitutional compromise, the relationship, especially in the early years, was the object of experimentation and testing. It withstood and survived, of course, and stands today as the evolutionary product of the precedents established over the years.

The Senate's historic document collection comprises the living record of this evolutionary process. These are original documents, signed by the Presidents and in some cases executed entirely in their own hand. The first of them which goes on display today was signed by George Washington more than 181 years ago.

This first Washington document itself provides a significant essay on the need for the intermediary of the written word in the relationship between the Executive and the Senate. It shows how, in the early months of the Republic, the first President conducted an uncomfortable experiment in substituting his personal presence for the more formal transaction of business by paper.

President Washington was acutely aware that his every act and word as the nation's first chief executive would be regarded as precedent for the future. He was particularly concerned about those parts of the Constitution which while clear as to what should be done were not so clear as to how to do it. A notable case in point was Article II, Sec-

tion 2. It stipulates that the process of making treaties and nominating ambassadors and other high officers should be undertaken "by and with the advice and consent of the Senate."

Washington had to determine, by experiment, the most effective method for giving and receiving such advice and consent. While he was quite firm in his belief that nominations should be transmitted in writing, he apparently felt that the intricacies of treaty-making might justify a face-to-face confrontation with the Senate. Accordingly, he sent the letter which we have here today declaring his intention to meet with the Senate "to advise with them on the terms of the treaty to be negotiated with the Southern Indians."

Historians tell us that it was not a successful confrontation. The process of verbal communication was long and cumbersome, complicated by the competition of street noises from passing carriages. Most important, apparently, was the fact that the presence of the President of the United States on the rostrum of the Senate had an inhibiting effect on Senatorial debate. The treaty was referred to committee, accordingly, where it could be considered in a more relaxed atmosphere. The President departed in what one observer called "a discontented air." He transmitted all subsequent treaty mesages in writing and it was 130 years before another President would come to the Senate to discuss a treaty, and that was the occasion of the submission of the Treaty of Versailles by Woodrow Wilson.

The failure of that first effort at personal representation by President Washington set the stage for our being here today. For it led to the practice of conducting all subsequent advice and consent transactions on paper and it thereby assured the Senate of this unique collection of documents.

Fortunately for us today, one man had the historical perspective and good sense to recognize the worth of these papers nearly 100 years ago while the earliest files of the Senate were still intact. That was the then Secretary of the Senate, Anson G. McCook, who in 1885 began to assemble and preserve the collection. I am very pleased to note that Secretary McCook's daughter, Mrs. Katharine McCook Knox, is able to be here with us today to help celebrate the opening of this display.

Thanks to the foresight of Secretary McCook and those who followed him, the Senate collection now contains several hundred documents, each of which marks a significant step in the relationship between the Senate and the Presidency. The Senate Commission on Art and Antiquities intends to place the collection on rotating display as part of a continuing effort to promote understanding of the rich heritage of this branch of the federal legislature. We invite your attention to the display and hope you will find it a source of interest and, above all, a reminder of the human dimension which lies behind the affairs of state.

STATEMENT OF SENATOR PROUTY

It has seemed to me that this ceremony should not serve simply as the opening of an historic exhibit. It should, also, be remembered as our recognition of the importance of historic manuscripts in the "permanence of our national institutions."

I would like to expand on the theme which the Majority Leader has already struck to the effect that many of these documents constitute landmarks in the Executive-Senatorial relationship.

I am particularly pleased that the second document displayed here today is from the hand of John Adams, the first of several Presidents from New England. And it strikes me that Adams' letter, perhaps unwittingly, created another precedent in the advice and consent process; this one having to do with nominations for public office.

President Adams, we are told, was much less rigid in his criteria for selection of federal appointees than was his immediate predecessor. Washington had been scrupulous in rejecting the advances of relatives and close friends who sought public office. Adams, on the other hand, was much more flexible in his view and saw no reason to exclude a qualified person just because he happened to be a relative. His nomination of his son, John Quincy Adams, to be Minister Plenipotentiary to Prussia, which we see here today, thus is in character and typifies a practical New England view, that those whom a President knows best are sometimes best suited for positions of trust. Each of us remembers when another President, John Kennedy, also from Massachusetts, as was John Adams, followed a similar course when he sent the name of his brother, Robert, to the Senate to be Attorney General.

Speaking as a Republican, I am also pleased to note that Presidents of my party are well represented here today. President Lincoln's nomination of Senator Seward to be Secretary of State, President Harding's nomination of William Howard Taft to be Chief Justice of the United States and President Nixon's nomination of his whole cabinet all are here.

Many of the letters in the collection, which will be seen in this and subsequent displays, have to do with the nomination of Cabinet officers. It is perhaps worth noting that Presidents have been particularly innovative in presenting their nominations to the Senate and to the country.

President Warren Harding, for example, went directly to the Senate chamber from his inauguration to present his nominations in executive session—thus breaking the long tradition established by Washington of nominating by letter.

President Nixon, it will be recalled, introduced his cabinet to the nation on television, while at the same time tendering his formal nominations to the Senate in writing, as we see here today.

Thus, we see that while Presidents do follow precedent they also make their own.

And so it is that these documents have as much to say about the men who wrote them as they do about the events they describe. They warrant our attention not simply for sentimental reasons, but because they give us a clearer understanding of that body of tradition and precedent which guide both the Senate and the Presidency today.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the additional period for morning business now be closed and and that the able senior Senator from Virginia (Mr. BYRD) be recognized for such time as he may require.

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

(The remarks of Mr. BYRD of Virginia when he introduced S. 1640 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

THE PENDING QUESTION

Mr. BYRD of West Virginia. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER (Mr. HART). The pending question is the amendment offered by the Senator from Kentucky (Mr. COOK) and others to S. 1557, the pending business.

ORDER FOR UNFINISHED BUSINESS TO BE LAID BEFORE THE SENATE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that upon the conclusion of the morning business tomorrow the Chair lay before the Senate the unfinished business.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 11 a.m. Immediately following the recognition of the two leaders under the standing order, the able senior Senator from Virginia (Mr. BYRD) will be recognized for not to exceed 15 minutes, to be followed by the distinguished junior Senator from Kentucky (Mr. COOK) for not to exceed 15 minutes, to be followed by the distinguished senior Senator from Alaska (Mr. STEVENS) for not to exceed 15 minutes, at the conclusion of which there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes. The unfinished business will then be laid before the Senate. There may be votes tomorrow.

ADJOURNMENT TO 11 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 adjourn until 11 o'clock tomorrow morning.

The motion was agreed to; and (at 6 o'clock and 17 minutes p.m.) the Senate adjourned until tomorrow, Friday, April 23, 1971, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate April 22, 1971:

NATIONAL RAILROAD PASSENGER CORPORATION

The following-named persons to be members of the Board of Directors of the National Railroad Passenger Corporation for terms commencing April 29, 1971, as indicated:

For a term of 2 years:
Catherine May Bedell, of Washington.
David Walbridge Kendall, of Michigan.
John A. Volpe, Secretary of Transportation.

For a term of 3 years:
Frank S. Besson, Jr., of Virginia.
David E. Bradshaw, of Illinois.
Charles Luna, of Ohio.

For a term of 4 years:
John J. Gilhooley, of New York.
Roger Lewis, of New York.