dent, Senators, Congressmen, Governors, state and local officials, they expect something in return. I do not mean to insinuate that contributions to candidates or parties should be completely abolished but when $5 million can be raised on a half dozen banquets in one evening as was done several weeks ago, then Congress must step in and preserve our representative government by prohibiting the purchase of public office by special-privileged groups.

The curbing of the fabulous and fraudulent tax loopholers will add greatly in shackling mammoth campaign funds from controlling our election system.

STOP ME

HON. JOHN G. DOW

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, January 24, 1972

Mr. DOW. Mr. Speaker, with the decline of American casualties in Vietnam it is so easy for us to follow the complacent path and let the issue diminish. However, it is well known that by our massive bombing and other actions in Southeast Asia that we are continuing a pretty major war in that area.

There are some perceptive Americans who realize that the war problem is neither gone nor forgotten. One of these is my good friend Fred Kuhn, of Spring Valley, N.Y., who sent to the Journal-News, Nyack, N.Y., a brief but stirring commentary that deserves our attention. A copy of Mr. Kuhn's letter from the December 27 issue of the paper follows:

STOP ME

Editor, Journal-News:

"Government of the people, by the people, and for the people. . . ." This is the glory of the American system; that the policies and achievements of this great nation are as the works of my own hand.

I killed 300 Vietnamese today.

Doctor, what's wrong with me? I don't know why I did it. I didn't even know about it until I saw it in the paper.

The government (that's me, isn't it?) said I did it for their own good. I—the Government—keep saying I'm winding it down; but, even though I don't get as many Americans killed. I kill more Vietnamese than ever. Because I'm turning into some sort of mad bomber.

Better them than us? That sort of depends on your point of view, doesn't it?

I keep saying I want to know why. But when someone took a secret history from the government (that's me), and opened it up to the people (that's me). I—the Government—arrested him for stealing my property and turning it over to me!

Doctor, what's wrong with me? Stop me, before I kill again.

FRED KUHN.

SENATE—*Tuesday, January 25, 1972*

The Senate met at 12 o'clock meridian and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

PRAYER

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

Eternal Father, Ruler of men and nations, Source of all that is good and true, as our fathers trusted in Thee, be to us the guide and strength of all our days. Uphold the leaders of this Nation by Thy mighty power. Open their minds and hearts to receive the wisdom which is above all that is human. Guide them in the use of power, and so direct the deliberations of Thy servants in this Chamber as shall be for the well-being of all the people, the promotion of peace and justice on the earth, and the advancement of Thy kingdom. Fuse the discordant, the diverse and contentious elements into a united people strong in the Lord and the power of His might, that this Nation may be a servant people for the greater good of all mankind.

In the Redeemer's name, we pray. 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., January 25, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. JAMES B. ALLEN, a Senator from the State of Alabama, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

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

MESSAGES 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. ALLEN) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of Senate proceedings.)

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, January 24, 1972, be dispensed with.

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

ATTENDANCE OF A SENATOR

Hon. FRANK E. MOSS, a Senator from the State of Utah, attended the session of the Senate today.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

STATEMENT BY SENATOR MANSFIELD BEFORE THE SENATE DEMOCRATIC CONFERENCE

Mr. MANSFIELD. Mr. President, I should like to repeat to the Senate what I said earlier today to the Democratic conference.

We begin this session at the point where we left off in the last. First, it should be recalled that a year ago, upon recommendation of your policy committee, the first act of the Democrats assembled in caucus was to call for "ending the involvement in Indochina and bringing about the withdrawal of all U.S. forces and the release of all prisoners in a time certain." Subsequently, withdrawal from Vietnam at "a time certain" was firmly established as the goal of the entire Senate.

In its own way and time, the administration has moved in the direction of contracting the U.S. involvement in Indochina. The movement out has not been fast enough. To some observers, it even appears that, with the augmented bombing of recent weeks, all of Indochina is just as deeply as ever bogged in war. What is also clear is that the administration has not yet established that the sole condition of withdrawal of all U.S. forces is the release of the prisoners of war. While policies that have moved very substantially in the direction of the withdrawal of ground forces are not to be dismissed, it must also be recognized that the end of the American involvement has yet to be achieved. One hundred fifty thousand Americans remain in Indochina. Americans still die in Indochina; Americans continue to be wounded and maimed and flooded with drugs in Indochina. Americans are confined as prisoners of war in Indochina and the number is increasing.

So long as that situation prevails, the conditions of the initial position of the policy committee last year and of the Democratic caucus and of the entire Senate remain to be fulfilled.

Insofar as the leadership is concerned, therefore, the pressure on behalf of the Senate's position will not cease. May I say, with all due respect, that it is not enough to wind down the war in Vietnam. The residual obligation is to wind this Nation completely out of the war in Indochina and to extricate our forces from the entire Southeast Asian mainland. To underscore that obligation, your policy

committee recommended unanimously for reconfirmation by this caucus the resolution on withdrawal from Vietnam which was adopted on three occasions by the Senate last year.

Beyond this fundamental effort regarding Vietnam, our job in the Congress is twofold. We must continue to do our part in promoting the readjustment of America's overextended, costly, and self-debilitating military role elsewhere in the world, notably in Western Europe. We must also press for a reordering of the Nation's internal affairs; resources must be shifted, as necessary, to the end that domestic needs too long deferred and neglected may be met.

Whatever Congress does in the coming session will be overhung by the presidential election. Inevitably, the election will exert an influence on the work of the Senate. Insofar as the leadership is concerned, however, the public interest will not be shortchanged for partisan gain.

As a prelude to this session this past week, the President offered an appraisal of the workload before the Congress during the past year of his term. What went unsaid in that appraisal, yet what affects it overwhelmingly, is a monetary deficiency of $123 billion compiled during the 4 years of the Nixon administration.

As the session opens, one of the first responsibilities of the Congress will be to confirm the President's devaluation of the dollar. The price of gold will have to be changed officially from $35 to $38 an ounce. It is a distasteful task because it reflects, in a symbolic sense, the devastating economic consequences of ineffective fiscal policies and more especially of the tragic and continuing involvement in Southeast Asia. More than anything these gigantic deficits reflect the vast waste of resources in the pursuit of outdated and antiquated security policies.

While this administration has accumulated these deficits, I might say the Congress has done its share to reverse the tide. During the last 4 years, it has made cuts of over $27 billion in the President's budget requests. It has done so largely by paring down enormous sums sought by the Pentagon, even while shifting a fraction of these savings into education, health, social, and environmental programs.

The Congress has also endeavored to pare down a foreign aid program designed for the 1940's. The question of "where next in foreign aid" remains to be answered. An interim financing bill for the program expires on the 22d of February. In my judgment the Senate will be well advised to stand fast at this point in its insistence on at least a drastic cut and complete overhaul of what has become, largely, an irrelevant exercise in government spending. The program no longer does a great deal for the ordinary people of other nations, and it does next to nothing for the people of this Nation. It has served only to increase an already intolerable deficit. The majority policy committee is considering, actively, suggestions which range from reduction to elimination of foreign aid. Certainly, at the very least, there is strong sentiment for a drastic cut in these expenditures for the 1970's.

On the domestic front, with few exceptions, each issue which confronts the Nation, whether it be the financial plight of the cities or the falling income of the farmers, is represented by a legislative proposal before the Senate. The equal employment opportunity amendments constitute the present business of the Senate. Thereafter, the Senate must consider such issues as higher education, welfare/social security, voter registration, consumer legislation and equal rights for women. In addition, we must consider an increase in the minimum wage, farm legislation, and proposals dealing with health insurance, revenue aid to cities, housing and a proposal that would for the first time give consideration to the innocent victim of violent crime—long ignored by our system of criminal justice. It should be said that we will endeavor to complete every item that falls within the national interest, be there 9, 19, or 90 of such proposals. As the branch of Government most responsible for legislative policy, in the final analysis, it is for the Congress to determine as well as to respond in matters of public policy. In this connection, the type of inquiry being undertaken by Senator ERVIN on the question of citizen surveillance by the military demonstrates the type of vigilance in behalf of individual rights that is in the highest tradition of the Senate. It demonstrates anew the priority SAM ERVIN gives to the protection of individual liberties and Senator ERVIN has my full backing and endorsement, as I am sure he has the backing of this caucus.

Another matter that will require the full support of the caucus involves the budget. Beginning February 1, the able chairman of the Appropriations Committee, ALLEN ELLENDER, will launch a full-scale inquiry into waste and priorities as they affect the budget. It is not only the economic experts who are aware that a truly monumental crisis exists within the American economy and its monetary system. The inflation rate in 1971 was 4.3 percent. The rate of unemployment was 5.9 percent, and the method of establishing the rate of unemployment leads one to suspect that many more are unemployed than the 5 million or more reflected by the present monthly rate of 6.1 percent. A word more should be said here about the budget.

In the past 4 years, including fiscal 1973, as projected by this year's budget—all of which were under the exclusive control of this administration—the administrative budget deficit has exceeded $120 billion. Under the unified budget reporting, which includes the surplus and bulging trust funds such as social security, the deficit for these fiscal years under this administration has been in excess of $87 billion. During the past 4 years—fiscal 1969, 1970, 1971, and 1972—the Congress has cut the administration's requests for appropriations by about $27 billion. Thus, Congress has prevented even more monumental deficits. I do not know how much longer the country can tolerate this type of failure to grasp the vitals of the budgetary process before the Nation's currency encounters even more serious jeopardy.

As much as we endeavor to communicate to the administration, however, the message has yet to be heard. The current budget seeks an increase in defense spending of $6.3 billion. It is estimated generally that capital expenditures for the defense program and the space program do not contribute as much to check inflation as would capital expenditures that continue to yield a positive return on that investment many years after the expenditure. The use of capital expenditures over and above what is necessary only feeds the inflationary forces within our economy. It is not only a question of priorities but it is a matter of questionable economics to expend capital resources for one-shot impacts on unemployment. It will be a sorry day for this Nation when our answer to unemployment is the production of unneeded weapons of war.

The fact is that these additional requests for defense expenditures will really feed the inflationary fires and in the long run will create greater unemployment. Strong questions can and should be raised about the wisdom of accepting a need for large increases in defense expenditures this year, and I hope the distinguished chairman of the Armed Services Committee (Mr. STENNIS) will raise them in the first instance, as he has in the past 3 years, and the Senate as a whole, thereafter.

The most visible point is the increase for the undersea long-range missile system programs for which $900 million will be sought. This program might well be justified. But $900 million should be absorbable by the decreases which presumably are being made by the drawdown in Southeast Asia. The incremental costs for Vietnam, I believe, have decreased about $10 billion in the past 2 years; in manpower, the size of the Armed Forces is more than a million less than just 2 years ago.

One reason for the continuing increase in Defense and other spending is the budgetary practice of requiring justifications only for increases in spending requests. Agencies are not required to go back and justify all of its money requests from the bottom up. I would hope that each committee would look into this situation and consider using the so-called "zero base" for each department in its purview. Our responsibility can be fully met only if this burden of proof for its budget is assumed by each department. At the same time, as a matter of courtesy, every request of the President should be treated with the utmost consideration and dispatch.

In any case, it is clear that a high degree of productivity is demanded this session. That will not be easy to extract in a year which is as much political as legislative. A congressional Democratic majority confronts a Republican-controlled administration; the ever-present inclination to political combat in both branches is a fact of public life. Inevitably, that situation will exert an influence on the work of the Government. But that influence can and should be minimized. I repeat that, insofar as the

Senate leadership is concerned, the public interest will not be shortchanged for partisan gain. The first responsibility of all of us in the Senate is to the business of the Senate and it is the intention of the leadership to proceed on that basis.

Achieving an adjournment at the earliest time is imperative in order to avoid, as far as possible, a legislative and political overlap in the fall of the year. It would be my hope that there can be a reasonable adjournment date. I say that in all seriousness, knowing full well the past track record on that score.

The availability of the appropriations bills for floor action will constitute, as usual, the critical element in adjournment. It is intended, therefore, to stick closely to the procedure authorized in the joint leadership's letter of last week. Tardy authorizations will no longer result in delaying the regular appropriations bills. Items of appropriation in the fiscal year 1973 bills that have not been authorized by June 1, 1972, will not be included in the general appropriations bill if the latter is otherwise ready and available for consideration. On the other hand, if the authorization is enacted after June 1, 1972, the appropriation item for which the authorization is required will be considered only as a part of a subsequent appropriations bill.

Both the White House and the House of Representatives have been notified of this new approach since both have a prior influence on the date when legislation of this kind reaches the floor of the Senate; and the Senate ought not to be expected to handle in the last 2 or 3 weeks under pressure of adjournment what has been many weeks of months in arriving at the Senate's door.

The recess schedule of the Senate has been designed this year to meet the special circumstances of the election. There will be only three extended weekends between now and the first of July and they are all brief—the Lincoln-Washington recess, the Easter holiday and Memorial Day. That brings us to July 4. Provision has been made for the Democratic Convention and, in August, the Republican Convention.

As in the past, the leadership is prepared to work in concert and cooperation with the President in whatever way we can, jointly, serve the Nation during the current session. I would emphasize, however, that the Senate has its separate Constitutional responsibilities, as does the President. The Senate is not the President's Senate. It is not the leadership's Senate or even the majority's Senate. It is the Members' Senate. It is the people's Senate.

If we proceed on that basis, in the end, the President is likely to get a substantial part of the legislation which his administration seeks, but not all of it. The Congress will be similarly satisfied and disappointed. Most significant, the people will get the kind of performance from both elected branches to which they are entitled under the Constitution of the United States.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

Mr. SCOTT. Mr. President, in regard to the unanimous-consent agreement entered into yesterday, with the time to be controlled by the minority leader on amendments to the Dominick amendment, I now designate the Senator from Colorado (Mr. DOMINICK) to be in control of the time in opposition.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. In accordance with the previous order, the Chair now recognizes the distinguished senior Senator from Virginia (Mr. BYRD) for not to exceed 15 minutes.

PRESIDENT NIXON'S 1973 BUDGET

Mr. BYRD of Virginia. Mr. President, the Federal Government is risking the integrity of the dollar and the purchasing power of American workers with reckless spending policies.

Yesterday the President submitted to the Congress his budget message and the Federal budget for the fiscal year beginning next July 1.

The budget projects a third consecutive deficit of huge proportions—and the 17th deficit for the 20-year period 1954–73.

The budget documents show that the Government is in grave financial condition.

For the current fiscal year, the estimated deficit is nearly $45 billion in Federal funds.

In an astonishing statement, Treasury Secretary Connally said that we should applaud this $45 billion deficit.

I do not applaud it. I condemn it.

The 1972 deficit comes immediately after a deficit of $30 billion in 1971. It is nearly double the $23 billion deficit which was predicted for the current year in the President's budget submitted in January 1971.

Those figures show that Federal deficit spending is continuing to mount, and that budget estimates often are extremely unreliable.

What is projected for fiscal 1973, the year beginning on July 1?

Another large deficit—this time, one of $36 billion in Federal funds.

For the 4 years of his administration, President Nixon will have run a total budget deficit of $124 billion—this huge sum is far more than double the $54 billion total deficit compiled during the last 4 years of the administration of President Johnson.

Many of us, including Mr. Nixon himself, felt that the Johnson deficits were reckless and unjustified, leading to inflation—which they were.

The figures I have cited are in Federal funds—that is, funds which the Government administers as an owner.

I have excluded from the budget totals the trust funds, because trust funds—principally social security—do not belong to the Government. They belong to the working people—the employees and employers of this Nation. The Government is only a trustee for this money.

Trust funds show a surplus every year. Until 1969, the Government budget excluded trust fund operations and thus gave a true picture of receipts and outlays. But in 1969 a change was made to the so-called unified budget, including trust fund surpluses in the overall budget figures.

This serves to mask overspending by the Government, because the trust fund surpluses seem to offset part of the deficit in Federal funds.

I believe that the Government should give the people the true fiscal facts and return to the traditional method of accounting; namely, excluding trust fund surpluses.

However, no matter what system of accounting is used, the comparison between the spending levels of the Johnson and Nixon administration holds good.

Mr. Nixon said in his budget message that the deficit for the coming year is a large one. He is certainly correct in that assertion. He claims that it is necessary under existing circumstances.

He also said that if we were to spend less, it would be "too little and too late."

I fear, however, that the large deficits we are running and plan to run mean that we are spending not too little but too much.

As a result, it may soon be too late, indeed—too late to save the fiscal integrity of the Federal Government, too late to have the value of the dollar in the world market, too late to save the purchasing power of the citizens of the United States.

In his state of the Union message in 1970, President Nixon declared:

> Now, millions of Americans are forced to go into debt today because the federal government decided to go into debt yesterday. We must balance our federal budget so that American families will have a better chance to balance their family budgets.

Mr. President, that was an excellent statement by President Nixon in 1970, an excellent statement.

But, Mr. President, what has happened in Federal finances since the President spoke those words? The deficits have piled ever higher, and the family's chance of balancing the home budget is slimmer than ever.

The mounting deficits of the Federal Government have raised the national debt ever higher.

At the beginning of January, the debt stood at $424 billion. The administration predicts that on June 30, 1973, it will have risen to $493 billion.

That is an increase in the public debt of $69 billion—and that is the amount by which the Government will operate in the red during the next 18 months.

Examination of the national debt figures for the 4 years of the Nixon administration is revealing.

On June 30, 1969, the debt stood at $367 billion. As of June 30, 1973, the administration forecasts that the debt will be $493 billion. That is an increase of $126 billion in 4 years.

When the total of $493 billion is reached next year, one-fourth of that enormous total debt will have been incurred during the administration of President Nixon, in only 4 years.

Already we are spending $21 billion a year on interest on the national debt. That amounts to 17 cents out of every dollar of individual and corporate income tax paid to the Government.

Yes, Mr. President, of every dollar

paid into the Federal Government in the form of income taxes by the individuals and the corporations of this Nation, 17 cents now goes for one purpose, and that is to pay the interest, and just the interest, on the national debt.

I do not believe that the United States can continue indefinitely on this course.

Continual deficit financing is eroding confidence in the dollar abroad.

It is destroying the purchasing power of the workers and housewives of this Nation.

These huge deficits must be paid for either by more taxes or by more inflation—or, more likely, by both.

The time is long overdue for major reductions in Federal spending, the best course we can take to put the finances of this Government and its people back into shape.

I ask unanimous consent that a table showing Federal deficits and interest on the national debt for the 20-year period ending with the coming fiscal year be printed at this point in the RECORD.

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

DEFICITS IN FEDERAL FUNDS AND INTEREST ON THE NATIONAL DEBT, 1954-73 INCLUSIVE

[Billions of dollars]

	Receipts	Outlays	Surplus (+) or deficit (−)	Debt interest
1954	$62.8	$65.9	−$3.1	$6.4
1955	58.1	62.3	−4.2	6.4
1956	65.4	63.8	+1.6	6.8
1957	68.8	67.1	+1.7	7.2
1958	66.6	69.7	−3.1	7.6
1959	65.8	77.0	−11.2	7.6
1960	75.7	74.9	+.8	9.2
1961	75.2	79.3	−4.1	9.0
1962	79.7	86.6	−6.9	9.1
1963	83.6	90.1	−6.5	9.9
1964	87.2	95.8	−8.6	10.7
1965	90.9	94.8	−3.9	11.4
1966	101.4	106.5	−5.1	12.0
1967	111.8	126.8	−15.0	13.4
1968	114.7	143.1	−28.4	14.6
1969	143.3	148.8	−5.5	16.6
1970	143.2	156.3	−13.1	19.3
1971	133.7	163.7	−30.0	20.8
1972 [1]	137.8	182.5	−44.7	21.2
1973 [1]	150.6	186.8	−36.2	22.3
20-year total	1,916.3	2,141.8	225.5	241.5

[1] Estimated figures.

Source: Office of Management and Budget and Treasury Department.

Mr. SCOTT. Mr. President, we are all very much concerned about budget expenditures and budget deficits. Deficits are, of course, getting to be too much a fact of life.

I believe that the thing for us to remember is that at any time we think the budget is too high, it is within the power of Congress to change it. In 1968 we were spending 45 percent of the budget on defense and 32 percent on domestic needs. With the passing of time and the reordering of priorities, we are now spending approximately 32 percent of the budget on defense and 45 percent on domestic needs.

While Congress has cut the budget from time to time, it has done so at times dangerously and recklessly by cutting down on our needs for vital elements of defense, vital until we can get agreement with the super powers and secure an end to this unfortunate war.

While the cost of the war has been cut down from $38 billion annually to $8 billion, Congress has continually increased appropriations for domestic needs on the ground that it was necessary to reorder priorities to meet the demands of the people.

This administration has asked for more money for education, health, welfare, social security, assistance for the blind, for highways, and for all of the other various causes in which the Federal Government has become increasingly involved. But not 1 cent of this money would have been in the national debt, not 1 cent of it would have been in the budget, not 1 cent of it would have been there without action by Congress. Not 1 cent of the money the President asked for and has spent would have been in his hands if Congress—the Senate and House of Representatives—had not given it to him.

All of this money, then, is the responsibility of Congress. If Congress thinks the President is spending too much for education, for health, for welfare, and for the schools, then let Congress say so. I might even say, let Congress dare to say so, because most of the clamor we have heard around here is devoted to more and more and more rather than less and less and less.

The old game of taking all the money out of the defense appropriations is running out. To my knowledge, the Russians have caught up in all major areas of defense, except for bombers which, with their missiles, they do not think they need, and submarines, in which they will have caught up by 1974 or 1975. Our equipment is older than theirs. Some of it is obsolete. This is the year we will have to do something about it.

I hope that Congress, if it makes a cut, will not target itself entirely at the Defense Establishment. That is dangerous. That is reckless. That is playing with fire.

If Congress has the nerve to make cuts, let Congress propose cuts across the board. Let it propose across-the-board cuts of 10 percent on everything and see how many votes there will be. Let it propose cuts of 5 percent across the board and see how many votes there will be. Let it propose cuts of 1 percent across the board and see how many votes there will be.

We have been engaging for a long time in the business of trying to fool the public and seeing how much we can cut from this, that, or the other budget. But we do not tell everyone that we do it at the expense of national safety.

This administration can rightfully claim that it has done more for the people than any other administration has done. If Congress does not like it, Congress can reverse it.

Mr. BYRD of Virginia. Mr. President, I have noted the comments of the distinguished Senator from Pennsylvania. I do not exclude Congress from my comments in regard to the budget.

I point out that a year ago the President in his statement to Congress deliberately set out on a deficit spending program; he encouraged Congress to follow such procedure, and Congress does not need much encouragement to spend.

Congress and the President must work together if we are going to get spending under control. But it was very significant that never once in his remarks did the Senator from Pennsylvania, the distinguished minority leader, mention these smashing deficits, and that is what I was talking about.

If the President wants to spend money and if Congress wants to spend money, they have the right to do so. But I submit they are fooling the public; they are misleading the public when they say this can be done and no one will have to pay for it; that we can reduce taxes and spend more and more money, run higher and higher deficits, pile up more and more national debt and no one has to pay for it.

Mr. President, I say the day of reckoning is coming; it is bound to come.

Every sensible person in this country knows that somewhere, sometime, somebody has to pay for the reckless spending by the Government of the United States.

The people who will bear the brunt of that spending will be the lower and middle economic groups in this country. They will be hit the hardest by inflation, just as they have been hit the hardest by inflation; and inflation has been the primary result of these huge deficits; they, too, will be the ones called upon to pay the brunt of the taxes when the day of reckoning comes.

I refer again to the statement by the distinguished Secretary of the Treasury when he made that astonishing speech saying that the American people should applaud this $45 billion deficit the Government is running this year.

I say that I, for one, do not applaud it. I condemn it.

[Applause in the galleries.]

Mr. BYRD of West Virginia. Mr. President, may we have order in the galleries?

The ACTING PRESIDENT pro tempore. There will be no outbursts in the galleries.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with the previous order, there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with the statements therein limited to 3 minutes.

The Senator from New York is recognized.

(The remarks of Mr. JAVITS when he introduced S. 3067 are printed in the RECORD under Statesments on Introduced Bills and Joint Resolutions.)

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The second assistant legislative clerk proceeded to call the roll.

Mr. ELLENDER. 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

THE PRESIDENT'S DEFENSE BUDGET FOR FISCAL YEAR 1973

Mr. ELLENDER. Mr. President, the President's budget for fiscal year 1973 is based on requests for new budget authority totaling $270.9 billion of which approximately $185.3 billion will have to be considered by the Congress. Of these totals, $83.4 billion is for the various programs of the Department of Defense. This represents an increase of $6.3 billion over the estimated budget authority of $77.1 billion for fiscal year 1972, including estimated fiscal year 1972 supplementals totaling approximately $2.9 billion.

Department of Defense outlays—expenditures—for fiscal year 1973 are estimated at $76.5 billion, an increase of $0.7 billion over the current fiscal year 1972 estimate of $75.8 billion.

Of this total of $83.4 billion requested for the Department of Defense, $78.7 billion will be considered by the Department of Defense Subcommittee of which I have the honor to serve as chairman.

I intend to make every effort to have the Department of Defense appropriation bill for fiscal year 1973 enacted before June 30, and I have been assured of the full cooperation of the distinguished senior Senator from North Dakota (Mr. YOUNG), the ranking minority member of the subcommittee, in attaining this goal. It is not possible to determine the dollar impact resulting from the enactment of the Department of Defense appropriation bills some 5 or 6 months after the beginning of the fiscal year, but I am convinced that it results in the waste of many millions of dollars.

The Department of Defense Subcommittee will begin its consideration of these requests totaling $78.7 billion in the near future with two objectives in mind, namely—

First. To recommend the appropriation of funds necessary to provide a United States defense posture second to none, and

Second. A review of each individual request to determine if reductions can be made without endangering national security.

These have always been my objectives and those of the subcommittee, and it goes without saying that I hope this will always be true.

A preliminary review of the defense budget proposed for fiscal year 1973 reveals a number of programs and projects that will require some rather difficult decisions on the part of the Congress. It should be made plain here that it is not my intention to burden the Senate with detailed comments on any of those issues that will come before the committee. Rather, I desire to alert the Congress to the possible controversial items that I see ahead. Toward that end, I wish to discuss briefly some of the larger programs and projects proposed by the Pentagon.

DEPARTMENT OF DEFENSE MANPOWER

The fiscal year 1973 defense budget is based on an active duty military strength of 2,358,000 and civilian employment of 1,036,000. The military strength includes the following forces:

Army	841,000
Navy	602,000
Marine Corps	198,000
Air Force	717,000

It is estimated that 52 percent of the total defense budget—about $43.4 billion—is required for manpower-related costs. It is significant to note that, of the requested increase of $6.3 billion over funds provided and requested for fiscal year 1972, $4.1 billion is for planned increases in compensation of military, civilian, and retired military personnel.

Last year, that committee was advised that the Army's manning program for Europe was based on 58 percent of its personnel assigned to combat functions and 42 percent assigned to support functions. I believe that through a better use of personnel the percentage of those assigned to support functions can be reduced. I also want to take a hard look at the personnel assigned to the operation of the Navy's Shore Establishment in relationship to the number of personnel assigned to the fleet.

We will also review the Air Force allocation of personnel between combat and support activities.

NAVY'S F–14 AIRCRAFT

The budget includes approximately $570 million for the procurement of 48 F–14 aircraft. This request is based on the production of these 48 aircraft in accordance with the terms of the existing contract. According to press reports, the prime contractor, Grumman Aircraft Corp., has advised the Navy that it will not produce these aircraft under the terms of the existing contract.

It is likely that the Department of Defense and the Department of the Navy will propose to renegotiate this contract to procure these 48 aircraft at a cost substantially in excess of the current contract cost. This matter will be carefully reviewed by the subcommittee. I want to make my position on one point absolutely clear: In the event additional funds are required for the procurement of these 48 aircraft, I will consider such funds only after they are requested by the President through the formal budget procedure.

CLOSE AIR SUPPORT AIRCRAFT

The budget includes $53.5 million for the continuation of the development of the Army's Cheyenne helicopter, and $48.1 million for the continuation of development of the Air Force's A–X close-support aircraft. There are many who feel that a decision should be made as soon as possible for the development and production of only one of these aircraft. This will receive careful review by the subcommittee.

NUCLEAR ATTACK AIRCRAFT CARRIER

A total of $299 million is requested for long leadtime items for the CVAN–70, the third nuclear attack aircraft carrier of the *Nimitz* class.

The total estimated cost of this ship is approximately $960 million, but when the cost of the required aircraft, the four nuclear guided missile frigates required to protect the carrier, the one ship required to support the carrier, and other support costs are considered, the total cost is in the neighborhood of $3 billion. Furthermore, the crew of this carrier, including its air wing, total about 5,300 men, and an additional 2,400 men are required for the supporting ships.

At the present time, we are operating 13 attack aircraft carriers, and one antisubmarine carrier is being operated as an attack carrier for a total of 14. Two nuclear attack carriers are under construction and will join the fleet in the near future.

It will be recalled that there is a difference of opinion within the Joint Chiefs of Staff as to the number of attack aircraft carriers we need.

I want to consider all of these factors before recommending funds for the initiation of this new carrier.

THE AIR FORCE'S F–15 AIR SUPERIORITY AIRCRAFT

The request includes $454.5 million for the continuation of the development of the Air Force's F–15 air superiority fighter and $456 million for the initial procurement of 30 of these aircraft for a total request of $910.5 million. The first flight of this aircraft is not scheduled until July of this year, and there has been a substantial delay in the development of the engine for this aircraft. The subcommittee will take a hard look at the schedule for this aircraft before funds are recommended for production. We will want to apply the "fly-before-buy" concept to procurement of this aircraft.

SAFEGUARD ABM SYSTEM

The requests include approximately $1.5 billion for the continuation of the development and deployment of the Safeguard ABM system. The funds included in the request for the deployment of this system in the Washington, D.C., area will be subjected to a careful review, particularly in the light of the fact that the SALT talks may lead to a limitation of the ABM program under the best of circumstances.

NAVY'S UNDERSEA LONG-RANGE MISSILE SYSTEM (ULMS)

A total of $520.4 million is requested for the continuation of development of the Navy's proposed undersea long-range missile system commonly referred to as ULMS. The request also includes $394.5 million for the advance procurement of long leadtime items to support the production of this system and $27.3 million for military construction projects to support the system, for a total request of $942.2 million. The need for the acceleration of this program will be carefully considered by the subcommittee in the light of the continuation of the program to convert existing Polaris submarines to carry the longer range Poseidon missile.

OTHER WEAPONS SYSTEMS

The budget also includes substantial funds for the continued deployment and development of many other expensive weapons systems, all of which will be reviewed by the subcommittee. The following are illustrative of these programs: over $1 billion for the construction of additional nuclear attack submarines; approximately $400 million for the continuation of the Polaris-to-Poseidon submarine conversion program; approximately $860 million for the con-

tinuation of the development and deployment of the Minuteman II and III ICBM systems; approximately $665 million for the continued development and production of the Navy's new S–3A antisubmarine aircraft; and approximately $445 million for the continued development of the Air Force's B–1 manned bomber aircraft.

MILITARY ASSISTANCE

One and three-tenths billion dollars is requested for military assistance, and in addition, the requests for military functions include approximately $2 billion for the support of the South Vietnamese Armed Forces, other free world forces in South Vietnam, and local forces in Laos. I personally feel that a substantial reduction can and should be made in the $1.3 billion requested for military assistance. We cannot continue to support the military forces of other nations in view of our current fiscal situation. This fact is borne out by the Federal funds deficit of $44.7 billion now estimated for the current fiscal year.

The careful consideration of requests totaling $78.7 billion is a difficult task and responsibility that I do not take lightly. As I stated earlier, I will start these hearings with three objectives in mind; namely:

First. Recommendation of the funds necessary to provide the United States with a defense posture second to none;

Second. A thorough review of each request to determine if reductions can be made in these requests without endangering national security; and

Third. The enactment of the Department of Defense Appropriation bill by June 30.

Mr. President, I wish to announce that just as soon as we come back from the Lincoln Day holiday, I propose to start hearings on the defense bill.

The ACTING PRESIDENT pro tempore. Is there further morning business?

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

PROPOSED LEGISLATION RELATING TO ISSUANCE OF COTTON CROP REPORTS

A letter from the Acting Secretary of Agriculture, transmitting a draft of proposed legislation to amend existing statutes to authorize the Secretary of Agriculture to issue cotton crop reports simultaneously with the general crop reports (with an accompanying paper); to the Committee on Agriculture and Forestry.

REPORT ON OVEROBLIGATION OF APPROPRIATIONS

A letter from the Deputy Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that the appropriations to the Department of Transportation for "Operating expenses" and "Reserve training," for the fiscal year 1972, had been reapportioned on a basis which indicates the necessity for a supplemental estimate of appropriations; to the Committee on Appropriations.

REPORT ON PROGRESS OF RESERVE OFFICER TRAINING CORPS FLIGHT TRAINING PROGRAM

A letter from the Secretary of the Air Force, transmitting, pursuant to law, a report on the progress of the Reserve Officer Training Corps Flight Training Program, for the calendar year 1971 (with an accompanying report); to the Committee on Armed Services.

REPORT ON CERTAIN FACILITIES PROJECTS PROPOSED TO BE UNDERTAKEN FOR THE ARMY NATIONAL GUARD AND ARMY RESERVE

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting, pursuant to law, a report on certain facilities projects proposed to be undertaken for the Army National Guard and Army Reserve (with an accompanying report); to the Committee on Armed Services.

PROPOSED AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PURPOSES

A letter from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to authorize appropriations during the fiscal year 1973 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes (with an accompanying paper); to the Committee on Armed Services.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A resolution adopted by the City Council of Lake Forest Park, Washington, praying for the enactment of legislation relating to tax-sharing; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PROXMIRE, from the Committee on Appropriations, with amendments:

H.R. 12067. An act making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1972, and for other purposes (Rept. No. 92–594).

By Mr. ALLEN, from the Committee on Agriculture and Forestry, with amendments:

S. 1794. A bill to authorize pilot field-research programs for the control of agricultural and forest pests by integrated biological-cultural methods (Rept. No. 92–595).

INTRODUCTION OF BILLS AND JOINT RESOLUTION

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. JAVITS:

S. 3067. A bill to eliminate racketeering in the sale and distribution of cigarettes and for other purposes. Referred to the Committee on Commerce.

By Mr. JORDAN of North Carolina:

S. 3068. A bill to amend the provisions of the Agricultural Adjustment Act of 1938, as amended, relating to the lease of tobacco acreage allotments and marketing quotas. Referred to the Committee on Agriculture and Forestry.

By Mr. CHILES:

S. 3069. A bill to amend title 28, United States Code, to provide that Madison County, Florida, shall be included in the northern judicial district of Florida. Referred to the Committee on the Judiciary.

By Mr. THURMOND (for himself and Mr. HARTKE):

S. 3070. A bill to amend chapter 15 of title 38, United States Code, to provide for the payment of pensions to World War I veterans and their widows, subject to $3,000 and $4,200 annual income limitations, to provide for such veterans a certain priority in entitlement to hospitalization and medical care; and for other purposes. Referred to the Committee on Veterans' Affairs.

By Mr. WEICKER:

S. 3071. A bill to amend the Urban Mass Transportation Act of 1964, as amended. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. INOUYE:

S. 3072. A bill to amend section 405 of title 37, United States Code, relating to the payment of a per diem with respect to the dependents of certain members of the uniformed services while on duty outside of the United States. Referred to the Committee on Armed Services.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JAVITS:

S. 3067. A bill to eliminate racketeering in the sale and distribution of cigarettes and for other purposes. Referred to the Committee on Commerce.

Mr. JAVITS. Mr. President, I send to the desk a bill to deal with interstate cigarette smuggling. This bill will be important in many States which tax cigarettes. It is an extremely serious problem.

Mr. President, in recent years cigarette smuggling has become a serious problem for many States, resulting in large losses in cigarette tax revenue and has become an important source of income for elements of organized crime. New York State alone has estimated that it loses in excess of $40 million a year in vitally needed revenues because of illegal trafficking in cigarettes.

While New York and other States have strengthened their efforts at cigarette tax enforcement, they have been unsuccessful in stopping the increased bootlegging of cigarettes across State lines. Because of the difference in cigarette tax rates charged by the different States throughout the country, smuggling of cigarettes has become a very profitable business. The difference in tax rates in some cases amounts to 19 cents per pack. Only the Federal Government can take effective action to stop the flow of untaxed cigarettes in interstate commerce.

I might point out that because of the illegality of this interstate smuggling there is a good deal of hijacking which contributes very materially to crime and the amount of dollars criminals have in their pockets.

The proposed legislation seeks to eliminate racketeering in the sale and distribution of cigarettes and also to facilitate more effective enforcement of State and local cigarette tax laws.

Under the bill contraband cigarettes would be 20,000 or more untaxed ciga-

rettes transported in interstate commerce by one who is not a manufacturer, a licensed distributor, an officer or agent of the U.S. Government, or a common or contract carrier. Violations would be a felony under Federal law carrying a fine of up to $10,000 and/or imprisonment for up to 2 years.

Similar legislation has been introduced in the House by Representative CELLER of New York and I hope that this legislation will be enacted quickly so that we can begin to wage an effective fight against this burgeoning problem.

Mr. President, I ask unanimous consent that my bill be printed in the RECORD at this point.

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

S. 3067

A bill to eliminate racketeering in the sale and distribution of cigarettes and for other purposes

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

STATEMENT OF FINDINGS AND PURPOSE

SEC. 1(a). The Congress finds that (1) smuggling of cigarettes in interstate commerce has dramatically increased in recent years with organized crime playing a larger role in the situation; (2) present Federal law pertaining to cigarette smuggling is ineffective because it covers only smuggling through use of the mails and does not reach smuggling using trucks and similar means which account for the main part of the problem; (3) a sharply expended Federal role in the fight against cigarette smuggling is essential if there is to be an effective law enforcement effort against cigarette smuggling since the interstate nature of the crime places individual states at too great a disadvantage to handle these problems effectively.

(b) It is the purpose of this Act to provide a timely solution to a serious organized crime problem and to help provide relief to many cities and states at a small cost to the Federal Government.

SEC. 2. For the purposes of this Act—

(1) the term "cigarette" means—

(a) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(b) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a),

(2) the term "contraband cigarettes" means a quantity in excess of twenty thousand cigarettes, bearing no evidence of the payment of applicable State cigarette taxes in the State where they are found and which are in the possession of any person other than (a) a person holding a permit issued pursuant to chapter 52 of title 26 United States Code, as a manufacturer of tobacco products or as an export warehouse proprietor or his agent; (b) a common or contract carrier: *Provided, however,* That the cigarettes are designated as such on the bill of lading or freight bill; (c) a person licensed or otherwise authorized by the State where the cigarettes are found, to deal in cigarettes and to account for and pay applicable cigarette taxes imposed by such State; or (d) an officer, employee, or other agent of the United States, or its departments and wholly owned instrumentalities.

(3) the term "common or contract carrier" means a carrier holding a certificate of convenience or necessity or equivalent operating authority from a regulatory agency of the United States or of any State or the District of Columbia.

(4) the term "State" includes a political subdivision thereof and the District of Columbia.

SEC. 3. The transportation of contraband cigarettes in interstate commerce is prohibited.

SEC. 4. Nothing in this Act shall be construed to affect the concurrent jurisdiction of a State to enact and enforce State cigarette tax laws, to provide for the confiscation of cigarettes and other property seized in violation of such laws, and to provide penalties for the violation of such laws.

SEC. 5. Whoever violates any provisions of this Act shall be sentenced to pay a fine of not more than $10,000, or to be imprisoned for not more than two years, or both.

SEC. 6. Any contraband cigarettes transported in interstate commerce in violation of the laws of any State and any vehicle or other means of transportation used for the transportation of contraband cigarettes in interstate commerce may be seized and shall be forfeited to the United States.

SEC. 7. The United States district courts shall have jurisdiction to prevent and restrain violations of this Act.

SEC. 8. This Act shall take effect ninety days after its enactment.

By Mr. JORDAN of North Carolina:

S. 3068. A bill to amend the provisions of the Agricultural Adjustment Act of 1938, as amended, relating to the lease of tobacco acreage allotments and marketing quotas. Referred to the Committee on Agriculture and Forestry.

Mr. JORDAN of North Carolina. Mr. President, I offer for appropriate consideration a further amendment to the Agricultural Adjustment Act of 1938 which would permit the sale of Flue-cured tobacco poundage during a marketing year.

The proposal would permit a grower who had produced excess poundage in any given year to market it under rights purchased from another farmer whose poundage was less than his allotted quota for the same year.

The transfer of marketing rights would apply only to the year in which the agreement was made and would not affect the poundage allotment of either the buyer or the seller of the rights for any ensuing crop year.

Its purpose would be to enable a producer to take full advantage of a favorable crop while at the same time affording an opportunity for additional income for the grower whose production, for reasons of adverse weather or other circumstances, was not up to normal expectations.

The amendment would also have the effect of reducing overall costs of tobacco production as is so necessary if we are going to continue to grow the world's best tobacco and compete on an equal basis for the overseas leaf market.

It is my intention to hold hearings by the Agricultural Production, Marketing and Price Stabilization Subcommittee of which I am chairman as soon as possible in the hope of getting action on this legislation in time to have it apply to this marketing year.

By Mr. THURMOND (for himself and Mr. HARTKE):

S. 3070. A bill to amend chapter 15 of title 38, United States Code, to provide for the payment of pensions to World War I veterans and their widows, subject to $3,000 and $4,200 annual income limitations to provide for such veterans a certain priority in entitlement to hospitalization and medical care; and for other purposes. Referred to the Committee on Veterans' Affairs.

Mr. THURMOND. Mr. President, the purpose of this bill is to provide a more equitable pension program for the Veterans of America's wars. Our present veteran benefit laws are, with one exception, the best that have been devised by any nation. The exception is concerning the Veterans of the War of 1917–18, commonly referred to as World War I.

It was during this war that our expansion as a world power really began. Our industry expanded until we changed from an importer to an exporter, from a borrower of finances to a lender, from a nation of isolation to a nation whose interests were worldwide.

From the birth of this Republic, the United States of America held the conception that our Nation owed its existence to those who fought. Some gave their lives to bring this Nation into being, and our country gave them special recognition in the form of tangible benefits.

Mr. President, beginning with the Revolutionary War and continuing through the Civil War, benefits were awarded to the men who fought to preserve this Nation. These benefits recognized these men for special consideration.

At the close of World War I, our Nation expanded so rapidly within and without, that the recognition accorded the veterans of previous wars was lost in the growth from a nation of isolation to a world power. Soon after the parades for the heroes of the battles of Chateau-Thierry and Verdun were over, these valiant men were forgotten.

As a benevolent nation we began to help our allies in World War I. Instead of the prevailing spirit of previous wars, which would have rewarded the veterans of World War I, we began to feed and clothe the nations of the world. We forgot the veterans whose service won the war.

It took another world conflict to arouse the conscience of our Nation. At the close of World War II an awakened people realized that without those who made their contribution on the battlefield, we would have no Nation. Laws were then passed providing benefits superior to any of previous wars.

Mr. President, the returning troops were provided unemployment compensation of $20 per week for 52 weeks, and educational opportunities were made available to all who chose to use the privilege. After rehabilitation and hospitalization, other benefits including compensation and pension were provided. Thus, the most adequate veterans benefits program of any nation was created. However, there was still one exception, that of the veterans of World War I.

It is this gap in an otherwise outstanding veterans benefits program this bill attempts to correct. Some special consideration for the veterans of World War I is certainly needed.

At the close of World War I there were more than 4,700,000 veterans. Today, there are less than 1,400,000 World War I veterans.

At a time in their lives when expenses are heavier than ever before, these aged veterans find themselves living in a poverty classification and deserve special consideration. This is the inequity this bill attempts to correct.

Mr. President, I request that this bill be appropriately referred and ask unanimous consent that it be printed in the RECORD.

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

S. 3070

A bill to amend chapter 15 of title 38, United States Code, to provide for the payment of pensions to World War I veterans and their widows, subject to $3,000 and $4,200 annual income limitations; to provide for such veterans a certain priority in entitlement to hospitalization and medical care; 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 "World War I Pension Act of 1972".

SEC. 2. (a) Subchapter II of chapter 15 of title 38, United States Code, is amended by adding the following new sections immediately after section 512:

"§ 513. Veterans of World War I

"(a) The Administrator shall pay to each veteran of World War I who meets the service requirements of section 521 of this title a pension at the following monthly rate:

"(1) If a veteran is unmarried (or married but not living with and reasonably contributing to the support of his spouse) and has no child, pension shall be paid at the rate of $135 per month.

"(2) If a veteran is married and living with or reasonably contributing to the support of his spouse, or has a child or children, pension shall be paid at the rate of $150 per month.

"(b) Where a veteran entitled to a pension under this section is in need of regular aid and attendance, the pension payable to him under subsection (a) shall be increased by $125 monthly, or $50 monthly if permanently housebound.

"(c) No pension shall be paid under this section to any unmarried veteran (or married but not living with and reasonably contributing to the support of his spouse) and who has no child, if his total income exceeds $3,000 or to any married veteran, or any veteran with children, if his total annual income exceeds $4,200.

"(d) Where any person is entitled to pension under this section or section 514 or 515 of this title and is also entitled to pension under another section of this chapter, he shall receive whichever amount is the greater.

"§ 514. Widows of veterans of World War I

"(a) The Administrator shall pay to the widow of each veteran of World War I who meets the service requirements of section 521 of this title pension at the following monthly rate:

"(1) If there is no child, pension shall be paid at the rate of $100 per month.

"(2) If there is a widow and one child, pension shall be paid at the rate of $125 per month.

"(3) If there is a widow and more than one child, the monthly rate payable under paragraph (2) of this subsection shall be increased by $20 for each additional child.

"(b) No pension shall be paid to a widow under this section unless she meets the requirements of section 541(e) of this title.

"(c) No pension shall be paid under this section to any widow without a child if her total annual income exceeds $3,000, or to any widow with one or more children if her total annual income exceeds $4,200.

"§ 515. Children of veterans of World War I

"(a) Whenever there is no widow entitled to pension under section 514 of this title, the Administrator shall pay to the child or children of each veteran of World War I who met the service requirements of section 521 of this title, or who at the time of his death was receiving (or entitled to receive) compensation or retirement pay for a service-connected disability, pension at the monthly rate of $45 for one child, and $18 for each additional child.

"(b) Pension prescribed by this section shall be paid to eligible children in equal shares.

"(c) No pension shall be paid under this section to a child whose annual income, excluding earned income, exceeds $2,000."

(b) The analysis of such subchapter II is amended by adding immediately after

"512. Spanish-American War veterans."

the following:

"513. Veterans of World War I.

"514. Widows of veterans of World War I.

"515. Children of veterans of World War I."

SEC. 3. Section 503 of title 38, United States Code, is amended by striking out "In" at the beginning of such section and inserting in lieu thereof "(a) In"; and by adding at the end thereof a new subsection as follows:

"(b) Notwithstanding the provisions of subsection (a) of this section, in determining the annual income of any person for any year for purposes of sections 513, 514, or 515 of this title, there shall not be included in such income the amount of any increase in monthly insurance benefits payable to such person during such year under section 202 or 223 of the Social Security Act, the amount of any increase in the monthly annuity or pension payable to such person during such year under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937, or the amount of any cost-of-living adjustment of an annuity under section 8340 of title 5."

SEC. 4. Section 610(a)(1)(B) of title 38, United States Code, is amended by changing the semicolon to a comma, and adding the following "except that in this category priority in admission shall be extended to any veteran in receipt of pension under section 513 of this title;".

SEC. 5. This Act shall take effect on the first day of the second calendar month following the date of its enactment.

ADDITIONAL COSPONSORS OF A BILL

S. 2890

At the request of Mr. Moss, the Senator from Minnesota (Mr. MONDALE) and the Senator from Alaska (Mr. GRAVEL) were added as cosponsors of S. 2890, a bill to authorize the Civil Service Commission to furnish assistance to provide for the emergency transitional employment by State or local governments of Federal employees who lose their positions as the result of reductions in force in areas of high unemployment.

SENATE RESOLUTION 232—SUBMISSION OF A RESOLUTION RELATING TO APPROPRIATIONS FOR RURAL ELECTRIFICATION PROGRAM FOR 1972

(Referred to the Committee on Agriculture and Forestry.)

Mr. CHILES. Mr. President, the Constitution says that the appropriations power is the exclusive prerogative of Congress. But the history of the Office of the Executive seems to have been a history of the amassing of Executive spending prerogatives of its own. I believe it is clear that the framers of our Constitution never intended to allow the President an item veto. But the effect of impounding of funds can easily be interpreted as a kind of item veto. It seems it is only by accident that a Member of Congress learns that money has been withheld after a program has been authorized, money been appropriated and the bill signed into public law by the President. But, on occasion the Congress, engaged in oversight activity, does find a legislative program canceled, abbreviated, or held back by the Office of Management and Budget, the arm of the President. And in these cases the President seems to be matching his will against the will of the Congress.

I hope that in the case of the rural electrification program the Executive will find that the Congress is unwilling to bend its will. The Congress, I believe, ought to maintain our tradition of separation of powers and the system of checks and balances by seeing to it that the laws are "faithfully executed" by the Chief Executive. The dangerous trend of impounding could become a practice leading eventually to the destruction of public reliance on the Congress.

If rural America is to be a viable party of a dynamic nation, it must have dependable, low-cost electricity. If we truly carry out concern with the quality of life in America to the farm we soon realize that the demand for electricity in rural America is so great that rural electrification programs must be kept moving forward. The systems will need to borrow close to $900 million during the present fiscal year to build new generating plants, transmission and distribution lines. Rural electric cooperatives sponsor and promote, and in some cases actually build houses, schools, parks, pools, factories, and hospitals in rural America.

One specific example of the practice of freezing funds prompted me to introduce a resolution last October expressing the sense of the Senate concerning the availability of appropriated funds for the food stamp program. Today, I raise the same objective regarding the REA. The President withholds expenditure of funds so long as the political system permits him to do so—until Congress discovers the withholding and makes it known that it will insist on "execution of the law." The decisive appeal is not to legal principles, however, but to constituencies, agency support and, most importantly, the watchful eye of the Congress.

I am today introducing a bill which would express the sense of the Senate that the full amount appropriated for the rural electrification program for fiscal 1972 should be made available by the administration to carry out that program. Congress appropriated a total of $545 million for the REA program for fiscal 1972 and the Office of Management and Budget has released $438 million of that appropriation, leaving $107 million unavailable for use in the program. In the State of Florida, as well as elsewhere

in the Nation, the demand for rural electricity is such as to require utilization of at the very least the full amount appropriated. The electric energy supplied through the program is absolutely essential to the continued development of rural areas.

Because the making of general policy in the United States constitutionally, traditionally, and politically belongs to the Congress, this resolution would be a step toward reestablishing that goal. It would be a positive expression that our system does not and will not allow the Chief Executive to obstruct constitutional intent or to subvert our system of a balanced government.

I ask unanimous consent that a copy of this resolution be printed at this point in my remarks.

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

S. RES. 232

Whereas Congress appropriated a total of $545 million for the rural electrification program for fiscal 1972; and

Whereas the Office of Management and Budget has released $438 million of that appropriation, leaving $107 million unavailable for use in the program; and

Whereas the demand for rural electric loans is such as to require utilization of the full amount appropriated; and

Whereas electric energy is essential to the continued development of rural areas: Now, therefore be it

Resolved, That it is the sense of the Senate that the remainder of the amount appropriated be immediately released by the Office of Management and Budget

ADDITIONAL COSPONSOR OF A RESOLUTION

SENATE RESOLUTION 209

At the request of Mr. CHILES, the Senator from Washington (Mr. JACKSON) was added as a cosponsor of Senate Resolution 209, relating to the plight of Jews in the Soviet Union.

SENATE CONCURRENT RESOLUTION 55—SUBMISSION OF A CONCURRENT RESOLUTION RELATING TO THE RECOGNITION OF BANGLADESH

(Referred to the Committee on Foreign Relations.)

Mr. HOLLINGS. Mr. President, on behalf of the Senator from Ohio (Mr. SAXBE) and myself, I submit a sense-of-the-Congress concurrent resolution calling upon the President to recognize Bangladesh as an independent country and to accord it full diplomatic recognition. It is right that we do so. And it is realistic that we do so.

Over a year ago, in a free election, the people of East Pakistan voted overwhelmingly against the Government of West Pakistan. The Awami League, campaigning on a platform of provincial autonomy won 167 of the 169 East Pakistani seats in the National Assembly. The reaction of President Yahya Khan's government was to cancel the meeting of the Assembly and to suppress with violence and brutality the expressed wishes of the East Pakistani people. For months the world watched in horror as rape, pillage, and murder swept over the territory of East Pakistan. Nine million refugees sought survival in India, but hundreds of thousands of others were denied even that—they were the victims of genocide.

One would have hoped that the United States—the land of the free and the home of the brave—would have taken a resolute stance against the barbarism and would have supported the results of a free election. After all, is a free election not what we have been fighting for all these years in South Vietnam? Our policy was instead to ally ourselves with the sick regime of President Yahya and to underwrite with American arms the committing of genocide.

In the process we lost the faith of the Indian people. We lost the faith of the East Pakistanis. And we lost the faith of freedom-loving peoples everywhere.

Now—although the wrongs of the past year cannot be righted—we have the chance to look anew at the situation and to formulate a policy in keeping with the events of these long months.

The people of Bangladesh have made good their claim to freedom. Now they are struggling with the harsh tasks of reconstruction—of rebuilding their ravaged lands. They have their own government, whereas the government we supported has been swept from power and its leader is under house arrest. The future of Bangladesh is far from assured. That future will be stormy—the road will be filled with many pitfalls. But the people of that country have earned the right to try, and they have earned the right to at least be recognized by the other nations of the world.

Mr. Nixon has told us that in South Vietnam he is prepared to accept the results of a free election no matter what the outcome—even if such an election installs the Communists in power. Mr. President, Bangladesh has had its election. It has a government obviously enjoying the strong support of the people. The United States, which prides itself as the world's leading democracy, should welcome the world's newest democracy.

In that spirit, Mr. President, I recommend that the Congress give urgent attention to the passage of the following concurrent resolution:

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the President should immediately recognize Bangladesh as an independent foreign country and recognize the government of that country.

Mr. SAXBE. Mr. President, today the junior Senator from South Carolina (Mr. HOLLINGS) and I have submitted a concurrent resolution to recognize Bangladesh as an independent nation. The United States cannot and should not logically ignore a nation of 75 million people, who, through terrible suffering, have emerged as a member of the world community.

Mr. President, in that connection I would like to call to the attention of my colleagues an article by James A. Michener, entitled "A Lament for Pakistan," which appeared in the New York Times magazine on January 9, 1972, during our recess. In Michener's usual professional manner, he has detailed the history of this chaotic struggle in a way we can all understand. Mr. President, I consistently called attention to the atrocities occurring in what was then called "East Pakistan" on March 25 last year, and at that time began urging suspension of our aid. I talked to both Mrs. Gandhi and President Yayah Khan on the eve of the outbreak of hostilities but, unfortunately, my efforts were insufficient. I ask unanimous consent that the article be printed in the RECORD.

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

A LAMENT FOR PAKISTAN

(By James A. Michener)

Pakistan was the impossible dream that failed. It was a doomed attempt to bind together two totally disparate sections of Asia, separated not only by language, custom, economics, politics and tradition but also by 1,000 miles of alien territory. The only cement it could rely upon was religion. And in less than 25 years religion proved unequal to the task.

It would be hard to find two parts of Asia less suited to be partners in such an effort. West Pakistan is part of the upland of Asia, girt by mountains, marked by vast desert areas, a plains area whose most notable characteristic is the romantic Khyber Pass.

East Pakistan is the flatest nation on earth, where an elevation of 4 feet becomes a hill. It is a mud flat where most residents have never seen a stone or rock. It is formed by two of the world's most magnificent rivers, the Ganges and the Brahmaputra, as they sprawl out at the end of their journey from the Himalayas. For hundreds of thousands of years these mighty streams have been depositing mountain silt in the Bay of Bengal, so that the under-water shelf off East Pakistan is also flat, and only a score of feet below the surface. This explains why tidal waves sometimes sweep in from the bay, inundating the flat-lands and killing hundreds of thousands.

When Maj. James Rennell surveyed the rivers in 1765 he found them in locations much different from the ones they occupy today. In fact, for the last 200 years they have been wandering crazily across the delta and will continue to do so. Rennell stated in his report, "We may safely pronounce that every other part of the country [that is, except some hill areas which would not be included in East Pakistan] has, even in the dry season, some navigable stream within 25 miles at farthest and more commonly within a third part of that distance."

The people of the two areas differ as much as their land. The Punjabi of West Pakistan is a tall, well-proportioned man, light in color and obviously of Aryan extraction. The Bengali of East Pakistan is short, almost skinny, very dark and with a marked proportion of Dravidian blood, inherited from those ancient people who inhabited the land before the Aryans came.

The Punjabi is direct, blunt, outspoken and much given to the wild natural life of the mountainous frontier; he is not fond of books nor philosophical discussion. The Bengali is the Irishman of Asia, a fiery, brilliant orator given to endless disputation. He is intellectually clever and, when provided the opportunity, is quick at learning.

The Punjabi eats meat and wheat, earns his money from cotton, dresses his men in trousers and his women in skirts. The Bengali eats fish and rice, earns his money from jute, dresses his men in dhotis (sarong-like skirts) and his women in trousers.

The two speak radicaly different languages, the Punjabi using a form of Urdu,

which is of Persian derivation and is written from right to left in an Arabic script; its books are printed in what we would describe as back-to-front. The Bengali speaks the language known by that name; it is of Sanskrit derivation with some Dravidian remnants, and is written in a unique Bengali script from left to right, with its books being printed front to back like ours. It is easier for either a Punjabi or Bengali to learn English than to learn the other language of his own country. Very few Punjabis learned Bengali; any Bengali who aspired to a job with the Government had to struggle with Punjabi, but he rarely mastered the language.

Power always rested with the west, so that even though the Punjabi was inherently less interested in books than the Bengali, before long it was the Punjabi schools and universities which prospered while the Bengali counterparts languished. What was worse, incessant political agitation in Bengal kept its universities closed, so that a student would be lucky if his classes met as much as 50 days during the year, and the disparity between the two halves increased.

When they joined, West Pakistan had the larger territory (310,403 square miles to 54,501) but much the smaller population (34 million in the west, 49 million in the east). This made East Pakistan one of the most densely populated areas in the world. Today it contains 1,336 people to the square mile. If the United States were as densely populated as East Pakistan, it would contain one and one-half times the total population of the world.

Trying to unite these two wildly different areas was like trying to join a group of free-ranging West Texas ranchers to a group of Boston schoolteachers, with an enemy Arkansas, Tennessee, Virginia, Pennsylvania and New York separating them by a thousand miles. And the only thing the Texans and the Bostonians would have in common was religion. No wonder the dream failed.

When, sometime around the year 1500 B.C., Aryans swept into India and overran the indigenous Dravidians, they established a sound and good society. To keep it that way, they perfected a rigorous caste system which would operate to their advantage and to the disadvantage of people who held menial jobs like sweeping, burying the dead, slaughtering cattle and making shoes. This regimented society flourished till about A.D. 1000, when bands of Moslems from Afghanistan came roaring through the Khyber Pass to ravage the cities of India. Mahmud of Ghazni made 17 such yearly trips until it was said of him, "He kept the cities of India tethered like cows to be milked as he wished." It was now that the famous lullaby was sung by Moslem mothers to their sons, "Beautiful are the women of India, and sleek are its cattle."

In his wake other Moslem adventurers arrived, and from them rose the Mogul Emperors like Akbar (reigned 1556–1605) and Shah Jehan (reigned 1628–58), who built the Taj Mahal for his wife Mumtaz. Always a minority in a vast Hindu population, the Moslems ruled ably during some dynasties, miserably in others. They became a majority of the population only in areas like the Punjab and its neighboring territories in the west, and, for some peculiar reason never fully explained, in Bengal in the east, where the local peasants found in the social freedom of Islam an escape from the repression of the Hindu caste system. If India seems to revel in its present victory it is partly because this is seen as a justified revenge for centuries of Moslem domination.

In the early 18th century came the British, who had to defeat Moslem rulers in order to win India. Naturally the British allied themselves with the Hindus and, when they gained ascendancy, selected Hindus as their managers and clerks. The role of the Moslem declined swiftly from that of alien ruler to that of workman at the lower levels.

At this point the Moslems made a most serious miscalculation. They retired from competition, as if cursing both the Hindu and the Englishman. Consequently, the opportunities which the latter brought to the subcontinent became the exclusive property of the Hindus. Typically, in 1880, after the English had offered high schools, 36,686 Hindus entered but only 363 Moslems; 3,155 Hindus had won advanced degrees but only 57 Moslems.

The English saw in this separation an advantage, and while there is little evidence that they took actual steps to exacerbate the situation, they did profit from it and many thought the way one local commandant did in 1860: "Our endeavor should be to uphold in full force the (for us fortunate) separation which exists between the different religions and races, not to endeavor to amalgamate them. *Divide et impera* should be the principle of Indian government."

By 1920 the two religious groups were so far apart as to be obviously irreconcilable, but there was still the chance that they could exist side by side as separated entities in the free India that was then looming on the horizon. However, at this time two fiery Moslem figures came on the stage, Muhammad Iqbal, a Punjabi poet of real distinction, who preached a united and free Islam, and Muhammad Ali Jinnah, a whip-smart Karachi lawyer who decided rather late in the game that the only future for his people was total separation from India.

The ideas of Iqbal swept the Moslem marketplaces, and Pakistan can be said to be the first nation in the world founded by a poet. Even the name was coined by a philosopher, a young student at Cambridge: P for Punjab, A for the frontier provinces bordering on Afghanistan, K for Kashmir, S for Sind and TAN for Baluchistan. Observe that Bengal did not figure in the name, nor in the initial agitation for the state.

Jinnah proved as adroit and persistent as Nehru and Gandhi in the infighting to win a free India; in addition, his brilliant argumentation and wasplike persistence made both England and India realize that the Moslems intended to have a nation of their own. Decision had to be made during World War II, and by the time Hitler committed suicide it was fairly clear to all that England would soon depart. The big question was: What would follow? Jinnah was determined that his Moslems must have their own free nation.

Lord Mountbatten was dispatched from London with plenary powers to arrange the future; he arrived on March 22, 1947, fully determined to hold free India together as one nation. He announced that the new nation would come into being in June, 1948, only 14 months away. Winston Churchill, then out of power, grumbled that such speed indicated either a shameful flight or a hurried scuttle.

Jinnah quickly demonstrated that Mountbatten's ideal of holding the two parts of India together was futile; division was inevitable. In some pique Mountbatten therefore reached the extraordinary decision that if division was inescapable, let it come right away. On June 3, 1947, the Cabinet in London announced that partition would occur; in India Mountbatten announced that the two new nations would begin separate operation on Aug. 15, 1947, only 72 days away.

The problems of 900 years—dating from the first invasions of Mahmud of Ghazni—were to be settled in 72 days. Never had there been a more precipitate abandonment of power, and since the Hindus were rather well organized and had most of the trained government personnel, they were able to influence decisions constantly in their favor. Jinnah and his less ably trained cadre simply never caught up. Lord Mountbatten is therefore a great hero in India, revered as one of the founders of the new nation; in Pakistan his name is reviled.

He did one clever thing. On the desk of every official appeared a calendar containing 72 leaves. Each morning the official tore off a sheet and saw staring him in the face the fact that he had only 31 or 19 or 11 days left before the two new nations came into existence. Heroic work was done, most of all by Sir Cyril Radcliffe, who drew the actual lines separating the two nations. His committee consisted of two Hindu judges and two Moslem judges, so that every decision of where this village should go or that river be cut was made by him.

Radcliffe did a reasonably good job (with conspicuous errors here and there, such as cutting across rivers in the Punjab and separating Calcutta from its hinterland) and on Aug. 15, as planned, the two great nations came into being; India was the second largest nation on earth, Pakistan the fifth. The dissection of India had been completed.

Immediately a vast interchange of populations began. Some 16 million people were on the move, more than a million of whom were slaughtered. The nations had been baptized in blood.

I think any young man would have reveled in the Pakistan I knew in those beginning years. I went into all corners of the new nation and lived with Pakistanis under all kinds of circumstances. During one extended period I had the privilege of traveling with Sir Mohammed Zafrullah Khan, then Foreign Minister, later President of the General Assembly of the United Nations, still later a distinguished judge on the International Court in The Hague.

Zafrullah was an amazing man, a devout Moslem who could recite the Koran in three languages but also a sophisticated world traveler who knew England, France and the United States better than most residents of those countries. On long trips to places like Peshawar and Quetta he shared with me his dream of a great Moslem state, pointing out that the document which launched Pakistan stated, "The entire universe belongs to God Almighty, and the authority which He had delegated to the State of Pakistan is a sacred trust." I felt that if the new nation could exemplify the ideas of Zafrullah it would be ensured a long life

Later I traveled much of the country with a different kind of guide, Gen. Rothwell Brown, United States Army, son of George Rothwell Brown, the columnist. He was serving with the Pakistan Army and introduced me to units like the cavalry regiment, Probyn's Horse. At mess I asked the officers, "Why do you retain an English title from the last century?" and they replied, "Probyn's Horse has the noblest reputation on the frontier. We'd be silly to surrender it."

General Brown took me on a long expedition into the Kingdom of Swat, a tiny enclave in a majestic valley set amongst the lower Himalayas. There I meet the Wali of Swat, a feudal lord resembling the men who had ruled such areas for the last 2,000 years. Later I went over the mountains into Dir and Chitral, remote principalities that few Pakistanis had seen. Still later I got to Gilgit, immensely high in the Himalyas, where I was astounded to be met by a company of 24 native bagpipers in Scottish kilts. From there I went up the passes to Hunza, where the air is so pure and the food so simple that men and women customarily live into their 90's and many reach 110, with no cavities in their teeth.

I never tired of the mountains and constantly found myself surprised by incredibly beautiful valleys. Once, heading into Skardu, which nestles at the foot of Nanga Parbat, 26,660 feet high and considered by experts to be the perfect mountain, I saw

a chain of valleys so exquisite that any one of them surpassed what Hollywood had devised as Shangri-la. I asked their names; in that region they were so ordinary that no one had bothered to name them.

I remember also my first sight of the town that lives in my memory as the most provocative I have ever seen. I had gone through the Khyber Pass partly on foot, partly by truck and partly with a line of camels, and at the western end, where you would think that nothing could have existed, let alone thrived, stood the caravan town of Landi Kotal. How big it was I don't know, but at the center it contained one of the most compelling open squares of Asia. It served, both as a caravanserai, with camels abundant, and as the marketplace, where contraband from remote areas was on sale. Most vivid in my recollection were rugs from Russia and new Singer sewing machine from Chicago.

As I stood entranced by the sight of so many different kinds of people from so many regions, a policeman tugged at my arm and asked, "American" When I nodded he said, "You must stop at the fort which guards the pass." I asked why and he winked, "You'll see something of interest."

So on the way out of Landi Kotal I did go up to the fort which guards the Khyber and saw there an old guest register which had been signed by many military men who had come to study the defenses and who later achieved world fame, among them a young graduate of West Point, who on Feb. 13, 1906, had accompanied his father on a tour of the Khyber and had signed the register "Douglas MacArthur, U.S.A."

The part of the Khyber I liked best, however, was a solitary fort some distance to the north where I spent three days. It was held not by the military but by a fierce family of Zakakhel tribesmen, 30 or 40 related men and women. It contained one narrow, low door through which I had to creep, and no windows except slits cut high in the wall. It had three turrets which were constantly manned by lookouts, and it had withstood recurring stages for the past 300 years.

I never saw any man inside this fort who did not have beside him his long gun. The Zakakheis were a branch of the once-murderous Afridi clan and although they no longer stormed out of the Khyber to lay waste Peshawar as they had done as late as the nineteen-twenties, they continued to be fractious and most difficult to rule. In the time I stayed in the fort I never saw a woman, but often at odd moments I would hear soft giggles behind the door or in back of some tapestry hanging from the wall, and I would know that they were spying.

Obviously, I loved Pakistan in those years. It was like a page from Rudyard Kipling, remote yet vital. I wrote of the new land and reported favorably on its efforts to stay alive. As a consequence, on later trips, I was welcomed in parts of the land that others would not have seen, and wherever I went I liked the people. In fact, I grew suspicious of my enthusiasm until someone at the frontier gave me a copy of the first book written by Winston Churchill, "The Story of the Malakand Field Force." It tells of a punitive expedition into Swat in 1897, which Churchhill accompanied as a brash young man of 23, and in its pages the reader encounters premonitions:

"There are men in the world who derive as stern an exultation from the proximity of disaster and ruin, as others from success, and who are more magnificent in defeat than others in victory. Such spirits are undoubtedly to be found among the Afridis and Pathans."

Later I discovered a similar book by John Masters, "Bugles and a Tiger," and he reports his equal respect for the men of the frontier.

Had it not been for the testimony of these two witnesses I would have been apologetic for my deepening sense of respect for Pakistan, but Churchill and Masters had seen the area as I did: One of the dramatic theaters of the world, girt by majestic mountains and nourished by rivers whose names were sibilant music: Indus, Jhelum, Chenab, Sutlej. I commiserated with the Pakistani corporal who lamented, "Damn Nehru! He even stole our land's name." The Indus River runs through Pakistan, not India, which Punjabis called Bharat. They never used the word India.

But as I lived in this new nation I became aware of three discrepancies that worried me. (1) The Pakistanis talked the noblest ideals . . . really, you would have thought they were building the new Jerusalem. But there was a vast discrepancy between principle and fact. The leaders refused to give the nation a constitution, and it became apparent that Pakistan was not going to be a Moslem showcase but merely a dictatorship of the well-to-do upper classes backed by the military. (2) The individual soldiers I met—the Punjabis, the Pathans, the Baluchis, the Gilgits—seemed tremendous fighters, and I listened when they insisted that one good hill Pakistani was the equal of 10 Indians, but I noticed that they had more rifles than machine guns, more horses than airplanes. And the rifles all seemed to date from the late 19th century. (3) What was most serious, I discovered that whereas the part of Pakistan I knew was the larger and the more dramatic, the really important segment lay a thousand miles away, across India, in the area called East Bengal. It had a much greater population than West Pakistan and earned most of the income. Yet, invariably, when a West Pakistani spoke of his Bengali fellow national, he did so with the deepest scorn. Indeed, a Punjabi rarely spoke of an Indian Hindu with the contempt he reserved for his fellow Bengali Moslem. "Filthy peasants" was a common description. "Impossible black monkeys" I heard once. If the Bengali had tried to better himself by study he was dismissed as a "book-wallah." If by some miracle he landed a job with the government he kas known as an "ink-stained babu" (clerk). It was obvious that if this contempt persisted, union between the two halves was going to be imperiled. Already it had produced one serious disability: Of a hundred government officials I met, more than 90 were from West Pakistan, and later when I reached East Pakistan the disproportion was about the same. "We are eager to promote Bengalis," my West Pakistan friends assured me, "but they're all peasants, and if you find one with education, he's fit only for a babu."

In addition to these specific fears I detected another, vague and lacking proof, yet persistent. Pakistan seemed dogged by bad luck. Jinnah died shortly after his nation was launched. Liaquat Ali Khan, first Prime Minister and perhaps an abler politician even than Jinnah was assassinated in 1951. All attempts at democracy ended in 1958 when the dictatorship took over. And the conciliation we had hoped for between West and East never materialized. Keyes Beech, correspondent for a Chicago newspaper, applied the phrase, "born loser," and we began to wonder

The division of Bengal was a crime against geography. If Asia contained one large area which formed a natural unit, it was Bengal. A state of some 67 million people, its two halves existed in a natural symbiosis, with the west providing manufacturing and business leadership while the east produced jute for the mills and rice for the kitchen. Division had been tried in 1905 but had proved a dismal failure and had been revoked in 1911.

Division was also a crime against culture. West Pakistanis who held their East Bengalis in contempt had some justification, for division had given the east all the farmers, all the peasants, all the dispossessed, whereas in West Bengal an extraordinarily vital culture had flourished for a thousand years. Rabindranath Tagore, who won the Nobel Prize for Literature in 1913, was the typical Bengali intellectual, but there were many like him. The book-wallahs of Bengal were some of the most capable men in India.

Division was a special crime against Calcutta. This once-magnificent city, founded only in 1690, flourished as long as it served as the capital of the entire Bengal area, but once the agricultural districts in the east were cut off, Calcutta really had no purpose to serve, and it promptly fell into a horrible desuetude. Today it is a city of seven million without hope; many consider it a preview of hell.

Aaron Levenstein, who spent last summer in Calcutta in a relief operation for Freedom House, has described the city vividly: 18 per cent unemployed, blatant expropriation of property, unprotected tram burnings, 6 to 10 political assassinations each day, murder rampant and unprosecuted, dead bodies lying in the street, and everywhere the Maoist Naxalites preparing for total revolution and eventual takeover. Of this dreadful city Levenstein has said, "I have seen the future and it does not work."

How did such an error come to pass? When the time came in the summer of 1947 for Sir Cyril Radcliffe to draw his pencil line through Bengal he ignored the vital similarities between the western portion and the east and remembered only the religious differences. Bengali Hindus were apt to be mercurial and difficult; Bengali Moslems were known to be fanatical, and clashes between the two had been common—1926, 1930, 1946.

So Radcliffe allowed religion to determine everything and hacked out an enclave in which East Bengal, encapsulated within India behind a frontier 1,300 miles long, was joined to the Punjab, a thousand miles away. If war ever erupted between India and Pakistan, East Bengal would be surrounded and could be supported only by airplanes which would have to fly about 3,000 miles.

Nevertheless, on Aug. 15, 1947, the two halves of Bengal were separated and four million Hindus struggled out of the Moslem areas into India, while one million Moslems went the other way. In the interchange some 800,000 were slaughtered.

I once spent three weeks in a little village north of Calcutta, right on the India-Pakistan line. I lived with a Hindu family, but often crossed over to visit with Moslems and in my wanderings I caught a sense of what Bengal meant. The family was miserably poor: a little rice, now and then a fish, some dal, drinking water from the village pond in which the water buffalo slept and urinated, each member of the family with one cotton garment, a life expectancy of 25 years, women married and child-bearing at 14. Here there was no war between Moslem and Hindu. Each was trying to survive.

What astonished me, though, was the fact that this village was in the jungle, a compact concentration of perhaps 600 people. Yet if I walked through the jungle in any direction, within about three-quarters of a mile I would come to another complete village of 800 people and beyond that other villages of 900 or 1,000, until I realized that the whole of Bengal, as far as a man could travel, was crowded with innumerable villages, never far apart, never far from the great rivers that criss-crossed the land.

Historically, Bengal has been the home of disaster, for any flood, from either the river or the sea, could inundate it. The slightest stoppage of rain or sun could produce a famine that would devastate an area. In 1943, 1,873,000 people had died when the crops failed. In 1948 the district I was visiting had been ravaged.

Throughout history Bengal had lived a

precarious existence, but so long as it stayed united the two halves could sustain each other. When the Radcliffe Line created an arbitrary separation of the two, natural disasters were compounded. Rarely has a more serious error been committed in the name of religion.

Later I lived for a while in another village in the district known as 24-Parganas, from where I explored the Sundarbans, the amazing congregation of islands and peninsulas which marks the mouths of the rivers. They are like a dream world, densely wooded, swampy, snake-infested segments of land cut by innumerable channels and providing just enough foothold for an adventurous family to construct dikes and make tenuous fields on which to grow rice. One heavy wave and the fields are gone, and sometimes the island, too.

I suppose that life on the Sundarbans must be the most precarious on earth, surpassing even that at Tierra del Fuego or along the edges of the Sahara. Inland, in East Bengal, the land became more stable, but the crowding increased proportionally. And with Calcutta lost, the area was headless. A capital was attempted at Dacca and a pitiful port at Chittagong. Universities were set up, but they had insufficient books and inadequate staffs. Industries were launched, but almost invariably they were owned by rich families from West Pakistan.

Government offices were staffed from the Punjab. A high percentage of the men who ruled East Pakistan could speak only haltingly the language of the people they governed. What galled the Bengalis even more was the fact that the money they earned from jute constituted the major income of all Pakistan, but was spent mostly in benefit of the West.

This was highlighted in a curious and unforeseen manner. In 1968 the military dictator, Gen. Ayub Khan—for Pakistan had failed as an elective democracy—looked back upon his 10 years of power and saw that much had been accomplished. Indeed, enormous strides had been made in education, manufacturing and in improving the standard of living . . . but only in the western half of the nation. Nevertheless, he launched a huge publicity campaign on the theme beloved by leaders: You never had it so good. "Our Decade of Development," he called it.

In Spain at about this time General Franco had plastered every wall in sight with his motto, "He has given you 25 years of peace," and every Spaniard knew this to be true, even though other problems might not have been attended to. But when General Ayub told East Bengal that it had enjoyed a decade of development, the citizens merely had to look at the facts. They realized then that if things had prospered, they had done so only in the west and had been paid for by the Bengalis.

One cynic said, "They were 10 years of darkness, oppression and increasing material poverty—and of intellectual poverty, the result of the rigorous political and cultural censorship imposed by the regime."

Little wonder that in the elections held in December, 1970, the Bengalis voted overwhelmingly against the Government in West Pakistan and elected people pledged to help East Bengal by a margin of 167 to 2. At this point the dictatorship of Gen. Yahya Khan, General Ayub's successor, declared the elections void, arrested the East Bengal leader, Sheik Mujibur Rahman, and dispatched an army of Punjabi soldiers to occupy the region.

The war was not unexpected. I had known for years that some kind of uprising was inevitable but I fell far short of the prescience shown by John W. Bowling, an American diplomat from Oklahoma, stationed in Pakistan. After an extensive tour of East Bengal in 1966 he composed a scenario of things to come and predicted line by line the events of 1970–71: "There will be a war between East and West Pakistan which will make Biafra look like a Sunday school picnic."

I cannot comprehend how the soldiers I knew in the Punjab could have behaved as they did in East Bengal. I cannot explain how a nation which was bound together by religion—and that alone—could have so swiftly degenerated to the point where the average Punjabi not only hated the Bengali but also wanted to kill and mutilate him. And yet I know this happened.

I was in Teheran, the capital of Iran, when the first planeloads of American refugees landed after their evacuation from Dacca. These were American Government employees whose credentials were beyond criticism, people not given to exaggeration. They did not at this time of heightened emotion want to talk to the press but they did agree to meet with me for extended interviews so that their facts could be put on record. Later this material was widely disseminated and formed the basis for the world's knowledge of what happened in East Bengal when the Punjabi and Pathan troops came on the scene.

Mrs. Elinor Terry (her name is fictitious) had taught at the University of Dacca: "When the Punjabi troops arrived with their orders they marched directly to our university, went through the classrooms with lists of names, sought out specific professors and student leaders, and shot them on the spot. We know of 50 professors who were executed in this manner. Maybe 500 to 1,000 students were shot.

"There was one lovely man, Professor Dev, I don't know his first name, but he had taught in one of the American universities near Philadelphia. Head of our philosophy department. They marched this fine man to the door of his classroom and gunned him down."

Mr. Harold Baker (his name is also fictitious): "The soldiers roamed the streets and shot anyone who looked like a student. Two days after the first wave of executions I went over to the university to satisfy myself as to what had happened. At the soccer field near one of the goal posts, a grave had been scooped out by a bulldozer and filled with the bodies of students. I counted 140. Another man made it 143."

Mrs. Terry added: "The most grievous incident occurred at a girls school near the university. When the Punjabis saw girls entering the building they must have assumed it was part of the university. So they opened fire with many guns and killed all the girls. Maybe 20. Maybe as many as 40."

Mr. Baker concluded: "They dashed up to the Faculty Club and destroyed it. Not finding any professors, they killed 12 employes. They started to destroy the British Library but satisfied themselves with shooting eight employes. They leveled the Press Club with grenades. They destroyed the offices of the newspaper Ettefaq and killed everyone who had not fled. At the Rama Race Track about 200 Hindus had set up squatter tents. The Punjabis executed everyone."

The account was continued by others who told of one Punjabi indecency after another, directed always against the leadership class. It was not genocide, as some have called it, but cephalocide, the cutting off of the head, the planned elimination of the intellectual leadership. It was carefully plotted; lists were drawn up; and it was ruthless.

Mrs. Terry explained one point: "On Tuesday night prior to the massacre I was visited by a knowledgeable West Pakistani who had been working in East Pakistan. He warned me, 'If you're smart, you'll fly out of here tomorrow. There's bound to be trouble.' When I asked him why, he said, 'Sheik Mujib has announced six points, and one of them is that East Bengal must be allowed to resume her ancient trade with West Bengal. This is a blow against the integrity of Pakistan. The first step in rupturing our union. Anyone who preaches this must die.

If I had a son and he took even one step that might lead East Pakistan back to India I would applaud as the soldiers shot him. We shall be forced to liquidate everyone in East Bengal who might have such plans. He fled and two nights later the liquidation began. It's likely that in those first hours the intellectual life of East Pakistan was destroyed.

After the universities, the people in the villages were attacked, and girls were raped publicly, and hatreds that will not be erased in this generation were inflamed. What was especially grievous, the Western soldiers appear to have vented their wrath against the Hindu minority that had always lived in East Bengal, and eight million of them began streaming across the border into India, setting an example for two million Moslems to follow. Calcutta, already crowded beyond endurance, had to cope with four times its normal population.

It is a wonder that India refrained so long from moving into East Bengal. When she did, the vaunted soldiers of the west—the Punjabis I had respected so much when I served with them, the wild Baluchis, the fierce Pathans—accomplished little. A friend who knows the Pakistan Army well told me, "Don't be misled. One Punjabi is still worth 10 Indians. But what armament did they have? Old Patton tanks against India's new-style Russian tanks. Some old F–86 Saber Jets against India's new MIG's. No bombers against India's excellent SU–7's from Russia. A few F–104's, a few Mirages and damned few heavy guns. The first Indian air strikes at Karachi destroyed 80 per cent of the nation's oil supplies. It's a wonder the Paks lasted as long as they did."

But when I asked why the Western army had behaved as it had in East Bengal he could offer no explanation. The only tenable one is that when a nation consistently ridicules and denigrates a segment of its citizenry, as Punjabis ridiculed Bengalis over the past 24 years, when crisis comes, massacre has already been accepted as logical behavior.

The war is over and Bangladesh has been launched as a free nation. Should it have been?

The makers of peace had four alternatives, and the fact that one has been temporarily chosen does not mean either that it was the right one or that the choice will not be reversed. Five years from now we may be grasping for one of the other alternatives.

(1) East Bengal could have been restored as part of a divided Pakistan, thus restoring the status quo. (2) Or it could be established as the independent Moslem nation of Bangladesh, with a population of 75 million, the second largest Moslem nation in the world after Indonesia. (3) The two portions of Bengal could have been reunited as an independent nation of 118 million people, with any advantages that may have accrued to alternative two plus a much greater chance of survival. (4) Or East Bengal could be reabsorbed into India, which would reunite the two halves of Bengal and restore the situation that existed for many centuries prior to 1947.

Alternative One. The brutality of West Pakistani troops in East Bengal made the restoration of Pakistan impossible. The gleeful reception East Bengalis accorded Hindu Indian troops testified to the hatred they felt for their Moslem countrymen. The only way in which West Pakistan could today enforce a union with East Bengal would be to occupy it indefinitely, assign several hundred thousand Punjabi and Pathan troops to police the area, and shoot everyone who sympathized with Bengali nationalism. India would never allow such a suppurating sore on her eastern flank.

Nor would the budget of West Pakistan permit it. A constant low-boil revolution would eat up the national budget. China and Russia would become involved. Any such attempt at this time to force East Bengal back into the arms of West Pakistan would be insanity.

Yet there is the possibility that after one or two decades, memories of the evil occupation may have subsided to a point where East Bengal might want to re-enter some kind of partnership with West Pakistan, and if this were accomplished voluntarily it might work. After all, the two halves of the United States were able to reunite after their civil war, and it is possible that the two segments of Ireland will soon coalesce. But such arguments are probably irrelevant because in these examples there was physical contiguity. With Pakistan geography works against union. For the remainder of this century, reunion is dead, although it might be revived as a possibility in the beginning years of the next.

Alternative Two. There was nothing inherently unreasonable in establishing Bangladesh as a new nation. Certainly, 75 million people speaking a common language and adhering mainly to one religion are entitled to govern themselves. But other factors have to be considered. The overcrowding is without parallel and, by the end of the century, the nation will contain 150 million people without a balanced economy. For decades to come Bangladesh can exist only as "an international basket-case." It will have to be supported by international charity. Ravaging floods of the Ganges and Brahmaputra will be endemic. Periodically tidal waves from the Bay of Bengal will engulf the Sundarbans. And whenever the monsoons falter, starvation will ensue.

Politically, it will have to be a client state of India, even though its Moslem leaders might prefer some kind of custodial care from China. I cannot imagine how India, which will encapsulate the new nation, except for a short, almost impassable frontier with Burma, could do otherwise than dominate the nation.

I see nothing wrong with this. I believe the Indian leaders will behave with restraint and avoid obvious intrusion. I doubt that India will either want to assume responsibility for the Bangladesh economy or be capable of doing so, but I can visualize India's acting as an older brother in the field of international relations and possibly in defense as well.

Obviously, Bangladesh patriots will protest, "We shall stand on our own two feet and accept protection from no one," but this is a cry more honored in utterance than in the performance.

Will the new nation prove viable? It starts with certain assets. It has greater unity than Indonesia did when it started. It will have a much better cadre of educated experts than Zaire (then the Belgian Congo) had at its beginning. It will have more officials of the second and third rank trained in government than the black republics had when they gained nationhood. And it has the rudiments of a better army and police force. Opposed to these favorable factors is the grinding poverty, the lack of industry, the appalling overpopulation. I suppose that Bangladesh can make a reasonable start.

I am, however, increasingly of the opinion that the two halves of Bengal must be reunited, and for me this preoccupation takes precedence over everything else. To continue the tragedy of Calcutta another day is indefensible, and the time to make constructive change is now. I therefore conclude that if the world were sensible it would not continue the separation of the two halves of Bengal but take steps to unite them. The next two alternatives explain how this could be accomplished.

Alternative Three. Even to suggest that India voluntarily relinquish West Bengal, allowing it to rejoin the East to form a new nation of 118 million, seems chimerical. The advantages of such a move are obvious. The historic symbiosis of the two halves would be restored, with the East providing potential agricultural riches which would funnel through Calcutta, making that city once more a major port. Industries in West Bengal could produce goods for which there would be customers in the East. Fortified by a common language and cultural heritage, such a new nation could prove viable.

Unfortunately, it is unrealistic to imagine that India would agree to this, for to create a self-governing Bengal would be to awaken irredentist longings in many other parts of India. At best India will have a difficult task to hold her various regions together, for separatist movements positively luxuriate, and there are few large segments of the country without cadres of patriots who want to preserve their language, their culture and their independence. If Indian Bengal were to break away, the stage would be set for a dozen other areas to plead equal justification, all of them as legitimate as Bengal's.

The gravitational pull of even a free East Bengal will be considerable. If West Bengal were allowed to join, the pull might become irresistible. Under ordinary circumstances, therefore, one cannot expect India to cooperate in her own dissolution. Alternative Three is not practical, although India might very soon propose some kind of economic relationship that would save Calcutta. One can also foresee altered circumstances under which India might be eager to dispose of fractious Bengal, and these I shall discuss in a moment.

Alternative Four. Since West Bengal cannot join East Bengal, I believe that the interests of everyone would best be served if Bangladesh did not try to operate as a free nation, but did rejoin India. I know this is a radical suggestion. I know that the Moslems of Dacca fear the hegemony of the Hindus of Calcutta. And I know that in the recent war eight million Hindus fled East Bengal and are afraid to go back. Now seems hardly the time to be advocating Moslem-Hindu amity.

But it is. India, as it already exists, contains a permanent minority of some 50 million Moslems and is thus the third largest Moslem nation on earth. Relationships between the two religious groups have been far from ideal, but they have been bearable. Indeed, if they continue as harmoniously for the next 40 to 50 years the world will be able to congratulate itself on having eliminated one flare point. In spite of the recent religious dislocations that have wracked Bengal, I still believe that some kind of accommodation can be achieved. I therefore see nothing inherently preposterous in accepting East Bengal as a Moslem enclave in India, because India already contains numerous such enclaves.

For the present I suppose this ideal solution is unattainable, because nationalism seems a stronger force than political realism. Shortly before his arrest, Sheik Mujib told an American official, "We remember too well the tyranny exercised over us when Bengal was united and Hindu zamindars held us like serfs. We will never go back to those Bengali Hindus." Bangladesh patriots will insist upon their rights to nationhood, their right to a seat in the United Nations, their right to their own army and airline, and this kind of appeal is irresistible. In Africa I was told by serious experts that the principal deterrent to any rational regrouping of the smaller black republics was the desire of each to have its own seat in the United Nations and an abundance of ambassadorships for distribution among its wealthier citizens. These same factors deter Arab states, from forming a union. The creation of an independent Bangladesh was inevitable, but that does not mean that it was right.

The danger is this. In both West Bengal and East, but for the moment more strongly in the former, violent Maoist revolutionary movements are afoot, the most powerful being the Naxalites operating out of Calcutta. There is bound to be so much agitation in West Bengal that we may well witness a situation in which India becomes eager to divest herself of this incubus, regardless of the fractionating effect upon other regions. And if the revolutionary movement continues in West Bengal, it will surely spread to Bangladesh, where conditions will be worse, for even the income from the jute may vanish; Japanese synthetic fiber now commands the market. Communism plus irredentism will become a terrifying force and China may well be drawn into the area.

The Indian Army gained a spectacular victory in East Bengal, but it was Pyrrhic and warranted no dancing in the streets of Delhi.

What of West Pakistan, that truncated dream of religious Moslem hegemony? On paper it is still a state of 55 million people occupying a land area about the size of Texas and Louisiana (or more than three times the size of Great Britain). It enjoys a viable if not luxurious economy and a powerful sense of destiny. It ought not only survive but prosper, for the loss of East Pakistan will in many respects prove a blessing. Decisions can now be made with only the problems of a unified, cohesive society in mind, and the energies that were wasted in trying to keep the Bengalis conciliated will be more profitably spent on local affairs.[1]

But the sailing is not going to be easy for the Pakistani ship of state. There will be many Hindus in India who, having seen the relative ease of victory in East Bengal, will apply pressure on their leaders to maintain momentum and wrest the Pakistani portions of Kashmir from Moslem rule. Subversive movements in Pakistan Kashmir can be expected, and if they flourish, Indian adventurers will support them, hoping for a duplicate of the East Bengal situation. The world should anticipate continuing trouble in Kashmir.

More important, perhaps, will be the problem of Pakhtoonistan. Not many Americans realize how close to war Afghanistan and Pakistan have often come over the problem of this strangely named border area. (It is spelled in various ways; Pushtunistan is common; Pathanistan is more logical, since this is the Land of the Pathans.) The easiest way to comprehend it is to think of it as the border area north and south of the Khyber Pass, inhabited by wild frontiersmen generally indifferent as to which nation they belong to. Afghanistan claims them as brothers to the Afghan tribes; Pakistan inherited them at the partition of India; they vacillated in announcing their allegiance and a good deal of fancy footwork took place before they finally opted for Pakistan.

I lived for some time in the heartland of Pakhtoonistan and met most of the leaders, gray-bearded, grizzled men who never appeared without long rifles slung across their arms. The Fakir of Ipi was a notorious rebel, wanted by both the Afghan and Pakistan Governments. He evaded search parties by living in caves and hidden valleys which had been so used by fugitives since the days of Alexander the Great. Khan Sahib was a well-educated political leader and a brilliant tactician. His brother, Abdul Ghaffar Khan, was the charismatic leader, a true man of the frontier who had a loyal following of Red Shirts. The redoubts I spoke of earlier as

[1] An analysis by West Pakistani scholars in 1968 showed that if the West could divest itself of East Pakistan, the former would be better off in almost every aspect considered except total population, and such divestiture was recommended.

marking the Khyber were filled with men who resisted the creation of Pakistan, preferring a Pakhtoonistan of their own, which would maintain a kind of military sovereignty similar to Nepal's. It would not be a nation in the formal sense of the word, but it would survive.

While I was living in Kabul, Afghanistan and Pakistan on several occasions came close to war over the problem of Pakhtoonistan, and I remember the riotous morning when Afghans laid siege to the Pakistan embassy. Concessions were made in time to defuse the bomb and war was avoided. But an ugly situation persisted. An Afghan leader told me, "Did you see how Pakistan was able to strangle us by forbidding her railroads to us? We're land-locked, and if we can't have access to the sea via Pakistan we'll perish. We shall do something about that."

Shortly thereafter overtures were made to Russia, which provided an outlet to the north and thus became Afghanistan's champion. Incidentally, of course, Russia gained what she had wanted for 200 years: Control of the Afghan passes leading into the Indian subcontinent. Thereupon Pakistan threw her lot in with China.

We can expect continued trouble on Pakistan's western border. But next time Russia will aid Afghanistan and India while Red China will support Pakistan. It could have been an appreciation of this delicate balance which inspired the American Government to take its incredible stand against India as the aggressor in East Bengal. President Nixon and Henry Kissinger could have been looking ahead to the next batch of problems involving Russian-Chinese attitudes on Pakhtoonistan. There is also a strong possibility that our Government wanted to avoid irritating China on the eve of the Presidential visit and thus refrained from speaking out against Pakistan, a client of China.

West Pakistan is terribly vulnerable to international pressures, and will probably never be freed from them. The Sikhs of India wait for a chance to grab back those parts of the Punjab they once occupied. Indians of all types are eager to recover western Kashmir. Afghanistan continues to stir up trouble in Pakhtoonistan. And empire-conscious Russia has never relinquished her 18th-century dream of leadership in India. Pakistan would be a good place to start.

There is a strong likelihood that Pakistan will become the Poland of Asia, whittled away by successive "peace treaties" or eliminated altogether by some "settlement" only to be revived at some later time when a revolution of major dimension sweeps the area. She will endeavor with greater or less success to keep alive and will exist now as a feudatory, now as a free nation, but always with radically shifting boundaries. After all, the original boundaries as laid down in 1947 survived less than a quarter of a century, and I would not want to gamble on how long the present ones will last.

As the tantalizing dream of a religious state fades, one must reflect on how inadequate a base for nationhood religion is. The only conceivable justification for having created a bifurcated nation like Pakistan was the Moslem character of its two parts, and if ever religion could have provided a binding cement it was here, because the Islamic faith of the two Pakistans was more profound, I should think, than the Catholicism of either France or Brazil or the Buddhism of Japan. Yet it failed.

It was not strong enough to surmount political differences, or economic, or cultural. Indeed, it did not even suffice to make West Pakistanis treat East Pakistanis with brotherly respect. And it certainly provided no aid to Pakistan in her relations with her neighbors. Moslem Afghanistan got along famously with Hindu India and atheist Russia, but found herself in constant trouble with Moslem Pakistan.

From this experience, and from collateral ones with the Catholic nations of Europe and the Arab states of the Middle East, I conclude that religion is about the poorest base for erecting a nation and the least to be depended upon. Almost any other vital force seems stronger.

If this is true then Northern Ireland should rejoin Ireland proper, because the religious differences between the two parts, terrible though they seem today, are probably less permanent than the political, social and economic similarities which would support unification. Conversely, the Catholics of eastern Canada should think twice before pursuing separation from the Protestans who occupy the rest of the nation. Ultimately Israel and the Arabs will discover that peaceful interaction is more productive than religious war.

It may be, however, that for the rest of this century religious antagonisms will prevent these logical kinds of coalescence. If that is the case, it was proper to keep the two halves of Bengal separated, and there was no alternative to the creation of Bangladesh as an independent Moslem nation. Given the terrible realities of Bengal, I doubt that it will long endure in its present form.

SOCIAL SECURITY AMENDMENTS OF 1971—AMENDMENT

AMENDMENT NO. 823

(Ordered to be printed and referred to the Committee on Finance.)

PROFESSIONAL STANDARDS REVIEW FOR MEDICARE AND MEDICAID

Mr. BENNETT. Mr. President, today I offer an amendment to H.R. 1 authorizing the establishment of Professional Standards Review Organizations throughout the United States.

This amendment is virtually identical with the Professional Standards Review provision supported by the Department of Health, Education, and Welfare, and approved by the Finance Committee and the full Senate as part of H.R. 17550, the "Social Security Amendments of 1970." What few changes I have made in the amendment are essentially of a technical and conforming nature, apart from incorporation into the amendment itself of language and intent expressed in the Finance Committee report on the PSRO provisions. The principal change—section 1159—involves the addition of specific language assuring and safeguarding the right of a patient to appeal an adverse decision of a PSRO.

The Professional Standards Review Organizations would be formed by practicing physicians themselves who would assume responsibility for reviewing the care and services provided under medicare and medicaid, in order to assure that such services are medically necessary and meet proper quality standards. The review activity would be a sophisticated process which would encompass the use of provider, patient, and practitioner profiles, and professionally developed norms as review checkpoints.

The amendment is so structured that practicing physicans rather than Government agencies or insurance company personnel will decide whether care was necessary and of proper quality. At the same time, I have built numerous safeguards into the amendment to assure public accountability and proper and professional monitoring of the review organizations. These safeguards, while realistic and substantial, are designed so as not to hamper effective day-to-day decisionmaking at the local levels.

Mr. President, all of us in this Congress are familiar with the problem of the rapidly rising costs of health care. These rising costs affect all citizens through increased taxes, insurance premiums and medical bills. In addition, rising health care costs fall disproportionately on those who have the greatest need for health services—the chronically ill, the aged, and the poor. Many of us are all too familiar with the fact that increasing health care costs have resulted in a projected deficit totaling at least $242 billion in the medicare program over the next 25 years. It is less well known that the increase in health care costs has also resulted in the aged paying about as much now for medical care per year as they were paying prior to the enactment of medicare.

In addition to the rapidly rising cost of health care, a problem exists with respect to the quality of that care. The Committee on Finance held two extensive series of hearings on health care in 1970. In the spring of 1970, we held oversight hearings on medicare and medicaid and, in the fall, we held hearings on the social security amendments which contained many medicare changes. During the course of those hearings, disturbing testimony was heard bearing on the quality of health care. We heard practicing physicians testify to the effect that in many areas of the country a good deal of unnecessary and avoidable surgery was being performed and excessive and inappropriate health care services provided. We learned of significant variations between sections of the country in the lengths of hospitalization for similiar patients having a given illness.

As these problems of rising costs, unnecessary services and uneven quality became apparent, the most disturbing fact was that in most areas of the country no effective review mechanism exists whereby practicing physicians can in organized and publicly accountable fashion, determine on a comprehensive and ongoing basis if services are medically necessary and if they meet quality standards. This amendment would go a long way toward correcting that intolerable situation.

Mr. President, I ask unanimous consent that the section of the Finance Committee Press Release No. 66, dated September 30, 1970, describing the Professional Standards Review Organization amendment, as approved by the Committee, appear at this point in my remarks.

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

SUMMARY OF THE AMENDMENT

The professional standards review mechanism would take effect along the following lines:

The Secretary of Health, Education, and Welfare would, after consultation with national and local health professions and agencies, designate appropriate PSRO areas throughout the Nation. This would be done by January 1, 1973. Area may cover an entire State (particularly those with smaller populations) or parts of a State, but gen-

erally a minimum of three hundred practicing doctors would be included within one PSRO area. Tentative area designations could be modified if, as the system was placed into practice, changes seemed desirable. The Secretary would also, in consultation with professional and other concerned organizations and interests, develop prototype review plans and would aid in the development of such plans with the view to securing acceptable arrangements for PSRO's in all areas and to gain experience with several patterns.

Organizations representing substantial numbers of physicians in an area, such as medical foundations and medical societies, would be invited and encouraged to submit plans meeting the requirements of the programs. Where the Secretary finds that such organizations are not willing or cannot reasonably be expected to develop capabilities to carry out PSRO functions in an effective, economical and timely manner, he may then enter into PSRO agreements with each other agencies or organizations with professional competence as he finds are willing and capable of carrying out PSRO functions. Formal plans would specify the extent and nature of cooperating arrangements with all agencies necessary to proper administration of the program.

It is expected that an acceptable plan will be one which encompasses in its proposed activities and responsibilities to the greatest extent possible physicians engaged in all types of practices in the PSRO area, i.e. solo, group, hospital and medical school-based practice, etc.

The Secretary would approve those plans which can reasonably be expected to improve and expand the professional review process. The initial approval is to be made on a conditional basis, not to exceed two years, with the review organizations operating concurrently with the present review system. During the transitional period, carriers and intermediaries (in the case of Medicare) are expected to abide by the decision of the PSRO where the PSRO has acted. This reliance will permit a more complete appraisal of the effectiveness of the conditionally-approved PSRO.

In areas where no adequate plan was initially submitted, the Secretary will seek to aid in the improvement and expansion of plans offered and to develop plans through his own efforts, based upon organizations with professional competence such as State or local health agenices or claims paying organizations such as carriers and intermediaries if necessary.

Once an organization is accepted, the Secretary with the assistance of the Statewide organization and the National Advisory Council would monitor the performance of the PSRO plans using statistical and other appropriate means of evaluation. Where performance of an organization was determined unsatisfactory, and his efforts to bring about prompt necessary improvement fail, he could terminate its participation, after appropriate notice and opportunity for administrative hearing by the Secretary, if requested.

Provider, physician and patient profiles and other relevant data would be collected and reviewed on an ongoing basis to the maximum extent feasible to identify persons and institutions that provide services requiring more extensive review. Regional norms of care would be used in the review process as routine checkpoints in determining when excessive services may have been provided. The norms would be used in determining the point at which physician certification of need for continued institutional care would be made and reviewed. The physician, provider and patient profiles and other data would be collected in ways determined by the Secretary to be most efficient. Initial priority in assembling and using data and profiles would be assigned to those areas most productive in pinpointing problems so as to conserve physician time and maximize the productivity of physician review. The PSRO would be permitted to employ the services of qualified personnel, such as registered nurses who could, under the direction and control of physicians, aid in assuring effective and timely review.

Where advance approval by the review organizations for institutional admission is required, such approval would provide the basis for a presumption of medical necessity for purposes of Medicare and Medicaid benefit payments. However, if the review organization finds that ancillary services provided subsequent to its approval are excessive, payment under Medicare and Medicaid would be denied with respect to such excessive services.

Failure of a physician, institution or other health care supplier to seek advance approval where required may be considered cause for disallowance of affected claims.

In addition to acting on its own initiative, the review organization would report on matters referred to it by the Secretary. It would also recommend appropriate action against persons responsible for gross or continued overuse of services, use of services in an unnecesarily costly manner, or for inadequate quality of services; and would act to the extent of its authority or influence to correct improper activities.

The Secretary would be authorized upon recommendation of the PSRO to recover cost of excessive services—up to $5,000—from the practitioner, supplier or institution at fault.

A National Professional Standards Review Council—composed of physicians with a majority selected from nominees of national organizations representing practicing physicians, and in addition physicians recommended by consumers and other health care interests—would be established by the Secretary to review the operations of the local area review organizations, advise the Secretary on their effectiveness and make recommendations for their improvement.

Those persons engaged in review activities would be exempt from liability for actions taken in the proper performance of these duties. In addition, physicians, providers and others involved in the delivery of care would be exemption from liability arising from conformity to the recommendations of such review organizations.

Mr. BENNETT. Mr. President, I would like to again point out that organized medicine has also recognized the need for an effective formal cost and quality review mechanism for health care.

As I stated on July 1, 1970, in my first speech on the Professional Standards Review Organization proposal, I welcomed the opportunity to review the American Medical Association's own peer review proposal. As I considered it, it became clear to me that to be effective, the AMA peer review proposal would have to be substantially strengthened and expanded and public interest safeguards should be added. An appropriate amendment incorporating such necessary changes was developed and introduced by me on August 20, 1970.

Mr. President, I think it would be helpful to briefly review events of the past year or so, in relation to the PSRO amendment. Following introduction of the amendment, the Committee on Finance held public hearings on social security amendments—including the PSRO proposal. During the course of those hearings, constructive suggestions were received from a variety of interested organizations and individuals, including hospital and medical organizations. The amendment was then considered in executive session, by the Finance Committee. The committee modified the amendment so as to include the constructive changes proposed during the hearings. As modified, the committee approved the amendment.

During floor consideration of the social security amendments in the Senate late in 1970, a motion was offered to strike the PSRO provisions. That move was overwhelmingly defeated. As Senators are aware, we were unable to arrange a conference with the House on the social security amendments due to the late date in the congressional session, so that the amendments did not become law.

I have been pleased that, as time has passed, the Professional Review amendment has gained increased support from those who have studied the proposal, including many medical societies and organizations.

Most recently, during initial hearings by the Finance Committee in July 1971 on H.R. 1, Secretary Richardson reiterated his support for the professional standards review approach and requested authority to proceed with formal implementation of these mechanisms.

In addition to gaining official support over the past year or so, the PSRO concept has become a working reality in States such as New Mexico, Colorado, and Georgia.

In New Mexico, for example, the State has turned over complete responsibility for medicaid medical review to an organization established by the physicians of the State. That organization was consciously structured along the lines of the PSRO amendment. It has effectively and equitably moderated medicaid costs which had previously soared out of hand. It has provided assurances that care of proper quality is being provided. As one of their first functions, the New Mexico doctors undertook a complete evaluation of each and every skilled nursing home patient. They determined, among other findings, that some 35 percent of the medicaid population in nursing homes were not in need of institutional care. This, to me, is dramatic evidence of the PSRO potential. Additionally, they are finding and acting to correct cases of under-utilization such as maternity patients who receive no prenatal care. They are also having an impact on the quality of care. For example, they have found instances where major abdominal surgery is performed without any X-rays prior to surgery. They are taking positive action to correct this type of deficiency and similar situation in the future.

In Colorado, the PSRO has reduced medicaid average lengths of hospital stay by more than 1 full day. Admissions to hospitals have been reduced by approximately 10 percent as well.

These are the kinds of results which PSRO can be expected to achieve.

Mr. President, the establishment of Professional Standards Review Organizations throughout the country would mean that each physician, as an integral part of his own professional responsibilities, would formally assume a shared responsibility for reviewing the quality of medical practice in his community.

In closing, I would like to make two points. First, I believe that the PSRO proposal becomes increasingly important in view of current legislative trends in health care. Any expansion of Federal health insurance obviously increases the need for a cost and quality review mechanism. Additionally, any emphasis on the use of Health Maintenance Organizations as a cost control mechanism demands the existence of an effective quality review mechanism capable of monitoring underservicing as well as overutilization of services.

Second, I want to reiterate that my amendment is firmly based on the principle that only physicians are capable of deciding whether a service is medically necessary or meets proper quality standards. Therefore, peer review must mean just that—only physicians should review physicians. As Chairman WILBUR MILLS stated succinctly in a recent speech in Atlanta, Ga., favorably discussing PSRO: "Physicians represent the master key; there are no copies." Public agents and fiscal intermediaries should not second-guess individual determinations made in the course of peer review. Obviously, the public interest must be safeguarded. However, while only peers can review peers if my amendment becomes law, the Government, the public, and the professions can and should audit the review process itself to determine what review activities are occurring. Additionally, we can and should review aggregate statistics from each review organization in order to determine the overall effectiveness of the review process.

Mr. President, I believe that the relationship between the patient, the physician, and the Government is at a crossroads in America today.

The pressures for increased governmental involvement in the day-to-day practice of medicine are increasing continually as we move toward expanded governmental financing of health care. Economics, commonsense, and morality each demand that the Government take an increasingly active role in dealing with the cost and the quality of medical care.

I sincerely believe that the amendment I now send to the desk represents the best and perhaps the last opportunity to fully safeguard the public's concern with respect to the cost and quality of medical care while, at the same time, leaving the actual control of medical practice in the hands of those best qualified—America's physicians.

Mr. President, I ask unanimous consent that a section-by-section analysis and the text of the amendment itself appear at this point in the RECORD.

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

The summary, presented by Mr. BENNETT, is as follows:

PROFESSIONAL STANDARDS REVIEW—MEDICARE AND MEDICAID

SECTION-BY-SECTION SUMMARY OF AMENDMENT

Declaration of purpose

Sec. 1151. Purpose of the subtitle is to promote effective, efficient and economical delivery of health services for which payment may be made under the Social Security Act, through application of professional standards review procedures which would assure that such services are of appropriate quality, and are provided only when necessary and then in the most economical fashion consistent with professional recognized health care standards.

Designation of Professional Standards Review Organization (PSRO)

Sec. 1152. The Secretary of Health, Education, and Welfare shall at the earliest practicable date, but prior to January 1, 1973, enter into agreements in each area of the United States with qualified organizations to serve as Professional Standards Review Organizations (PSRO).

In making such agreements, the Secretary would give first priority to local medical organizations which represent a substantial portion of physicians in the area. Where such groups are unable or unwilling to enter into agreements, the Secertary would make such agreements with other private nonprofit, public, or other agency or organization with professional competence.

The agreement shall provide that the designated organization will perform the duties and functions of a PSRO and that the Secretary shall pay for reasonable and necessary expenses. Agreements shall be for periods of 12 months, and may be terminated by the organization upon reasonable notice, or by the Secretary after a formal hearing.

Review pending designation of Professional Standards Review Organizations

Sec. 1153. Pending assumption of responsibility, and demonstration of capacity for improved review efforts by a PSRO, presently authorized review and audit activities shall be continued.

Trial period for Professional Standards Review Organization

Sec. 1154. The Secretary shall, after receipt and approval of a formal plan for progressive assumption of full responsibility, initially designate an organization as a PSRO on a conditional basis. During the trial period (not to exceed 24 months) the Secretary may require the PSRO to perform only such duties and functions as he deems them capable of performing. Assumption of responsibility for duties should proceed in accordance with the approval plan, so that at the end of the trial period, the PSRO is performing all required duties and functions.

An agreement by which an organization is *conditionally* designated as a PSRO may be terminated by either party on 90 days' notice.

Any duties and functions not performed by a PSRO during the trial period shall continue to be performed as presently authorized. The Secretary is authorized to waive any other review requirements where he finds, based on substantial evidence, that the PSRO meets or exceeds those requirements.

Duties and functions of Professional Standards Review Organization

Sec. 1155. It shall be the duty and function of each PSRO to assume responsibility for review of the professional activities of health care practitioners and providers with respect to health care services and items for which payment may be made under the Social Security Act. Such review shall be for the purpose of determining whether the services are necessary to proper health care; meet recognized professional standards of health care; and are provided in the most economical fashion consistent with recognized standards of care.

Each PSRO may also determine, in advance, that elective inpatient admissions or extended, costly out-patient courses of therapy meet the above criteria. Hospital admissions shall be approved for periods certain related to patient age and diagnosis; and recertification by the attending physician shall be necessary for extensions of the period initially approved.

A PSRO is authorized to accept "in-house" hospital review to the extent it meets the requirements and responsibilities of the PSRO.

Each PSRO shall be responsible for the development, maintenance and review of practitioner, patient, and provider service profiles.

Each PSRO is authorized to: utilize specialists as needed in the review process; undertake necessary professional inquiries; and examine pertinent records and sites of care.

Norms of health care services for various illnesses or health conditions

Sec. 1156. Each PSRO shall apply professionally-developed and published norms of care and treatment based upon patterns of practice in the region as principal points of evaluation and review in determining quality and medical necessity of services.

Where actual norms in an area differ significantly from regional norms, the PSRO can, with approval of the National Professional Standards Review Council, apply such norms in its geographic area. The National Review Council shall prepare and distribute to each PSRO appropriate materials concerning the regional and national norms to be utilized as initial checkpoints.

Submission of reports by professional standards review organizations

Sec. 1157. If a PSRO determines that a practitioner or provider has violated any obligation imposed by Sec. 1160, the PSRO shall transmit a report of findings and recommendation to the Secretary through the Statewide Professional Standards Review Council, which shall transmit the report and recommendations along with such comments as the Statewide Council deems appropriate.

Requirement of review approval as condition of payment of claims

Sec. 1158. Where a PSRO has reviewed and disapproved a health care service, and has notified the practitioner and provider and the patient of the disapproval, no Federal funds appropriated under the Social Security Act shall be used for the payment of any claim for the provision of such disapproved services.

The PSRO, upon disapproval of a proposed service, shall promptly notify any claims payment agency concerned of such disapproval.

Sec. 1159. Provides beneficiaries and recipients with right to appeal adverse PSRO decisions to Statewide PSRO Councils and Secretary of H.E.W. where amount involved is $100 or more.

Obligation of Health Care Practitioner and Providers of Health Care Services—Sanctions and Penalties

Sec. 1160. It shall be the obligation of any health care practitioner or provider to assure that the services they provide, for which payment may be made under the Social Security Act, will be provided: only when medically necessary; will meet recognized professional standards of health care; and in the case of in-patient services will be provided in the most economical facility consistent with professionally recognized health care standards.

If after reasonable notice and opportunity for discussion, a PSRO finds that a practitioner or provider has consistently failed to comply or has flagrantly failed to comply with his obligations, the PSRO may then recommend to the Secretary (and he may require that such practitioners or providers pay an amount related to the cost of unnecessary or excessive services not to exceed $5,000 (as a condition of remaining eligible for program payments for his services) or the Secretary may temporarily or permanently exclude such practitioner or provider from the program.

Notice to Practitioner or Provider

Sec. 1161. Whenever a PSRO takes any action which denies approval of a proposed service, or indicates that a practitioner or provider has violated the obligations imposed upon him, the PSRO shall give notice to the practitioner or provider, and provide an appropriate opportunity for discussion and review.

Statewide Professional Standards Review Councils: Advisory groups to such Councils

Sec. 1162. In each State with three or more Professional Standards Review Organizations the Secretary shall appoint a Statewide Professional Standards Review Council consisting of one representative from each PSRO, two physicians designated by the State Medical Society, two physicians nominated by the State Hospital Association and four public members knowledgeable in health care from the State selected by the Secretary as public representatives.

It shall be the function of each council to coordinate the activities of and disseminate data among the various PSROs and promptly to transmit to the Secretary reports and recommendations received from the PSROs and to otherwise assist the Secretary.

The Secretary shall make payments to cover reasonable and necessary expenses.

Each Statewide Council shall be advised and assisted by an Advisory Group consisting of representatives of the various types of health care practitioners (other than physicians) and providers, providing covered health care services in a State which it shall select in accordance with regulations prescribed by the Secretary.

National Professional Standards Review Council

Sec. 1163. There shall be established a National Professional Standards Review Council consisting of eleven physicians appointed by the Secretary for three-year terms. A majority of the members of the Council shall consist of physicians of recognized standing and distinction in the appraisal of medical practice nominated by one or more national organizations representing practicing physicians. The Secretary shall provide such personnel and other assistance as may be necessary for the Council to carry out its functions.

The Council shall advise the Secretary in the administration of this part; distribute among Statewide Councils and PSROs pertinent information and data; review the operation of PSROs with a view to determining their comparative effectiveness and performance; and approve or disapprove requests of PSROs for usage of other than regional norms. The National Council shall, at least annually, submit to the Secretary and the Congress a report on its activities, and comparative data indicating the results of review activities in each State and area.

Application of this amendment to certain State programs receiving Federal financial assistance

Sec. 1164. Provisions of this amendment shall apply to the operation of any State plan approved under the Social Security Act as health care programs.

Correlation of functions between Professional Standards Review Organizations and administrative instrumentalities

Sec. 1165. The Secretary shall by regulation provide for correlation and cooperation between carriers, intermediaries, government agencies and PSROs. Such cooperation shall include usage of existing mechanical and other data gathering capacity where appropriate.

Prohibition against disclosure of information

Sec. 1166. Any information acquired by a PSRO in the discharge of its functions shall be held in confidence, except as may be necessary to carry out the purposes of this part or to assure adequate protection of the rights of patients, practitioners or providers. Disclosures of information other than for such authorized purposes shall be unlawful and shall upon conviction be punishable by a fine of up to $1,000 and imprisonment for up to 6 months.

Limitation on liability for persons providing information and for members and employees of PSROs

Sec. 1167. Persons providing information and members or employees of PSROs shall in general not be liable if such information were genuine, and if any actions taken are not motivated by malice. An action shall be deemed to be motivated by malice if the individual or PSRO has consistently failed impartially to take similar action in similar circumstances involving other persons or providers.

Authorization for use of certain funds to administer the provisions of the part

Sec. 1168. Expenses incurred in the administration of this part shall be payable from the Hospital Insurance Trust Fund, the Supplementary Medical Trust Fund, and funds appropriated for other Titles of the Social Security Act in such proportion as the Secretary deems to be equitable.

Sec. 1169. The Secretary is authorized to provide all necessary technical assistance to appropriate organizations in developing a plan for designation of such organizations as PSRO's.

Authorization of demonstration projects

Sec. 1170. The Secretary is authorized to enter into agreements (ending not later than 1975) with such number of PSROs as are necessary to permit a comparison of results where a PSRO assumes a financial risk for the payment of Medicare claims in contrast to areas where a PSRO does not assume financial risk.

Where a PSRO indicates a willingness and capacity to assume financial responsibility for the review and payment of all claims, reimbursement to such PSROs may be made on a capitation, prepayment, insured or related basis for renewable contract periods not exceeding one year. Such amounts may not exceed per capita beneficiary costs in the area concerned during the preceding 12-month period.

Where such agreements are negotiated provision shall be made for the PSRO to assume a risk by making payments for physicians' services at a rate not in excess of 80% of otherwise allowable amounts for such services.

Any sums remaining at the end of the agreement period shall be divided so that the Government receives 50% of the savings. The Government shall also receive amounts, if any, remaining after the PSROs have received the 20 percent or other risk factor withheld and an incentive payment not in excess of 25% of 100% of the physicians' allowable program charges during the agreement period.

Renewable agreements shall be at the base or initial year rate of payment adjusted for appropriate increases, if any, in the unit costs of covered services during the prior year.

On page 176, after line 14, insert the following:

SEC. 220. (a) The heading to tile XI of the Social Security Act is amended by striking out

"TITLE XI—GENERAL PROVISIONS"

and inserting in lieu thereof

"TITLE XI—GENERAL PROVISIONS AND PROFESSIONAL STANDARDS REVIEW

"PART A—GENERAL PROVISIONS".

(b) Title XI of such Act is further amended by adding the following:

"PART B—PROFESSIONAL STANDARDS REVIEW

"DECLARATION OF PURPOSE

"SEC. 1151. In order to promote the effective, efficient, and economical delivery of health care services for which payment may be made (in whole or in part) under this act and in recognition of the interests of patients and the public in improved health care services, it is the purpose of this part to assure, through the application of suitable procedures of professional standards review, that the services for which payment may be made under the Social Security Act will conform to appropriate professional Standards for the provision of health care and that payment for such services will be made—

"(1) only when, and to the extent, medically necessary, as determined in the exercise of reasonable limits of professional discretion; and

"(2) in the case of services provided by a hospital or other health care facility on an inpatient basis, only when and for such period as such services cannot, consistent with professionally recognized health care standards, effectively be provided on an outpatient basis or more economically in an inpatient health care facility of a different type, as determined in the exercise of reasonable limits of professional discretion.

"DESIGNATION OF PROFESSIONAL STANDARD REVIEW ORGANIZATIONS

"SEC. 1152. (a) The Secretary shall (1) not later than January 1, 1973, establish throughout the United States appropriate areas with respect to which Professional Standards Review Organizations may be designated, and (2) at the earliest practicable date after designation of an area enter into an agreement with a qualified organization whereby such an organization shall be designated as the Professional Standards Review Organization for such area.

"(b) For purposes of subsection (a), the term 'qualified organization' means—

"(1) when used in connection with any area—

"(A) a nonprofit professional association (or a component organization thereof) (i) which is composed of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area, (ii) the membership of which includes a substantial proportion of all such physicians in such area, (iii) which has available professional competence to review health care services of the types and kinds with respect to which Professional Standards Review Organizations have review responsibilities under this part, (iv) the membership of which is voluntary and open to all doctors of medicine or osteopathy licensed to engage in the practice of medicine or surgery in such area without requirement of membership in or payment of dues to any organized medical society or association, and (v) which does not restrict the eligibility of any member for service as an officer of the Professional Standards Review Organization or eligibility for and assignment to duties of such Professional Standards Review Organization, or

"(B) such other public, nonprofit private, or other agency or organization, which the Secretary determines, in accordance with criteria prescribed by him in regulations, to be of professional competence and otherwise suitable; and

"(2) which the Secretary, on the basis of his examination and evaluation of a formal plan submitted to him by the association, agency, or organization (as well as on the basis of other relevant data and information), finds to be willing to perform and capable of performing, in an effective and timely manner and at reasonable cost, the duties, functions, and activities of a Professional Standards Review Organization required by or pursuant to this part.

"(c)(1) The Secretary shall not enter into any agreement under this part under which there is designated as the Professional Standards Review Organization for any area any organization other than an organization referred to in subsection (b)(1)(A) unless, in such area, there is no organization referred to in subsection (b)(1)(A) which meets the conditions specified in subsection (b)(2).

"(2) Whenever the Secretary shall have entered into an agreement under this part under which there is designated as the Professional Standards Review Organization for any area any organization other than an organization referred to in subsection (b)(1)(A), he shall not renew such agreement with such organization if he determines that—

"(A) there is in such area an organization referred to in subsection (b)(1)(A) which (i) has not been (nor has its predecessor been) previously designated as a Professional Standards Review Organization, and (ii) is willing to enter into an agreement under this part under which such organization would be designated as the Professional Standards Review Organization for such area;

"(B) such organization meets the conditions specified in subsection (b)(2); and

"(C) the designation of such organization as the Professional Standards Review Organization for such area will result in an improvement in the performance in such area of the duties and functions required of such Organizations under this part.

"(d)(1) An agreement entered into under this part between the Secretary and any organization under which such organization is designated as the Professional Standards Review Organization for any area shall provide that such organization will—

"(A) perform such duties and functions and assume such responsibilities and comply with such other requirements as may be required by this part or under regulations of the Secretary promulgated to carry out the provisions of this part; and

(B) collect such data relevant to its function and such information and keep and maintain such records as the Secretary may require to carry out the purposes of this part and to permit access to and use of any such records as the Secretary may require for such purposes.

"(2) Any such agreement with an organization under this part shall provide that the Secretary make payments to such organization equal to the amount of expenses reasonably and necessarily incurred, as determined by the Secretary, by such organization in carrying out or preparing to carry out the duties and functions required by such agreement.

"(3) Any such agreement under this part with an organization shall be for a term of twelve months; except that, prior to the expiration of such term, such agreement may be terminated—

"(A) by the organization at such time and upon such notice to the Secretary as may be prescribed in regulations (except that notice of more than three months may not be required); or

"(B) by the Secretary at such time and upon such reasonable notice to the organization as may be prescribed in regulations but only after the Secretary has determined (after providing such organization with an opportunity for a formal hearing on the matter) that such organization is not substantially complying with or effectively carrying out the provisions of such agreement.

"(e) No Professional Standards Review Organization shall utilize the services of any individual who is not a duly licensed doctor of medicine or osteopathy to make final determinations with respect to the professional conduct of any other duly licensed doctor of medicine or osteopathy, or any act performed by any duly licensed doctor of medicine or osteopathy in the exercise of his profession.

"REVIEW PENDING DESIGNATION OF PROFESSIONAL STANDARDS REVIEW ORGANIZATION

"SEC. 1153. Pending the assumption by a Professional Standards Review Organization for any area, of full review responsibility, and pending a demonstration of capacity for improved review effort with respect to matters involving the provision of health care services in such area for which payment (in whole or in part) may be made, under this Act any review with respect to such services which has not been designated by the Secretary as the full responsibility of such organization, shall be reviewed in the manner otherwise provided for under law.

"TRIAL PERIOD FOR PROFESSIONAL STANDARDS REVIEW ORGANIZATION

"SEC. 1154. (a) The Secretary shall initially designate an organization as a Professional Standards Review Organization for any area on a conditional basis with a view to determining the capacity of such organization to perform the duties and functions imposed under this part on Professional Standards Review Organizations. Such designation may not be made prior to receipt from such organization and approval by the Secretary of a formal plan for the orderly assumption and implementation of the responsibilities of the Professional Standards Review Organization under this part.

"(b) During any such trial period (which may not exceed twenty-four months), the Secretary may require a Professional Standards Review Organization to perform only such of the duties and functions required under this part of Professional Standards Review Organizations as he determines such organization to be capable of performing. The number and type of such duties shall, during the trial period, be progressively increased as the organization becomes capable of added responsibility so that, by the end of such period, such organization shall be considered a qualified organization only if the Secretary finds that it is substantially carrying out the activities and functions required of Professional Standards Review Organizations under this part with respect to the review of health care services provided or ordered by physicians and other practitioners and institutional and other health care facilities, agencies, and organizations. Any of such duties and functions not performed by such organization during such period shall be performed in the manner and to the extent otherwise provided for under law.

"(c) Any agreement under which any organization is conditionally designated as the Professional Standards Review Organization for any area may be terminated by such organization upon ninety days notice to the Secretary or by the Secretary upon ninety days notice to such organization.

"(d) In order to avoid duplication of functions and unnecessary review and control activities, the Secretary is authorized by waive any or all of the review or similar activities otherwise required under or pursuant to any provision of this Act (other than this part) where he finds, on the basis of substantial evidence of the effective performance of review and control activities by Professional Standards Review Organizations, that the review and similar activities otherwise so required, are not needed for the provision of adequate review and control.

"DUTIES AND FUNCTIONS OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

"SEC. 1155. (a)(1) It shall be the duty and function of each Professional Standards Review Organization for any area to assume, at the earliest date practicable, responsibility for the review of the professional activities in such area of physicians and other health care practitioners and institutional and noninstitutional providers of health care services in the provision of health care services and items for which payment may be made (in whole or in part) under this Act for the purpose of determining whether—

"(A) such services and items are or were medically necessary;

"(B) the quality of such services meets professionally recognized standards of health care; and

"(C) in case such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, such services and items could, consistent with the provision of appropriate medical care, be effectively provided on an out-patient basis or more economically in an in-patient health care facility of a different type.

"(2) Each Professional Standards Review Organization shall have the authority to determine, in advance, in the case of—

"(A) any elective admission to a hospital, or other health care facility, or

"(B) any other health care service which will consist of extended or costly courses of treatment

whether such services, if provided or if provided by a particular health care practitioner or by a particular hospital or other health care facility, organization, or agency, would meet the criteria specified in clauses (A) and (C) of paragraph (1).

"(3) Each Professional Standards Review Organization shall, in accordance with regulations of the Secretary, determine and publish, from time to time, the types and kinds of cases (whether by type of health care or diagnosis involved, or whether in terms of other relevant criteria relating to the provision of health care services) with respect to which such Organization will, in order most effectively to carry out the purposes of this part, exercise the authority conferred upon it under paragraph (2).

"(4) Each Professional Standards Review Organization shall be responsible for the regular review of profiles of care and services received and provided with respect to patients, utilizing to the greatest extent practicable in such patient profiles, methods of coding which will provide maximum confidentiality as to patient identity and assure objective evaluation consistent with the purposes of this part. Profiles shall also be regularly reviewed on an ongoing basis with respect to each health care practitioner and provider to determine whether the care and services ordered or rendered are consistent with the criteria specified in clauses (A), (B), and (C) of paragraph (1).

"(5) Physicians assigned responsibility for the review of hospital care may be only those having active hospital staff privileges in at least one of the participating hospitals in the area served by the Professional Standards Review Organization and except as may be otherwise provided under section 1155(d)(1) of this part, such physicians ordinarily should not be assigned to the review of care and services provided in any hospital in which such physicians have active staff privileges.

"(6) No physician shall be permitted to review—

"(A) health care services provided to a patient if he was directly or indirectly involved in providing such services or

"(B) health care services provided in or by an institution, organization, or agency, if he or any member of his family has, directly or indirectly, any financial interest in such institution, organization, or agency. For purposes of this paragraph, a physician's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents, and grandparents.

"(b) To the extent necessary or appropriate for the proper performance of its du-

ties and functions, the Professional Standards Review Organization serving any area is authorized in accordance with regulations prescribed by the Secretary to—

"(1) make arrangements to utilize the services of persons who are practitioners of or specialists in the various areas of medicine (including dentistry), or other types of health care, which persons shall, to the maximum extent practicable, be individuals engaged in the practice of their profession within the area served by such organization;

"(2) undertake such professional inquiry either before or after, or both before and after, the provision of services with respect to which such organization has a responsibility for review under subsection (a)(1);

"(3) examine the pertinent records of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under subsection (a)(1); and

"(4) inspect the physical facilities in which care is rendered or services provided (which are located in such area) of any practitioner or provider.

"(c) In order to familiarize physicians with the review functions and activities of Professional Standards Review Organizations and to promote acceptance of such functions and activities by physicians, patients, and other persons, each Professional Standards Review Organization, in carrying out its review responsibilities, shall (to the maximum extent consistent with the effective and timely performance of its duties and functions)—

"(1) encourage all physicians practicing their profession in the area served by such Organization to participate as reviewers in the review activities of such Organization;

"(2) provide rotating physician membership of review committees on an extensive and continuing basis;

"(3) assure that membership on review committees have the broadest representation feasible in terms of the various types of practice in which physicians engage in the area served by such organization; and

"(4) utilize, whenever appropriate, medical periodicals and similar publications to publicize the functions and activities of Professional Standards Review Organizations.

"(d)(1) Each Professonal Standards Review Organization is authorized to utilize the services of, and accept the findings of, the review committees of a hospital located in the area served by such Organization, but only when and only to the extent and only for such time that such committees in such hospital have demonstrated to the satisfaction of such Organization their capacity effectively and in timely fashion to review activities in such hospital (including the medical necessity of admissions, types and extent of services ordered, and lengths of stay) so as to aid in accomplishing the purposes and responsibilities described in subsection (a)(1).

"(2) Each Professional Standards Review Organization is authorized to utilize the services of medical societies and similar organizatons to assist such Organization in performing one or more of its professional review activities, but only when and only to the extent that such societies or other organizations have demonstrated to the satisfaction of such Organization their capacity effectively and in timely fashion to perform such activities so as to aid in accomplishing the purposes described in subsection (a)(1).

"(3) The Secretary may prescribe regulations to carry out the provisions of this subsection.

"NORMS OF HEALTH CARE SERVICES FOR VARIOUS ILLNESSES OR HEALTH CONDITIONS

"SEC. 1156. (a) Each Professional Standards Review Organization shall apply professionally developed norms of care and treatment based upon typical patterns of practice in their region (including typical lengths-of-stay for institutional care by age and diagnosis) as principal points of evaluation and review. The National Professional Standards Review Council and the Secretary shall provide such technical assistance to the organization as will be helpful in utilizing and applying such norms of care and treatment. Where the actual norms of care and treatment in a Professional Standards Review Organization area are significantly different from professionally developed regional norms of care and treatment approved for comparable conditions, the Professional Standards Review Organization concerned shall be so informed, and in the event that appropriate consultation and discussion indicate reasonable basis for usage of other norms in the area concerned, the Professional Standards Review Organization may apply such norms in such area as are approved by the National Professional Standards Review Council.

"(b) Such norms with respect to treatment for particular illnesses or health conditions shall include (in accordance with regulations of the Secretary)—

"(1) the types and extent of the health care services which, taking into account differing, but acceptable, modes of treatment, are considered within the range of appropriate treatment of such illness or health condition, consistent with professionally recognized and accepted patterns of care;

"(2) the type of health care facility which is considered, consistent with such standards, to be the type in which health care services which are medically appropriate for such illness or condition can most economically be provided.

"(c)(1) The National Professional Standards Review Council shall provide for the preparation and distribution, to each Professional Standards Review Organization and to each other agency or person performing review functions with respect to the provision of health care services under this act, of appropriate materials indicating the regional norms to be utilized pursuant to this part. Such data concerning norms shall be reviewed and revised from time to time. The approval of the National Professional Standards Review Council of norms of care and treatment shall be based on its analysis of appropriate and adequate data.

"(2) Each review organization, agency, or person referred to in paragraph (1) shall utilize the norms developed under this section as a principal point of evaluation and review for determining, with respect to any health care services which have been or are proposed to be provided, whether such care and services are consistent with the criteria specified in section 1155(a)(1).

"(d)(1) Each Professional Standards Review Organization shall—

"(A) in accordance with regulations of the Secretary, specify the appropriate points in time after the admission of a patient for in-patient care in a health care institution, at which the physician attending such patient shall execute a certification stating that further in-patient care in such institution will be medically necessary effectively to meet the health care needs of such patient; and

"(B) require that there be included in any such certification with respect to any patient such information as may be necessary to enable such Organization properly to evaluate the medical necessity of the further institutional health care recommended by the physician executing such certification.

"(2) The points in time at which any such certification will be required (usually, not later than the 50th percentile of lengths-of-stay for patients in similar age groups with similar diagnoses) shall be consistent with and based on professionally developed norms of care and treatment and data developed with respect to length of stay in health care institutions of patients having various illnesses, injuries, or health conditions, and requiring various types of health care services or procedures.

"SUBMISSION OF REPORTS BY PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

"SEC. 1157. If, in discharging its duties and functions under this part, any Professional Standards Review Oragnization determines that any health care practitioner or any hospital, or other health care facility, agency or organization has violated any of the obligations imposed by section 1160, such organization shall report the matter to the Statewide Professional Standards Review Council for the State in which such organization is located together with the recommendations of such Organization as to the action which should be taken with respect to the matter. Any Statewide Professional Standards Review Council receiving any such report and recommendation shall review the same and promptly transmit such report and recommendation to the Secretary together with any additional comments or recommendations thereon as it deems appropriate.

"REQUIREMENT OF REVIEW APPROVAL AS CONDITION OF PAYMENT OF CLAIMS

"SEC. 1158. (a) Except as provided for in section 1159, no Federal funds appropriated under any title of this Act for the provision of health care services or items shall be used (directly or indirectly) for the payment, under such title or any program established pursuant thereto, of any claim for the provision of such services or items if—

"(1) the provision of such services or items are subject to review under this part by any Professional Standards Review Organization, or other agency; and

"(2) such organization or other agency has, in the proper exercise of its duties and functions under or consistent with the purposes of this part, disapproved of the services or items giving rise to such claim, and has notified the practitioner or provider providing such services or items and the individual to receive such services or items of its disapproval of the provision of such services or items.

"(b) Whenever any Professional Standards Review Organization, in the discharge of its duties and functions as specified by or pursuant to this part, disapproves of any health care services or items furnished by any practitioner or provider, such organization shall, after notifying the practitioner, provider, or other organization or agency of its disapproval in accordance with subsection (a), promptly notify the agency or organization having responsibility for acting upon claims for payment for or on account of such services or items.

"HEARINGS AND REVIEW BY SECRETARY

"SEC. 1159. (a) Any beneficiary or recipient who is entitled to benefits under this Act who is dissatisfied with a determination with repect to his claim made by a Professional Standards Review Organization in carrying out its responsibilities for the review of professional activities in accordance with paragraphs (1) and (2) of section 1155(a) shall, after being notified of such determination be entitled to a reconsideration thereof by the Profesional Standards Review Organization and, where the Professional Standards Review Organization reaffirms such determination in a State which has established a Statewide Professional Standards Review Council, and where the matter in controversy is $100 or more, such determination shall be reviewed by professed members of such Council and, if the Council so determined, revised.

"(b) Where the determination of the statewide Profesional Standards Review Council is adverse to the beneficiary or recipient (or, in the absence of such Council in a State (and where the matter in controversy is $100 or more), such beneficiary or recipient shall be entitled to a hearing

thereon by the Secretary to the same extent as is provided in section 205 (b), and, where the amount in controversy is $1,000 or more, to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). The Secretary will render a decision only after appropriate professional consultation on the matter.

"OBLIGATIONS OF HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES; SANCTIONS AND PENALTIES; HEARINGS AND REVIEW

"SEC. 1160 (a) (1) It shall be the obligation of any health care practitioner and any other person (including a hospital or other health care facility, organization, or agency) who provides health care services for which payment may be made (in whole or in part) under this act, to assure that services or items ordered or provided by such practitioner or person—

"(A) will be provided only when, and to the extent, medically necessary; and

"(B) will be of a quality which meets professionally recognized standards of health care;

and it shall be the obligation of any health care practitioner, in ordering, authorizing, directing, or arranging for the provision by any other person (including a hospital or other health care facility, organization, or agency) of health care services for any patient of such practitioner, to exercise his professional responsibility with a view to assuring (to the extent of his influence or control over such patient, such person, or the provision of such services) that such services or items will be provided—

"(C) only when, and to the extent, medically necessary; and

"(D) will be of a quality which meets professionally recognized standards of health care.

"(2) Each health care practitioner, and each hospital or other provider of health care services, shall have an obligation, within reasonable limits of professional discretion, not to take any action, in the exercise of his profession (in the case of any health care practitioner), or in the conduct of its business (in the case of any hospital or other such provider), which would authorize any individual to be admitted as an in-patient in or to continue as an in-patient in any hospital or other health care facility unless—

"(A) in-patient care is determined by such practitioner and by such hospital or other provider, consistent with professionally recognized health care standards, to be medically necessary for the proper care of such individual; and

"(B) (i) the in-patient care required by such individual cannot, consistent with such standards, be provided more economically in a health care facility of a different type; or

"(ii) (in the case of a patient who requires care which can, consistent with such standards, be provided more economically in a health care facility of a different type) there is, in the area in which such individual is located, no such facility or no such facility which is available to provide care to such individual at the time when care is needed by him.

"(b) (1) If after reasonable notice and opportunity for discussion with the practitioner or provider concerned, any Professional Standards Review Organization submits a report and recommendation to the Secretary pursuant to section 1157 (which report and recommendation shall be submitted through the Statewide Professional Standards Review Council which shall promptly transmit such report and recommendations together with any additional comments and recommendations thereon as it deems appropriate) and if the Secretary determines that such practitioner or provider, in providing health care services over which such organization has review responsibility and for which payment (in whole or in part) may be made under this act has—

"(A) by failing, in a substantial number of cases, substantially to comply with any obligation imposed on him under subsection (a), or

"(B) by grossly and flagrantly violating any such obligation in one or more instances,

demonstrated an unwillingness or a lack of ability substantially to comply with such obligations, he (in addition to any other sanction provided under law) may exclude (permanently or for such period as the Secretary may prescribe) such practitioner or provider from eligibility to provide such services on a reimbursable basis.

"(2) A determination made by the Secretary under this subsection shall be effective at such time and upon such reasonable notice to the public and to the person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of institutional health care services such determination shall be effective in the manner provided in title XVIII with respect to terminations of provider agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

"(3) In lieu of the sanction authorized by paragraph (1), the Secretary may require that (as a condition to the continued eligibility of such practitioner or provider to provide such health care services on a reimbursable basis) such practioner or provider pay to the United States, in case such acts or conduct involved the provision by such practitioner or provider of health care services which were medically improper or unnecessary, an amount not in excess of the actual or estimated cost of the medically improper or unnecessary services so provided, or (if less) $5,000. Such amount may be deducted from any sums owing by the United States (or any instrumentality thereof) to the person from whom such amount is claimed.

"(4) Any person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

"(c) It shall be the duty of each Professional Standards Review Organization and each Statewide Professional Standards Review Council to use such authority or influence it may possess as a professional organization, and to enlist the support of any other professional or governmental organization having influence or authority over health care practitioners and any other person (including a hospital or other health care facility organization or agency) providing health care services in the area served by such review organization, in assuring that each practitioner or provider (referred to in subsection (a)) providing health care services in such area shall comply with all obligations imposed on him under subsection (a).

"NOTICE TO PRACTITIONER OR PROVIDER

"SEC. 1161. Whenever any Professional Standards Review Organization takes any action or makes any determination—

"(1) which denies any request, by a health care practitioner or other provider of healtn care services, for approval of a health care service or item proposed to be ordered or provided by such practitioner or provider; or

"(2) that any such practitioner or provider has violated any obligation imposed on such practitioner or provider under section 1160;

such organization shall, immediately after taking such action or making such determination, give notice to such practitioner or provider of such determination and the basis therefor, and shall provide him with appropriate opportunity for discussion and review of the matter.

"STATEWIDE PROFESSIONAL STANDARDS REVIEW COUNCILS; ADVISORY GROUPS TO SUCH COUNCILS

"SEC. 1162. (a) In any State in which there are located three or more Professional Standards Review Organizations, the Secretary shall establish a Statewide Professional Standards Review Council.

"(b) The membership of any such Council for any State shall be appointed by the Secretary and shall consist of—

"(A) one representative from and designated by each Professional Standards Review Organization in the State;

"(B) four physicians, two of whom may be designated by the State medical society and two of whom may be designated by the State hospital association of such State to serve as members on such Council; and

"(C) four persons knowledgeable in health care from such State whom the Secretary shall have selected as representatives of the public in such State (at least two of whom shall have been recommended for membership on the Council by the Governor of such State).

"(c) It shall be the duty and function of the Statewide Professional Standards Review Council for any State, in accordance with regulations of the Secretary, to coordinate the activities of, and disseminate information and data among, the various Professional Standards Review Organizations within such State, including assisting the Secretary in development of uniform data gathering procedures and operating procedures applicable to the several areas in a State (including, where appropriate, common data processing operations serving several or all areas) to assure efficient operation and objective evaluation of comparative performance of the several areas and, (b) to assist the Secretary in evaluating the performance of each Professional Standards Review Organization, and (c) where the Secretary finds it necessary to replace a PSRO, to assist him in developing and arranging for a qualified replacement Professional Standards Review Organization.

"(d) The Secretary is authorized to enter into an agreement with any such Council under which the Secretary shall make payments to such Council equal to the amount of expenses reasonably and necessarily incurred, as determined by the Secretary, by such Council in carrying out the duties and functions provided in this section.

"(e) (1) The Statewide Professional Standards Review Council for any State shall be advised and assisted in carrying out its functions by an advisory group (of not less than seven nor more than eleven members) which shall be made up of representatives of health care practitioners (other than physicians) and hospitals and other health care facilities which provide within the State health care services for which payment (in whole or in part) may be made under any program established by or pursuant to this Act.

"(2) The Secretary shall by regulations provide the manner in which members of such advisory group shall be selected by the Statewide Professional Standards Review Council.

"(3) The expenses reasonably and necessarily incurred, as determined by the Secretary, by such group in carrying out its duties and functions under this subsection shall be considered to be expenses necessarily incurred by the Statewide Professional Standards Review Council served by such group.

"NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

"Sec. 1163. (a)(1) There shall be established a National Professional Standards Review Council (hereinafter in this section referred to as the 'Council') which shall consist of eleven physicians, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

"(2) Members of the Council shall be appointed for a term of three years and shall be eligible for reappointment.

"(3) The Secretary shall from time to time designate one of the members of the Council to serve as Chairman thereof.

"(b) Members of the Council shall consist of physicians of recognized standing and distinction in the appraisal of medical practice. A majority of such members shall be physicians who have been recommended to the Secretary to serve on the Council by national organizations recognized by the Secretary as representing practicing physicians. The membership of the Council shall include physicians who have been recommended for membership on the Council by consumer groups and other health care interests.

"(c) The Council is authorized to utilize, and the Secretary shall make available or arrange for, such technical professional and consultative assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by, for, or otherwise available to, the Department of Health, Education, and Welfare as the Council may require to carry out its functions.

"(d) Members of the Council, while serving on business of the Council, shall be entitled to receive compensation at a rate fixed by the Secretary (but not in excess of the daily rate paid under GS–18 of the General Schedule under section 5332 of title 5, United States Code), including traveltime; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

"(e) It shall be the duty of the Council to—

"(1) advise and assist the Secretary in the administration of this part;

"(2) provide for the development and distribution, among Statewide Professional Standards Review Councils and Professional Standards Review Organizations, of information and data which will assist such review councils and organizations in carrying out their duties and functions;

"(3) review the operations of Statewide Professional Standards Review Councils and Professional Standards Review Organizations with a view to determining the effectiveness and comparative performance of such review councils and organizations in carrying out the purposes of this part; and

"(4) make or arrange for the making of studies and investigations with a view to developing and recommending to the Secretary and to the Congress measures designed more effectively to accomplish the purposes and objectives of this part.

"(f) The National Professional Standards Review Council shall from time to time, but not less often than annually, submit to the Secretary and to the Congress a report on its activities and shall include in such report the findings of its studies and investigations together with any recommendations it may have with respect to the more effective accomplishment of the purposes and objectives of this part. Such report shall also contain comparative data indicating the results of review activities, conducted pursuant to this part, in each State and in each of the various areas thereof.

"APPLICATION OF THIS PART TO CERTAIN STATE PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

"Sec. 1164. (a) In addition to the requirements imposed by law as a condition of approval of a State plan approved under any title of this act under which health care services are paid for in whole or part, with Federal funds, there is hereby imposed the requirement that provisions of this part shall apply to the operation of such plan or program.

"(b) The requirement imposed by subsection (a) with respect to such State plans approved under this act shall apply—

"(1) in the case of any such plan where legislative action by the State legislature is not necessary to meet such requirement, on and after January 1, 1973; and

"(2) in the case of any such plan where legislative action by the State legislature is necessary to meet such requirement, whichever of the following is earlier—

"(A) on and after July 1, 1973, or

"(B) on and after the first day of the calendar month which first commences more than ninety days after the close of the first regular session of the legislature of such State which begins after December 31, 1972.

"CORRELATION OF FUNCTIONS BETWEEN PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS AND ADMINISTRATIVE INSTRUMENTALITIES

"Sec. 1165. The Secretary shall by regulations provide for such correlation of activities, such interchange of data and information, and such other cooperation consistent with economical, efficient, coordinated and comprehensive implementation of this part (including but not limited to usage of existing mechanical and other data-gathering capacity), between—

"(A) (i) agencies and organizations which are parties to agreements entered into pursuant to section 1816, (ii) carriers which are parties to contracts entered into pursuant to section 1842, and (iii) any other public or private agency (other than a Professional Standards Review Organization) having review or control functions, or proved relevant data-gathering procedures and experience, and

"(B) Professional Standards Review Organizations, as may be necessary or appropriate for the effective administration of title XVIII, or State plans approved under this act.

"PROHIBITION AGAINST DISCLOSURE OF INFORMATION

"Sec. 1166. (a) Any data or information acquired by any Professional Standards Review Organization, in the exercise of its duties and functions, shall be held in confidence and shall not be disclosed to any person except (A) to the extent that may be necessary to carry out the purposes of this part or (B) in such cases and under such circumstances as the Secretary shall by regulations provide to assure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care.

"(b) It shall be unlawful for any person to disclose any such information other than for such purposes, and any person violating the provisions of this section shall, upon conviction, be fined not more than $1,000, and imprisoned for not more than six months, or both, together with the costs of prosecution.

"LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION, AND FOR MEMBERS AND EMPLOYEES OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS, AND FOR HEALTH CARE PRACTITIONERS AND PROVIDERS

"Sec. 1167. (a) Notwithstanding any other provision of law, no person providing information to any Professional Standards Review Organization shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law, of the United States or of any State (or political subdivision thereof) unless—

"(1) such information is unrelated to the performance of the duties and functions of such Organization, or

"(2) such information is false and the person providing such information knew, or had reason to believe, that such information was false.

"(b)(1) No individual who, as a member or employee of any Professional Standards Review Organization or who furnishes professional counsel or services to such organization, shall be held by reason of the performance by him of any duty, function, or activity authorized or required of Professional Standards Review Organizations under this part, to have violated any criminal law, of the United States or of any State (or political subdivision thereof) provided he has exercised due care.

"(2) The provisions of paragraph (1) shall not apply with respect to any action taken by any individual if such individual, in taking such action, was motivated by malice toward any person affected by such action.

"(c) No health care practitioner and no provider of health care services shall be civilly liable to any person under any law, of the United States or of any State (or political subdivision thereof) on account of any action taken by him in compliance with or reliance upon professionally accepted norms of care and treatment applied by a Professional Standards Review Organization (which has been designated in accordance with section 1152(b)(1)(A)) operating in the area where such practitioner or provider took such action but only if—

"(1) he takes such action (in the case of a health care practitioner) in the exercise of his profession as a health care practitioner or (in the case of a provider of health care services) in the exercise of his functions as a provider of health care services and

"(2) he exercised due care in all professional conduct taken or directed by him and reasonably related to, and resulting from, the actions taken in compliance with or reliance upon such professionally accepted norms of care and treatment.

"AUTHORIZATION FOR USE OF CERTAIN FUNDS TO ADMINISTER THE PROVISIONS OF THIS PART

"Sec. 1168. Expenses incurred in the administration of this part shall be payable from—

"(1) funds in the Federal Hospital Insurance Trust Fund;

"(2) funds in the Federal Supplementary Medical Trust Funds; and

"(3) funds appropriated to carry out the health care provisions of the several titles of this Act;

in such amounts from each of the sources of funds (referred to in clauses (1), (2), and (3)) as the Secretary shall deem to be fair and equitable after taking into consideration the costs attributable to the administration of this part with respect to each of such plans and programs.

"TECHNICAL ASSISTANCE TO ORGANIZATIONS DESIRING TO BE DESIGNATED AS PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

"Sec. 1169. The Secretary is authorized to provide all necessary technical and other assistance (including the preparation of prototype plans of organization and operation) to organizations described in section 1152(b)(1) which—

"(1) express a desire to be designated as a Professional Standards Review Organization; and

"(2) the Secretary determines have a potential for meeting the requirements of a Professional Standards Review Organization;

to assist such organizations in developing a proper plan to be submitted to the Secretary and otherwise in preparing to meet the requirements of this part for designation as a Professional Standards Review Organization.

"AUTHORIZATION OF DEMONSTRATION PROJECTS

"SEC. 1170. (a) In order to determine the feasibility and potential economies of methods whereby Professional Standards Review Organizations, in addition to their responsibilities under this part, assume responsibility and risk with respect to the review and payment of claims for health care services, payment for which may be made (in whole or in part) under any program established by or pursuant to this Act, the Secretary is authorized to enter into agreements in periods ending not later than December 31, 1977, with such number of Professional Standards Review Organizations, in the same or in different areas of the Nation, as may be necessary to permit adequate and proper comparison of results, with respect to the review and payment of claims for such services, as between areas in which risk is assumed by Professional Standards Review Organizations and areas in which such risk is not assumed by such organizations. The Secretary shall submit reports to the Congress on the results of such demonstration projects from time to time but not less than annually.

"(b)(1) The Secretary shall undertake such agreements with Professional Standards Review Organizations which indicate willingness and capacity to assume responsibility for review and full payment for all care and services for which beneficiaries or recipients resident in such geographic areas are eligible. Reimbursement to such Professional Standards Review Organizations for such commitments may be on a capitation, prepayment, insured or related basis for renewable contract periods not in excess of one year. Such amounts may not, on an annualized basis for the initial agreement period, exceed per capita beneficiary costs in the geographic area concerned during the 12-month period prior to the effective date of the agreement. For any subsequent periods the base 12-month period per capita beneficiary costs shall also be applicable and adjusted by appropriate factors representing unit cost increases in covered services.

"(2) Where such agreements are negotiated, provision shall be made for assumption of risk by the underwriting Professional Standards Review Organizations through agreement to make contingent payment for physicians' services of not in excess of 80 per centum of the amounts otherwise allowable for such services in the absence of such agreement.

"(3) From any amounts remaining at the end of the agreement period, provision shall be made for equal division of such amounts between the Secretary (and the State in the case of a federally matched program) and the Professional Standards Review Organizations. The amounts actually paid to the Professional Standards Review Organizations from the divided excess may not exceed the 20 per centum of otherwise allowable amounts withheld plus an incentive payment not in excess of 25 per centum of the total amounts allowable and payable for physicians' services during that year. Any remaining amounts of the Professional Standards Review Organizations calculation in excess shall revert to the Secretary or to the State in the case of a federally matched health care program.

"(4) Any deficit shall be assumed by the Secretary or State agency in order to assure beneficiaries and recipients of payment for necessary care. The Professional Standards Review Organizations shall not be entitled to the 20 per centum of the otherwise allowable amounts for physicians' services withheld in such period. In any subsequent year, the Secretary shall recover from any excess amounts remaining such additional amounts as had been paid by him or by a State agency to eliminate deficits in prior periods before calculation of any payments of withheld and incentive amounts to the Professional Standards Review Organizations.

"EXEMPTION OF CHRISTIAN SCIENCE SANATORIUMS

"SEC. 1171. The provisions of this part shall not apply with respect to a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts."

AMENDMENTS NOS. 824, 825, AND 826

(Ordered to be printed and referred to the Committee on Finance.)

Mr. RIBICOFF. Mr. President, much of our discussion of H.R. 1 has focused on the need for welfare reform. While this is the most innovative title of the bill and deserves our thoughtful consideration, we often forget that H.R. 1 contains several other important provisions.

Significant changes of great importance to our elderly citizens are made, for example, in our medicare programs. I am therefore introducing today several amendments to the medicare portion of H.R. 1 designed to strengthen this program for the millions of Americans who rely on medicare to insure adequate health care.

First. Extend medicare coverage to the cost of out-of-hospital prescription drugs;

Second. Protect recipients against proposed increases in the deductible amounts they are required to pay;

Third. Eliminate the present requirement for a 3-day hospital stay before home health services are covered;

Fourth. Remove H.R. 1's proposed requirement of a daily hospital copayment of $7.50 by beneficiaries after 30 days of hospitalization;

Fifth. Lower the limit for hearings on disputed claims from $100 to $25;

Sixth. Establish an Office of Inspector General for Health Administration within the Department of Health, Education, and Welfare; and

Seventh. Require public disclosure of data relating to the performance and operation of participants in the medicare and medicaid programs.

These amendments will improve the coverage provided by our present medicare system and, at the same time, help cut down waste in the operation and administration of the program. Further information about each amendment follows.

1. MEDICARE COVERAGE FOR OUT-OF-HOSPITAL, PRESCRIPTION MEDICINES

Millions of medicare patients every year contact illnesses of varying severity that require treatment with prescription drugs. The costs of these medicines often make up a majority of the expenses associated with an illness and can run into hundreds or even thousands of dollars. And yet none of these expenses are presently covered by medicare.

This amendment extends medicare coverage to the cost of out-of-hospital, prescription drugs with a $1 copayment on each prescription by the consumer. This proposal was supported by the 1969 report of the HEW task force on prescription drugs. The need is obvious when you remember that those living on a fixed income—the aged—are least able to pay for high health costs. Their health bills are six times higher than the average nonaged individual.

Under the proposal, qualified pharmacies would enter into agreements to provide a full range of pharmaceutical services for medicare recipients. Patients would be fully relieved from the time and confusion of claims records and filing responsibilities.

To help control costs, this amendment also establishes a committee to formulate a list of drugs, organized in such a way as to assist the prescriber in making sound and rational decisions regarding which drugs to prescribe for his patients. Only listed drugs would be covered by medicare payments. Two officials of the Department of Health, Education, and Welfare and seven individuals of recognized professional standing and distinction in the fields of medicine, pharmacology, and pharmacy would serve as members of the committee. Drugs selected would be those recognized as appropriate and proper for use in treating the myriad of health problems which afflict older people, listed according to their diagnostic, prophylactic, therapeutic, or other uses in modern pharmaceutical therapy.

Reimbursement under the bill would be limited to a maximum allowable cost for each drug listed by the committee. The committee would examine the amount or amounts at which listed drugs, in given strengths, quantities, and dosage forms, are generally available for sale to the ultimate dispensers of such medications. The actual maximum allowable cost to which providers are entitled includes a professional fee designed to cover the costs of the pharmaceutical services rendered in connection with the program.

2. LIMITING PROPOSED INCREASES IN MEDICARE DEDUCTIBLES

As the medicare program has grown to accommodate the health needs of the aged, costs have increased far beyond projected estimates. This is not the fault of the senior citizen. Nonetheless, we are now cutting back on costs by putting the financial burden back on the individual patient—the one least able to bear the burden. My amendment would halt proposed increases in deductibles under medicare.

Under medicare, a beneficiary is presently required to pay the initial $50 of covered expenses during a year plus at least 20 percent of the balance. H.R. 1 would increase that deductible to $60. My proposal would restore the $50 deductible level.

Another rising deductible is that for hospitals. The Social Security Act requires the Secretary of HEW to determine and promulgate between July 1 and October 1 of the inpatient hospital deductible applicable to any spell of illness.

In October of 1971, the Secretary raised the deductible from $60 to $68, an action expected to adversely affect about 4 million people for whom the average stay in a hospital is 12.2 days, and costs about $800. My amendment freezes the inpatient hospital deductible at $60 and

freezes the $15 copayment for the 61st through 90th days of hospitalization at the $15 level. The freeze on deductibles and copayments which I am proposing would apply to treatment in an extended care facility as well.

3. ELIMINATION OF 3-DAY HOSPITAL STAY AS A REQUIREMENT FOR MEDICARE COVERAGE FOR HOME HEALTH SERVICES

Under existing law a medicare beneficiary is not entitled to home health services until he has been hospitalized for a minimum of 3 days. Thus, a physician is forced to hospitalize his patient to insure medicare coverage even though the optimum health care services might be provided in the home through a home health agency at a significant savings.

The HEW medicare advisory committee, the Health Insurance Benefits Advisory Committee, has recommended that the hospitalization requirement as an eligibility criterion for home health services be eliminated. My amendment would implement that recommendation.

Our present medicare law requires hospitals and extended care facilities to carry out utilization review activities in the interest of effective use of scarce resources and improvements in levels of care. My proposals would extend this requirement to home health agencies as well.

Home health services also need to be coordinated more effectively. They are now administered through three major organizational components of the Department of Health, Education, and Welfare—the Social Security Administration, the Social and Rehabilitation Service and the Health Services and Mental Health Administration. A home health agency at the local level is frequently confronted with three conflicting sets of ground rules. To improve coordination, an advisory committee on home health services should be appointed to assist the Assistant Secretary for Health and Scientific Affairs in administering home health services provided under medicare, medicaid and the maternal and child health program.

4. ELIMINATION OF PROPOSED NEW HOSPITAL COPAYMENT

This amendment would eliminate H.R. 1's new requirement of a daily hospital copayment of $7.50 by beneficiaries for the 31st through 60th days of hospitalization.

Some argue that medicare encourages prolonged hospitalization that is unnecessary because of the absence of sufficient financial barriers and deterrents. Medicare presently covers 90 days of hospitalization with the beneficiary being responsible for the first $60 of his bill and a copayment of $15 for each day from the 61st through the 90th. Present law also provides each beneficiary with a nonrenewable lifetime reserve of 60 days of inpatient coverage, subject to a $30 daily copayment.

While H.R. 1 adds a daily copayment by beneficiaries of $7.50 from the 31st through 60th days of hospitalization, the number of lifetime reserve days would also be increased from 60 to 120 days. This expanded reserve is a desirable feature. However, the estimated costs of increasing the lifetime reserve would supposedly be offset by the savings incurred from the $7.50 copayment during the 31st to 60th day.

This allegation ignores the facts. From the individual's standpoint, medicare statistics indicate that a miniscule proportion of people would benefit by an increase in the lifetime reserve compared to the numbers who would be hurt by the $7.50 copayment. Over 6 percent of the total number of stays in hospitals under medicare in 1970 involved hospitalization between 31 and 60 days in length. Less than one-third of 1 percent of the stays would have benefited by the newly proposed lifetime reserve period.

In absolute figures there were 4,212,400 medicare days of hospitalization between days 31 and 60 in 1969 compared with only 553,700 lifetime reserve stays. While absolute costs to the Government may be limited by imposing a new copayment and increasing the lifetime reserve, the impact is negative on the patient who is much more likely to be forced to pay the new copayment. My proposal therefore eliminates the new copayment while retaining the liberalized lifetime reserve features of H.R. 1. I ask unanimous consent that the following table be printed at this point in the RECORD.

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

DISTRIBUTION OF HOSPITAL INPATIENT STAYS COVERED BY MEDICARE—PART A: DURING SEPARATE SPELLS OF ILLNESS

Number of days	Year 1970 (incomplete [1])		Year 1969 [1]	
	Number of stays [2]	Percent of total	Number of stays [2]	Percent of total
1 to 30	3,991	92.0	5,133	91.0
31 to 45	213	4.9	308	5.4
45 to 60	70	1.6	102	1.8
31 to 60	283	6.5	400	7.0
61 to 90	40	.9	57	1.0
91 to 150	12	.3	32	.5
Total	4,326	100.0	5,656	100.0

[1] Updated through Dec. 31, 1970.
[2] In thousands.

Source: Medicare study, Baltimore, June 23, 1971.

5. MEDICARE HEARINGS

Mr. RIBICOFF. Mr. President, section 262 of H.R. 1 would be amended to lower the minimum claim for fair hearings. H.R. 1 would restrict hearings under the supplementary medical insurance program to disagreements involving amounts over $100. The purpose of the provision is clearly to eliminate the expense and inconvenience of such hearings for amounts of money considered too small. Approximately 45 percent of all such hearings to date have concerned amounts under $100.

Clearly it is inconvenient for the insurance company—fiscal intermediaries who hold the hearings—to be bothered by disagreements over small amounts of money. But medicare is a program to help people, not insurance companies. For the aged, many of whom are poor, amounts of $100, $75, $50 and even $25 are significant.

My amendment provides that hearings be held on all claims above $25. Spurious claims can be dismissed quickly just as they are in the courts and minor claims would be eliminated to lower the burden. But meritorious claims should be paid.

6. ESTABLISHMENT OF AN OFFICE OF INSPECTOR GENERAL FOR HEALTH ADMINISTRATION

No independent reviewing mechanism is presently charged with specific responsibility for ongoing and continuing review of medicare and medicaid in terms of their efficiency and effectiveness. Our recent hearings on the operations of these programs documented the need for such review by disclosing inefficiencies, wasteful expenditures, and noncompliance with legal requirements.

While the Comptroller General and the Department of Health, Education, and Welfare's Audit Agency have done some valuable and helpful work in reviewing medicare and medicaid operations, a pronounced need exists for vigorous day-to-day and month-to-month monitoring of these programs, which now cost $15 billion annually.

This amendment would establish an Office of Inspector General for Health Administration within the Department of Health, Education, and Welfare. The Inspector General would be appointed by the President, would report to the Secretary, and would be responsible for reviewing and auditing the social security health programs on a continuing and comprehensive basis to determine their efficiency, economy, and consonance with the law and congressional intent. I introduced this amendment in the last Congress with my former Finance Committee colleague, the Honorable JOHN WILLIAMS of Delaware and it gained the approval then of the full committee.

The Inspector General would be provided with authority sufficient to assure that medicare and medicaid function as Congress intends. The responsibilities and role envisaged for the Inspector General for Health Administration are essentially patterned after the successful approach employed in the Agency for International Development and the investigative and reporting responsibilities with respect to congressional requests required of the U.S. Tariff Commission.

The Inspector General is to report directly to the Secretary of HEW and will be required to maintain continuous observation and review of the programs to determine the extent to which they comply with applicable laws and regulations and to evaluate the extent to which the programs attain their legislative objectives and purposes. The Inspector General is to make recommendations for correction of deficiencies or for improving the organization, plans, procedures, or administration of the health care programs. He is also to provide the congressional Committees on Finance and Ways and Means with any material or information requested.

In carrying out his duties, the Inspector General will have access to all Federal records, reports and information relating to health care programs. He will also have authority to suspend any regulation, practice, or procedure employed in the administration of a program if he determines that the suspension will promote efficiency and economy in the administration of the program, or that the

regulation, practice, or procedure involved is contrary to or does not carry out the objectives and purposes of applicable provisions of law. In order to enable him to carry out his duties, the Inspector General could devise uniform reporting standards which would allow him to make adequate comparisons of provider and intermediary performance.

In am convinced that this new office will make a major and badly needed contribution to the efficiency of our massive Federal health programs.

7. PUBLIC DISCLOSURE OF MEDICARE INFORMATION

As the American public and Congress analyze the need for reform in this Nation's health care system, it is imperative that the merits and failings of the present system be fully known. Unfortunately, a confidentiality provision of the Social Security Act, section 1106, has placed an obstacle in the path of obtaining needed information concerning the workings of our medical system. The secrecy requirements, enacted in the late 1930's to prevent unscrupulous politicians and tradesmen from obtaining lists of old-age assistance recipients for the purpose of political propagandizing and high-pressure selling, have in large part outlived their usefulness and their original intent.

Section 1106 forbids disclosure of "any file, record, or other paper or any information" obtained by the Social Security Commissioner except as expressly allowed by him. Today, in conjunction with the so-called Regulation No. 1, this sweeping confidentiality provision has become HEW's equivalent of the Pentagon's "classified for national security" provisions.

Instead of protecting the individual medicare patient or social security recipient from a possible violation of privacy, section 1106 and its regulations have been utilized to deny access to information concerning the performance of fiscal intermediaries—insurance companies—under medicare, hospital surveys, nursing home performance, deficiencies in other types of medical facilities and the administrative relationships between hospitals, physicians and insurers.

Mal Schechter, a recognized expert in the health care field and Washington editor of Hospital Practice magazine, summarized the problem concisely in a September 26, 1971, Washington Post article:

What Congress intended as a protection of payroll tax beneficiaries has been extended to Medicare's corporate servants.

Mr. Schechter's difficulties in obtaining information about medicare performance and HEW's responses to him are well documented. I ask unanimous consent that they be made a part of the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. RIBICOFF. Mr. President, even major participants in the operation of medicare have been denied access to information. Pennsylvania Insurance Commissioner Herbert S. Denenberg recently, complained that the Federal Government is attempting to keep important reports and documents on the operations of medicare secret without any justification whatsoever, and in defiance of the public's need for information. Mr. Denenberg was denied such documents based on what the Bureau of Health Insurance called executive privilege and fear of misinterpretation.

In a letter to Mr. Denenberg, Thomas Tierney, director of the Bureau of Health Insurance, which oversees medicare, stated that certain of the items requested "are considered privileged materials not so much for their content as for the administration's belief that misinterpretations might easily result."

Mr. Denenberg's experience is not unique. The health law project at the University of Pennsylvania, an organization which is constantly studying the operation, effectiveness and impact of medical programs under the Social Security Act and recommending improvements, has been needlessly hampered in its efforts to obtain public information. Time after time the health law project has been denied access to reports, audits and memoranda concerning the effectiveness of medicare and the practices of the Social Security Administration.

Access has been denied to Social Security Manuals which govern many aspects of the operation of medicare by intermediaries with respect to claims of medicare enrollees. One "Freedom of Information" officer in HEW quoted a price of $800 for copying various medicare manuals which should be public information. Information has also been impossible to obtain on doctors' customary charges for private office visits in various localities.

I ask unanimous consent that correspondence between the Health Law project and various Federal officials responsible for medicare and medicaid operations be inserted in the RECORD at the conclusion of my remarks. It will show how broadly the Federal Government has interpreted laws and regulations which were intended solely to protect individual privacy.

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

(See exhibit 2.)

Mr. RIBICOFF. Mr. President, apparently medicare officials think the public should not see the contents of the reports. It seems more likely to me that if the public saw these reports, many of which show substandard performance, they would understand all too well the implications of shoddy performance, substandard medical care, and improper cost arrangements.

The taxpayer spends over $6.3 billion a year for the Federal hospital insurance program yet the facts of its operation and the causes of ever-increasing hospital costs are buried in secrecy. The result has been that some insurance companies continue to participate in medicare despite poor performance records as fiscal agents. Surveys of hospitals which have lost their accreditation go unnoticed. Unsafe nursing homes and other medical facilities with substandard performance records remain in operation free from public scrutiny. And hospital and medical costs go up beyond reason because the public and State officials cannot obtain adequate information on which to base cost and quality controls.

While regulation No. 1 has been amended to require disclosure of institutional payments, sufficient data has not been available to enable Congress and the public to evaluate and compare costs related to patient load, thereby hindering medicare's ability to control costs and provide the pilot data needed in the development of any national health insurance program.

My amendment, a modification of the provision approved last year by the Senate Finance Committee, will replace section 1106 with a single statement limiting confidentiality to taxpayer-beneficiary-patient records. All other information would be made available in easy-to-understand form at every social security office and at every institution participating in Federal health insurance programs.

The provider of services under medicare has for too long been insulated from the cleansing effect of public scrutiny. It is time to protect the patient-beneficiary and find out what needs to be known if medicare and future health insurance programs are to succeed. As Thomas Jefferson once said of the public:

Give them the facts and they will know what to do.

My amendment will do just that.

EXHIBIT 1

MEDICARE'S SECRET DATA

(By Mal Schechter)

In 1939, the fledgling Social Security System warned Congress of a problem vitiating its objective of humane aid to the poor. Political candidates in some states acquired, legally, the names of Old-Age Assistance recipients and deluged them with campaign propaganda, promises and warnings. Tradesmen also used the lists. A few states actually required publication of the names to deter the poor from seeking relief.

Social Security Board Chairman Arthur Altmeyer asked Congress for authority to require confidentiality of records. Not only to protect assistance recipients but also individuals in the payroll tax program of old age and survivors insurance, Congress agreed.

Section 1106 of the Social Security Act to this day ranks as one of the most sweeping secrecy provisions in any federal program. It forbids disclosing "any file, record, or other paper or any information" obtained by the system or provided for official use, except as the Social Security commissioner expressly allows.

A quarter century after Altmeyer's plea, Medicare began.

There lies the rub. For Section 1106, implemented by Regulation No. 1, covers relationships hardly imagined in 1939.

Medicare deals with hospitals, nursing homes, clinical laboratories, physicians, health departments, and insurance companies. What Congress intended as protection of payroll taxpayers and beneficiaries has been extended to Medicare's corporate servants. The "authority to refuse to disclose"—as Regulation No. 1 puts it—has mushroomed, and this restricts the public's right to know about the quality of care it receives and the quality of Medicare's administration.

Much information on specific facilities is not open to the public, such as reports on Medicare-financed inspections of nursing

homes and hospitals. These surveys contain information bearing on patient health and safety which could be important to families trying to place a relative. Or to newsmen, students of health care and public administration, or anyone who wants to know how good or bad a community is served by the health establishment.

But nobody can get these reports from Social Security.

In New York State, on the other hand, information on institutional deficiencies gathered by the state is, by law, public information.

Social Security Commissioner Robert Ball says he realizes that deficiency disclosure could help the public and patients, by he emphasizes "undesirable effects." He insists Medicare doesn't certify a facility endangering the patient's health or safety. Therefore, public disclosure or lesser deficiencies in certified institutions "might create unwarranted concern" or an "adverse public reaction (that) could severely hamper an institution's efforts to maintain patient loads while effectuating needed improvements."

SHORTCOMINGS SHIELDED

That serious deficiencies exist under Medicare is hardly hallucination. Federal auditors repeatedly have found Medicare homes lacking complete fire protection programs, required nursing attention, required physician attention, necessary emergency electrical service, and complete nurses' call systems.

Which ones Don't ask the Social Security Administration.

Medicare certification is hardly an infallible guide to quality. Of some 4,500 medicare nursing homes mentioned in a Senate Finance Committee report, nearly 3,300 had significant deficiencies, some tolerated for years in the category of "substantial compliance" with standards. The public never is told which homes are in "full" and which in "substantial" compliance. The Finance Committee says administrative legerdemain permits disregard of many standards.

The nation has the word not only of auditors but also of President Nixon that something is seriously wrong with federally subsidized care in nursing homes. Much of the President's recently announced effort to tighten up federal supervision of nursing homes appears directed at officially tolerated abuses—perhaps in good measure tolerated behind a screen of nondisclosure.

Although Social Security has some good words for disclosure, it has backed off from an innovative proposal by the Finance Committee. Last year, the committee proposed that Medicare publish information on deficiencies if an institution fails to correct them within 90 days. The proposal is still pending. Social Security has come up with many reservations to the plan without acknowledging the public's right to information. Ball has argued that "widespread and indiscriminate dissemination of information about deficiencies" may have some undesirable effects.

The public's right to know may be forever in conflict with such official paternalism, whether altruistic or self-serving. Often considered one of the better bureaucracies, Social Security has a record on Medicare nondisclosure that goes beyond nursing homes. It was reluctant to name insurance companies that it found to be poor Medicare fiscal agents, including District of Columbia Blue Shield. It declined to disclose results of a Medicare survey of Boston City Hospital after disaccreditation by the Joint Commission on Accreditation of Hospitals; nondisclosure prevented an attempt to compare certification systems. Social Security is silent on revealing the names of Medicare nursing homes that have highly inflammable carpeting. It has stopped a state agency from describing the administrative process that permitted a leading clinical laboratory to be certified for four years without meeting key standards.

Even reimbursement information has been played close to the vest. When first asked for specific payments to hospitals, the agency said nothing doing: Regulation No. 1. Fortunately, Ball relented because "there is not the same validity in withholding information concerning the payment of public funds to institutional providers of Medicare services as there is in the case of information on Social Security payments to individuals."

Ball made the data available and amended Regulation No. 1—but only to disclose institutional payments, not deficiency data. Alas, the hospital payment data turned out to be inadequate for comparing institutions on costs related to patient load. This raised questions about Medicare's capacity to analyze costs and influence development of cost controls amid medical-hospital inflation. A promise that good comparative data would be published regularly remains unkept.

Given specific hospital payment data, the extent to which Medicare financed certain racially discriminating Southern hospitals was assessed by Hospital Practice. The report led to tightening up of a Medicare loophole. There was no difficulty obtaining specific civil rights data from the Office for Civil Rights of the Department of Health, Education, and Welfare; that office said the records were public information.

SOOTHING THE INDUSTRY

The application of Regulation No. 1 to Medicare may be a historical result of the health industry's opposition to enactment of the program—and specially to its chief spokesman, Wilbur Cohen, then HEW under secretary. After enactment, Cohen, prodded by the White House, emphasized consultation and conciliation. Consumer representatives, including organized labor, followed Cohen. Much of the regulatory work was confidential from the very start. In this atmosphere, Regulation No. 1 was handy.

The bureaucrats who moved over from the cash-payments and disability-payments programs had matured at the knee of Regulation No. 1. A history of early Social Security days point to the founding policy of shunning political controversy at almost all costs. This meant a tight lip on information that might stir things up even more for a young social program in the hostile 1930s. The system had to be above reproach and suffer its pains quietly.

These themes may have figured in the application of Regulation No. 1 to Medicare. The commissioner could have excluded the new relationships from nondisclosure. Psychologically, 1966 may have been 1936 all over again in the bureaucracy. Whatever the reason, frankness with the public has not been a Medicare hallmark where controversy portended—neither under the Democrats nor under the Republicans, who, the bureaucrats are aware, have special ties to protect in the health establishment, especially insurance companies.

Some officials argue that it is enough that congressional committees get information. Still, information on deficiencies does little practical good to the man in the street when deposited on the Hill under a "confidential" stamp. Nor, one might argue, should congressional oversight delimit the public's right to information. Medicare records probably are a mine of information for communities on the quality of medical-hospital care. Disclosure might generate healthy corrective pressures in localities.

The dangers of secrecy, some officials argue, are outweighed by the dangers of disclosing undigested technical information. Raw data might do the public little practical good. The proper rejoinder may be that government must provide the context to give data meaning with other sources free to comment on the facts. The HEW Audit Agency has such a pattern so readers can judge for themselves.

THE CHANGES NEEDED

A few steps could give the public access to Medicare information. First, Section 1106 should be replaced by a simple statement limiting confidentiality to taxpayer-beneficiary-patient records. All other information should be subject to the 1967 Freedom of Information law.

This statute assumes that all information in federal hands belongs to the people and is disclosable, with certain exceptions—such as internal policy memoranda, trade secrets and patient records. Unfortunately, the 1967 law exempts any antedating statutory authority for secrecy, such as Section 1106. Also lamentably, the law has been laced with bureaucratic interpretations that have created or widened loopholes.

The information law should be amended to narrow the loopholes, especially to make clear that factual material must be disclosed on request in timely fashion. Where doubt exists about "confidentiality," the matter should be examined by a board including non-bureaucrats. For example, the President might name such a board from newsmen, public representatives and bureaucrats. Among other things, they might have power to release the substance of documents after "sanitizing" to preserve necessary patient-beneficiary confidentiality. The board should work rapidly. Its decisions should be subjected to immediate court review.

Further, in the current debate over national health insurance all proposals should carry an explicit requirement for freedom of information, avoiding secrecy from the start. The debate over forms of health insurance, quality of care, economics and efficiency of services, and governmental-versus-private roles might be better informed today if the people had the facts.

Finally, the Senate Finance provision on releasing deficiency information should be enacted without delay. Anyone seeking to learn about the quality of a facility should be able to look it up at a district Social Security office. The same information on institutions in Medicaid and other government programs should be public, as should results of hospital accreditation inspections which form the basis for joining government programs.

Thomas Jefferson once said, "Give the facts and they will know what to do."

Medicare should do no less.

HOSPITAL PRACTICE,
Washington, D.C., November 23, 1971.

Sen. ABRAHAM RIBICOFF,
Old Senate Office Bldg.,
Washington, D.C.

DEAR SENATOR RIBICOFF: Knowing of your keen interest in matters of the public's right to know the conduct of public business, I take the liberty of forwarding the enclosed file of efforts to obtain access to information in the hands of Medicare officials.

The authority Medicare uses to block access to information gained for a public program is attributed to Section 1106 of the Social Security Act.

It may be of interest to you that the recent nursing-home conference sponsored by Duke University and the American Association of Retired Persons, preliminary to the White House Conference on Aging, approved a resolution calling for the amending of Section 1106 to permit disclosure of information on deficiencies found in institutions participating in Medicare.

If I can be of any assistance to illuminating the problems the press faces because of Section 1106, I would be glad to reply to questions.

Sincerely,

MAL SCHECHTER,

HOSPITAL PRACTICE,
Washington, D.C., October 18, 1971.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN LONG: This is an appeal to you to assure access to the facts under current and proposed government health-care programs.

Our immediate concern is to ask for amendment of the Social Security Act to eliminate the extension of authority to suppress information. We refer to Section 1106, which, as implemented by Regulation No. 1 of the Social Security Administration, blacks out specific information about the providers, suppliers, fiscal agents, and certification agencies in the Medicare program. (For a use of this confidentiality authority, see the attached article.)

We urge that 1106 be replaced or amended so as to provide for swift, complete access of the news media to the facts in current Social Security Act programs involving health services. (We are entirely in accord, however, with the original 1106 objective of guaranteeing confidentiality of individual beneficiary and taxpayer records.)

Our longer-range concern is that an explicit directive assuring the public's right to the facts be made part of any national health insurance legislation. We urge that, in any hearings on national health proposals, your committee consider ascertaining the views of sponsors as to a thoroughgoing freedom-of-information provision and incorporate the responses and committee decisions in the record.

Subscribing to this request, besides the undersigned, are members of the news media listed on an attachment (with titles provided for identification purposes only).

We thank you for your consideration.

Sincerely,

MAL SCHECHTER.

(Attachment/Letter of 18 October 1971)

The following members of the news media associate their names with the enclosed freedom-of-information letter:

Don Kirkman, Scripps-Howard Newspaper Alliance, Washington; President, National Association of Science Writers.

Cathy Cooper, Drug Topics-Drug Trade News, Washington.

Vincent Burke, Los Angeles Times (Washington) reporter.

Craig Palmer, United Press International correspondent, Washington.

Gil Tholen, Associated Press reporter.

Nathaniel Pollster, Managing Editor, Drug Research Reports, Washington.

Richard Bradee, Milwaukee Sentinel, Washington.

Judith Randall, Medical Editor, Washington Star.

[News release from U.S. Department of Health, Education, and Welfare]

Tuesday, December 9, 1969.

HEW Secretary Robert H. Finch today said information on Medicare payments to hospitals, extended care facilities, and home health agencies may now be made public.

The new regulations announced by the Secretary amend the rules on the confidentiality of social security records to permit release of information on payments made to institutional providers of health care services to Medicare beneficiaries.

By tradition, Secretary Finch said, social security records of individuals' earnings and of payments to individual social security beneficiaries have been kept confidential. With the advent of Medicare, the Social Security Administration for the first time in its history began to make payments to various institutions, organizations, and agencies.

There is not the same validity in withholding information concerning the payment of public funds to institutional providers of Medicare services as there is in the case of information on social security payments to individuals, Secretary Finch noted.

The regulations have therefore been amended to permit the disclosure of information on payments to such institutions and agencies and also such information as the number of days' service provided, the number of beneficiaries who were patients, and the interim rates of payment. However, information identifying any particular beneficiaries may not be disclosed.

The Secretary said that the Social Security Administration is planning for regular release of data on payments to institutional providers of services in Department of Health, Education, and Welfare and Social Security Administration publications.

MACALESTER COLLEGE,
Saint Paul, Minn., June 2, 1971.

Mr. MAL SCHECHTER,
Washington Editor,
Hospital Practice,
Washington, D.C.

DEAR MR. SCHECHTER: This is in response to your letter of April 5, 1971 concerning disclosure of information on providers of health care by the Social Security Administration.

I have been in touch with Mr. Alvin M. David, Assistant Commissioner for Program Evaluation and Planning, about the matters you raise in your letter. Mr. David sent me the enclosed memorandum, which I hope will be helpful to you.

Very sincerely and cordially yours,

ARTHUR S. FLEMMING,
President.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
May 5, 1971.

To: Mr. Arthur S. Flemming, President, Macalester College, St. Paul, Minn.

From: Alvin M. David, Assistant Commissioner, Office of Program Evaluation and Planning

Subject: Social Security Administration Disclosure of Information on Providers of Health Care

1. While the Advisory Council on Social Security discussed the many issues relating to the social security program, as you know, the Council did not formally consider as an agenda item the subject of public disclosure of information on providers of health care who are participating in the Medicare program. This was not because of a lack of concern about this matter, but rather because of limited time available to the Council to study and report on the wide range of issues affecting the total social security program.

2. Mr. Schechter has been concerned about obtaining information on the fire safety status of nursing homes and on SSA monitoring of the quality of independent laboratory work. On checking, I find no unanswered correspondence from Mr. Schechter on either of those two subjects. On fire safety, Deputy Commissioner Hess met with Mr. Schechter on January 21 and spent several hours with him reviewing the status of the regulations on carpeting, sprinklers, and other related issues.

3. On the monitoring of the quality of laboratory work, Mr. Schechter has been given current information on the status of the policy decision respecting a particular laboratory in which he is interested. The SSA Freedom of Information Officer has notified him as to the specific information that can be provided to him after the policy decision has been made.

ALVIN M. DAVID.

JUNE 7, 1971.

Dr. ARTHUR S. FLEMMING,
President, Macalester College,
St. Paul, Minn.

DEAR DR. FLEMMING: Your 2 June letter, in regard to information disclosed by the Social Security Administration, contained a most interesting memo by Mr. David.

If Mr. David's memo is the entirety of SSA's response in regard to reassessing its information policy and appraisal of my complaints, there seems even more work to be done than I thought. Contrary to Mr. David's statement that there is no outstanding correspondence with me, there is. I will not burden you with details in this letter but do invite you to examine my records at any time when you are in Washington.

In connection with your key role in the forthcoming White House Conference on Aging, may I suggest that there be an examination of why government has been unresponsive to many needs of the elderly. I attended the 1961 conference; I gather the forthcoming meeting will reiterate many 1961 findings and suggestions.

I believe it would be productive to examine the information policies of various bureaucracies concerned with the health and well-being of the elderly to determine whether the facts, or only some of the facts, on the conduct of their programs are accessible to the public. As an example, I submit to you that SSA's withholding of Medicare inspection findings does operate to obscure real needs for improving specific institutions, i.e., nursing homes and hospitals as well as labs. SSA's tendency, as I find it, to lean over backwards to accommodate the providers of care in many instances should be subject to examination and public reaction.

My thanks for your concern and kindness.

Sincerely,

MAL SCHECHTER.

WHITE HOUSE CONFERENCE ON AGING, 1971,
Washington, D.C., September 9, 1971.

Mr. MAL SCHECHTER,
Hospital Practice for the Staff and Community Physician, Washington, D.C.

DEAR MR. SCHECHTER: I asked the Social Security Administration to provide me with a memorandum relative to their views on the disclosure of information relative to the providers of services under the Medicare Program. I am enclosing a copy of the memorandum they have furnished me with this letter. I would be very much interested in your reactions to the memorandum.

Very sincerely and cordially yours,

ARTHUR S. FLEMMING,
Chairman.

MEMORANDUM ON PUBLIC DISCLOSURE OF INFORMATION

Mr. Schechter has expressed concern about the fact that, under present policy and regulations, the Social Security Administration does not divulge to the public information about deficiencies of specific providers of services participating in the Medicare program.

We recognize the value of making Medicare operations and policy information available to the general public. We are required, under the Public Information Section of the Administrative Procedure Act, to make certain administrative materials available to the public, and we comply willingly with this requirement. At the same time, we are required under section 1106 of the Social Security Act to maintain the confidentiality of information about people obtained in connection with the administration of the social security programs, except as specifically permitted by regulations.

We realize that disclosure of Medicare information could, in certain circumstances, further the objectives of the Medicare program, and our regulations governing disclosure of information reflect this awareness. For example, our regulations were amended to permit disclosure to an official of a medical or other professional society or a State licensing board of information indicating unethical practices or a pattern of unprofessional conduct by a physician or other prac-

titioner; disclosure to persons concerned with the interests of a Medicare beneficiary of information about services furnished the beneficiary under the program; and disclosure to the press and public of broad statistical information about reimbursement to and utilization of services furnished by providers of services. We have the general objective of permitting disclosure of additional Medicare information, subject to appropriate safeguards on individual privacy, where we determine that such disclosure is consistent with the goals of the social security programs and is in the public interest.

We agree with Mr. Schechter that physicians, patients, and the general public have a legitimate need for information about serious deficiencies of our providers of services, and we agree in principle with the provision that passed the Senate in 1970 (Section 274 of H.R. 17550) that would have accomplished this objective. We found, however, that this provision presented a number of difficulties for us. The provision would have required publication of information concerning the deficiencies of a provider of services if the deficiencies were not corrected within 90 days after the provider was notified of their existence. One problem we have with this proposal is that we think it is important that such a proposal should apply only with respect to serious deficiencies affecting such areas as staffing, fire and other safety requirements and sanitation, and the draft language and Committee Report were not entirely clear on this point.

A second problem we have is that although we agree that an institution should be given written notice of its serious deficiencies and that it should be given a period of time within which to correct these deficiencies before information about them is disclosed, we think the 90-day maximum period specified in section 274 would be an unrealistically short period of time in some cases (e.g., where the institution would be required to make extensive structural changes). Finally, we think it would be necessary to specify in the proposal that the information we published would be updated on a periodic basis, so that we would be relieved of the responsibility for making up-to-minute data available to the public. The provider might make many changes during a 90-day period and it would not be feasible to verify at each time a change is made whether or not the deficiency has been removed and to therefore delete it from the list for publication before the deadline expires. Nor would it be feasible to amend the list immediately as conditions improve after publication. Inspections need to be scheduled on a systematic basis. Thus, keeping up with and verifying changes made by the provider, without reasonable time lags, would not be feasible. We are now developing, for possible consideration by the Senate Finance Committee during the forthcoming hearings on H.R. 1, a modification of the legislative provision that passed the Senate last year that would overcome the difficulties.

HOSPITAL PRACTICE,
Washington, D.C., September 23, 1971.

ARTHUR FLEMMING,
Chairman, White House Conference on Aging, Washington, D.C.

DEAR DR. FLEMMING: Thanks ever so much for your letter of 9 September relative to issues I raise concerning Medicare and freedom of information.

It is heartening to see your attention to a matter vital to the public's right to know the conduct of public business and the press' function to serve the public.

A memorandum of the Social Security Administration was attached to your letter. That memo, I'm sorry to say, fails to express recognition that the public has a preeminent right to the information it has paid for—preeminent over the convenience of a bureaucracy.

Without frank recognition of that right, SSA is in the posture of lese majeste. A discussion, in such a context, of the means whereby information gathered by civil servants is communicated to citizens would be, I feel, on a fundamentally unsound basis.

The right exists. Why is it so hard to get SSA to say so? Section 1106 of the Social Security Act has a long history applicable to certain beneficiary and employer-employee records; extension of confidentiality to the providers and suppliers of Medicare is beyond the intent of that section, approved by Congress more than a quarter century before Medicare began.

If Congress, by inattention, permitted that Section to be extended, then, it has been in the power of SSA itself to retract the confidentiality cover from the corporate servants of Medicare. Commissioner Ball could do this completely, cleanly by prescribing exemption in a regulation. But, despite pleadings, he has not done so. I am concerned that an outstanding civil servant clings so tenaciously to a cause which he himself once supplied a rationale for abandoning. To wit:

"There is not the same validity in withholding information concerning the payment of public funds to institutional providers of Medicare services as there is in the case of information on Social Security payments to individuals."

The memo you transmitted shows proliferating reservations to the proposed Finance Committee amendment. Against the public's right to have information on the character of nursing homes in their localities, these are trivializing reservations. They evince a renewed appetite, I am distressed to conclude, for abridging or trivializing the public's right to know.

Abuses in the nursing home field have been recognized by President Nixon in his recent message launching an attack on poor care. While I and others may wish to hope that Medicare nursing homes are beyond reproach, they are not. SSA and the Finance Committee can document serious faults that have persisted for years despite the standards and inspection forces in the Medicare system. I believe "confidentiality" has permitted abuses to acquire official tolerance.

I fail to see why SSA should not Xerox the annual (or more frequent) certification survey report on any nursing home in Medicare and deposit it at a local Social Security office for review by anyone who wants to see it. If SSA wishes to assist the public by providing a condensation of what it views as serious deficiencies, that would be commendable. Explanatory material would be welcome. If the nursing home wishes to file a rebuttal, that, too, should be available to the public and to newsmen and to students of community health planning, etc.

Or, I should add, to students of public administration.

The records also should be made public on home-health agencies, independent clinical laboratories, and hospitals (whether or not in Medicare by virtue of accreditation by the Joint Commission on Accreditation of Hospitals). Indeed, the JCAH inspection reports should be open to the public since Medicare status is conditioned on them.

My protest at the stinginess of SSA's information policies extends to other documents that may enlighten the public and inform its debates on the health-care crisis. Specifically, Medicare has Program Validation Review Reports on individual facilities. From what I have heard (since these documents are for "official use only"), there is a mine of concrete information on institutional performances in terms of quality of care and payments.

I urge you, Commissioner Ball, and members of Congress and the press to have these documents released, with safeguards to protect patient-beneficiary confidentiality, as well as other individual rights. These reports have facts. I do not believe they contain any administrative policy discussion; if they do, such portions may be reserved. But the facts should be given out. If the corporate servant of Medicare (e.g., the nursing home or hospital ownership) wishes to enter a rebuttal to the program validation review, that should be appended.

What I describe is a modification of the procedure employed by the HEW Audit Agency. Two weeks after completing a report, that report automatically is public. It is available on demand. The report contains a statement of the pertinent law and regulations, a statement of findings and conclusions, and a rebuttal statement by the investigated party.

You don't have to fight Section 1106, Regulation No. 1, and its interpreters to get the reports.

The Audit Agency policy should serve as a model for SSA. Would you study and assess it and, if convinced, seek to interest SSA in immediately adopting it?

It is from Audit Agency and General Accounting Office reports that we have documentation of failures in the Medicare system of patient protections. We know from the Senate Finance Committee staff report of 1970 that many Medicare nursing homes received certifications although failing to meet even minimum nursing-care standards.

Which ones are they? Neither you nor I can get the names from SSA: confidentiality.

Nor for that matter can the Freedom of Information Act pry the names loose. Several times I have been told that an exclusion for "internal memoranda" was the basis for forbidding release of specific information. There is, of course, no obligation that an agency *must* use this exclusion. Why SSA chooses to use it would be interesting to explore. Recent court cases have established the public's right to the facts in federal documents that have been kept under wraps because they contain administrative chit-chat on policy. The chit-chat can be reserved, I am told. But the facts must be made available. I sincerely hope that SSA never finds itself in court on the issue of withholding facts.

At times, however, when I have pressed a request for facts, I have been told that Section 1106 barred the way because the documents I wanted referred to specific patients or listed them. The Freedom-of-Information exclusion and Section 1106 make an admirable nutcracker. When I asked for the documents without patient names, I get nowhere. I am forced to conclude that one of the nation's most respected bureaucracies just won't budge when the giving of information might provoke controversy.

There seems to be a historical root for such an attitude. I refer to the McKinley and Frase book, "Launching Social Security," on the early months of the young program. A reflection of this attitude is in a 20 May letter to me over Commissioner Ball's signature.

"We have the general objective of permitting disclosure of additional Medicare information, subject to appropriate safeguards on individual privacy, where we determine that such disclosure is consistent with the goals of the social security program and is in the public interest."

Is it not in the public interest to name nursing homes that are fire traps, that lack round the clock nursing, that lack call buttons for patients?

Why is it in the public interest *not* to name them?

In whose interest is it *not* to name them?

I hope SSA is not afraid to let the public form its own judgments as to nursing homes and as to quality of public administration.

If you will go a step further with me in what already must be far too lengthy a letter, let us examine SSA's self-serving view of its system. The 20 May letter declares that "cer-

tification is denied if institutions have deficiencies which constitute hazards or potential hazards to the health and safety of patients." Therefore, it continues, "public disclosure of the existence of *other* deficiencies in institutions which are certified might create *unwarranted* concern that particular facilities may be unable to provide adequate patient care. Such adverse public reaction could severely hamper an institution's efforts to maintain patient-loads while effectuating needed improvements." (My emphases.)

However, certified homes do have serious deficiencies. The system does not rule out poor homes. I have an estimate, represented to me as SSA's own estimate, that nearly 400 of the 4300 or so Medicare homes have serious fire-safety deficiencies—"serious" in SSA's own lexicon. I have the admission from SSA that at least 700 Medicare homes (and perhaps as many as 2200, or half of all) had been found with carpeting that does not meet the standard for flammability in the Life Safety Code (which SSA by law is required to apply but has yet to issue the regulations—21 months late). I asked six months ago for an opportunity to examine the records at least from two HEW regions. From the agency that embraces confidentiality, I have gotten silence—no reply to date. (It took several letters to wring out the 700 figure; nothing is granted easily in certain matters.)

For four years, Medicare tolerated a substandard clinical laboratory's work in cytology, specifically, the examination of Pap smears, for cervical cancer detection. Because of Regulation No. 1 and Section 1106, applied in spirit if not in letter to a state agency, I am barred from determining from the documents how the administrative process permitted this laboratory to enter the system.

I have been prevented from looking at the Medicare survey of Boston City Hospital after it was disaccredited by the Joint Commission. I wished to compare the Medicare and JCAH certification systems. I was told by SSA that the Finance Committee amendment would loosen things up. In the meanwhile, Regulation No. 1.

I am thankful that some SSA people champion the public's right to know. Commissioner Ball did grant release of specific reimbursement information and he amended Regulation No. 1 to a degree for this purpose. That was fine.

I wonder about the need for the mechanics of excepting things from the blanket nondisclosure authority of 1106. What it leads to is shown in the May 20 letter. After assuring me of fidelity to the spirit of the Freedom of Information act, the commissioner says that SSA, at the same time, is required by 1106 to maintain "the confidentiality of files, records, and information obtained in connection with the administration of the social security programs, except as specifically permitted by regulations."

Of course, it is the commissioner who imposes the regulations that permit SSA to release information.

I am led to believe that 1106 needs to be replaced. The philosophy should be that all information in SSA hands is public and must be made available. In no case should material received in confidence concerning patients or beneficiaries (or people in their roles as payroll tax contributors) be released by name of individual.

Such an approach would put the burden on proving need for secrecy, not on freedom of information. I believe that reports, such as Program Validation Review Reports, which may contain patient names could be "sanitized." The names could be deleted. I don't see how deletion would preclude a newsman's investigation of a local facility. For mixed material (with confidential and other information) or material where the bureaucracy says disclosure would harm the policymaking discussion, the President or the Secretary might appoint a board of newsmen, public members, and bureaucrats to review quickly and decide how much, if anything, may be retained. The right of the information seeker to go to court under the Freedom of Information Act should be continued.

I am not a vast bureaucracy, so I have not the resources to make highly detailed recommendations. I am appealing to you for recognition of basics—the right of the people to have the facts—and for help in moving the people who control the facts.

My thanks for your interest and your patience.

Sincerely,

MAL SCHECHTER.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Baltimore, Md., May 20, 1971.

Mr. MAL SCHECHTER,
Washington Editor, Hospital Practice, Washington, D.C.

DEAR MR. SCHECHTER: Secretary Richardson has forwarded to me your letter in which you suggest that a "freedom of information" provision be included in the Administration's proposal for national health insurance and has asked me to respond to your statements about the Medicare program. I regret the delay in replying.

Let me assure you that the Social Security Administration subscribes fully to the spirit of the "freedom of information" provisions of the Administrative Procedure Act, and that the Administration's regulations with respect to public disclosure of information are in accordance with this law. At the same time, as you realize, we are required under section 1106 of the Social Security Act to maintain the confidentiality of files, records, and information obtained in connection with the administration of the social security programs, except as specifically permitted by regulations.

We realize that disclosure of Medicare information could, in certain circumstances, further the objectives of the Medicare program, and our regulations governing disclosure of information reflects this awareness. For example, our regulations were amended to permit disclosure to an official of a medical or other professional society or a State licensing board of information indicating unethical practices or a pattern of unprofessional conduct by a physician or other practitioner; disclosure to persons concerned with the interests of a Medicare beneficiary of information about services furnished the beneficiary under the program; and disclosure to the press and public of broad statistical information about reimbursement to and utilization of services furnished by providers of services. We have the general objective of permitting disclosure of additional Medicare information, subject to appropriate safeguards on individual privacy, where we determine that such disclosure is consistent with the goals of the social security programs and is in the public interest.

We have given a good deal of thought to the question of disclosure of information about deficiencies of Medicare providers of services, under certain circumstances. As you know, the social security bill that passed the Senate in the last Congress included a provision requiring publication of information concerning the deficiencies of a provider of service, if such deficiencies were not corrected within 90 days after the provider was notified of their existence. The purpose of the provision is to encourage institutions that are certified for participation in the program because they are in substantial compliance to correct what deficiencies they may have, and to enable physicians and patients to make sound judgments about the use of such institution. (As I am sure you realize, an institution that is deficient with respect to one or more standards of participation may still be found to be in substantial compliance and thus be allowed to participate in the program, but only if it is rendering adequate care, if its deficiencies do not represent a hazard to patient health or safety, and if efforts are being made to correct the deficiencies.) While we agree with this objective, we believe that widespread and indiscriminate dissemination of information about deficiencies in all participating institutions, as required by the provision, may have some undesirable effects. Since certification is denied if institutions have deficiencies which constitute hazards or potential hazards to the health and safety of patients, public disclosure of the existence of other deficiencies in institutions which are certified might create unwarranted concern that particular facilities may be unable to provide adequate patient care. Such adverse public reaction could severely hamper an institution's efforts to maintain patient-loads while effectuating needed improvements.

We believe that the present approach of ongoing consultation and cooperation with participating institutions to assist them in correcting deficiencies and making any changes which will enable them to come into full compliance with all conditions of participation is the preferred method of dealing with the problem of providers with relatively minor deficiencies. At the same time, we recognize that physicians, patients, and the general public have a legitimate need for information about serious deficiencies affecting patient care. We are, therefore, developing a legislative proposal that would permit disclosure of information about serious deficiencies.

Sincerely yours,

ROBERT M. BALL,
Commissioner of Social Security.

DEPARTMENT OF HEALTH,
EDUCTION, AND WELFARE,
Baltimore, Md., September 29, 1970.

Mr. MAL SCHECHTER,
Hospital Practice,
Washington, D.C.

DEAR MR. SCHECHTER: About the follow up on your request for the certification report on Boston City Hospitals. As you are aware from information given you at the time, when the Joint Commission on Accreditation of Hospitals lifted the accreditation of the hospital, our Boston Regional Office according to established procedure requested the State agency to survey the institution.

The report on this survey was in the hands of our Regional Office when the JCAH returned the institution to a certified status. I believe this fact was reported to you by our Press Officer.

You are familiar, I know, with Section 1106 of the Social Security Act which prohibits the disclosure of any information obtained by the Social Security Administration in the course of administering the program, except as the Secretary shall by regulation prescribe. Under present regulations, the information obtained in the provider certification process cannot be released. The matter is under study, however, in connection with a proposal made by Senator Clinton Anderson during the Senate Finance Committee hearings where you and I met in July. Senator Anderson proposed that certification information and reports concerning facilities certified with deficiencies be made a matter of public record after the lapse of a period of time during which deficiencies could be corrected if the institution so desired.

At the present time, however, we cannot under the law and regulations, release to you the survey report you have requested.

Sincerely yours,

RUSSELL R. JALBERT,
Assistant Commissioner for
Public Affairs

EXHIBIT 2

HEALTH LAW PROJECT,
UNIVERSITY OF PENNSYLVANIA,
Philadelphia, Pa., October 19, 1971.

Mr. GEOFFREY G. PETERSON,
Special Assistant to Senator Ribicoff, Old Senate Office Building, Washington, D.C.

DEAR GEOF: Enclosed are the 'freedom of information' items which I said I would send you. A brief description of each follows.

I. Correspondence and memoranda from the Health Law Project, from the Social Security Administration, and from others on the availability of certain reports, audits, and memoranda dealing generally with the effectiveness of intermediaries and with the effectiveness of policies and practices of SSA and the intermediaries.

II. Correspondence and memoranda from the same sources mentioned in "I" above on the availability of SSA manuals. These manuals govern many aspects of the operation of Medicare by intermediaries with respect to claims of Medicare enrollees; nevertheless, we have been refused Part 1 of the Parts A and B Intermediary Manuals and have been offered only an edited version of the Claims Manual.

III. Correspondence from our office and from SSA on the availability of statistics on doctors' customary charges for private office visits in various localities in Pennsylvania. SSA is required under Medicare to do these studies. By comparing the customary private visit fees with those allowed under Medicaid we could tell how far below the private fee level the Medicaid fees fall and thus whether, in gross terms, Pennsylvania's Medicaid program violates federal law by failing to offer sufficient fees to enlist more than a token number of doctors in the program.

I hope this is helpful.

Sincerely,

HARVEY MAKADON.

Enclosure.

I. REPORTS, AUDITS, MEMORANDA

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md., May 10, 1971.

Mr. HARVEY MAKADON,
Health Law Project, University of Pennsylvania Law School, Philadelphia, Pa.

DEAR MR. MAKADON: This letter is in response to your recent requests for background information concerning replacement of Blue Shield of Ohio, and statistics on intermediary and carrier performance.

Other than that information already reflected in newspaper accounts, any information concerning our replacement of Blue Shield of Ohio is considered to be privileged information restricted to those involved in the action. To indiscriminately disseminate additional information would be to needlessly jeopardize the position of the contractor. This is also true with respect to overall intermediary and carrier performance statistics beyond those formally published and widely disseminated.

I have enclosed the recently published staff paper, "Private Health Insurance Organizations as Intermediaries or Fiscal Agents Under Government Health Programs." I regret we are unable to further comply with your requests, but, hopefully, the enclosed staff paper and copies of our widely circulated health insurance manuals which were mailed to you some time ago will be of assistance to you.

Sincerely yours,

ROBERT M. MAYNE,
Assistant Bureau Director.

Enclosure.

MAY 21, 1971.

Mr. THOMAS TIERNEY,
Director, Bureau of Health Insurance, Social Security Administration, Baltimore, Md.

DEAR MR. TIERNEY: I am currently engaged in writing a law review article on the role of fiscal intermediaries in the administration of Medicare and Medicaid. My interest is in studying the overall and general issues and I have no interest in publishing information about a particular fiscal intermediary or provider.

I spoke with Mr. Irwin Wolkstein last week who mentioned several documents which would be most useful in our work and suggested that it would be appropriate to obtain authorization from you before studying them.

The particular items he referred to are: (1) contract performance review reports; (2) a survey on implementation of the prudent buyer concept; (3) the MADOC study and data of the Office of Research and Statistics; (4) the staff papers presented to HIBAC and the minutes of HIBAC meetings.

I would be most grateful if you could authorize our study of these documents, on the condition mentioned above, or any additional condition that you think appropriate. Thank you for your help.

Sincerely,

SYLVIA A. LAW, Esq.,
Staff Director.

JUNE 25, 1971.

Mr. J. STEWART HUNTER,
Associate Director of Information for Public Services, Department of Health, Education, and Welfare, HEW Building North, Washington, D.C.

DEAR MR. HUNTER: Attached is a copy of a letter dated May 21, 1971, to Mr. Thomas Tierney, requesting the following information from your department:

1. contract performance review reports
2. a survey on implementation of the prudent buyer concept
3. the MADOC study and data of the Office of Research and Statistics
4. the Staff papers presented to HIBAC and the minutes of HIBAC.

To date I have not received a reply to this letter.

With respect to the last three items, Mr. Irwin Wolkstein of the Bureau of Health Insurance, orally indicated to me on May 19th that he did not believe it likely that we would be allowed to examine these items, which are critical to research in which we are currently engaged. I have been trying, without success, to obtain the first item—the contract performance review reports—since about October 1970. I now understand that these reports—by that name—exist only through 1969, and for New York in 1970. We would seek to examine all "contract performance review reports" or their equivalent, which exist to date, and by whatever name they are currently known.

Section 3 of the Administrative Procedure Act amended by 81 54 19967), Subsection a(3), requires that your agency "shall make the records promptly available to any person." A time lapse of more than one month cannot be considered "prompt." Having received no reply as of the date of this letter, I deem this non-response as a denial of the requested material. As such, I am appealing this action and would appreciate your ruling on the matter.

Thank you for your consideration.

Sincerely,

SILVIA A. LAW, Esq.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md., July 12, 1971.

SYLVIA A. LAW, *Esquire,*
Staff Director, Health Law Project, University of Pennsylvania Law School, Philadelphia, Pa.

DEAR MISS LAW: This is in reference to your letter in which you requested authorization to study certain program documents. Enclosed you will find materials concerning the subject in which you are interested. We are unable to furnish copies of certain documents, e.g., Contract Performance Review Reports, because of the large number of these reports.

As you indicated in your letter, the purpose of your request is related to your research for a law review article on the role of the fiscal intermediaries in the administration of the Medicare and Medicaid. Since research is involved, we would like to be as cooperative as possible in assisting you in your endeavor. However, as you will recognize, there are legal and policy considerations which may preclude us from making available to you all the information you might want to see.

We believe that the best way to handle your request would be for you to come to Baltimore, Maryland, to review your specific needs for your research project. You may find it worthwhile to examine some of our files to determine what information you will find useful and then we can see to what extent we can release the information you want. In the event that studies and reports are furnished you for your study we can at that time discuss with you the conditions under which this material is made available to you and what assurances we will need as to restrictions on its use.

Please get in touch with Mr. Wolkstein as to an appropriate date for a discussion with us in Baltimore.

Sincerely yours,

THOMAS M. TIERNEY,
Bureau of Health Insurance.

Enclosures 18.

AUGUST 13, 1971.

Mr. IRWIN WOLKSTEIN,
Assistant Director, Bureau of Health Insurance, Social Security Administration, Baltimore, Md.

DEAR MR. WOLKSTEIN: Thank you for your cooperation in answering our questions and showing us the information that we requested on Tuesday, August 10, 1971.

It was my understanding that I would be allowed to return on Wednesday, August 11, 1971, to read but not reproduce the Contract Performance Review Reports and the Contract Valuation Reports. Upon my return, I was refused all access to the Contract Performance Review Reports.

In light of this very firm refusal to allow me to read those reports on any conditions, I assume that the agency has reversed its earlier statements from you and from Thomas Tierney that we would be allowed to examine these documents. If this assumption is incorrect, please let me know. We are very anxious to examine the reports and will come to Baltimore anytime that becomes possible. However we of course, do not want to undertake another futile trip.

We would be most grateful if you could supply us with a formal reason for denial of access to the Contract Performance Review and Valuation Reports. I was given various reasons for the denial: to wit, 1) the reports are quite critical, do not mention positive aspects of intermediary performance and were not originally prepared for public distribution; 2) the reports had been denied to others, including members of the Congress,

and it would be inequitable to show them to us; 3) the reports are bulky and somewhat dated, and would be of limited utility to us in our work. None of these reasons is recognized grounds for denying access to information under the Freedom of Information Act or the HEW regulations.

The report of March 19, 1971 evaluating fiscal intermediary performance was flatly denied to us. The reasons which I can recall for the denial were: 1) the methodology of the study was not as solid as it might have been; 2) the study had been denied to others, including Pennsylvania Insurance Commissioner Dennenberg, and it would be inequitable to give it to us. Again we would be grateful if you would supply us with a statement of any additional grounds upon which the agency bases its decision to deny us the report.

In our discussions, we did not decide upon the availability of the study of the implementation of the Prudent Buyer Concept. Would you please send to us copies of these reports.

Thank you for your help.

Sincerely,

SYLVIA A. LAW, Esq.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md., September 10, 1971.

Mrs. SYLVIA A. LAW,
Staff Director, Health Law Project, University of Pennsylvania, Philadelphia, Pa.

DEAR M's LAW: This is in response to your letter of August 13, 1971, addressed to Mr. Irwin Wolkstein concerning your request to examine certain papers and documents relating to the administration of the Medicare program. Specifically, you want to examine Contract Performance Review Reports and Contract Valuation Reports.

The working paper on Evaluation of Part A Intermediary Performance, which you refer to as the Contract Valuation Report, is a special study on performance evaluation of our intermediaries. It has been released to the Committee on Finance of the Senate and to a number of intermediaries. Under these circumstances, we have no objection to making this report available for your inspection, and you may also examine Intermediary Workload Reports which contain the data underlying the report. However, I would like to emphasize that all of these reports, and particularly the performance evaluation report, reflect purely quantitative measures of some selected functional categories. They do not in any way purport to evaluate the quality of any intermediary's performance. Publication of the data might suggest and lead many to a conclusion that a higher place in the composite ranking is equivalent to superior performance. This conclusion would be incorrect in a great many cases. Because of this fact, we ask that you confine the use of the materials to circumstances which would preclude direct quotes and references. You also inquired about the Prudent Buyer policy. We will be glad to discuss with you this policy and our experience with it. However, we have not made an organized study of the experience and consequently are unable to furnish you with copies as you requested.

As for the Contract Performance Review Reports, we do not believe that we can release these reports. They are essentially working papers put together by employees below the management and policy-making levels. The purpose of these papers is to give higher level staff members the benefit of staff on-site observations for evaluating the work of an intermediary and suggesting ways and devices for improving the intermediary's performance. Neither the staff evaluations nor the suggestions constitute bureau positions.

These papers are usually used by our people in the regional offices in their day-to-day work with the intermediary. They use the reports only as a tool and a guide in this work. Where our regional people take exception to items in the reports, they are not bound to follow such items.

I believe you would agree that it would not be fair or desirable for us to make available, for outside scrutiny, working reports of this kind which have not been evaluated and found to be correct by officials in the policy-making and higher management levels. The effectiveness of these papers is in fact dependent upon having the information in them kept confidential and for that reason we feel they are exempt from disclosure under the Freedom of Information Act. It is quite possible that some of the informal staff findings in these review papers could be erroneous and if made public they could do unwarranted injury to the intermediary or institution involved.

I am sorry about your recent unproductive trip. I hope that this clarification will be helpful to you and suggest that, if you want to visit us further in connection with contractor material, you might make arrangements with Mr. Robert M. Mayne, Deputy Bureau Director, Program Operations, Area Code 301, 944–5000, extension 5601.

Sincerely yours,

THOMAS M. TIERNEY,
Director, Bureau of Health Insurance.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md., June 15, 1971.

DEAR SENATOR (name confidential): This is in further response to your letter of April 26, 1971, to Jerry W. Poole, Deputy Assistant Secretary for Congressional Liaison, requesting copies of reports of Contract Performance Reviews made at the Blue Cross Plans serving as Medicare intermediaries in the (1) District of Columbia, (2) Texas, (3) Southern California, (4) Puerto Rico, and (5) New York City, during the period 1970–1971. Your request was referred to my office for reply.

Associated Hospital Service of New York, the Blue Cross intermediary serving Medicare beneficiaries in the New York City area, is the only Plan in the group enumerated where a Contract Performance Review was made in 1970 and 1971. Contract Performance Reviews in the past were made by central office teams on roughly a two-year cycle. These reviews were supplemented by periodic visits by our regional offices to contractors. However, we now have established onsite representation at the larger contractors and have expanded our regional office staffs to the point where we have day-to-day or very frequent surveillance of contractor operations, and consequently these Plans have not this year been subject to centralized review.

The enclosed report on the New York City Blue Cross Plan incorporates the findings and recommendations made by the Contract Performance Review team, verbatim, as well as the status of actions taken by the Plan to correct identified deficiencies. We feel that this way of presenting the material will fulfill your need better than furnishing a copy of the original report with a separate report showing current status.

I wish to point out that our Contract Performance Review reports are confidential administrative documents designed to improve programs operations. Disclosure of their contents to the public might seriously impair our administration of this program. It is requested that the Committee, in its use of this report, protect its confidentiality.

Sincerely yours,

ROBERT M. BALL,
Commissioner of Social Security.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, REGION VII,
Kansas City, Mo., July 1, 1971.

Mr. JAMES GILLMAN,
Commissioner, Department of Social Services, Lucas State Office Building, Des Moines, Iowa

DEAR Mr. GILLMAN: Enclosed is the HEW Audit Agency audit report covering the Medical Assistance Program administered by State of Iowa for the period July 1, 1967 through June 30, 1970; your attention is invited to the findings and recommendations contained therein. Please respond to this report within 30 days to the HEW official named below, presenting any comments or additional information which may have a bearing on the final determination. To facilitate identification, please refer to the above audit control number in all correspondence relating to this report.

In accordance with the principles of the Freedom of Information Act (Public Law 90–23) HEW Audit Agency reports issued to the Department's grantees and contractors are made available, if requested, to members of the press and the general public. These reports are not released however, until a period of fourteen (14) calendar days has elapsed from the date of their issuance to the grantee/contractor orgainzation.

Sincerely,

JOHN C. STANFORD,
Regional Audit Director.

II. INTERMEDIARY MANUALS

Re: Conversations on July 7 and 8 with Mr. Wolkstein
To: Dick
From: Dorothy

I obtained the chapter heading for the following material.

PART 1, PART A INTERMEDIARY MANUAL

Chapter 1 Principles or reimbursement for administrative costs.
Chapter 2 Budget Preparation.
Chapter 3 Budget Execution.
Chapter 4 Letter of Credit Method of Advancing Funds.
Chapter 5 Accountability.
Chapter 6 Financial policies for co-ordination of Medicare and other insurance programs.

PART 2, PART A INTERMEDIARY MANUAL

Chapter 1 Guidelines for Provider Audits.
Scope of annual audit of Provider Cost Reports (How to do cost reports.)
Preparing cost reports for submission to SSA.
Evaluating audit costs in relation to estimated costs.
Instructions for intermediaries.
Chapter 2 Determination of Provider.
Chapter 3 Payments.
Chapter 6 Provider Cost Reports.
Chapter 8 Utilization Review.
Chapter 9 Provider Participation Agreements.

PART 3, PART B INTERMEDIARY MANUAL

Parts 1 and 2 of Part B Intermediary Manual. Involves what you ask the carrier to do and how you ask them to perform. Mr. Wolkstein did not have at his disposal, at this time, Parts 1 and 2 though he seemed willing to give the headings as he did for Part A Intermediary Manual. Not wishing to ask for too much information at once, I did not further inquire as to the headings for these

parts. However, Mr. Wolkstein again indicated that these sections were comparable to those in Part A.

Claims Manual. Everything in the Claims Manual is now available to the public. However, the tolerance rules have been removed and determined to be used by employees only of used "internally."

I then called Mr. Walter Rubenstein, at the suggestion of Mr. Wolkstein, to inquire into more detail about the Claims Manual. Mr. Rubenstein reaffirmed that the entire Claims Manual is now available to the public and only the tolerance rules have been removed. When asked what the tolerance rules constitute, Mr. Rubenstein gave a couple of examples:

1. Rules for investigation—times when HEW will and will not investigate certain items.

2. Analogy to IRS in that they don't investigate every possible misstatement. Their rules as to when they will and won't investigate are the kind of things which HEW does also.

3. Rules on kinds of evidence that will be secured.

Mr. Rubenstein also gave the "proof of age" example; all the conversation centered around the "Tolerance Rules" dealt with investigatory techniques. Comment of Rubenstein, "relates to touchy situations where integrity of program is at stake."

Auditing. Applies to intermediaries which is done by an audit agency in the Department. Also, audit of provides cost reports.

JUNE 29, 1971.

Mr. BERNARD MCCUSTY,
Regional Director, Department of Health, Education and Welfare, Philadelphia, Pa.

DEAR MR. MCCUSTY: I am writing to request the following information from your department. We will, of course, pay any reasonable charges for the cost of duplicating and mailing these documents.

Would you please forward to the above address Parts 1, 2, 3 and any other "Parts" of Part A intermediary Manual (Provider Services). Would you please send any available index to the requested material.

Thank you for your help.

Yours respectfully,
Miss DOROTHY L. MOORE,
Law Clerk.

JUNE 29, 1971.

Mr. BERNARD MCCUSTY,
Regional Director, Department of Health, Education and Welfare, Philadelphia, Pa.

DEAR MR. MCCUSTY: I am writing to request the following information from your department. We will, of course, pay any reasonable charges for the cost of duplicating and mailing these documents.

Would you please forward to the above address Parts 1, 2, 3 and any other parts of Part B Intermediary Manual (Physician and Supplier Services). Would you please send any available index to the requested material.

Thank you for your help.

Yours respectfully,
Miss DOROTHY L. MOORE,
Law Clerk.

JUNE 29, 1971.

Mr. BERNARD MCCUSTY,
Regional Director, Department of Health, Education and Welfare, Philadelphia, Pa.

DEAR MR. MCCUSTY: I am writing to request the following information from your department. We will, of course, pay any reasonable charges for the cost of duplicating and mailing these documents.

Would you please forward to the above address the Bureau of Health Insurance (BHI) Intermediary letters related to Parts 1, 2, and 3 of Parts A and B (and any other "Parts" existent) Intermediary Manuals. Also, would you please send any index you have with regard to these parts.

Thank you for your help.

Yours respectfully,
Miss DOROTHY L. MOORE,
Law Clerk.

JULY 9, 1971.

Mr. BERNARD MCCUSTY,
Regional Director, Department of Health, Education and Welfare, Philadelphia, Pa.

DEAR MR. MCCUSTY: You received a letter dated June 29, 1971, requesting copies of the entire Claims Manual. To date, I have not received a reply on this request.

I would be most appreciative of your determination as to this matter. Thank you for your consideration.

Yours respectfully,
DOROTHY L. MOORE.

JULY 9, 1971.

Mr. BERNARD MCCUSTY,
Regional Director, Department of Health, Education and Welfare, Philadelphia, Pa.

DEAR MR. MCCUSTY: You received a letter dated June 29, 1971, requesting copies of Parts 1, 2, 3 and any other "Parts" of Part A Intermediary Manual (Provider Services) and any available index. To date, I have not received a reply on this request.

I would be most appreciative of your determination as to this matter. Thank you for your consideration.

Yours respectfully,
DOROTHY L. MOORE.

JULY 9, 1971.

Mr. BERNARD MCCUSTY,
Regional Director, Department of Health, Education and Welfare, Philadelphia, Pa.

DEAR MR. MCCUSTY: You received a letter dated June 29, 1971, requesting copies of Parts 1, 2, 3 and any other "Parts" of Part B Intermediary Manual (Physician and Supplier Services) and any available index. To date, I have not received a reply on this request.

I would be most appreciative of your determination as to this matter. Thank you for your consideration.

Yours respectfully,
DOROTHY L. MOORE.

JULY 9, 1971.

Mr. BERNARD MCCUSTY,
Regional Director, Department of Health, Education and Welfare, Philadelphia, Pa.

DEAR MR. MCCUSTY: You received a letter dated June 29, 1971, requesting copies of the Bureau of Health Insurance (BHI) Intermediary letters related to Parts 1, 2, 3 and any other "Parts" of Parts A and B Intermediary Manuals and any available index. To date, I have not received a reply on this request.

I would be most appreciative of your determination as to this matter. Thank you for your consideration.

Your respectfully,
DOROTHY L. MOORE.

JULY 16, 1971.

Mr. RUSSELL R. JALBERT,
Assistant Commissioner of Public Affairs, Social Security Building, Baltimore, Md.

DEAR MR. JALBERT: Enclosed are copies of the initial request and follow-up letters requesting the Bureau of Health Insurance Intermediary letters related to Parts 1, 2, and 3 of Parts A and B (and any other "Parts" existent) Intermediary Manuals, dated June 29, 1971 and July 9, 1971, respectively. To date I have received no reply as to the Department's determination.

Section 3 of the Administrative Procedure Act, subsection (a)(3), requires that your agency "shall make the records promptly available to any person." As I have received no reply, I deem this a denial of the requested material and appeal this determination.

Thank you for your consideration.

Sincerely,
DOROTHY L. MOORE.

Enclosures.

JULY 20, 1971.

To: Dick
From: Dorothy
Re: Conversation with Mr. Ray Levindesky

Mr. Levindesky, Officer with the Bureau of Health Insurance, stated that Mr. McCusty's office forwarded to him the requests we made in letters dated June 29, 1971. Mr. Levindesky, who does not deal with the dissemination of this kind of information, will send our requests to Mr. Carlton White, 3936 Lancaster Ave., Philadelphia, Pa. 19104, EV 7-0351, the freedom of information officer. He said Mr. White would have to research the matter to see if we would be allowed access to the documents.

Mr. Levindesky indicated to Miss Weisberg that we would be denied the information because these documents were "in-office work papers."

JULY 26, 1971.

To: Dick.
From: Dorothy.
Re: Conversation with Mr. Carlton White.

Mr. White, the Freedom of Information officer for the Social Security Administration in Philadelphia informed me that we would be able to obtain Parts 1, 2, and 3 of Parts A and B Intermediary Manuals at a cost of $.25/page. The number of pages would be approximately 1300. He did not mention the Intermediary letters but another letter inquiring as to their availability was written on July 27, 1971.

The Provider Reimbursement Manual, Chapters 13-20, inclusive, are not available as they have not been published.

JULY 27, 1971.

Mr. CARLTON WHITE,
Philadelphia, Pa.

DEAR MR. WHITE: As per our conversation on July 26, 1971, a cost of $.25 per page is reasonable for non-published material available under the Freedom of Information Act but this price is unreasonable for printed materials, i.e., regulatory materials. Secondly, at the price you quoted to me, does this include service revisions and updating.

I also requested the Intermediary letters with regard to Parts 1, 2 and 3 of the Intermediary Manuals. Are there materials also available to us?

Upon deciding to get the materials reproduced, is it possible to look at the materials and decide those things we want reproduced in order to limit our expenses.

Thank you for your consideration.

Respectfully yours,
Miss DOROTHY L. MOORE.

JULY 30, 1971.

To: Dick.
From: Dorothy.
Re: Conversation with Mr. Boust, Director of the District Office in West Philadelphia.

My letter to Mr. White of July 27, 1971, was forwarded to Mr. Boust. I received a call on Friday, July 30, 1971, from Mr. Boust stating that he didn't know what was in the materials nor where to send my request. Mr. Boust seemingly knew nothing about the Manuals or what they encompass. I am to receive a letter next week specifying:

1. The intermediary manuals are available.

2. The cost of $.25/page does not include updating and revisions.

3. The price quoted does include the intermediary letters.

4. My letter will be forwarded to the appropriate person when he determines who that person is.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, SOCIAL SECURITY ADMINISTRATION,
Philadelphia, Pa., August 3, 1971.

Miss DOROTHY L. MOORE,
Health Law Project, University of Pennsylvania, The Law School, Philadelphia, Pa.

DEAR MISS MOORE: I am writing you to explain what Social Security Administration information you can secure regarding your requests for parts 1, 2, and 3 and other parts of part A Intermediary Manual, parts 1, 2, and 3 and any other parts of part B Intermediary Manual and chapters 13 through 20 and chapter 22 of the Provider Reimbursement Manual, and the Bureau of Health Insurance Intermediary letters relating to parts 1, 2, and 3 of parts A and B.

Our current manuals are not in good order so we couldn't comply with your requests at our office.

Our instructions do not mention allowing copies of the Provider Reimbursement Manuals to be given to the public. Since we have no instructions to the contrary we have to assume these instructions are current.

The other information you requested can be secured from: Fiscal Operations Branch 1–B–25, Baltimore Md. 21235. A charge of 25 cents per page (one side of a sheet will be made for each copy provided. Also this doesn't include any changes that are subsequently issued.

The information you requested must at least encumber approximately 1600 pages and an estimated cost of $800.00. . . .

I am sorry I wasnt able to give you any better way to secure the information you requested.

Very truly yours,

ROBERT B. BOUST,
Operations Supervisor.

AUGUST 4, 1971.

Mr. ROBERT BOUST,
Health Insurance Coordinator, Philadelphia, Pa.

DEAR MR. BOUST: As per our conversation on Friday, July 30, 1971, you were to send me written confirmation as to: 1) the availability of parts 1, 2, 3, of Parts A and B Intermediary Manuals and the Intermediary letters with regard thereto; 2) the cost of $.25/-page, as quoted to me by Mr. White and yourself, includes the Intermediary letters but does not include updating and revisions; 3) the availability of the Provider Reimbursement Manual; and 4) the forwarding of my request to the appropriate individuals, as your office did not have the requisite manuals, as soon as it was determined to whom the letter would be sent.

To date I have received no further communications from your office with regard to these matters. As it is urgent that I get confirmation as to the availability of the materials and/or the materials, I would be most appreciative of your determination.

For your information, the regulations which I quoted to you on Friday as to the availability of information for inspection and copying may be found in the *Federal Register*, Volume 36, No. 108, Friday June 4, 1971, p. 10880. These regulations also specify the places where requests may be made.

Sincerely yours,

MISS DOROTHY L. MOORE.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md., August 17, 1971.

Miss DOROTHY L. MOORE,
Law Clerk, Health Law Project, University of Pennsylvania, Philadelphia, Pa.

DEAR MISS MOORE: This is in response to your request for a copy of the Department Staff Manual on Organization, DHEW, Parts 1 through 8, inclusive.

We are unable to comply with your request in this instance. The material in question is exempted from disclosure by paragraph 5.72 of Subpart F ("Exemptions") and Item 6 of Appendix A ("Examples of Kinds of Exempt Records") of the Public Information Regulation, Public Welfare Title 45 Subtitle A—Department of Health, Education, and Welfare, General Administration, Part 5—Availability of Information to the Public Pursuant to Public Law 90–23 (the Public Information Act).

Paragraph 5.72 ("Records Relating solely to the internal personnel rules and practices of the Department") of Subpart F ("Exemptions") states, "This exemption covers only those internal rules or instructions to personnel relating to how employees carry out their assigned functions and activities for which the Department has responsibility. Thus, materials which provide guidelines or instructions to employees relating to tolerances, selection of cases, quantums of proof, and the like, are within this exemption. However, materials having only management significance, such as rules relating to work hours, leave, promotion plans, while relating to personnel, will be disclosed."

Appendix A ("Examples of Kinds of Exempt Records") states, in Item 6, "Manuals, guidelines, instructions, and other materials which are for the guidance of employees in evaluating applications, in establishing or carrying out audit or inspection procedures, allowable tolerances, or quantums of proof, or in selection or handling of cases in litigation, and materials of similar kinds which cannot be disclosed to the public without defeating their purpose."

The Public Information Regulation of which Appendix A is part, was printed in the Federal Register of June 30, 1967 (32 FR, 9315); October 27, 1967 (32 FR, 14894), and December 4, 1968 (33 FR, 18030).

Sincerely yours,

RUSSELL R. JALBERT,
Assistant Commissioner for Public Affairs.

AUGUST 18, 1971.

To: Dick.
From: Dorothy.
Re: Events of the past 3 weeks.

On June 29, 1971, letters were written to Mr. Bernard McCusty, Regional Director of HEW, requesting access to Parts 1, 2 and 3 of Parts A and B Intermediary Manuals and the Intermediary letters with regard thereto; Chapters 13–20, inclusive, and Chapter 22 of the Provider Reimbursement Manual; and the Claims Manual. As we had received no response as of July 16, 1971, we appealed to Mr. Jalbert, the Freedom of Information Officer.

July 20, 1971, I received a call from Mr. Ray Levindesky stating that Mr. McCusty had forwarded my letter to him. He, however, did not disseminate the information I requested therefore he was sending my request to Mr. Carlton White. July 26, 1971 I received a call from Mr. White stating that I could have access to the information I requested. I had further questions with regard to my conversation with Mr. White so I send a letter making the following inquiries (a letter of July 27):

1. Stated that $.25/page for published materials was unreasonable.

2. If the intermediary letters with regard to Parts 1, 2 and 3 of Parts A and B Intermediary Manuals were available.

3. If we could look at the materials and decide what we wanted in order to reduce our costs.

July 30, 1971 I received a call from Mr. Boust stating that Mr. White had forwarded my letter of July 27 to him. Mr. Boust seemingly knew little or nothing about the materials I was requesting.

We finally agreed that Mr. Boust would send me a letter stating:

1. The availability of the intermediary manuals.

2. The cost of $.25/page doesn't include updating and revisions.

3. The price quoted includes the intermediary letters.

4. My letter, as Mr. Boust didn't have the manuals in his office, would be sent to the appropriate person as soon as he determined who that person was.

Mr. Boust, citing the 1969 HEW regulations, refused us access to the Provider Reimbursement Manual. I quoted the June 4, 1971 regulations to him and gave him the cite but his letter of confirmation as to the content of our conversation stated, "Our instructions do not mention allowing copies of the Provider Reimbursement Manuals to be given to the public. Since we have no instructions to the contrary we have to assume these instructions are current" (letter of August 3, 1971). Mr. Boust's letter referred me to Fiscal Operations, Baltimore.

August 8 or 9, 1971 I received a call from the Social Security Administration in Baltimore suggesting that I come down with Sylvia on August 10, 1971 to discuss the materials I had requested. During our visit at the Social Security Administration, I examined the Intermediary Manuals; Sylvia went to the area where the Contract Performance Review Reports were kept and looked at some things as to how data was compiled or worked up; and Paul went to the reimbursement area. All the materials which we were to look at or receive which was confidential, we had to accept with the restriction that we keep it confidential and consult the Department if we wished to publish any of it. We made an agreement not to take Part 1 of Parts A and B Intermediary Manuals as they only concerned the administrative costs of intermediaries. We did receive copies of Part 2 of Part A and Parts 2 and 3 of Part B Intermediary Manuals; the Department was to mail Chapter 22 of the Provider Reimbursement Manual (Chapters 13–20 are not published yet); and Sylvia was to return the following day to look at the contract performance review reports. During that day, August 10, Sylvia also requested access to a "report done on the effectiveness of fiscal intermediaries of March 19, 1971." We were flatly denied access to this report stating that they refused to give the report to Denneberg and it would be inequitable to give it to us, etc. (in letter to Wolkstein from Sylvia).

On August 10, Sylvia was told she could look at but not reproduce the contract performance review reports (these reports are being regionalized and the name changed to contract valuation reports) if she returned the following morning. Upon returning August 11 Sylvia was denied all access to the contract performance review reports stating Wolkstein did not have the authority to allow us access.

During the course of the day a remark was made by one of the individuals showing us the materials with regard to the amount of material in the Social Security Administration. He said it was possible to bury individuals under tons of paper and that there is no way of telling how long it would take counsel to answer a request for access to information, it could be 3 days or 3 months.

Since all denials were oral, a letter was sent to Wolkstein on August 13, from Sylvia stating the reasons we could recall for denial and requesting a more formal reason for the denial. As of today, there has been no response from Wolkstein.

SEPTEMBER 3, 1970.

Mr. RUSSELL JALBERT,
Assistant Commissioner for Public Affairs, Social Security Building, Baltimore, Md.

DEAR MR. JALBERT: We have requested and have been offered Parts 2 and 3 of Parts A and B Intermediary Manuals at a cost of

$.25/page. Is this the price at which manuals are available for any person or group who seeks to obtain these manuals? Also, is there a statute which authorizes the Department to charge such fees for this and similar materials?

Thank you for your help.

Respectfully yours,

DOROTHY L. MOORE.

III. CUSTOMARY CHARGES

SEPARATE LETTERS TO:

Commissioner George K. Wyman, New York State Department of Social Services, Albany, N.Y.

Commissioner, Department of Institutions and Agencies, Post Office Box 1237, Trenton, N.J.

Commissioner, Department of Economic Security, New Capitol Annex Building, Frankfort, Ky.

Director, Human Relations Agency, Department of Health Care Services, 714 P Street, Office Building No. 8, Sacramento, Calif.

DEAR SIR: We are engaged in a study of the Pennsylvania State Medical Assistance program under Medicaid and are seeking data to compare its plan with those of other states.

We are particularly interested in your state's reimbursement levels (and the bases therefor) for non-institutional services pursuant to federal regulations which are set forth on the attached page. For example, Pennsylvania currently reimburses physicians participating in its Medicaid program at a basic rate of $4 per office visit. Pennsylvania appears to have arbitrarily arrived at this figure without the supporting analysis required by the aforementioned federal regulations.

We would greatly appreciate your supplying us with current dollar levels of reimbursement for physicians' and other non-institutional services under your state program and the bases therefor.

Thanking you for your cooperation, I am,

Very truly yours,

DOUGLAS FRENKEL,
Law Clerk.

JUNE 25, 1971.

Mr. J. STEWART HUNTER,
Associate Director of Information for Public Services, Department of Health, Education, and Welfare, HEW Building North, Washington, D.C.

DEAR MR. HUNTER: In the administration of Part B of Title 18, your agency makes individual determinations of the reasonableness of charges of individual practioners by comparing the charge to the main criteria: 1) the customary charges for singular services generally made by the physician or other person furnishing the service and 2) the prevailing charges in the locality for similar services. In this connection, Mr. Edward V. Sparer has requested access to the Medicare program prevailing charge screen. Attached is a copy of a letter to Mr. Sparer denying him access to this information.

In addition to the denial as per the attached letter, the request was renewed in March, 1971. This second request was made to Dr. Roger H. Cutt, Medical Service Specialist of the Social Rehabilitation Service of HEW, Philadelphia, Pa., who was to try to look into the availability of the information requested by Mr. Sparer. To date, I have not received access to this information. As such, I consider this a denial and am requesting review of these determinations.

Thank you for your consideration.

Sincerely,

RICHARD K. BARLOW, Esq.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md., July 23, 1971.

Mr. RICHARD K. BARLOW, Esq.
Health Law Project,
University of Pennsylvania Law School,
Philadelphia, Pa.

DEAR MR. BARLOW: Mr. J. Stewart Hunter has asked me to reply to your letter of June 25, concerning Mr. Edward Sparer's request for access to the Medicare prevailing charge screen.

In reply to Mr. Sparer's initial request for this information, Mr. Thomas C. Badstibner noted that this information must be kept confidential because publication would impair the effectiveness of the screens.

As you may know, the prevailing charge screens are developed by the individual carriers, based on the customary charges of individual physicians in the locality. There is no single, national screen. For your information, I am enclosing several Intermediary Letters outlining the policies to be followed by Medicare carriers in developing their reasonable charge screens. Also enclosed is a copy of the recent report of the committee on Ways & Means on H.R. 1. I believe you will be interested in the discussion of prevailing charge levels that begins on page 85.

Under present policy, the prevailing limit on the reasonable charge for a service is set at the 75th percentile of the customary charges for the particular service in that locality. The Medicare carrier will base payment on the full amount of a physician's bill if his charge is no higher than 75 percent of the physicians' charges in that area.

If information as to the prevailing limits on Medicare reimbursement were to become a matter of public knowledge, the 75th percentile might well come to be considered a base rather than a limit. As indicated in Mr. Badstibner's reply to Mr. Sparer, if a carrier's tolerances, criteria, and guidelines were made public, their effectiveness would be lost.

Appendix A of the Department's Public Information Regulation, sent to you by Mr. Hunter, lists examples of materials which are exempt from mandatory disclosure under the Freedom of Information Act. The information requested by Mr. Sparer falls under Item 6 in that listing.

Sincerely yours,

RUSSELL R. JALBERT,
Assistant Commissioner for Public Affairs.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 798

Mr. AIKEN. Mr. President, last week I submitted an amendment to the Social Security Act which would make an individual eligible for social security disability benefits if he or she is totally disabled due to a condition which started when currently insured even though he or she is no longer currently insured.

I now ask unanimous consent that the name of the senior Senator from Florida (Mr. GURNEY) be added as a cosponsor.

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

ANNOUNCEMENT OF HEARINGS ON S. 448, RELATING TO APPROPRIATION REQUESTS OF CERTAIN REGULATORY AGENCIES

Mr. METCALF. Mr. President, the chairman of the Senate Subcommittee on Intergovernmental Relations, the distinguished Senator from Maine (Mr. MUSKIE), has asked me to announce that the subcommittee will hold hearings on S. 448, a bill to provide that the appropriation requests of certain regulatory agencies be transmitted directly to Congress.

Senator MUSKIE has requested that I preside at the hearings which are scheduled for February 15, 16, 17, 22, and 23. The hearings will begin at 10 a.m. in room 3302 of the New Senate Office Building.

Any Member of Congress or other person wishing to testify with respect to the proposed legislation should notify Mrs. Lucinda Dennis, chief clerk of the subcommittee. She can be reached by calling 225–4718.

NOTICE OF HEARINGS ON THE EGG INDUSTRY ADJUSTMENT ACT

Mr. JORDAN of North Carolina. Mr. President, I wish to announce the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices of the Committee on Agriculture and Forestry will hold hearings March 7, 8, and 9 on S. 2895, the Egg Industry Adjustment Act. The hearings will be in room 324, Old Senate Office Building, beginning at 10 a.m. Anyone wishing to testify should contact the clerk of the committee as soon as possible.

NOTICE OF HEARINGS ON NOMINATIONS

Mr. BYRD of West Virginia. Mr. President, on behalf of the distinguished senior Senator from Alabama (Mr. SPARKMAN), I wish to announce that the Committee on Banking, Housing and Urban Affairs will hold a hearing on the following nominations:

John Eugene Sheehan, of Kentucky, to be a member of the Board of Governors of the Federal Reserve System.

C. Jackson Grayson, Jr., of Texas, to be Chairman of the Price Commission.

George H. Boldt, of Washington, to be Chairman of the Pay Board.

The hearing will be held at 10 a.m., on Thursday, January 27, 1972, in room 5302, New Senate Office Building.

ADDITIONAL STATEMENTS

ADDITIONAL DEATHS OF ALABAMA SERVICEMEN IN VIETNAM

Mr. ALLEN. Mr. President, I have placed in the RECORD the names of 1,139 Alabama servicemen who were listed as casualties of the Vietnam war through September 30, 1971. In the period of October 1 through December 31, 1971, the Department of Defense has notified 11 more Alabama families of the death of loved ones in the conflict in Vietnam, bringing the total number of casualties to 1,150.

I wish to place the names of these heroic Alabamians in the permanent archives of the Nation, paying tribute to

them, on behalf of the people of Alabama, for their heroism and patriotism. May the time not be distant when there will be no occasion for more of these tragic lists.

I ask unanimous consent to have printed in the RECORD the names of the next of kin of these 11 Alabamians.

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

LIST OF CASUALTIES INCURRED BY U.S. MILITARY PERSONNEL FROM THE STATE OF ALABAMA IN CONNECTION WITH THE CONFLICT IN VIETNAM, OCTOBER 1, 1971, THROUGH DECEMBER 31, 1971

ARMY

Pfc. Larry W. Chaney, son of Mrs. Ora D. Chaney, P.O. Box 433, York, 36925

Sp4. Wyatt Miller, Jr., son of Mr. Wyatt Miller, Sr., P.O. Box 225, Ozark, 36360

Pfc. John H. Brown, son of Mr. Samuel E. Brown, Route 3, Box 155, Prattville, 36067

1st Lt. Danny A. Cowan, husband of Mrs. Nancy E. Cowan, 830 Woodlock Lane, Weaver, 36277

1st Lt. Raymon H. James, Jr., son of Mr. and Mrs. Raymon H. James, Sr., 705 Marion Drive, Madison, 35758

Sp5. Harvey D. Johnson, son of Mrs. Corine C. Cole, 404 N. McGregor Avenue, Mobile, 36603

Pfc. Ronnie Sharpe, husband of Mrs. Betty J. Sharpe, 601 Lawrence Street, Selma, 36701

Pfc. Harold D. Bowlen, husband of Mrs. Betty J. Bowlen, 2401 Lookout Avenue, Gadsden, 35901

Sp4. Terry G. Kugler, son of Mr. and Mrs. Wendell W. Kugler, Route 4, Cullman, 35055

Sp4. Archie T. Lucy, son of Mr. Sam Lucy, Route 1, Magnolia, 36755

MARINE CORPS

Sgt. Charles W. Turberville, son of Mrs. Annie Lucille Turberville, Route #2, Box 11, Finchburg, 36440

UKRAINIAN INDEPENDENCE

Mr. YOUNG. Mr. President, for more than half a century, the Ukrainian people all over the free world have fought with great courage and determination to regain their independence of the Soviet Union.

It was January 22, 1918, 54 years ago, that the independence of Ukraine was proclaimed in Kiev. One year later the Act of Union took place, putting all Ukrainian territory into one independent and sovereign state.

The Soviet Union chose to reject and ignore the declaration of the Ukrainian people and seemed determined to continue its suppressive tactics, politically, economically, culturally, and even militarily.

Mr. President, I am impressed by the unceasing resistance put up by brave Ukrainians everywhere, and particularly so by the efforts of the sizable number of outstanding citizens of Ukrainian descent in my State. These are some of our best citizens. Their loyalty to America is unquestioned.

On this important anniversary, it is a pleasure for me to join with many of my colleagues in commending the brave efforts of Ukrainians to regain their independence. They deserve our recognition and encouragement.

THE NEED TO IMPROVE FARM INCOME

Mr. McGOVERN. Mr. President, one of the most important votes affecting the welfare of rural America will be taken in the Committee on Agriculture and Forestry on Wednesday. The question is on concurrence with the House on the bill the House passed last December to improve farm income. It is my hope that the bill will be reported by the committee and speedily passed by this body.

Hearings were held on the measure Monday. So that Senators may better understand the issues involved, I ask unanimous consent that my testimony and other representative favorable testimony be printed in the RECORD.

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

TESTIMONY FOR H.R. 1163 SENATE COMMITTEE ON AGRICULTURE AND FORESTRY, JANUARY 28, 1972

Mr. Chairman, it would do little good to belabor the near economic collapse facing the feed grain and wheat producers in my State and across the Nation. I am sure all the members of this committee from feed grain and wheat states agree with me on that.

While I was opposed to the confirmation of Secretary Butz, he did, to his credit, recognize that at the time we were deliberating on his confirmation, that the prices farmers were receiving for corn did not meet the cost of production. In his State of the Union message, President Nixon said that farm income was not what it should be.

It seems to me, then, that the question is not whether our Nation's farmers need help, but rather the best means to give them this help.

It is my view that the best way we can improve farm income is by passing H.R. 1163. My principal reason for that belief is that if we fail to concur completely with the another farm bill, and the Congress will not have the opportunity to pass another farm bill in this session of the Congress. It is my understanding that if we fail to pass this measure as it was reported to us, the chances of the bill passing the House after a conference are less than fifty.

It would be ironic for the Senate to fail to act on the House measure to improve farm income since the proportionate strength of the farm belt is so much greater in the Senate than in the House. I commend the members of the House for their parliamentary skill in securing the passage of this measure.

Mr. Chairman, there has been considerable discussion of the alleged inconsistencies and contradictions of this measure. A careful review of this measure fails to disclose any. While I suspect the House members testifying today will address themselves to this question in some detail, I would just like to comment on that argument briefly. It has been suggested that the provision for a reserve and the clause to increase price supports are inconsistent since the purchase price provided for in the reserve feature of the bill sets the purchase price at the average price of the five previous years and the provision of the bill which increases the support level for wheat and feed grains by 25 percent would raise the prices for those commodities above the five-year average cost. In other words, since the loan feature of the bill would put the prices higher than the purchase price authorized by the bill, the reserve feature would be largely unoperative, unless price supports are reduced for the 1973 marketing year.

And with further respect to the reserve feature of the House measure, it should be noted that it is not mandatory for the Secretary to buy more than a small amount of the commodities. The 300 million bushels of wheat and the 25 million tons of feed grains in the bill are the maximum amounts. During the hearings of the House Agriculture Committee, it was quite clearly established that the Secretary is not required to place commodities in the reserve and the Secretary is free to determine the amount to be purchased. So to those members of this committee who have so often expressed their opposition to the concept of a reserve, I would say to them that their fears should be allayed by the fact that the reserve feature of the bill will for the most part be a dead letter provision.

Mr. Chairman, the essential arguments against the bill were summarized by Secretary Butz last month. According to a news account, the Secretary said he was opposed to the bill for three reasons. First, he said, the bill would "sabotage" the set-aside program. Secondly, that farmers would be induced by the increase in the loan level to plant feed grains such as corn and grain sorghum that tend to be in surplus now, instead of planting soybeans and other crops for which there is a greater market demand. The Secretary's third argument was that passage of the House bill would "wreck" farm export prices.

Sabotaging the set-aside program might well be a meritorious act. When the 1970 farm bill was passed, I predicted it would be a disaster for the Nation's farmers. In its first year of operation, it has been an unmitigated disaster. I would also like to digress a bit at this point to clarify the record on the 1970 farm bill. The Secretary and other spokesman of the Administration are traveling around the country proclaiming that the 1970 law was a bipartisan measure, leaving the implication that the present law was the consensus of all members of the Congress and that the Congress considered no other alternative. I am sure that this comes as a great surprise to members of both Houses who supported the Coalition Farm Bill and to the organizations which supported it, such as the National Farmers Organization, the National Grange, the National Farmers Union and the Midcontinent Farmers Association. These same organizations, incidentally, have all announced their strong support for H.R. 1163.

But to refer more specifically to the Secretary's allegations, there is no reason to believe that the 25 percent increase in the loan level would reduce participation in the 1972 program. Under the terms of the Agricultural Act of 1970, the Secretary has more than sufficient discretionary authority to make participation in the program attractive to farmers. The Secretary knows this, and it is my view that instead of discussing the intent of the set-aside program, Secretary Butz should tell us in no uncertain terms that his department can take the necessary action to assure broad participation in the 1972 program.

In response to the Secretary's second claim, it is obvious that the most effective way to prevent such an event is by dropping the set-aside program for 1972 with a base acreage program of supply control which was in effect under the 1965 Agricultural Act. Title Five of the 1970 Act provides for base acreage controls for feed grains for the years through 1971 through 1973.

In addition to base acreage control to preclude massive plantings of feed grains instead of soybeans and other crops, the Secretary could increase the loan level for soybeans and other crops.

There are several options available to the Secretary if the Congress increases the loan level 25 percent, and, in my view, it is the clear duty of the Secretary to make the necessary changes in the details of the program to accommodate the higher loan level.

The Secretary's third charge is that enactment of the bill would wreck export opportunities for our agricultural commodities. Again, I would like to digress a bit and correct the record. In the written State of the Union mesage, the President said that three years ago he pledged to increase farm exports. He may have said that in passing, but it is my clear recollection that he pledged in no uncertain terms to improve the parity ratio. In any event, that was his farm pledge which was given so much publicity and the pledge at which he failed so miserably.

The United States could maintain a high level of exports by establishing base acreage controls on corn and grain sorghum and leaving soybeans outside the grain crops subject to production control. By doing this, we would leave the door open for production of soybeans for export.

The American farmer is not impressed with the statistics the Administration throws at us with increasing regularity on the increase of our agricultural exports. He would be impressed if these exports increased his income, but our policy has been to scuttle international grain policies to the chagrin of other exporting nations and make the international market a dumping market which benefits only the grain trade and shores up our sagging balance of trade somewhat.

At the recent convention of the National Association of Wheat Growers, speakers from the other wheat exporting nations begged the United States to cease depressing international grain prices. In no uncertain terms, these representatives suggested that we should listen to our farmer producers instead of the grain trade.

E. K. Turner, President of the Saskatchewan Wheat Pool, pointed out that the other exporting nations have sold all their wheat and asked, since we have the world market virtually to ourselves until after next July, "why continue to put downward pressure on it?"

"Governments ought to listen more to farmers and less to the members of the grain handling and international grain train," said Turner.

All of the foreign guests at the Wheat Growers convention urged the United States to renegotiate the International Wheat Agreement with minimum price floors which would assure producers at the very least an opportunity for a fair price.

For two years now, the United States has been leading an international price cutting war in farm commodities. The adverse effect on the farmers was not considered in our effort to increase volume and improve our trade balance. Completely overlooked is that the price cutting has been unnecessary. In addition, the devaluation of the dollar has lowered our prices by another 12 percent for wheat.

As far as the question of our Nation's farm exports are concerned, I would like to conclude with a salient part of Mr. Turner's statement at the Denver wheat meeting. He said:

"Either we agree to cooperate in an international agreement in international form, or else we cut up each other in the market place on the basis of prices alone. We're simply going to be in there, and we're going to sell, and we're going to market our grains as competitively as we know how. We tried sitting back and it cost us. I know that Canada can't match the purse the United States has, but if we're going to go down, we're going to go down fighting on this question."

STATEMENT OF THE NATIONAL FARM COALITION

(Presented By: John W. Scott, Master, The National Grange; Tony T. Dechant, President, National Farmers Union; Jerry Rees, Executive Vice President, National Association of Wheat Growers; Walter Geoppinger, President, National Corn Growers Association)

Mr. Chairman: Each of the undersigned organizations appeared before the Subcommittee on Agricultural Production, Marketing and Stabilization of Prices, or has otherwise indicated its support for H.R. 1163, which was unanimously reported by the Subcommittee and is now being considered by the full Committee. Our testimony or statements are a part of that hearing record and our position is well known to members of the full Committee. We therefore feel that to duplicate our support in detail would be an imposition upon the Committee's time. We therefore are filing this joint statement in strong support of H.R. 1163.

The central issue of the legislation—in fact, the basic issue before this Committee—is the immediate improvement in farm income. You have heard many statements made to divert the Committee's attention away from the need for improvement in farm income. However, we would like to point out to the Committee that income is the main problem facing American farmers.

Action is needed now. If we wait to try for still another year, an untried and questionable course in farm programs, thousands of family farmers will be no longer engaged in farming, having been forced off the farm because of low prices.

If farm income is to be improved, H.R. 1163 must be enacted immediately. The attached chart will show the improvement in farm income if the loan rate on wheat, corn, grain sorghum and barley is increased by 25%. The totals may have changed since this chart was compiled, but would hasten to point out that each day's delay in increasing the loan rate will remove that much more income from farmers' pockets.

The undersigned organizations, representing thousands of family farm grain producers, respectfully request that this Committee take immediate and affirmative action on the pending legislation and report it to the Senate floor in the same form as it passed the House so as not to further delay the improvement in farm income.

NAMES AND HEADS OF ORGANIZATIONS

The National Grange—John W. Scott, Master.

National Farmers Union—Tony T. Dechant, President.

National Association of Wheat Growers—Jerry Rees, Executive Vice President.

National Corn Growers Association—Walter Geoppinger, President.

Farmers Cooperative Council of North Carolina—Harry B. Caldwell, Executive Vice President.

Grain Sorghum Producers Association—Elbert Harp, President.

Midcontinent Farmers Association—Fred V. Heinkel, President.

Soybean Growers of America—Alvah F. Troyer, President.

Virginia Peanut Growers Association—Russell C. Schools, Exec. Secy.

Farmers Union Grain Terminal Association—B. J. Malusky, Gen. Mgr.

Webster County Farmers Organization—Alfred Schutte, President.

North Dakota Feeder Livestock Producers Association—Laverne Schoedor, President.

United Grain Farmers of America—Cleo A. Duzan, Chairman.

North Dakota Wheat Producers Association—James Martin, President.

Durum Growers Association of the U.S.—John Wright, President.

The National Farmers Organization—Oren Lee Staley, President.

Peanut Growers Cooperative Marketing Association—S. Womack Lee, Manager.

PROJECTED INCOME INCREASES TO FARMERS ON 1971 CROP AS RESULT OF 25 PERCENT LOAN HIKE (H.R. 1163)

[In millions of dollars, rounded to nearest 100,000]

State	Wheat		Corn		Grain sorghum		Barley		Total income increase
	Yield (bushel)[1]	Income increase[2]	Yield (bushel)[1]	Income increase[2]	Yield (bushel)[1]	Income increase[2]	Yield (bushel)[1]	Income increase[2]	
Alabama	3.5	0.6	25.4	4.5	2.3	0.3			5.4
Arizona	11.8	2.1	.3	.1	12.9	1.8	9.0	1.8	5.8
Arkansas	9.6	1.7	1.3	.2	12.0	1.7			3.6
California	20.0	3.6	28.1	4.9	28.8	4.0	57.6	11.5	24.0
Colorado	70.9	12.8	36.8	6.5	11.7	1.6	15.3	3.1	23.8
Delaware	1.0	.2	12.0	2.1			1.0	.2	2.5
Florida	2.0	.4	17.5	3.1					3.5
Georgia	8.0	1.4	83.0	14.5	1.8	.3	.6	.1	16.3
Idaho	50.6	9.1	3.0	.5			38.8	7.8	17.4
Illinois	43.3	7.8	1,043.0	182.5	9.6	1.3	.8	.2	191.8
Indiana	33.1	6.0	526.0	92.0	2.2	.3	.6	.1	98.4
Iowa	1.3	.2	1,214.2	212.5	9.0	1.3			214.0
Kansas	312.6	56.3	115.4	20.2	227.2	31.8	7.5	1.5	109.8
Kentucky	7.6	1.4	89.0	15.6	2.1	.3	3.5	.7	18.0
Louisiana	1.0	.2	4.4	.8	4.2	.6			1.6
Maryland	4.4	.8	36.9	6.5			4.3	.9	8.2
Michigan	20.5	3.7	119.0	20.8			.9	.2	24.7
Minnesota	57.0	10.3	469.0	82.0			40.7	8.1	100.4
Mississippi	5.1	.9	9.9	1.7	8.1	1.1			3.7
Missouri	34.3	6.2	266.7	46.7	48.9	6.9	.8	.2	63.7
Montana	112.0	20.2	.4	.1			58.8	11.8	32.2
Nebraska	107.4	19.3	465.9	81.5	117.9	16.5	2.2	.4	116.7
Nevada	.6	.1					1.1	.2	.3
New Jersey	1.6	.3	5.1	.9			1.1	.2	1.4
New Mexico	4.0	.7	1.1	.2	19.3	2.7	1.0	.2	3.8

Footnotes at end of table.

PROJECTED INCOME INCREASES TO FARMERS ON 1971 CROP AS RESULT OF 25 PERCENT LOAN HIKE (H.R. 1163)—Continued

[In millions of dollars, rounded to nearest 100,000]

State	Wheat		Corn		Grain sorghum		Barley		Total income increase
	Yield (bushel) [1]	Income increase [2]	Yield (bushel) [1]	Income increase [2]	Yield (bushel) [1]	Income increase [2]	Yield (bushel) [1]	Income increase [2]	
New York	5.2	.9	26.1	4.6			.4	.1	5.6
North Carolina	11.6	2.1	89.6	15.7	6.8	1.0	4.1	.8	19.6
North Dakota	285.2	51.3	8.1	1.4			99.9	20.0	72.7
Ohio	42.7	7.7	313.8	54.9			.8	.2	62.8
Oklahoma	69.5	12.5	5.4	1.0	28.2	4.0	11.8	2.4	19.9
Oregon	34.5	6.2	1.0	.2			19.1	3.8	10.2
Pennsylvania	10.3	1.9	83.5	14.6			10.0	2.0	18.3
South Carolina	5.0	.9	26.6	4.7	1.4	.2	1.2	2.0	6.0
South Dakota	68.7	12.4	118.6	20.8	13.3	1.9	18.7	3.7	38.8
Tennessee	8.8	1.6	34.0	6.0	2.1	.3	.9	.2	8.1
Texas	31.4	5.6	33.1	5.8	318.3	44.6	1.3	.3	56.3
Utah	6.0	1.1					7.6	1.5	2.6
Virginia	8.4	1.5	30.5	5.4	1.8	.3	5.4	1.1	8.3
Washington	118.9	21.39	6.0	1.1			25.9	5.2	27.7
West Virginia	.4	.1	3.7	.7			.5	.1	.9
Wisconsin	1.7	0.3	196.6	34.4			2.1	0.4	35.1
Wyoming	7.0	1.3	2.1	.4			6.9	1.4	3.1
Total	1,575.6	283.6	5,551.8	971.6	989.2	124.5	462.5	92.50	[3] 1,472.2

[1] Production figures for corn and grain sorghum are taken from U.S.D.A. Crop Production Report of Nov. 1, 1971; production figures for wheat and barley are taken from U.S.D.A. Crop Production Report of Dec 1, 1971.

[2] See opposite side for formula by which income increase was computed.

[3] This is total of 4 commodities, adding horizontally; the total of the State-by-State vertical column is $1,498,500,000. The slight discrepancy is due to rounding and omission from State-by-State figures of some States with very small production of a commodity.

HOW INCOME INCREASES ARE COMPUTED

1. WHEAT

1,639.5 million bushels total 1971 U.S. production times 60% (non-domestic portion of U.S. production) times $0.30 (estimated price increase per bushel).

Only non-domestic portion of U.S. production is used in the calculation because farmers are already guaranteed 100% of parity on domestic production.

2. CORN

5,551.8 million bushels total 1971 U.S. production times 70% (estimated portion of production eligible for loan increase) times $0.25 (estimated price increase per bushel).

Estimated portion of production eligible for loan increase computed as follows: 100% of 5,551.8 million bushels minus 15% of total production not participating and therefore not eligible for loan (and in large part fed on farm so as not to benefit from market price increase resulting from loan hike) minus 15% participating corn already sold equals 70% of 5,551.8, or 3,386.3 bushels.

3. GRAIN SORGHUM

889 million bushels total 1971 U.S. production times 70% (estimated portion of production eligible for loan increase) times $0.20 (estimated price increase per bushel).

Estimated portion of production eligible for loan increase computed as follows: 100% of 889 million bushels minus 15% of total production not participating and therefore not eligible for loan (and in large part fed on farm so as not to benefit from market price increase resulting from loan hike) minus 15% participating sorphum already sold equals 70% of 889, or 622 million bushels.

4. BARLEY

462.5 million bushels total 1971 U.S. production times $0.20 (estimated price increase per bushel).

NOTE.—For all commodities (wheat, corn, grain sorphum, and barley), the state-by-state breakdown uses the same formula as for U.S. production, except that yield figures for the individual states rather than nationwide yield figures are used.

STATEMENT OF CHARLES L. FRAZIER, NATIONAL FARMERS ORGANIZATION, BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND FORESTRY, JANUARY 24, 1972

H.R. 1163, STRATEGIC STORABLE AGRICULTURAL COMMODITIES ACT OF 1971, AND S.J. RES. 172

Mr. Chairman and members of the Committee, I appear briefly today in behalf of favorable action on this legislation. The officers and members of the National Farmers Organization are quite seriously concerned. We appeared before the subcommittee in early November in support of similar bills.

Summary

The buying provisions to establish a reserve supply of wheat and feed grains would not be immediately effective in view of the increased loan rates established by Section 8 of the bill. This does not necessarily make the bill defective in substance. The reserve principle should be established in the law. It may be modified or improved as it comes into use if that should become necessary.

Immediate favorable action on H.R. 1163 is of vital importance to grain producers, many of whom still hold 1971 crop grain in hopes of congressional action to increase loan rates by 25%.

Actions of the USDA to improve grain prices by purchasing corn appear to be too little and too late. Less than 10 million bushels have been bought and some milo has been sold.

Prevailing farm prices of wheat and feed grain in most major production areas still hover at or below the cost of production. Contrary to the contention that the very modest increases in loan rates contemplated in the bill would wreck the programs, such action might very well be required to restore producer confidence and facilitate gradual disposition of the surplus grain now on hand.

S.J. Resolution 172 contains some provisions that would implement sound administration of the grain price support program. We support that part of the resolution designed to strengthen control of feed grain acreage.

Strategic Storable Agricultural Commodities Act of 1971

It has been stated that H.R. 1163 is technically deficient or that one section contradicts another. In the first Section through Section 7 the Secretary of Agriculture is directed to establish and maintain certain reserves of wheat and feed grains. The maximum price authorized for the purchase of grain is the average price farmers received during the preceding five marketing years. It is provided that the minimum sale price would be 120% of this average price. Critics of the bill point out that Section 8, wherein loan rates are temporarily increased for 1971 and 1972 crops, makes it highly improbable that purchases would be made for the reserve at this time. Nevertheless, this does not make the legislation unsound in principle. The Secretary of Agriculture should have the authority and the direction to maintain a reserve that protects the users of wheat and feed grains in times of threatening short supply and it should be possible for the administrators of the price support program to project production plans, loan rates, and payment provisions without calling upon farmers to carry an adequate reserve for the nation at their own expense. Thus, we contend that it would be wise to establish the authority for a strategic reserve. It will be reassuring to producers, consumers and farm program administrators to establish this principle in law. In the language of Section 7, the authority will expire at the end of the marketing year for the 1973 crop. There is ample time to extend or improve this portion of the proposed law if that is considered wise in light of events yet to come. We support the strategic storage principle and urge that the Congress establish this basic authority. In any event, the proposed authority would damage no one.

The most urgent matter before you today is, of course, the question of immediate action to improve grain prices.

Early in the summer of 1971 it became apparent that excessively large grain crops would depress prices throughout most of the country. Since that time, many efforts have been made, or at least widely discussed, but corn is still selling from the farm in the heart of the belt at $1.02 to $1.08 and wheat is selling for $1.24 to $1.35 in Nebraska and the Dakotas.

An economic study conducted by the University of Illinois and just recently released, covering the operation of a number of specialized corn growing farms in the three years 1968–1970 shows they lost an average of $1.75 an acre when all costs of production were considered. These were farms ranging in size from 260 to over 1,000 acres. Yields averaged 105 bushel per acre and the corn sold for an average of $1.24 per bushel in the three-year period.

It has been said that increasing the loan rates to 125% of their current level, as proposed in the bill, would wreck the programs, discourage farmer participation in the 1972 program and build up burdensome supplies of grain in this country. These generalizations are coming out of the USDA at a time when their own reports disclose that December, 1971, prices were 45% of parity for wheat, 57% for corn, 65% for barley and 59% for grain sorghum. The proposed increases are modest indeed under these circumstances.

Rather than sell grain at prices only equal to or less than the cost of production, many farmers have held their grain, hopefully awaiting action in this Congress. Only this

week two grain growers from Traverse County, Minnesota, calling at our Washington office, estimated that 70% of the grain in their home county was still in the hands of producers. These growers had consulted with local trade men and other farmers—they estimated that the increased price support in this bill would mean $1,280,000 to the producers in their county alone.

In contrast with the current situation, the average price of corn received by farmers on December 15, 1970, was reported by the USDA as $1.36 per bushel. In that year we exported a record amount of feed grain from this country and a larger percentage of producers signed up to participate in the 1971 program than ever before. For many months responsible men in the USDA have predicted a drop in exports this marketing year, largely because of factors other than price. Certainly we already have too much grain but it is ridiculous to contend that raising grain prices to a level existing only a year ago would wreck the programs or create a new surplus. We have the surplus now.

The Secretary of Agriculture seemingly has placed his faith in open market purchases of corn. In six weeks of purchases in the open market, the Department has bought less than 10 million bushels of corn. In all fairness, we must conclude that a surplus variously estimated well above 500 million bushes of feed grain will not be isolated from the market at this rate of purchase. The market responded immediately when H.R. 1163 passed in the House. More decisive action is now required and we urge favorable action on the bill H.R. 1163 as quickly as possible. We have sufficient faith in farmers to believe that they will participate in the 1972 program with the more favorable loan rates. In the absence of positive action, a large number may not be in the program because they may not be farming.

S.J. Res. 172

The Secretary has authority in Section 105 (c) of the Agricultural Act of 1949, as amended, to limit the acreage planted to feed grains on each farm participating in the set-aside program. If the Committee believes it is necessary to make such a policy mandatory, then we would support positive action on that part of S.J. Res. 172. However, we urge that any action of this nature remain separate from the Senate's consideration of H.R. 1163.

PRESIDENT NIXON'S 1973 BUDGET REQUEST

Mr. THURMOND. Mr. President, I know that Senators will give President Nixon's just-submitted fiscal year 1973 budget request the detailed study and attention it requires and deserves.

At this time I would like to highlight a vital segment of this budget request; specifically, the record-high $11.7 billion requested for the Veterans' Administration to enable it to provide the benefits and services for America's 28.5 million living veterans and their dependents. These benefits will also accrue to the survivors of deceased veterans.

I should inform Senators that the fiscal year 1973 budget for VA requested by the President is not only $790 million more than this year's record-high budget, but marks the fourth consecutive year in which all-time high VA budget requests have been set.

Mr. President, as a member of the Committee on Veterans' Affairs, I believe that budget figures—VA budget figures in particular—become meaningful only when translated into the specific benefits and services they will provide. Thus, we should look at the requested fiscal year 1973 VA budget in terms of the benefits and services it will provide.

Assuming Senate and House approval of the budget requested by the President, the Veterans' Administration in the coming year will be able to accomplish the following:

The VA will increase the agency's average employment by 11,640, bringing its total work force to 183,876. Nearly 11,000 of these additional employees will be assigned to VA's Department of Medicine and Surgery, thus giving it a work force of more than 162,000, the greatest number in the history of VA medicine.

With a record-high budget of $2.5 million for VA medicine, up more than $166 million over this year's all-time high appropriation, VA will be able to provide inpatient treatment to nearly 950,000 veterans, an increase of more than 24,000 over this year.

The VA will be able to handle 10.8 million outpatient medical visits, an increase of 1.4 million over this year.

The care provided in VA nursing care units will be increased by 20 percent, while the amount expended for VA medical and prosthetic research will be increased by $8 million to a record-high $78 million.

The staffing ratio in VA hospitals will be raised to 149 employees for each 100 patients, an increase of seven employees for each 100 patients.

Nearly 250 new medical service units will be activated in the coming fiscal year, including additional drug treatment centers, intensive care units, and renal transplant centers.

Finally, VA medicine in fiscal year 1973 will provide medical training for nearly 62,000 physicians, dentists, nurses, and other health personnel; again, a record number and more than 5,000 above the total trained this year.

Mr. President, the largest single item in the proposed fiscal year 1973 budget is the $6.4 billion—up $331 million over this year—requested for disability and death compensation and pension payments to nearly 5 million veterans and dependents.

Although not an all-time high, the $155 million budget for VA hospital construction in fiscal 1973 is the highest amount since 1951.

Not since 1957 has VA guaranteed the 340,000 loans valued at $7.2 billion for which it has requested necessary funding in fiscal 1973.

Mr. President, each year since June 1966 when the present Vietnam era GI bill education and training program went into effect, this most worthwhile and popular program has grown. Fiscal year 1973 will be no exception. In fact, the $2.2 billion requested for GI bill training and other readjustment benefits is $204.7 million higher than this year's budget, and represents a more than 200-percent increase over the figure of just 4 years ago.

Moreover, the more than 2 million young veterans who will train under this program in the coming fiscal year constitute an increase of more than 105,000 over this year's record number of enrollees.

I particularly invite the attention of Senators to the proposed new legislation which accounts for a significant part of the $790 million increase in the proposed fiscal year 1973 budget for VA. Specifically, I would point out the requested 8.6-percent increase in GI bill education and training benefits at an estimated cost of $174 million, and a nearly 6-percent increase in compensation paid service-disabled veterans, at a fiscal year 1973 cost of $148 million.

Mr. President, in closing, I should like to emphasize that approximately 74 cents out of every dollar appropriated for VA goes for direct veterans benefits; 22 cents for medical care; 1.4 cents for hospital construction; with only 2.6 cents being used for VA general operating expenses.

THE FUTURE OF THE PEACE CORPS

Mr. McGEE. Mr. President, it is probably realistic to state that the current controversy over our foreign aid program has also threatened the future of the U.S. Peace Corps effort.

As was pointed out in the Washington Post of Saturday, January 22, Congress could be on the verge of cutting the Peace Corps budget substantially and thus endanger many worthwhile projects now being conducted in many underdeveloped nations.

The Post editorial states that plans to bring home up to 4,000 volunteers by April, due to inadequate funding of the program, would mean the United States would be breaking agreements with 55 nations. The integrity of the United States would be brought into question and not without considerable reason.

It is my belief that, rather than cutting back on the Peace Corps program, Congress should be strengthening it. I urge Senators to give close consideration to the Post editorial and sincerely hope it will serve as a guide to our consciences.

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

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

MONEY FOR THE PEACE CORPS

In the past when news came that the Peace Corps was "in trouble," it usually meant a host country had ordered out a group of volunteers, or that an incident had occurred in a back-country village, or that the volunteers were disenchanted with U.S. foreign policy. It was mostly something happening abroad. Now, the Peace Corps is in trouble and the problem is at home.

Congress may be on the mischievous way to cutting the Peace Corps budget substantially. Last June, the President asked for $82 million as an authorization for the coming year. This in itself was disappointing, $82 million being a low request. But the situation is even worse. The Peace Corps was authorized to spend at the $82 million rate for the first half of the fiscal year and has already spent roughly $47 million. However, the House has provided for only $68 million for the year. Thus if the House figure is sustained, the Peace Corps would have only about $21 million left for the rest of the year.

Peace Corps officials have had no choice but to face the dollar reality. A freeze has been ordered through June 30 on extending invitations to join the Peace Corps. Worse, plans exist for bringing home up to 4,000 volunteers by April, meaning the United States

will break agreements with 55 nations where Peace Corps volunteers now work. An unsettling paradox is thus created. Many in Congress who see as sacred the many military and trade agreements between this country and others now care little whether this agreement for peaceful social change will be threatened. Moreover, the agreement will be broken at the village level where many of the Peace Corps volunteers live and work. Diplomats in embassies understand how agreements must be "altered," but what about the Peruvian teacher or the Indian farmer who sees his Peace Corps volunteer pulled out?

The Peace Corps has been one foreign commitment in which the country has taken near-unanimous pride. America still has large numbers of idealists who see the Peace Corps as both a means of service to others and enrichment to oneself. The agency reports that applications are now on the upswing, following a sharp slide in the first two years of the Nixon administration. Instead of gutting the program, you would think that Congress would want to strengthen it.

The Senate has yet to appropriate funds for this year. It will soon meet on this matter and it is hoped that a funding level of $77 million—the full amount that can be legally appropriated at this time—will be agreed on and that that amount will prevail in the Senate-House conference. Anything less would mean dark days ahead for one of the nation's brightest experiments in peaceful social change.

WHY THE SPACE SHUTTLE MAKES SENSE

Mr. GURNEY. Mr. President, on January 5, 1972, President Nixon announced a firm administration commitment to the development of the space shuttle as the next logical step in our space program. As a longtime proponent of that program, and of the shuttle concept as well, I commend the President for his action in the matter.

I am extremely hopeful that election-year politics will not in any way distort the discussion of the space shuttle in this body and will not affect or influence the decision of the Senate on the program. It seems quite clear to me that the space shuttle is the appropriate and necessary next step of man's exploration of his universe and that, when examined, the arguments clearly resolve themselves in weight of the furtherance of that program.

I ask unanimous consent to have printed in the RECORD an excellent article entitled "Why the Spave Shuttle Makes Sense," written by Mr. Lawrence Lessing, and published in this month's issue of Fortune magazine.

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

WHY THE SPACE SHUTTLE MAKES SENSE

(By Lawrence Lessing)

A new space system now being considered for development would feature an elaborate orbiting space station, but the first and most important innovation would be the shuttlecraft—that snub-nosed vehicle at lower left—which would have many immediate uses, e.g., launching, repairing, and servicing existing satellites.

The twelve-man station, planned for the early 1980's, would be launched into near-earth orbit and would function for as long as ten years. Its central core would be made up of four deck compartments for laboratories, living quarters, and equipment, with two end sections for bulk storage and entrance-exit ports. At intervals of six weeks the shuttlecraft would deliver men and supplies to the station and return equipment and men to earth. It would also carry up and return those large laboratory pods, fitted into airlocks in the station's core, where experiments in biology, metal-chemical processes, and other fields could be conducted.

Finally, the shuttle could deploy free-flying satellite observatories, bases for, say, solar and stellar studies; like the laboratory pods, these would be monitored and serviced from the station. Such stations eventually would be the assembly and take-off points for other vehicles going to the moon and beyond.

The U.S. space program is entering an entirely new stage of development. The first stage featured high adventure—reaching the moon and proving that men can walk upon it. The new stage, less glamorous and doubtless less gripping to the man in the street, will feature the more prosaic task of making space flight economic, of putting it on a basis in which our knowledge may be cultivated and extended over a long period of time.

Some two years ago a presidential task force, set up to review the space program, recommended that the next big goal in space be the building of a space shuttle system. This would involve a new class of reusable rocket boosters, and spacecraft able to fly routinely in and out of space, much like conventional aircraft. Instead of being thrown away on each flight as Saturn-Apollo equipment is—at a cost of some $280 million per mission—the new vehicles would return intact to earth to be launched and flown again. The goal would be vehicles good for at least a hundred missions. The system could reduce the cost of putting men and payloads in orbit from about $1,000 per pound to around $100. Eventually these vehicles would provide the first transportation link to an orbiting space station, a permanent base on the moon, exploration of the planets, and much more. All together, they would lay the basis for a multipurpose space transportation system, viable for perhaps a quarter of a century, that would insure the nation's hard-won lead in space.

Needless to say, given the present economic climate and apathy about space, the project has met some sharp opposition, on the score of both high initial costs and lack of immediate "relevance." And, indeed, a shuttle system would be a large, long, and expensive undertaking. Its costs could run anywhere from $9 billion to $14 billion, spread over the next decade. But the shuttle's basic economic appeal helped to get its small initial budgets safely through two sessions of Congress. Last summer the National Aeronautics and Space Administration selected the first hardware contractor, the Rocketdyne Division of North American Rockwell, to build the big liquid-hydrogen engines needed—the item requiring the longest lead time. That contract, expected to run for a decade, will by itself amount to some $1 billion. In 1972, NASA will be moving toward a critical decision on the shuttle vehicles themselves. The decision to build them will represent a final commitment to the program, and will certainly be preceded by more heated debate.

TIME FOR DEBATE

It is well for democratic processes that the debate is occurring now, rather than long after the letting of firm hardware contracts. In the Apollo program, launched in an atmosphere of urgency about catching up with the Russians in space, appropriations were rushed through and all contracts let within the span of a single year, with hardly a dissenting vote. Only in 1963, with costs mounting (as projected earlier), and with a presidential election looming, did congressional attacks on the space program begin. No such precipitate haste has marked the intiation of the shuttle project. For two years three big aersospace combines—North American Rockwell teamed with General Dynamics, Grumman Aerospace with Boeing, and McDonnell Douglas with a range of specialized contractors—have been working under small study contracts to develop a wide range of optional system proposals. In turn, NASA has been analyzing and refining the proposals, mindful of budget stringencies, in an effort to find the most economical way to long-term program of maximum usefulness. No space program thus far has been so critically or extensively examined.

The shuttle's origins go back to the early days in space, when the Air Force began an experimental "lifting body" prospect called Dynasoar. This was conceived by Boeing, the system contractor, as a big-rocket-propelled spacecraft with stubby delta wings, which, instead of plummeting back ballistically through the atmosphere, would have enough wing lift to glide back aerodynamically to an airport landing on earth. Dynasoar was to be a purely experimental vehicle. The ultimate objective was to use it to ferry men and equipment to a large manned orbiting laboratory, or space station, which the Air Force proposed to develop as a control center for its growing reconnaissance satellite system. Dynasoar never was built, however, and the whole project was canceled in 1963. Its costs were too high, especially when they were added to those of the Apollo program, and it was ahead of its time. Much basic space technology was still to be proved. But Dynasoar left behind a solid residue of experimental work on lifting-body designs for use at the enormous speeds of re-entry into the earth's atmosphere.

By 1969, with the Apollo program tapering off, aerospace engineers were ready to tackle a shuttle and space station. Initially, these were considered interlocking elements of a single system. Most of the basic technology needed for the system was already in hand—we could dock in space for example, and had developed reliable, restartable hydrogen engines. NASA initiated a broad study of the proposed system, and meanwhile set about converting the third stage of a surplus Saturn rocket into an experimental space station, dubbed Skylab, for launching in 1973, in order to test its possible uses and gain experience in long-extended weightlessness. (In the absence of a shuttle vehicle, Skylab will be serviced by modified Apollo spacecraft.) At the same time the Air Force remounted its own program for a shuttle system and manned orbiting laboratory. But this duplication of effort, in an increasingly tight budget, could not be tolerated. The orbiting laboratory was canceled to await the outcome of Skylab, and since then the Air Force has agreed to work cooperatively with NASA on development of a single shuttle system.

The basic shuttle design that emerged from the combined studies projected an imposing vehicle. It would have two major components: a stubby-winged launch rocket, or booster, looking something like a 747 jumbo jet, upended on its tail; and a winged shuttlecraft, or obiter, about the length of a 707 jetliner, but wider. On launching, the orbiter would ride piggyback on the booster, which would carry it up to an altitude of about forty-five miles, at which point the booster would drop away and be brought back to its base by two pilots. Meanwhile, the orbiter, carrying a payload of as much as 65,000 pounds, plus twelve passengers and a crew of four, would ignite its own engines and go into higher orbit for missions lasting up to seven days or more. To lift these loads, the booster would have twelve big liquid-hydrogen engines developing a total of 6,600,000 pounds of thrust—the first use of hydrogen in ground launching—while the orbiter would have three similar engines with over a million

and a half pounds of thrust. Together, they would represent the most powerful space vehicles ever built.

REPAIRMEN IN SPACE

As studies progressed, it became clear that the shuttle was the key element and highest-priority item in the complex. With or without a space station, it would stand on its own. The economies implicit in its large load-carrying capacity could make it the basic launch system for all kinds of space satellites, commercial or scientific, and planetary probes. The orbiter's sixty-foot-long payload compartment, with an ejection hatch, could carry into orbit the largest satellites contemplated, singly or in groups. Moreover, since the orbiter would also carry men, it could routinely service, repair, or retrieve the increasingly expensive objects in orbit. A $75-million orbiting astronomical observatory, for instance, whose batteries went dead in orbit some time ago, might thus have been saved. Such a service would ultimately allow manufacturers to build less expensively engineered satellites, one-half to two-thirds of present costs, since they would not have to be built for long life unattended.

On the basis of launch savings alone, the Air Force announced last spring that with a shuttle available it would be able to phase out all its present big launch rockets, including its Titan 3's. The economics were most compelling. Against present costs of $20 million to $35 million for each major unmanned launch, a shuttle launch would run about $5 million. Savings over Saturn-Apollo missions are even greater, since this manned system requires long countdowns and the assistance at splashdown of the Navy, Air Force, and a cast of thousands; the shuttle would count down in two to three hours, and return on its own to land.

The Air Force is mainly interested in the shuttle as a means of maintaining its extensive system of reconnaissance, communication, early-warning, and other defensive satellites. Until recently, recon satellites had to be launched every two or three weeks. In the relatively low orbits at which they must operate to get useful photographs, they had a very short life. A big, more advanced recon satellite, with a huge high-resolution camera and a higher orbital life of two to three months, is now coming into use. But this is still a short time span for expensive equipment; the span could be extended at great savings by a shuttle system. Even greater benefits would accrue to the growing galaxies of civilian satellites used in communications, earth-resources and weather surveying, and navigation traffic control.

With the shuttle thus taking top priority, it became apparent that a large space station could be deferred until late in the decade to keep budgets down. Moreover, the shuttle program itself might be extended further over time so as to hold down annual budgets. NASA is well aware of the fact that the Apollo program ran into political trouble because all its system elements were contracted for and developed concurrently causing NASA's budget to rise sharply to a peak of $5.9 billion in 1966. Concurrent development is the most economic, effective way to develop complex systems, as was demonstrated in World War II. By selecting a firm target date and developing all systems in parallel to meet it, a program's time span, overhead, and waste motion are reduced and it is made less vulnerable to inflation. But the short-run budgetary implications of concurrent development are now politically unpalatable. NASA is facing the political reality and planning to keep somewhere within its present $3.3 billion a year.

HOW THE SPACE SHUTTLE WORKS

The flight plan of the space shuttle differs markedly from that of the now familiar long-drawn-out launch procedures and splashdown dramatics of the Apollo missions. On the launch pad at the far left sits a rocket booster the size of a 747, carrying piggyback a shuttlecraft, or orbiter, which is about the size of a 707. After a countdown of two to three hours, the booster raises the orbiter up to an altitude of about forty-five miles, at which point the booster peels off and is piloted back in a great arc to its base. Meanwhile, the shuttlecraft, carrying a crew of four and up to twelve passengers, plus payload, fires its liquid-hydrogen engines and arcs upward into orbit. Fitted for orbiting missions of seven days or longer, the shuttlecraft has the capacity to perform a variety of tasks—e.g., servicing a space station with men and supplies. At the end of its mission the shuttlecraft, with a last burst from its small inboard maneuvering engines, swoops out of orbit into re-entry position and makes a powered flight to an airport landing on earth.

There is a similar concern about the political realities in the hard-pressed aerospace industry these days. "Each engineer working on the program," a McDonnell Douglas spokesman assured a conference last spring, "has had his head reshaped to design for low costs." As an example, Grumman, builder of Apollo's famous Lunar Excursion Module (LEM), came up last spring with what proved to be a winning idea for shuttle-orbiter design. It consisted simply of employing external, disposable tanks to carry the bulky volume of hydrogen fuel. This would allow a smaller, lighter orbiter to be built, without sacrificing payload capacity, at the same time that it would materially reduce the size and complexity of the booster. The cost of the fuel tanks jettisoned on each flight would run close to $2 million, but these would be largely offset by capital savings of $1,500,000 per vehicle—and the capital costs would come earlier and pose a greater political threat to the program. NASA promptly directed all contractors to study the incorporation of expendable fuel tanks in their own designs.

TUSSLING WITH THE OPTIONS

Other budget-cutting measures included a proposal to use existing, non-reusable boosters, such as the Titan 3 or Saturn 1C, to launch the first shuttle-orbiter flights in 1978, phasing in a reusable booster later. Still another recent proposal, which originated at Boeing, would have the Saturn system redesigned into a reusable booster, while the shuttlecraft was scaled down to use smaller "off-the-shelf" hydrogen engines than those now contracted for; the proposal would make it possible to build a reusable booster and orbiter concurrently with less budget strain. These are the options, along with others, with which NASA will be tussling through this spring.

The danger is that under pressures for short-term savings the long-term benefits and *raison d'être* of the program may be lost. The use of one-shot expendable boosters, while holding down development costs, would itself be costly in operation, and would defer the system's full projected launch savings. A reusable Saturn system, though lowest in cost, would tend to freeze development on old technology, built for an entirely different special purpose, and, in addition to lowering payload capacity, would imply a performance goal far below the minimum of a hundred flights per vehicle. But such measures may now be the only ones that are politically feasible.

However costs are shaved, the shuttle remains a big, long-term investment, and it is this hard fact that draws the heaviest attack. In last year's congressional go-around on the shuttle's token $100-million budget, opponents led by Senator Walter Mondale seized upon a 1970 Rand Corp. study, financed by the Air Force, as proof that the program could not be economically justified. The study, basing its calculations on a conservative projection of U.S. space activity in the next two decades, concluded that savings effected by the shuttle over comparable expendable systems would at best amount to only a "marginal" $2.8 billion by 1990. The Air Force retorted that the Rand report was an interim study, based on outdated 1969 figures, and did not reflect changes and refinements in the new joint program, on which a more comprehensive cost-benefit analysis was being completed. Opponents could muster less than thirty Senate votes in their attempt to halt the program.

Later in the year, a NASA-sponsored study, made by Mathematica, Inc., an independent firm headed by economist Oskar Morgenstern, came in with more substantial figures. Taking as one of its base lines an average of fifty-six launches per year (assuming that total space activity ran along close to the current level), the Mathematica study found that savings using the full-scale shuttle would come to some $14 billion by 1990—enough to pay off original development costs in something more than a decade of operation. It made clear that these savings would not be registered on launch-vehicle capital costs, in which the shuttle ran more than $4 billion higher than expendable equipment, but on payload costs and operations, where the shuttle would have an $18-billion cost-savings advantage. These savings would begin to accrue even in a phased program using expendable boosters, and irrespective of whether the comparison was made with unmanned launchings. Savings, of course, would be less if a more limited shuttle system were to be adopted.

Actually, useful as cost-benefit analysis is in evaluating projects in which all the elements are reasonably well known, it can be only a limited guide in weighing a program that encompasses a great mixture of exploration, advanced industrial application, military development, scientific experimentation, and large elements of the unknown. It is almost as if, in the wilderness of late-eighteenth-century America, analysts had attempted to project all the costs and benefits of building a transcontinental railroad. Or perhaps more nearly as if, early in this century, they had tried to weigh all the economic benefits of developing the Wright brothers' flying machine, at a time when not a few learned as well as practical men held the opinion that the machines would never safely carry passengers.

Aerospace men believe that so far cost-benefit analyses, which conservatively assume that the launch pattern of the last decade will continue, take too little account of one of the cardinal principles of transportation. This is that as transport becomes more frequent, faster, routinized, and lower in carrying costs, it invariably attracts more traffic, leading to further cost savings and other benefits. The last decade was the infancy of space flight. With space satellites on the verge of a decade of major expansion, a shuttle would greatly expedite their growth. With a shuttle in being, space stations may be economically assembled and maintained, not only to coordinate satellite operations but to establish near-earth platforms for direct scientific and industrial experimentation. This includes such projects as the creation of new metals, materials, or methods of fabrication in vacuums unobtainable on earth, the possible generation and transmission of pollution-free electric power from space, and still other more exotic prospects. Ultimately, perhaps the economic justification of the shuttle rests upon the plain proposition that if the U.S. is to have a progressive space program at all, it cannot continue to throw away multi-million-dollar vehicles on every trip.

THE ANTI-MAN-IN-SPACE SYNDROME

The most persistent opposition, however, continue to come from a group of scientists, mainly nuclear and theoretical physicists,

who have attacked manned space flight almost from the start as being too dangerous, expensive, and unproductive. A leading voice is Cornell University's Dr. Thomas Gold, an astrophysicist chiefly noted for a theory, vigorously promulgated in the early Sixties, that the moon might have such a deep covering of fine dust in its "seas" that astronauts would be in danger of sinking soundlessly in it. Last summer, as the shuttle's budget hung in the balance, Gold returned to the battle in an article in the New York *Times* Magazine titled "Machines, Not Men, in Space." Its main thesis, an echo of one widely used earlier to cut back the space budget, was that electronic automata and unmanned satellites could do everything a manned shuttle or space station could do, and do it much more safely and cheaply besides—a position now severely shaken by the recent economic analysis of the shuttle system. Gold concluded after reviewing all the possible harrowing physiological effects of prolonged weightlessness—none yet proved—that man should give up space flight for the present.

A tangled mixture of motives and emotions lies behind these attitudes. There is a feeling that space funds could better be spent for basic research in such areas as high-energy physics and radio astronomy, both in need of very large investment. But dissension over priorities has only served to diminish both basic research and space budgets, while cutting down the high technology that has sustained research and the U.S. economy through the last decade. More explicitly, opposition to man-in-space is often disparagingly tied to the charge that NASA's manned space-flight program is only a cover for military development, a suspicion darkly confirmed in this view by the joint shuttle program. But maintenance of defensive reconnaissance and early-warning satellites can do a great deal to deter major wars; the more that military powers know about what other powers are doing, the less prone they will be to reckless acts. It would be more than rash to deny the Air Force the manned space-flight capability to improve its satellite systems and to act fast against hostile systems in an emergency.

Basically, much of the physicist opposition is due simply to a predisposition, developed through long dealing with atomic abstractions and phenomena beyond the range of direct vision, to rely on instruments or remote-controlled mechanisms to explore nature. But exploring the solar system is a different proposition, and many eminent scientists do not agree that it can all be done with instruments. "It is physicists that say that," testified Nobel Laureate Harold C. Urey, discover of heavy hydrogen, when the same argument arose over going to the moon. "Chemists like to have their hands on matter . . . we must bring the sample back at least."

The Apollo voyages have brought back hundreds of pounds of matter for analysis, as against the few grams so far yielded by the Soviet program, still limited to unmanned instruments and machines. Out of the Apollo program has come a great body of new knowledge, direct observation, and data from carefully implanted experiments, unattainable by other means. Not the least of its accomplishments is the overturning of erroneous theories, such as that the moon is a cold, completely dead, dry body—now refuted by solid evidence of seismic-volcanic activity and emission of water vapor from deep fissures.

The shuttle, with its greater passenger and cargo capacity, would go on from Apollo to enlarge man's role in space. High on the first passenger lists would be medical men, to investigate at first hand the effects of weightlessness and cosmic radiation, and add to the already substantial contributions—in hospital-patient monitoring and other areas—of space to medicine. Also among the passengers might be biochemists, studying the reaction and synthesis of organic molecules in space, where more unusual carbon reactions are now found to be taking place than anyone had earlier suspected. New compounds and pharmaceuticals may thus be discovered. Engineers, metallurgists, or electronic specialists might go along to explore the formation of materials or structures in near-zero gravity and high-vacuum conditions. Laboratory-type experiments could be taken into space and carried out directly by the scientists who devised them.

But since almost anyone in good health could go on a flight, the list could include other creative people, artists or philosophers, men or women, who might imaginatively see new ways in which this uniquely weightless environment might benefit life on earth. (NASA's program includes a $100,000 design study for shuttle amenities suitable for "male and female passengers.") To limit U.S. space exploration for the next decade or more to instruments and robots would be to remove the human element from the program and to mark time, which in any enterprise is to go backward.

HOW GOES THE COMPETITION?

Though the so-called moon race is long over, and a series of Soviet technical setbacks and tragic accidents in space have removed much of the immediate pressure of competition, the Soviet program in both manned and unmanned flight continues to move steadily forward on a massive scale, unhampered by budgetary vacillation or divisions between civilian and military research. U.S. intelligence and British sources estimate that the Soviet space budget is running several billion dollars a year higher than that of the U.S., a fact reflected in a rate of launchings more than double that of the U.S., civil and military, in recent years.

Last spring the U.S.S.R. launched the first experimental earth-orbiting space station, Salyut 1, some two years ahead of the U.S.' scheduled Skylab. Following this, Soviet versions of an interim shuttlecraft, called Soyuz, carrying three cosmonauts, made two dockings with the Salyut in orbit. The first sortie was aborted and the craft quickly returned to earth when one crew member fell ill and a malfunction prevented the Soyuz crew from entering the station. The second docking ended in tragedy, after nearly a month's successful work in Salyut, when the returning crew was killed on re-entry in the earth's atmosphere. After a medical board determined that the deaths were not caused by any physical disability but by a faulty hatch door, leading to catastrophic decompression, Soviet authorities announced that Soyuz-Salyut flights would be resumed this year. Concurrently, four successful test flights of a maneuverable spacecraft similar to the Apollo indicated that manned lunar missions, though delayed by setbacks in developing a big rocket, are still very much on the Soviet agenda.

Meanwhile, on a much smaller scale, four other countries are now members of the space club, having launched and orbited experimental objects or satellites with rockets of their own design. They are Britain and France heading a European consortium, and, more recently, Japan and China. All have run into difficulties in designing large rocket boosters; the European group, which wants to develop a regional communication satellite of its own to serve Western Europe, has had special difficulties. NASA has had extensive talks with the Europeans in an effort to persuade them to become financial partners in the shuttle project, in return for some transfer of technology and shared use. Recently, as a further inducement, NASA offered to launch the European communication satellite at nominal cost. Given the tensions created by the recent international monetary situation, the European governments have been wary of joining in the U.S. space program. Meanwhile, NASA is committed to launch in 1973 an educational TV broadcasting satellite for India, the first of its kind, and a domestic satellite communication system for Canada. Quite aside from national or military rivalries, therefore, the U.S. has in space an exportable high technology of large potential, just beginning to open up.

Perhaps the most startling recent development of all has been a series of talks between Soviet and U.S. space authorities, who are now close to an agreement to design compatible docking mechanisms for the Soyuz-Salyut and Apollo-Skylab space stations and to conduct joint operations between them. Both nations want to develop the capability, in future shuttle flights, to rescue nationals of either country who may happen to be injured or stranded in space. The agreement may also be an opening move toward more international cooperation and exchange of technological information in space exploration, complementing the recent easing of U.S.-Soviet trade barriers.

A SYSTEM OF STAGED GROWTH

Primarily, the shuttle is a vehicle designed for the first, most arduous stage of getting large loads out of the earth's heavy gravity and atmosphere into near-earth orbit, and later assembling large space stations there. The next planned stage, following closely on the first, would be development of a space tug, a smaller version of the shuttlecraft, which would be carried up into orbit by the shuttle itself, and there be regularly serviced and refueled. It would operate from near-earth orbit and from space stations to deploy and maintain satellites in higher synchronous orbits, some 22,000 miles up, where a satellite's speed coincides with the revolutions of the earth so that it appears to be fixed in space over a single area. The tug would also operate from space stations as a shuttle link carrying men and equipment between the stations and the moon. Ultimately, the tug would be replaced by a third vehicle stage, a nuclear-powered spacecraft, whose engine is already well along in development. It would extend the range of operations from near-earth orbit and the moon to Mars and beyond. The basic shuttle, while earning its way in near space, would also serve to hold these options open for future decision and development.

A fresh vision of the great implications of man's quest in space was imparted a year ago by the Swedish-born scientist Hannes Alfvén, now at the University of California at San Diego, on the occasion of his receiving the 1970 Nobel Prize for work in plasma in physics. In his address, Alfvén saw as the major impact of space exploration the discovery that interplanetary space, instead of being a structure-less void, is permeated by complex patterns of electric currents, electric and magnetic fields, and charged gaseous particles in heated motion, collectively known as plasmas. The direct study of plasmas in space, he predicted, will not only lead to more fundamental understanding of the origin and accretion of the solar system—a major goal of late twentieth-century science—but it is also likely to supply indirectly the missing key to the control of thermonuclear power, a key that has proved elusive to earth-bound theoreticians.

JOURNEY TO AN ASTEROID

To further that basic study, Alfven repeated a daring proposal he had made earlier that the next step beyond the moon be a manned mission to an asteroid, one of thousands of small bodies revolving in a great belt about halfway to Mars; the mission would require some form of shuttle technology. Because of their small size (many of them are less than sixty miles in diameter), asteroids may reveal the composition of the earliest coalescence of matter out of cosmic plasmas.

Other investigators are beginning to look to experiments performed in space for clues

to the problems of supplying the earth with new sources of electric power and with scarce materials. There has been an increasing number of technical papers on various proposals to generate electricity from a space station and transmit it by microwave for conversion to usable power on earth. Thermonuclear reactions would be easier to control and sustain in the cold, high vacuum of space; more conventional nuclear plants would also work better there, without danger of lethal accidents or polluting the earth. Also to be taken into consideration is the use of magnetohydrodynamics (tapping electricity directly from highspeed plasma streams) and the direct conversion of solar power from space. Further on, as strategic metals grow scarcer and more difficult to wrest from the earth, it is not beyond the bounds of economic feasibility to ferry them in from planetary bodies. Alfvén suggests that asteroids, because of their low gravity, would be easy to mine. Smaller ones might even be propelled into near-earth orbits, or even to a soft landing on earth, for closer study and use. Thus there is more to the first-stage shuttle program for the future of man than would at first appear.

Back in the early Sixties, when these issues were first being debated, Ralph J. Cordiner, then chairman of the board and president of General Electric, had some words to say at a symposium on the space frontier. His observations bear directly on the future of the space shuttle.

"At this stage," said he, "the new frontier does not look very promising to the profit-minded businessman or to the tax-minded citizen. Every new frontier presents the same problem of vision and risk . . . Leif Ericson discovered America five hundred years before Columbus, but apparently the Vikings did not have the vision to see anything worthwhile on that vast, empty continent . . .

"When a new frontier is opened, the new territory always looks vast, empty, hostile, and unrewarding. It is always dangerous to go there, and almost impossible to live there in loneliness and peril. The technological capacities of the time are always taxed to the utmost in dealing with the new environment. It takes an immense effort of imagination for the citizens to see beyond these initial difficulties . . . But such an effort at prophetic imagination is what is required of us as citizens, so that we will not, like Leif Ericson, leave the making of the future to others."

EQUAL RIGHTS FOR WOMEN IN THE SENATE

Mr. McGOVERN. Mr. President, the Senate should immedately drop the barrier that prevents Senate female employees from entering the Democratic Cloak Room.

If we believe in equal rights for women, let us strike down this needless restriction.

I ask unanimous consent that an article published in the Washington Post of November 12, 1971, relating to this matter be printed in the RECORD:

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

GIRL PAGES: NO TRESPASSING?

What lurks in the clubby confines of the Senate Democratic cloakroom that a 15-year-old girl should not hear or see?

Mari Iwashita, who is 15, would like to find out.

She can't. The rules forbid girl pages from entering the cloakroom where Democratic senators gather off the floor.

"Well, I think it's ridiculous," Mari said, taking a stand as one of the few girl pages in the senate.

She confided, "I think it's so I wouldn't hear their language or maybe because they take off their jackets.

"The pages use the same language as the senators. It's just the way men talk, you know.

"And I've heard it all before anyhow," Mari, part-Hawaiian and appointed by Sen. Daniel K. Inouye, (D-Hawaii) said.

"I can't do my job right," she told inquiring reporters. "This is a serious inconvenience to me.

"This morning, Sen. (John C.) Stennis asked me to get him the Wall Street Journal and I couldn't," she added. "Sometimes, you have to get through the cloakroom to get out in the hall.

"It's not that I'm a women's lib freak or anything. I just want to do my job."

Mari said she thought Sen. Warren G. Magnuson (D-Wash.), was responsible for the ban.

Word quickly filtered to Magnuson who called an impromptu news conference to vehemently deny he was the culprit.

"I'm not for a rule to bar women anywhere in the senate except one cubby hole (the senators' private rest room)," Magnuson said.

"Why, I led the movement in the policy committee to hire them," he said in recalling the long agonizing the Senate underwent before it finally broke tradition and allowed girls (as long as they wore pants and not skirts) as pages.

Magnuson assured reporters he would see the rule was changed—quickly.

What of Mari's future after 10 weeks on the job?

"The sergeant-at-arms told me not to say anything or he'd go to my senator and I might get fired."

A boy colleague was equally miffed but more cautious.

"Don't use my name please but I don't think it's very fair and if I were a girl, I wouldn't like it."

As for the Republicans, Mari said she can get into their cloakroom and feels they use the same language as the Democrats.

RULES OF COMMITTEE ON DISTRICT OF COLUMBIA

Mr. EAGLETON. Mr. President, section 133B of the Legislative Reorganization Act of 1946, as added by section 130 (a) of the Legislative Reorganization Act of 1970, requires the rules of each committee to be published in the CONGRESSIONAL RECORD not later than March 1 of each year. Accordingly, I ask unanimous consent that rules of the Committee on the District of Columbia be printed in the RECORD.

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

RULES AND PROCEDURES OF THE SENATE COMMITTEE ON THE DISTRICT OF COLUMBIA

Rule 1. Unless the Senate is meeting at the time, or it is otherwise ordered, and notice given, the Committee shall meet regularly at 10:30 a.m. on the second Friday of each month. The Chairman may, upon proper notice, call such additional meetings as he may deem necessary, or at such times as a quorum of the Committee may request in writing, with adequate advance notice provided to all members of the Committee. Subcommittee meetings shall not be held when the full Committee is meeting.

Rule 2. The rules of the Senate and the provisions of the Legislative Reorganization Act of 1970, insofar as they are applicable, shall govern the Committee and its Subcommittees. The rules of the Committee shall be the rules of any Subcommittee of the Committee.

Rule 3. The Chairman of the Committee, or if the Chairman is not present, the ranking majority member present, shall preside at all meetings. A majority of the members of the Committee shall constitute a quorum of the Committee. However, the Committee may authorize a quorum of one Senator for the purpose of taking testimony.

Rule 4. Unless otherwise determined by a majority of the Committee, written proxies may be used for all Committee business, except that proxies shall not be permitted for the purpose of obtaining a quorum to do business. Committee business may be conducted by a written poll of the Committee, unless a member requests that a meeting of the Committee be held on the matter.

Rule 5. There shall be kept a complete record of all Committee action. Such records shall contain the vote cast by each member of the Committee on any question on which a yea and nay vote is demanded. The record of each yea and nay vote shall be released by the Committee either at the end of the executive session on a bill or upon the filing of the report on that bill as a majority of the Committee shall determine. The clerk of the Committee, or his assistant, shall act as recording secretary on all proceedings before the Committee.

Rule 6. All hearings conducted by the Committee or its Subcommittee shall be open to the public, except where the Committee or the Subcommittee, as the case may be, by a majority vote, orders an executive session.

Rule 7. The Committee shall, so far as practicable, require all witnesses heard before it to file written statements of their proposed testimony at least 72 hours before a hearing and to limit their oral presentation to brief summaries of their arguments. The presiding officer at any hearing is authorized to limit the time of each witness appearing before the Committee.

Rule 8. Should a Subcommittee fail to report back to the full committee on any measure within a reasonable time, the Chairman may withdraw the measure from such Subcommittee and report that fact to the full Committee for further disposition.

Rule 9. Attendance at executive sessions of the Committee shall be limited to members of the Committee and of the Committee staff. Other persons whose presence is requested or consented to by the Committee may be admitted to such sessions.

Rule 10. The Chairman of the Committee shall be empowered to adjourn any meeting of the Committee if a quorum is not present within 15 minutes of the time scheduled for such meeting.

Rule 11. Subpoenas for attendance of witnesses and for the production of memoranda, documents, and records may be issued by the Chairman or by any other member designated by him. The subpoena shall briefly state the matter to which the witness is expected to testify or the documents to be produced. All witnesses subpoenaed before the Committee who are to testify as to matters of fact shall be sworn by the Chairman or another member.

Rule 12. Accurate stenographic records shall be kept of the testimony of all witnesses in executive and public hearings. The record of a witness' own testimony, whether in public or executive session, shall be made available for inspection by witnesses or by their counsel under Committee supervision; a copy of any testimony given in public session or that part of the testimony given by a witness in executive session and subsequently quoted or made part of the record of a public session shall be made available to any witness at his expense, if he so requests. Witnesses not testifying under oath may be given a transcript of their testimony for the purpose of making minor grammatical corrections and editing, but not for the

purpose of changing the substance of the testimony. Any question arising with respect to such editing shall be decided by the Chairman.

Rule 13. Subject to statutory requirements imposed on the Committee with respect to procedure, the rules of the Committee may be changed, modified, amended, or suspended at any time, provided, however, that not less than a quorum of the Committee so determines in a regular meeting with due notice, or at a meeting specifically called for that purpose.

CORRESPONDENCE BETWEEN THE NEW YORK TIMES AND THE NORTH VIETNAMESE FOREIGN MINISTRY

Mr. SCOTT. Mr. President, I ask unanimous consent that correspondence between the New York Times and the North Vietnamese Foreign Ministry regarding Vietnamese war negotiations be printed in the RECORD.

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

NEW YORK TIMES EDITOR SENDS LETTER TO PHAM VAN DONG

Hanoi VNA in English to VNA Paris, 1354 GMT, 15 Jan. 72 B—for official use only.

["Message from A. M. Rosenthal, New York Times"]

[Text] Honorable Pham Van Dong, Foreign Ministry, Hanoi.

In view of the conflicting accounts we have had recently [on the] negotiating position of your government and PRG on ways to end the Indochina war, we invite your answers to the following questions because we believe they can clarify the situation.

1—If the United States sets a firm troop withdrawal date would you agree to the release of American prisoners in your control?

2—Would you negotiate on military withdrawal and the release of prisoners completely separate from questions pertaining to the political future of Vietnam?

3—Which of the following must be wholly withdrawn or halted to obtain the release of all American prisoners in your control?

1. American ground troops in South Vietnam.
2. American transport and logistic air support to South Vietnamese forces.
3. American bombing in North Vietnam.
4. American air reconnaissance in North Vietnam.
5. American bombing in South Vietnam.
6. American bombing in Laos and Cambodia.
7. American airbases in Southeast Asia outside Indochina.
8. American military advisory activities in South Vietnam.
9. American military aid shipments to South Vietnam.
10. American economic aid to South Vietnam.

4—Are there any additional conditions for the release of all American prisoners?

5—Assuming an agreement is possible under the terms of Question 3, how soon could all prisoners be released and how much time would be available to arrange the American disengagements?

6—Would the elements of such an agreement be separate? Could some prisoners be released before others in exchange for some acts of disengagement?

7—What in concrete terms is the meaning of your demand that the United States withdraw all political support from the present Saigon government? How could such a withdrawal be acted upon?

8—Quite apart from negotiations for withdrawal and prisoner release, under what conditions would you agree to a larger international peace conference on all Indochina? Who should attend? At what stage could such negotiations prove profitable?

A. M. ROSENTHAL,
Managing Editor,
New York Times.

NGO DIEN'S REPLY

Hanoi VNA in French to VNA Paris 1340 GMT 15 Jan 72 B—For official use only.

[Reply by Ngo Dien, head of DRV Foreign Ministry's Information and Press Department to A. M. Rosenthal's message to Pham Van Dong]

[Text] Mr. A. M. Rosenthal, managing editor of the New York Times.

DEAR SIR: Concerning your questions addressed to Premier Pham Van Dong, I am authorized to draw your attention to the following points:

The fundamental problem is the cessation of the U.S. war of aggression in Vietnam and the restoration of peace in Vietnam with respect for the basic national rights of the Vietnamese people. Therefrom, the aspiration of the Vietnamese people for a peace in independence and freedom will be satisfied, as well as the wish of the American people who are demanding the extrication of their country from the current quagmire in Vietnam and the repatriation of all their sons engaged in the ranks of the U.S. expeditionary corps in Vietnam, including the U.S. militarymen captured in Vietnam.

At present, forced to carry out a gradual withdrawal of U.S. troops, President Nixon has not, however, resigned himself in putting an end to his war of aggression. Implementing his Vietnamization policy, he intends to pursue it through the Nguyen Van Thieu clique and the Saigon puppet army, which the United States has provided with colossal aid and massive participation of the U.S. Air Force and Navy in combat.

By simultaneously raising the issue of prisoners of war and that of U.S. troop withdrawal, without renouncing all commitment to and support for the Nguyen Van Thieu puppet administration, President Nixon does not aim at bringing a solution to the abovementioned fundamental problem, but simply at placating the legitimate demands of the American people. In fact, he aims at evading the pressure of U.S. and world public opinion with a view to prolonging and extending the war in Indochina.

Concerning the solution to the Vietnamese problem, the DRV Government approves of and fully supports the seven points put forward on 1 July 1971 by the PRGRSV. You can find in this the answer to the questions which you raised in your telegram.

In refusing to comply with these seven points, the Nixon administration has turned away from the path leading to a correct solution of the Vietnam problem, rejecting at the same time the opportunity to bring home last Christmas all U.S. militarymen, including those who have been captured in Vietnam.

I am, sir, yours very truly,

NGO DIEN,
Head of the Information and Press Department of the DRV Foreign Ministry.

[From the Washington Star, Jan. 24, 1972]

PERPETUATING THE DECEPTION ON THE POW ISSUE

(By Richard Wilson)

A cruel deception is being perpetuated by heedless men that all President Nixon need do to secure the release of prisoners of war held in North Vietnam is to declare a specific date for complete withdrawal of all American forces.

The depth of this deception is emphasized in a response to questions submitted to the Hanoi government by the New York Times which the newspaper decided not to publish The reasons leading to this decision are curious.

On Page 10 of its Friday edition under a headline saying "Hanoi's Cable to Times Cites Peace Aim," the Times gave this main reason for not publishing Hanoi's response to the questions submitted by its managing editor:

The response was no different than previous positions stated at the Paris peace negotiations by Hanoi's representatives and published at the time in the Times.

This excuse for not publishing Hanoi's response can be questioned for several reasons. First, the cable was an official statement direct from Hanoi and not filtered through the North Vietnamese delegation in Paris. Second, the Times, in an interview earlier with the head of the Communist delegation, had spread the impression that releasing prisoners of war could be separated from other issues at the Paris conference.

And, third, the Hanoi response might have helped to clear the minds of those who cultivate the deception that the prisoner of war question can be separated from North Vietnam's insistence that all troops must be withdrawn, all support to the Thieu government be withdrawn and the policy of Vietnamization be abandoned. The Times has often published, and makes a special point of publishing, important public documents. It confined itself in this case to publishing merely a summary of the exclusive statement it received from Hanoi, and did not relate this response to the questions it had asked except to say that none had been answered directly.

Nor, it was indicated, would the Times have done this much had it not been for the fact that the foreign broadcast information service of the Central Intelligence Agency had published in its weekly report the substance of the exchange in its regular function of monitoring Hanoi's public communications. The exchange between Hanoi and the Times managing editor thus became known to reporters covering the State Department.

Furthermore, a good many readers would conclude that the Hanoi response confirmed beyond any shadow of doubt the Nixon administration's claim that North Vietnam has flatly turned down a prisoner release in exchange for a firm withdrawal date. Sen. George McGovern, a candidate for president, has, in effect, called Nixon a liar for making that claim.

Aside from revealing the hazards of a newspaper trying to conduct, or at least influence, foreign affairs, the incident of this unpublished document from Hanoi nails down hard what the Communist government will settle for. It will settle for the humiliation of the United States, complete renunciation of the Thieu government, and an end to all support for the elected government of South Vietnam. Then—maybe—it will release American prisoners of war.

The Times could have placed these facts in high relief by publishing its questions and Hanoi's cabled response, but it did not do so.

McGovern, and more recently Sen. Mike Mansfield, persist in the notion that it is all simple. Just announce a complete withdrawal and Hanoi will interpret that as letting the Thieu government go down the drain and promptly release the prisoners. The war will then be over.

Hanoi's cable makes it a lot clearer: President Nixon must pull totally out of Vietnam, stop backing the Nguyen Van Thieu bellicose clique and conform to all seven points of Hanoi's peace proposal, which would accomplish the complete humiliation of Nixon in his attempt to achieve a constructive end to the war.

Nixon tried, in his recent television interview, to open the door a little wider by intimating that the last troops would be withdrawn when the prisoners had been released,

or concurrently. That little crack in the door might have widened to permit a view of compromises on both Hanoi's unaltered seven points and Nixon's commitment to Vietnamization and to the Thieu government.

But the door was slammed shut by Hanoi with a resounding whack loud enough, certainly, to be heard by all who pursue the simplification of prisoner repatriation in exchange for setting a final and total withdrawal date.

[From the New York Times, Jan. 21, 1972]

HANOI'S CABLE TO TIMES CITES PEACE AIM

(By Bernard Gwertzman)

WASHINGTON.—North Vietnam has reiterated, in a message to The New York Times, its apparent position that American prisoners will not be released until the Nixon Administration agrees both to withdraw all its forces from South Vietnam and to end its support of the Government of President Nguyen Van Thieu.

The statement was virtually identical to comments made by spokesmen for Hanoi in recent weeks and to declarations in the news media. It was sent last Sunday to A. M. Rosenthal, managing editor of The Times, in reply to eight questions cabled by Mr. Rosenthal to Premier Pham Van Dong of North Vietnam on Jan. 4.

The Times had sought clarification of Hanoi's negotiating position, specifically whether the prisoners would be released in return for a firm withdrawal date. Critics of the Administration's policy believe the setting of such a date would result in the release of the prisoners. The Administration has maintained that Hanoi also wants Washington to end its support of the Saigon Government as part of a seven-point "all or nothing" negotiating position.

NIXON'S STATEMENT

In a television interview on Jan. 2, Mr. Nixon said that the possibility of a total troop withdrawal in exchange for the release of the prisoners had been discussed with the North Vietnamese at the Paris peace talks but that Hanoi had "totally rejected" such an approach.

Senator George McGovern, Democrat of South Dakota, charged next day that Mr. Nixon had deceived the public. Mr. McGovern, who met with North Vietnamese officials in Paris last summer, has insisted that Hanoi will recognize an announcement of firm withdrawal date as representing an end of support for Saigon and will release the nearly 400 prisoners.

The Times in this cable asked, "in view of the conflicting accounts" about Hanoi's position, "if the United States set a firm troop withdrawal date, would you agree to the release of American prisoners in your control?"

Mr. Dong was also asked: "Would you negotiate on military withdrawals and the release of prisoners completely separate from questions pertaining to the political future of Vietnam?"

There were also such questions as what constituted an American withdrawal and what constituted the end of political support of Saigon.

On Jan. 6, before The Times had received a reply to its questions, the North Vietnamese spokesman in Paris, Xuan Thuy, said publicly that if the United States wanted to disengage from the war and to repatriate its prisoners, it should "give up aggression, stop the Vietnamization of the war, pull out from South Vietnam all the troops, stop backing the Nguyen Van Thieu bellicose puppet group."

Mr. Thuy's remarks were printed on the front page of The Times on Jan. 7.

Hanoi's answer, signed by Ngo Dien, director of the Press and Information Department, was sent to The Times through the North Vietnamese mission in Paris on Jan. 15. Without answering any of Mr. Rosenthal's questions directly, Mr. Dien repeated Hanoi's attack on the Nixon Administration.

"At the present time, placed in the obligation of carrying out a gradual withdrawal of United States troops, President Nixon has nonetheless not resigned himself to putting an end to his war of aggression," he said. "Putting into effect his policy of Vietnamization, he means to continue it through the intermediary of the clique of Nguyen Van Thieu."

Mr. Diem added that "by raising at the same time the 'prisoners' question and the withdrawal of United States troops without renouncing all engagement and support in favor of the Nguyen Van Thieu puppet clique, President Nixon aims not to bring a solution to the aforementioned fundamental problem, but simply to allay the legitimate demands of the American people."

U.S. SUMMARIZES EXCHANGE

On Monday, Mr. Rosenthal thanked Mr. Dien by cable for his reply but said that The Times, after much consideration, had decided not to publish the material "since its content is identical to previous statements made by your Government and subsequently printed by The New York Times."

The Times decided to report on the exchange after it learned that the United States Government had obtained Hanoi's reply to the paper as well as the paper's questions and that a brief summary of the exchange was included in a weekly report distributed for Government use by the Foreign Broadcast Information Service, a bureau of the Central Intelligence Agency. The report is made available to newsmen covering the State Department.

The report said that the Vietnamese Communist media had so far not mentioned Mr. Rosenthal's communication to Mr. Dong.

The Government summary said:

"The Vietnamese news agency's service channel to Paris on the 15th carried Rosenthal's questions along with a message from Ngo Dien. Ignoring Rosenthal's specific questions. Dien implied that Point I, on United States withdrawal and prisoner release, could not be separated from Point II, on a political settlement in South Vietnam.

A YEAR OF ACTION FOR AMERICA'S ELDERLY—1972

Mr. BENTSEN. Mr. President, in future years we may well look back upon 1971 as the year in which beginnings were made toward according the problems of the aging their proper place high on the list of our national priorities.

But we would be gravely mistaken, in my view, if we mistake rhetoric for reality and if we assume that all the increased talk about the aged means that we have done all that we should or could to enable our older citizens to live out the balance of their lives in dignity and comfort.

Indeed, we have just scratched the surface. We have taken some steps that are significant, to be sure, but we have not yet devised a comprehensive strategy for coping with the severe problems of the 20 million Americans who have reached the age of 65.

In short, Mr. President, a long list of proposals for the elderly is still awaiting our attention, and I trust this Congress will take upon itself the responsibility of enacting them into law.

Before I move into a brief discussion of some of these proposals, as well as some new initiatives which I shall introduce, let me review the accomplishments in the field of aging during the first session of the 92d Congress.

In 1971, the Congress acted to shore up our social security system by enacting a 10-percent increase in social security benefits.

In 1971, the Congress acted to strengthen the Administration on Aging by increasing its level of appropriations by over 200 percent to $100 million.

In 1971, the Congress enacted the Emergency Employment Act to direct added funds to areas of high unemployment, with a special provision that middle-aged and older persons were to be equitably represented in new employment opportunities.

In 1971, the Congress voted a 10-percent increase in the railroad retirement annuity program.

In 1971, Congress extended the golden eagle passport program which allows senior citizens free entrance to our national parks and reduces substantially the charges they must pay for using their facilities.

And in 1971, the Congress approved my amendment to the Economic Stabilization Act, which encouraged the growth of private pension plans by exempting them from the guidelines for wages and salary increases allowable in the period of economic controls.

These measures, Mr. President, are significant, and they represent a substantial gain for our older citizens. But they fall far short of the needs, and they must be regarded only as preliminary steps which must be followed by continued congressional action.

Indeed, the very thoughtful section reports from the White House Conference on Aging remind us that we have lagged behind in other areas no less critical to our elderly citizens.

I share President Nixon's hopes that the reports of this White House conference will result in action and will not be filed away to gather dust as so many other conferences have been. But in all candor, Mr. President, the record of this administration in the field of aging is such that I believe we shall have to remain skeptical.

I do not say this to be partisan; I merely state it as a fact.

Ou June 25, 1971, President Nixon declared that—

> The generation over 65 is a very special group which faces very special problems—it deserves very special attention.

Yet in the last Congress the President threatened to veto a 15-percent hike in social security benefits and only signed it into law when it was made a part of a tax reform bill he badly wanted.

In the present Congress the President opposed the 10-percent rise in social security benefits and went on to take the credit for it after the Congress overwhelmingly approved it.

The President has spoken of the need to provide adequate housing for the elderly while at the same time his administration is phasing out section 202 of the Housing Act which provides direct loans at nominal interest rates to nonprofit sponsors of housing for the elderly.

Despite the high level of unemployment and poverty among older Americans, the President's representatives testified against the Older Americans Community Service Employment Act, a measure which I cosponsored along with 18 of my colleagues and which would allow older Americans to have a chance to serve their communities in useful and productive work.

And the President, despite his recent statements to give top priority to the aging, acted earlier this year to cut funds for the Administration on Aging and to transfer some of its critical programs—such as foster grandparents and the retired senior volunteer program—to a new agency which is not chiefly concerned with problems of the elderly. Fortunately congressional hearings on this matter produced a flood of bipartisan criticism of these plans, and the administration only recently reversed itself and asked for an increase in funds for the Administration on Aging.

Mr. President, the actions I have described are not the product of an administration which has demonstrated a prominent concern for the elderly. Indeed, the advances we made over the last 2 years have been achieved largely by constant prodding from both parties in the Congress with the administration supplying the rhetoric and then stepping in to claim credit for measures it has originally opposed.

While we must hope that President Nixon has determined to reverse these policies, the actions for the past several years indicate most clearly that we cannot rely on words and visions; the Congress must continue to take the initiative.

I intend to work with my colleagues in the House and Senate to translate the President's rhetoric into the reality of a better life for older Americans.

During my first year in the Congress, I told my constituents that the problems of the elderly would be a principal concern of mine. In that time, I introduced or cosponsored a number of measures that I consider to be critical, including:

The Nutrition Program for the Elderly Act, which would provide hot, nutritious meals for persons over 60 in conveniently located centers. This measure passed the Senate by a vote of 89 to 0 despite the fact that the administration, in testimony before a House committee, opposed the bill as it passed the Senate in June.

The Older Americans Transportation Services Development Act, which would allocate $3 million over the next 2 fiscal years to explore the possibilities of reduced fares for the aged, special transportation subsystems, and relevant problems affecting the crisis in mobility which confronts many Americans over 65.

An amendment to the Social Security Act, which I cosponsored with Senator RIBICOFF, which would extend medicare insurance on a voluntary basis to people reaching age 65 who are not covered by social security. This group includes some three-quarters of a million teachers and hundreds of thousands of local and State employees.

A measure to establish a joint House-Senate Committee on the Aging to give added legislative emphasis to the needs of older Americans;

The Middle Aged and Older Workers Employment Act, which would establish a comprehensive midcareer development service in the Department of Labor and provide training, counseling, and other services to aid the more than 1 million Americans over 45 who are out of work.

In addition, I have supported and sponsored measures to enable elderly citizens to receive tax credits for property taxes and to encourage the growth of private pension plans.

All of these measures are directed to the basic needs of older Americans—income, food, and transportation. Many of them have been the subject of hearings in the Senate and some have already been approved.

But the agenda is far from complete, and we can feel little sense of satisfaction until we address ourselves to the unmet needs which remain.

One of the principal unmet needs which has received relatively little attention is adequate education programs for older Americans. The Education Section of the White House Conference on Aging began its report to the delegation with the following statement:

> Education is a basic right for all persons of all age groups. It is continuous and one of the ways of enabling older people to have a full and meaningful life, and as a means of helping them develop their potential as a resource for the betterment of society.

In 1816 Thomas Jefferson wrote John Adams:

> Bodily decay is gloomy in prospect but of all human contemplations the most abhorrent is body without mind.

During the past several years in this country, we have witnessed an accelerated interest by older people in continuing their education. They recognize what Jefferson said, that "body without mind" accelerates the process of aging and contributes to a feeling of worthlessness.

I believe it is important that we investigate a range of possibilities for providing better education for those who are in their later years—and by that I include adult basic education, vocational education, preretirement education and informal and formal degree programs for older Americans depending upon their needs and interests.

We are not doing an adequate job in any of these areas today. A recent report of the Senate Special Subcommittee on Aging points out that—

> Education . . . is seldom mentioned when reviewing available resources which would be of use in meeting challenges of old age.

Too often our education programs for older Americans are inadequately funded and emphasized, with the elderly receiving little attention when compared to those in younger age groups.

In adult basic education, for example, which is the most critical educational need of older Americans, less than 5 percent of the Federal funds are used to help those 65 years of age or older, despite the fact that one-fifth of the persons in this age group are functionally illiterate and only one-third of them have been in school beyond the eighth grade. In my own State of Texas recent figures indicate that less than 2,000 persons over 65 are in these programs while over 46,000 persons are involved from all age groups combined.

This is in part the result of inadequate funding and in part the result of insufficient attention given by State and Federal officials to enrolling substantial numbers of the elderly who may be interested.

This year I intend to offer an amendment which will raise the funding of adult basic education to its authorized level of $225 million; last year we succeeded in appropriating $61 million, less than 30 percent of the authorization. As a consequence, many programs allowing adults to continue their education past primary school were necessarily discontinued.

And these are other measures I believe we should explore. Education for the elderly does not always proceed most effectively in a formal setting. Informal education, in churches, YMCA's, and libraries, can often be more effective and indeed more inviting to the person of advanced years who may be reluctant to enter a formal educational setting.

In line with a suggestion by the Education Section of the White House Conference, I am offering an amendment to the Library Services and Construction Act, which would establish a separate title to provide library services for older Americans.

The public library, because of its neighborhood character, offers an excellent opportunity as a community learning resource for the elderly. I believe we must direct specific attention to these possibilities, and I urge the Labor and Public Welfare Committee to consider this question seriously.

I also urge prompt action on S. 555 and S. 1307, both of which would provide vocational education and training for older Americans seeking to enter the job market. With our unemployment rate at 6.1 percent and with over 1 million persons over 45 unemployed, we must accelerate our efforts to give middle-aged and older workers a chance to reenter productive employment.

And finally, Mr. President, I intend to explore methods of earmarking funds for older Americans in any consumer education and preretirement educational programs which may be considered by this Congress. Both of these fields deserve our attention; the elderly frequently find themselves the primary targets of consumer fraud by those who recognize that older people do not have the information which would enable them to uncover deceptive practices in advertising and solicitation. Preretirement education, with emphasis on the problems of retirement, can be equally important.

Earlier in my remarks, Mr. President, I mentioned my cosponsorship of the Older Americans Transportation Services Development Act, a measure to provide funds for research and demonstration projects in transportation for the elderly.

There is little doubt that we need more

Government attention to the question of transportation and older Americans. Recent reports by the Senate Special Committee on Aging indicate that we are spending only a pittance to explore this problem.

Yet transportation can be the root cause of a number of ills besetting older Americans. If an elderly person cannot walk to the store to shop, he or she may go hungry; if he cannot find the means to visit his friends and relatives he may be overcome by feelings of rejection and loneliness; if he cannot visit the doctor, he may suffer from unnecessary and debilitating illnesses. Transportation is a lifeline for the elderly, and it must be expanded and improved.

Moreover, it is a significant problem in urban as well as in rural areas. In the center city, where nearly one-third of all 65 plus individuals live, fear of crime is a primary cause of immobility. In the rural areas, distances and the absence of bus, railroad, and taxi service are the principal considerations.

Some remarkable demonstration projects, funded through a combination of Government and private money, have been successful in reaching a number of the elderly. In my own State of Texas, for example, Project FISH in Waco, uses volunteers to provide transportation for those individuals who otherwise could not make necessary medical appointments and numerous other trips to meet everyday needs.

We must continue to encourage the use of funds for these programs under title III of the Older Americans Act. And I believe that we must do more than simply provide additional funds for research and demonstration.

In particular, I shall propose an amendment to the Urban Mass Transit Assistance Act of 1970 which would require the Secretary of Transportation, before approving any transportation development grant, to be assured that local officials have taken into account the particular needs of the elderly and the handicapped in drawing up their plans. Too often, in the planning of design of transportation systems, inadequate attention is paid to features—such as sheltered benches, automatic turnstiles, special ramps—that would make public transportation more accessible to older Americans. As a result, many of the elderly do not use transit systems that may be their only hope for mobility.

If we are going to spend billions in Federal funds for mass transit systems, the least we can do is assure that these facilities can be effectively utilized by the people most in need of them.

Thus far, Mr. President, I have spoken of the basic needs of the elderly in income, in employment opportunities, in education and training, and in transportation.

Now I want to turn to another subject which has not received sufficient attention from Congress or the administration—the question of research into the aging process itself.

A recent article in Time magazine notes that "The biology of aging is no better understood today than was the circulation of the blood before William Harvey."

The consequences of our relative neglect of research into the aging process are profound. Dr. Gerald LaVeck, Director of the National Institute of Child Development at NIH, told Congress last year that advances in aging research could be expected to build body resistance and measurably reduce the incidence of chronic diseases such as arteriosclerosis, cancer, and arthritis.

And there are other benefits to aging research as well, most notably the opportunity our generation has to extend vigorous and productive life by an additional 15 to 20 years by studying the normal body processes that contribute to deterioration. Dr. LaVeck noted that research on aging will eventually permit a reduction in the percentage of his lifespan the average person has to spend dependent on society in a nursing home or a similar environment which often results in a slow and depressing degeneration in his final years.

It is ironic, Mr. President, that at the same time President Nixon was requesting a major increase in funds for cancer research, he was asking for a cut of nearly 18 percent in the funds for aging research at NIH, a drop from a mere $8.8 million to $7.2 million. These actions seem to be clearly contradictory.

When Dr. LaVeck was asked for the rationale behind the cutback he said:

> The first priority for this coming year has been assigned to contraceptive development and the medical effects of contraceptives, while aging research has been forced to take a lower priority.

I suggest, Mr. President, that we can afford to spend as much to extend life as we can to prevent it. Accordingly, this year, I shall offer a bill specifically earmarking $20 million for aging research and training within the National Institutes of Health. That is a very modest price to pay—less than $1 per person over the age of 65—for research that is as basic as the mystery of life itself.

This list of legislative initiatives is not an exhaustive one, and there are other efforts, particularly in the area of retirement income, which I shall be supporting during the current session of the Congress.

I believe, for example, that we must act to bar States from deducting any increases in social security from State old-age assistance payments, as long as we have the present welfare system.

I believe that we must work for larger increases in social security than the 5 percent proposed by the President and that we must see to it that other benefits become available earlier than June of 1972.

I believe that we must continue our efforts to ease the burden of property taxes on the elderly poor.

I believe that we must move to eliminate the earnings test on old age and survivors insurance benefits.

And I believe that we must direct special attention to the plight of the 5.4 million older Americans in rural areas, many of whom are particularly disadvantaged in retirement income, in transportation and in health programs.

All of these questions and more should receive the attention of this Congress during the present session. With the White House conference and new legislative proposals we have made a start; now we should follow through on the work begun in 1971.

Many of my colleagues, notably the Senator from New Jersey (Mr. WILLIAMS) and the Senator from Idaho (Mr. CHURCH) have submitted a series of thoughtful proposals directed at improving the lives of older Americans. In particular, I want to pay tribute to Senator CHURCH for his work as chairman of the Special Subcommittee on Aging, a committee which has published a series of invaluable reports on various problems afflicting the elderly.

Over the next several months, I intend to work closely with these and other concerned Senators to see to it that America's elderly have, in the words of one Senate report, "a full share in abundance."

The people for whom we will be acting comprise a generation which has contributed its skills, its knowledge, and its devotion to building this country. It has helped to pay for two great wars and two so-called lesser ones. Many of its sons have died on distant battlefields to preserve the idea we call America.

That generation deserves better at our hands.

Some time ago, Franklin Roosevelt said:

> The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.

For too long, the older generation in America has enjoyed too little of the fruits of this Nation's abundance.

The 92d Congress has the opportunity to reverse that pattern and to bring 20 million elderly Americans back into the mainstream of American life.

COME TO THE PARTY AT THE OMB

Mr. METCALF. Mr. President, on behalf of the Office of Management and Budget, I should like to welcome any interested persons to attend its public utility party on Friday, January 28. The party will be held in room 2008 of the New Executive Office Building, on 17th Street, between Pennsylvania Avenue and H Street NW., beginning at 9:30 a.m.

The purpose of the party, according to the OMB announcement, is "to give advise on reporting problems and concepts to the Office of Management and Budget on the Price Commission 'Public Utility Price Increase Form.' "

This form is a one-page questionnaire, the answers to which will provide the basis of the Price Commission's 10-day review of the multibillion-dollar rate increases which the gas, electric, bus, truck, airline, and railroad corporations are pushing through. This one-page form includes tough questions such as:

Name of firm:
Address:
Employer Identification Number:
Ending date most recent fiscal year:
Approved price increase:
Effective date of price increase:

Rate of return "pursuant to the customary practices of the regulatory agency having jurisdiction."

That last question, I might add, affords reporting utilities an opportunity to set back regulatory accounting a quarter of a century. The customary practices of a number of State regulatory agencies permit rate base to include "fair value," "reproduction cost new," and a variety of other items calculated to make a corporation's investment appear larger, and its profits smaller, than is actually the case.

Mr. President, I base my invitation to come to the party on testimony by an OMB official, then Assistant Director Maurice Mann, before the Senate Subcommittee on Intergovernmental Relations on October 8, 1970. We were discussing my bill to open up what has been for years some altogether too cozy discussions about public business between OMB's industry advisory committees and a few Federal officials. The pertinent colloquy reads as follows—page 187 of "Advisory Committee" hearings, part II:

Senator METCALF. Yesterday Mr. Wimmer (Vice President Ed Wimmer of National Federation of Independent Business) made a suggestion that as a result of demands for student and youth participation, as a way of training young people to take part in Government, that we have some young person on the (OMB advisory) committee, we go through colleges and so forth and select for various advisory committees some young man or woman to participate.

Mr. MANN. I see no reasons why they cannot participate in the way that we are operating now.

Mr. President, there are literally billions of dollars at stake in this issue of rate control. That control, if it is to be exercised, will be based upon timely provision of pertinent and sufficient data to the Price Commission and other regulatory agencies. So I hope that interested persons and organizations will avail themselves of OMB's and my invitation, and participate in the Friday meeting.

So that attendees may be better informed on this matter, I ask unanimous consent to insert at this point in the RECORD OMB's notice of meeting, the names of the OMB industry advisory committee members, trade associations which OMB has invited to this meeting, and other persons who, according to OMB, have been notified of this meeting. I also ask unanimous consent to insert the one-page questionnaire and a supporting statement provided me by OMB and an article entitled "Utility Rates Are Going Up—Your Electric Bill May Be A Shocker," written by Morton C. Paulson, and published in the National Observer of January 29.

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

NOTICE OF MEETING

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, D.C., January 14, 1972.

You are invited to attend and participate in a meeting of the Business Advisory Council on Federal Reports Committees concerned with public utilities (gas, electric, bus, truck, airlines, railroad, etc.) to be held on Friday, January 28, 1972, beginning at 9:30 A.M. The meeting will be held in Room 2008 of the New Executive Office Building, on 17th Street between Pennsylvania Avenue and H Street N.W., Washington, D.C. The purpose of the meeting is to give advice on reporting problems and concepts to the Office of Management and Budget on the Price Commission, "Public Utility Price Increase Form." A copy of the form and instructions are attached.

In order that we may properly plan for the meeting, please indicate whether you plan to attend.

* * * * *

CLEARANCE OFFICER,
Office of Management and Budget,
Room 10201A, New Executive Office Building,
Washington, D.C. 20503

I____plan ____do not plan to attend the meeting on January 28, 1972.
Name: ----------
Organization: ----------
Address: ----------

OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

The industry representatives invited consist of the Committee on Public Utilities, Committee on Natural Gas Pipelines and representation from the other areas involved such as bus, truck, telephone, water, sewer, railroads and aircraft. Copies of lists attached.

PUBLIC UTILITIES COMMITTEES

(Coordinating, operating report and financial reports)

G. H. McDaniel, Commonwealth Services, Inc., Acting Chairman. (Robert S. Quig, Ebasco Services, formerly Chairman has resigned following illness.)
C. M. Allen, Panhandle Eastern Pipeline Co.
A. J. Brodman, New Orleans Public Service Co.
Fred W. Braga, Detroit Edison.
Thomas H. Burbank, Edison Electric Institute.
Thomas R. Daugherty, American Gas Association.
Robert R. Fortune, Penn Power & Light.
Arthur E. Gartner, Consolidated Natural Gas Co.
John Geiger, Pacific Power & Light.
John S. Graves, Columbia Gas System.
Robert A. Jeremiah, Long Island Lighting.
J. C. Johnson, Southern Services, Inc.
Albert J. Klemmer, Rochester Gas & Electric.
James I. Poole, Jr., Natural Gas Pipelines.
Francis Quinn, Transcontinental Gas.
Frank H. Roberts, Northern Natural Gas.
Donald E. Rose, Peoples Gas Light & Coke Co.
William E. Sauer, Peoples Gas Light & Coke Co.
William T. Sperry, Public Service Gas & Electric.
Philip Willemann, American Electric Power Service Corp.
E. A. Willson, Northern States Power Co.
R. C. Wilson, Washington Gas Light Co.

COMMITTEE ON NATURAL GAS PIPELINES

E. H. Hasenberg, Natural Gas Pipeline Company of America.
W. Page Anderson, Panhandle Eastern Pipe Line Company.
Daniel L. Bell, Jr. Columbia Gas System Service Corp.
I. D. Bufkin, Texas Eastern Transmission Corp.
Robert L. Cramer, Florida Gas Transmission Co.
Thomas R. Daugherty, American Gas Association.
J. D. McCarty, United Gas Pipe Line Company.
Harry A. Offutt, Consolidated Gas Supply Corporation.
C. W. Radda, Northern Natural Gas Company.
Walter E. Rogers, Independent Natural Gas Assn. of America.
Robert H. Stewart, Jr., Gulf Oil Corporation.
Lloyd M. Varenkamp, El Paso Natural Gas Company.

There will also be representatives from the following:

Air Transport Association of America—Stuart G. Tipton.
Aluminum Company of America—David J. Mahrer.
American Telephone & Telegraph Company—Ben F. Givens.
American Trucking Associations, Inc.—William A. Bresnahan.
American Waterways Operations, Inc.—Braxton B. Carr.
Association of American Railroads—Burton N. Behling.
BACFR Committee on Air Transportation—John A. Paine, Chairman.
National Association of Motor Bus Owners—Charles A. Webb.
National Water Company Conference—Frederick N. Allen.
Transportation Association of America—Harold F. Hammond.
U.S. Independent Telephone Association—William C. Mott.
Water Transport Association—John A. Creedy.

NOTICE OF MEETING

Committee or subject: BACFR Committees concerned with Public Utilities (gas, electric, telephone, buses, trucks, railroads, etc.) on Price Commission PC–35, "Public Utility Price Increase form"

Date: *Friday* 28, 1972; time 9:30 *A.M.*; place *Rm.* 2008, *New Executive Office Bldg.*

Arranged by *David T. Hulett and Harry B. Sheftel.*

PARTICIPANTS

Industry representatives

C. M. Allen, Panhandle Eastern Pipeline Company.
Frederick N. Allen, National Water Company Conference.
W. Page Anderson, Panhandle Eastern Pipeline Company.
Burton N. Behling, Association of American Railroads.
Daniel L. Bell, Jr., Columbia Gas System Service Corporation.
Fred W. Braga, Detroit Edison.
William A. Bresnahan, American Trucking Associations, Inc.
A. J. Brodman, New Orleans Public Service Company.
I. D. Bufkin, Texas Eastern Transmission Corporation.
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John A. Creedy, Water Transport Association.
Thomas R. Daugherty, American Gas Association.
Robert R. Fortune, Penn Power & Light.
Arthur E. Gartner, Consolidated Natural Gas Company.
John Geiger, Pacific Power & Light.
Ben F. Givens, American Telephone & Telegraph Company.
John S. Graves, Columbia Gas System.
Harold F. Hammond, Transportation Association of America.
E. H. Hasenberg, Natural Gas Pipeline Company of America.
Robert A. Jeremiah, Long Island Lighting.
J. C. Johnson, Southern Services, Inc.
Albert J. Klemmer, Rochester Gas & Electric.
David J. Mahrer, Aluminum Company of America.
J. D. McCarthy, United Gas Pipe Line Company.
G. H. McDaniel, Commonwealth Service, Inc.

William C. Mott, U.S. Independent Telephone Association.
Harry A. Offutt, Consolidated Gas Supply Corporation.
John A. Paine, BACFR Committee on Air Transportation.
James I. Poole, Jr., Natural Gas Pipelines.
Francis Quinn, Transcontinental Gas.
C. W. Radda, Northern Natural Gas Company.
Frank H. Roberts, Northern Natural Gas.
Walter E. Rogers, Independent Natural Gas Assn. of America.
Donald E. Rose, Peoples Gas Light & Coke Company.
William E. Sauer, Peoples Gas Light & Coke Company.
William T. Sperry, Public Service Gas & Electric.
Robert H. Stewart, Jr., Gulf Oil Corporation.
Stuart G. Tipton, Air Transport Association of America.
Lloyd M. Varenkamp, El Paso Natural Gas Company.
Charles A. Webb, National Association of Motor Bus Owners.
Philip Willemann, American Electric Power Service Corporation.
E. A. Willson, Northern States Power Company.
R. C. Wilson, Washington Gas Light Company.

Price Commission

Arnold Braff, Robert Evenson, William Daley, Michael Lang, and Robert Long.

Civil Aviation Board

Arthur Sims.

Department of Defense

Curtis L. Wagner, Jr.

Federal Power Commission

Charles Franklin and James R. Tourtelotte.

Federal Communication Commission

Bernard Strassberg.

Interstate Commerce Commission

Under arrangement.

National Association Regulatory Utility Commissioners

Paul Rogers.

Rural Electrification Administration

Dave Askegaard and James W. Goodwin.

Tennessee Valley Authority

C. Godfrey.

Office of Management and Budget

Dean Anderson, GGP, Malcolm Arnold, PC, Dave Hulett, SPD, Henry Lum, NRP, Harry B. Sheftel, SPD, and Kenneth Swartz, ESTP.

Business Advisory Council on Federal Reports

Dave Marsh.

Other representation

J. D. Crumlish, Natl. Bureau of Standards.
John Jameson, Small Business Admin.
Senator Metcalf's Office.
H. Postma, Oak Ridge Nat. Lab.
H. W. Wells, Pres. Comm. on Consumer Interests.
Mrs. Angevine, Consumer Federation-America.
I. Antin, Marquette University.
B. R. Anziowar, Pharmaco-Medical Doc.
J. Blamphin, Medical World News.
E. H. Blum, N. Y. Rand Institute.
Theodore L. Brown, Champaign, Ill.
Mrs. C. Bush, Dual Labs.
David W. Calfee, Public Interests Research Group.
Center for Law and Social Policy, Washington, D.C.
Arthur Charous, Sears Roebuck & Co.
L. C. Clapper, National Wildlife Fed.
R. L. Cohen, Berkeley Heights, N.J.
Mrs. J. Del Solar, National Parks Assoc.
Clarence M. Ditlow, Public Interest Research Group.
H. F. Didsbury, Jr., Washington, D.C.
J. Dixon, Applied Devices Corp.
Tim Eichenbert, Citizens Advocate Center.
Michael P. Esposito, Chase Manhattan Bank.
Federation of Homemakers.
J. S. Hamilton, Nat. Council of Churches.
H. F. Hecker, Oakhurst, N.J.
Michael Hathaway, Natl. Rural Elec. Corp.
L. J. Heere, Medical University of S.C.
R. D. Henningan, Syracuse College—Forestry.
E. L. Johnson, Jr., Norristown, Penna.
Robert T. Jordon, Washington, D.C.
Larry S. Kamanitz, Washington, D.C.
B. Kass, Nat. Consumer Law Center.
Alvin Kaufman, N.Y. Public Service Commission.
Albert Kramer, Citizens Communication Commission.
D. S. Kim, Maplewood, N.J.
T. A. King, Adelphi, Maryland.
Donald Lief, Center Political Research.
C. Mackown, Oceanology.
J. J. Nickson, Michael Reese Hospital.
Ohio Conservation Federation.
Rudolf Oswald, AFL/CIO.
Fred. Panzer, Tobacco Institute.
P. J. Petkas, Public Institute Research Commission.
Peter Petra, Kenton Corporation.
Jooste Polak, Newhouse Papers.
Alex Radin, American Pub. Power Assoc.
Thomas Riddel, American University.
Richard Ritter, Federal Times.
R. B. Robertson, III, Comm. Study of Responsive Law.
A. E. Rowse, U.S. Consumer.
Miss E. Stengel, Consumers Union.
J. B. Talmadge, Asso. American Colleges.
Edward Sandifer, Dartmouth College.
Dr. Pauline Vaillancourt, Jackson Heights, New York.
Godfrey J. Vitt, Washington, D.C.
Raymond Watts, Ct. Small Business.
John R. Stark, Joint Economic Committee.

PUBLIC UTILITY PRICE INCREASE FORM

PART I—IDENTIFYING DATA

1a. Is this a resubmission? (1) Yes, (2) No.
1b. If "Yes", indicate prior reference number.
2. Application date (Month—, day—, year—).
3. Parent Firm Data.
a. Name of firm.
b. Address (Number and street) City or town, State and ZIP code.
c. Ending date most recent fiscal year—Mo.—; Day—; year— .
d. Employer identification number— .
e. Total revenues in most recent fiscal year— $ (000 omitted).

PART II—SERVICES COVERED BY THIS REPORT

4. Data on Reporting Entity Covered by this Filing (Complete only if different from item 3).
a. Name of reporting entity:
b. Address (Number and street):
City or town, State and ZIP code:
c. Ending date most recent fiscal year: Mo. ; Day ; Year .
d. Employer identification number:
e. Total revenues in most recent fiscal year $— (000 Omitted).
5. Indicate if report covers (check one): —(1) Request based on filing with regulatory agency; —(2) Interim price increase; —(3) Approved price increase; —(4) Price increase not subject to regulatory agency approval.
6. Services covered:
7. Agency having jurisdiction over price increases:
8. Indicate document(s) attached —(1) Application to regulatory agency; —(2) Agency; rate order; —(3) Agency opinion; —(4) Agency certificate; —(5) Self certification; —(6) Other (specify):
9. Effective date of price increase as proposed, allowed, or authorized:
10a. Total revenues last 12 months $—.
10b. Test period from: —— to: ——.
10c. Test period revenues $—.
11. Estimated annual increase in revenues, $—.
12. Price increase %:
Net profit.
13. Rate of return:
a. Estimated rate of return data for this price increase; (1) Overall, %; (2) On common equity —%.
b. Rate of return data for most recent prior price increase authorized by the agency in item 7, above: (1) Overall —%; (2) On common equity, —%. (3) Date of prior price increase.
c. Basis for overall rate in a. and b.: —(1) Original cost; —(2) Other—explain.
14. Have you previously filed with the Price Commission a report? For this price increase covering:
(1) A request? Yes —; No —. If "yes" give date.
(2) An interim price increase? Yes —; No —.
15. Are any other price increases being considered by a regulatory agency?
(a) For your company?
Yes—; No—. If "yes" attach explanation.
(b) Holding?
Yes—; No—. If "yes" attach explanation.
(c) Subsidiaries?
Yes —; No —. If "yes" attach explanation.
16. Contact for further information:
Individual's name and title: —; Address:—; Telephone number:

PART III—CERTIFICATION

To the best of my knowledge and belief, the data submitted herewith are factually correct, complete and prepared in accordance with the applicable instructions.
Chief Executive Officer of Parent Firm or other authorized executive officer.
Typed name and title:
Name of company:
Signature:
Date:
Forward this form and all supporting documents to: Price Commission, P.O. Box 19300, Washington, D.C. 20036. Indicate "Submission of Form PC–35" in the lower left-hand corner of the envelope.

STATEMENT SUPPORTING REQUEST FOR CLEARANCE OF PC–35 "PUBLIC UTILITY PRICE INCREASE FORM

A. *Justification of form in relation to program.*—Price Commission regulations require that certain public utilities (principally those with annual revenues over $100 million) furnish data with respect to proposed price increases or those authorized by a regulatory agency. The data on this form is a summary of the information required to determine whether the proposed price increase is consistent with Price Commission regulations.

B. *Justification of those to be covered.*—The selection of those firms required to file Form PC–35 is specified in Price Commission regulations. Those requirements are set forth in the instructions to Form PC–35 under "Who Must File".

C. *Collection, tabulation and publication plans.*—Only selected data will be collected for the purposes indicated in section A, above. Data may be summarized by the Price Commission and released to the public in the form of press releases. Such press releases would be in a manner which avoids disclosure of confidential individual company data and solely for those purposes as the Price Commission deems necessary for achieving the objectives of the economic stabilization program.

D. *Consultation with others regarding Form PC–35.*—Earlier drafts of this form have been reviewed by Price Commission staff members and many of their comments have

been included in this form. Because of the temporary nature of the Price Commission, its staff members come from and can be assumed to represent a fairly broad cross-section of other Federal Agencies and include individuals with experience in various other agencies which regulate public utilities.

INSTRUCTIONS FOR THE PREPARATION OF FORM PC–35 PUBLIC UTILITY PRICE INCREASE FORM

PRICE COMMISSION,
Washington, D.C., December 28, 1971.

GENERAL INSTRUCTIONS

Purpose

Form PC–35 is to be used to notify the Price Commission of:

(1) Requested price increases at the time of filing an application with a regulatory agency,

(2) Interim price increases in effect under suspension, including those subject to accounting or refund,

(3) Approved price increases as ordered or certified by a regulatory agency,

(4) Proposed price increases for utility services not subject to the jurisdiction of a regulatory agency, prior to the effective date of such increases.

Form PC–35 shall not be used by a public utility to report requests for price increases for non-utility services or products such as merchandise. Such requests shall be submitted to the Price Commission on the applicable forms which would be used if the firm was not a public utility.

Suggestions for Improvement

The Price Commission welcomes suggestions for improving this and other forms. In general, it seeks ways of obtaining the information it needs to exercise its responsibilities under the price stabilization program with a minimum amount of reporting burden on prenotification and reporting companies.

Who must file

This form must be used by all public utilities who are subject to the reporting requirements of the Price Commission regulations.

A public utility includes, but is not limited to, a person that furnishes services such as gas, electricity, telephone, telegraph, public transportation by vehicle or pipeline, water, and sewage disposal, but does not include water or sewage disposal services furnished by a government agency or instrumentality.

If the public utility is a separate entity, not controlled by another entity, it should disregard Item 4 on the form. If the public utility is a part of a consolidated group of companies, it should complete Items 3 and 4.

In the case of transportation companies, price increases may be requested by a recognized rate bureau or conference rather than an individual company. If so, the rate bureau or conference must submit the data as parent firm. The bureau must provide an attachment for "Item 4: Data on reporting entity covered by this filing" listing all entities included in the price increase. When completing the items on Form PC–35, the bureau should base its responses on the financial data included with the filing with the regulatory authority.

As required by Section 215 of the Economic Stabilization Act Amendments of 1971 (Public Law 92), a company, or other entity constituting a public benefit corporation, charged by law or contract with the responsibility to operate a mass transportation facility or facilities, the fares of which are not otherwise regulated, shall use Form PC–35 to apply for approval of fare increases.

When to file

Requested price increases must be reported within 10 working days after filing the request with the regulatory agency.

Interim price increases put into effect subject to accounting and refund must be reported at least 10 working days before the effective date of the price increase.

Price increases approved by a regulatory agency must be reported within 5 days of receipt of the final regulatory agency approval.

Proposed price increases not subject to the jurisdiction of a regulatory agency must be reported at least 10 working days before the effective date of the price increase.

What to file

A separate Form PC–35 must be prepared for each type of notification mentioned above, although a rate increase for more than one service such as electric and gas may be included on the same form.

If the space provided on the Form PC–35 is inadequate, furnish the necessary data on attachments. All items on the form should be answered. If the data required is not applicable (N/A) or none; so indicate in the appropriate box. Do not use "unknown" or similar wording. For the purpose of this form, all percentages must be expressed to the nearest two decimal places (e.g., 5.92%). All dollar entries must be rounded to the nearest $1,000 and the 000 should be omitted (such as $1,750,803 entered as $1,751).

A duplicate copy of Form PC–35 (but not the attachments) should be included with each submission.

This form and instructions call for basic information. The Price Commission may request additional data in particular cases.

Where to file

Form PC–35 and attachments should be mailed to: Price Commission, P.O. Box 19300, Washington, D.C. 20036.

Indicate "Submission of Form PC–35" in the lower left-hand corner of the envelope.

SPECIFIC INSTRUCTIONS

Part I—Identifying data

Item 1: Prior Reference Number—Answer the question in 1(a). If you are supplying requested additional information or resubmitting a request that had been initially returned, record the prior reference number in 1(b). The prior reference number is the number recorded by the Price Commission in the top right hand corner of this form, in the box labeled "Reference No."

Item 2: Application Date—Enter the date that this notification is made, regardless of whether this represents an initial report, notification of interim price increases in effect under suspension, price increases approved by a regulatory agency, proposed price increases not subject to a regulatory agency, requested additional information, or a resubmission.

Item 3: Parent Firm Data—A parent firm is the firm which controls a group of consolidated subsidiaries following the criteria for the preparation of consolidated financial statements in accordance with generally accepted accounting principles. Where the utility is operated by a government unit, the governmental unit should be considered to be the Parent firm for purposes of Form PC–35. In such cases, enter "N/A" in Item 3e.

(a) Enter name of Parent firm.

(b) Enter address of executive offices of Parent firm.

(c) Enter the ending date of the most recent fiscal year as customarily used by the Parent firm.

(d) Enter the Parent firm's employer identification number as used for Internal Revenue Service Filings.

(e) Enter the total revenues of the Parent firm during its most recent fiscal year (Item 3c), from whatever source derived.

Item 4: Data on Reporting Entity Covered by this Filing—Fill in this item only if the reporting entity covered by this filing is different from the entity listed in Item 3. The criteria for determining such reporting entities are given above under "Who Must File."

(a) Enter name of reporting entity covered by this filing.

(b) Enter address of executive offices of reporting entity.

(c) Enter the date of the most recent fiscal year of the reporting entity as customarily used.

(d) Enter the employer identification number, as used for Internal Revenue Service filings, of the reporting entity covered by this filing. If the reporting entity's employer identification number is the same as the Parent firm's leave this item blank.

(e) Enter the total revenues of the reporting entity covered by this filing during its most recent fiscal year (Item 4c), from whatever source derived.

Part II—Services covered by this report

Item 5: Indicate if Report Covers—Indicate whether you are notifying the Price Commission of either; (1) a request for a price increase at the time of filing an application with a regulatory agency, (2) an interim price increase in effect under suspension including those subject to accounting or refund, (3) an approved price increase as ordered or certified by a regulatory agency, or (4) a proposed price increase not subject to the jurisdiction of a regulatory agency.

If item 5(3) is checked, attach a statement if the public utility plans to petition or appeal the price increase as ordered or certified by the regulatory agency.

Item 6: Service Covered by 5 Above—Enter the service or services included in the increase, e.g., gas, electric, telephone, telegraph, water, common carrier trucking, contract trucking, railroad passenger, railroad freight, air passenger, air freight.

Item 7: Agency Having Jurisdiction Over Price Increases—Insert the name of the regulatory agency or agencies or other authority having rate jurisdiction over the service or services for which the increase in rates is being requested.

Item 8: Attach Copy of the following Document(s) as applicable: Request for price increase. When notifying the Price Commission of a request for a price increase, attach a copy of the application for rate increase as filed with the regulatory agency entered in Item 7. If more than one regulatory agency, attach a copy of the application filed with each agency (if the applications are different).

Interim price increase in effect under suspension. When notifying the Price Commission of an interim price increase in effect under suspension, including those subject to accounting or refund, attach a copy or copies of the certificate by the regulatory agency entered in Item 7 (see the Price Commission regulations). If the regulatory agency has established findings prior to prices being placed in effect under suspension, attach a copy of the findings. If the staff of the regulatory agency has prepared a brief, attach a copy and indicate if the brief is confidential.

Approved price increase.

When notifying the Price Commission of an approved price increase, attach a copy of the rate order and certificate by the regulatory agency.

Price increase not subject to a regulatory agency. When notifying the Price Commission of a proposed price increase not subject to the jurisdiction of a regulatory agency, attach a schedule adequately describing the nature of the proposed price increase, including the appropriate self certification (see the Price Commission regulations).

Item 9: Effective Date of Price Increase—Enter the date the increase becomes effective subject to the review of the Price Commission. If the notification is a request for a price increase under Item 5(1) or (4), enter the proposed date if any.

Items 10, 11 and 12:

Total revenues for the last 12 months (Item 10a.) should include the revenues for the most recent 12 months available. Reve-

nues for the test period should include the revenues as used for the test period used in the rate proceedings.

Data with respect to proposed price increases should be related to the services affected by the proposed price increase. A public utility providing more than one type of service, for example a gas and electric distribution company, should include revenues for the last twelve months and the proposed increase in annual revenues for only electric service if the proposed increase applies only to electric rates. If the proposed increase applies to electric and gas rates, items 10, 11 and 12 should include data for both services. Supplemental data setting forth the information by type of service should be included by attachment if more than one service is involved. Further information should be included by attachment in response to items 10, 11 and 12 indicating the rate schedules, tariffs or class of customer service affected by the proposed increase.

Item 12 should indicate the percentage relationship of the increase in revenues (Item 11) to the revenues for the last twelve months (Item 10a.) or to the revenues for the test period (Item 10c.), whichever is most meaningful under the circumstances.

Item 13: Rate of Return—Overall rate of return refers to the rate of return applied to the rate base pursuant to the customary practices of the regulatory agency having jurisdiction over the service for which the increase is proposed. Rate of return on common equity refers to the percentage return proposed or allowed on the common stock equity.

In the case of proposed price increases not subject to the jurisdiction of a regulatory agency, the rate of return data shown should be based on the customary practices used for those activities of the reporting entity which are subject to the jurisdiction of a regulatory agency. If this is considered inappropriate by the reporting entity, it should use the method it considers proper, and provide a full explanation by attachment.

If rate of return data is not available or useful because of the nature of the industry or regulation, profit margins and/or operating ratios should be submitted by attachment in lieu of rate of return data.

Rate of return data should be supplied by attachment when increases relate to more than one service and when the rate of return is determined by type of service.

(a) In connection with requests for price increases, this item should include the applicable data based upon the application for increased rates as filed with the regulatory agency. If the form is being submitted for an increase approved by the regulatory agency, enter the data from the rate order or decision. If interim prices are being permitted to become effective under suspension, enter the rate of return which the reporting entity estimates will result from the increased prices.

(b) The rate of return allowed or authorized by the regulatory agency in the most recent prior rate order or decision should be included. If the method of determining overall rate of return or return on common stock equity in (a) above is significantly different from that included in the prior rate order, provide an explanation by attachment. In those cases where the reporting entity has not had a formal rate proceeding in recent years, additional information should be attached indicating the average rate of return which the reporting entity earned during any two of the past three fiscal years ending prior to August 15, 1971.

Enter on line (3) the effective date of the most recent prior price increase authorized by the agency entered in Item 7.

(c) Indicate by attachment a brief description of the type of rate base used if other than original cost.

Item 14: Reference to Previous Filings with the Price Commission in Connection with Proposed Increase—Enter the data necessary to relate the increase proposed by this report to prior reports filed with the Price Commission if there is not a prior reference number in response to Item 1.

Item 15: Proposed Price Increases Other than Those Being Requested in This Report—If the reporting entity has filings before any regulatory agency for increased prices (subject to the reporting requirements of the Price Commission regulations), other than that covered by this report, the information required by Items 6, 7, 10, 11 and 12 of Part II should be furnished for each such proposed increase. Reference to previously filed Forms PC–35 concerning such price increases will satisfy the requirements of this item.

Item 16: Self-explanatory.

Part III—Certification

Type, on the lines above the signature, the name and title (including the company name) of the individual who has signed the certification. The individual certifying to the PC–35 must be the Chief Executive Officer of the Parent firm, or such other executive officer as authorized by the Chief Executive Officer to sign for him for this purpose. Such authorization must be in the form prescribed by the Price Commission.

Important Notice

Effective January —, 1972, the Price Commission will only process reports of price increases for public utilities on this Form PC–35 or a facsimile copy of such form.

[From the National Observer, Jan. 29, 1972]

UTILITY RATES ARE GOING UP—YOUR ELECTRIC BILL MAY BE A SHOCKER

(By Morton C. Paulson)

Of the many expenses that strain the typical family budget, utility charges generally come under the heading of small change. While prices of everything from housing to hosiery have risen dramatically, costs of gas, electricity, and telephone service have, for the most part, held steady for decades—or even declined. But not now.

For more than a year, utility costs have been advancing at nearly double the rate of the over-all cost-of-living index. And despite Federal price restraints, the worst may lie ahead.

A record number of rate-increase applications are pending before state and other governmental regulatory agencies. More than 60 electric utilities are seeking increases that would, if approved, raise electric bills about $1 billion a year. Members of the Bell telephone system are seeking $1.5 billion in boosts.

HEDGING REQUESTS

U.S. Sen. Lee Metcalf, Montana Democrat and long-time critic of electric utilities, estimates that electric, gas, telephone, and pipeline companies have applied for a total of about $4 billion in annual increases.

"Utilities usually ask . . . for a third or fourth more than they actually want and plan to get, in order to preserve the appearance of regulation," declares Metcalf. Therefore, he says, "we can expect rate increases totaling between $2.5 and $3 billion a year."

Last week the New York State Public Service Commission authorized a $160,000,000 raise in that state's telephone rates. Unless modified by the Federal Price Commission, the Action will mean a 9 per cent boost statewide for customers and will increase rates for most New York City subscribers 29 per cent above the July 9, 1971 level. Furthermore, said the state commission, "there is grave danger that the price of telephone service will increase substantially in the years ahead." Of major concern is the possibility that telephone service will be "priced out of the reach of the less-affluent members of society," the commission said.

In New Jersey, Bell customers will have to pay minimum increases ranging from $1.20 to $22.40 a year under a new rate schedule filed last week. Across the country, regulators authorized Bell Companies to raise rates $1.3 billion in 1970 and 1971. There were, however, no appreciable increases in the two preceding years.

In Chicago, it cost an average of $168 annually to heat a six-room house with gas in 1969. Last year the bill came to $186. In Denver, the average user's gas outlay rose from $103 in 1969 to $112 in 1971, even though less gas was consumed last year. In Missouri, customers of the Laclede Gas Co. paid $49 last year for 50,000 cubic feet of gas, up from $41 in 1969.

Nationally, prices of both gas and electricity rose 7.4 per cent during the 12 months ending in September 1971. Telephone costs went up 7.1 per cent over the period, and water and sewer bills jumped 9.9 per cent. These increases compare with a rise of only 4.2 per cent in the over-all consumer-price index. In part, however, the higher utility prices reflect increases in Federal, state, and local taxes.

COSTS ARE CLIMBING

Utility executives insist that they must have more money to meet the demands of growing populations. Costs of construction, labor, and fuel are steadily climbing, they argue. On top of this, many companies are being forced to shell out heavily for antipollution equipment. "In my opinion we will have to have rate increases every year for the next decade," asserts Gordon R. Corey, chairman of the finance committee at Chicago's Commonwealth Edison Co.

J. Harris Ward, Commonwealth chairman, says the company expects to spend $400,000,000 in the next five years for air- and water-quality-control systems at generating sites. This will be in addition to $165,000,000 previously spent for such purposes and will represent 13 per cent of the company's total construction budget.

The Price Commission has authority to overrule rate decisions of regulatory agencies, and has laid down standards for permissible increases. Even so, commission officials acknowledge that, on the average, rate rises this year will exceed 2.5 per cent, the Nixon Administration's hoped-for limit on over-all price increases.

"We will not require a profit-margin test [for utilities] as is done with other industries," says James H. Hogue, the commission's director of congressional relations. He said the panel has neither the staff nor the expertise to take on rate-making functions of the kind performed by state public-utility commissions. Rejection of a legitimate increase could result in curtailed service and impaired credit ratings of utility companies, he adds.

PROFITS RISE

But critics such as Senator Metcalf and the Consumers Federation of America maintain that profits of many power companies are excessive, and thus many rate-boost applications are unjustified. "To the extent that wage-price controls are successful and interest costs decrease, the needs of the utilities for rate increases will diminish," argues Metcalf.

After-tax profits of the country's 100 largest private power companies totaled a record $3.3 billion in 1970, up $250,000,000 from 1969. The figures are supplied by the companies themselves to a trade publication, Electric Light & Power. Net, after-tax earnings of the 100 companies expressed as a percentage of gross revenue—ranged from a high of 22.6 per cent to a low of 5.5 per cent in 1970. The average was 15 per cent.

Another measure of profitability is the percentage of return on common stock equity, or book value. The range here for 184 companies was 17.5 per cent and 1.5 per cent, with the average being 11.3 per cent, the Federal Power Commission reports.

In Metcalf's view, these sizable differences prove that some companies are enriching themselves at the expense of their customers. He and his executive assistant, Vic Reinemer, wrote a book in 1967 entitled *Overcharge*. In it they take the position that, despite governmental rate regulation, many investor-owned power companies take in "far more than is received by risk-taking free-enterprise business," and therefore "overcharges can cost many a family thousands of dollars during the breadwinner's working life."

Accordingly, the senator is sponsoring legislation that would provide funds for hiring lawyers to represent the public before regulatory commissions and courts. It also would require electric, gas, and telephone companies to disclose more information about their earnings.

All too often, he says, state regulatory commissions are overwhelmed at rate hearings by highly paid economists, engineers, and accountants representing the utilities. Having small staffs and little money, the commissions "lack experts who can challenge the companies." His bill would provide for Federal funds for hiring "this expertise so sorely needed," says Metcalf. The measure died in committee in 1970 but has been reintroduced.

Some companies with above-average earnings in 1970 filed for substantial rate increases in 1971. Commonwealth Edison, which achieved a 13.6 per cent return on common-stock equality, requested $95,200,000. Illinois Power Co., which earned 17.2 per cent, asked for $21,500,000. Cleveland Electric Illuminating Co. earned 14.5 per cent and filed for $53,538,000.

Filings of the Virginia Electric & Power Co. (VEPCO) over the last two years provide an interesting study. VEPCO's return on both stock equity, 13.5 per cent, and after-tax profits on revenue, 19.2 per cent, were above the industry average in 1970. Nonetheless, in June of that year the Virginia Corporations Commission granted the company's request for $22,500,000 in rate boosts. The increase survived court challenges by the Virginia attorney general and a consumer group called the Ad Hoc Committee on Cities and Counties.

One year later VEPCO got a "temporary emergency" increase of $22,800,000. This one was contested unsuccessfully by the utility's biggest customer, the U.S. Department of Defense. Then, in August 1971, the company applied for $57,000,000 more, or $79,800,000 including the $22,800,000, which it wants made permanent. That request is pending. If the increases are granted, VEPCO's residential customers would pay between $18.81 and $19.86 on the average, up from $15.20 and $16.13.

"We're in a deteriorating financial situation," a VEPCO spokesman said last week. "We must receive rate relief soon if we are to remain financially healthy." Another official said the company expects to spend $5 billion for expansion in the next five years.

THE ONLY TRUE MEASURE

VEPCO and other power companies insist that figures showing return on stock equity and net profits on sales are largely irrelevant in measuring profitability of utilities. They argue that utility companies have a huge investment in plants, equipment, power lines, and the like and therefore their profits should be calculated as a percentage of their capital investment. "That's the only true measure," asserts Alvis M. Clement, senior assistant treasurer for VEPCO.

In 1968, electric power companies had a net plant investment of $3.66 for every $1 of revenue, says Prall Culviner, vice president of the Edison Electric Institute, an industry association. That compared with 74 cents for the steel industry and 23 cents for auto makers. But VEPCO earned an amount equal to 5.45 per cent of its net plant investment in 1970. This, too, was well above the average of 4.37 per cent for the 100 largest companies. Other electric utilities earned from 2.66 per cent to 7.77 per cent of plant investment.

Regulatory officials queried by The National Observer said that as a rule no single profit yardstick is used in determining whether a company should be allowed to raise rates. "It's done on a case-by-case basis," said William L. Webb, director of information for the Federal Power Commission. "The basic idea is to allow them the cost of the service they provide, and then a fair return."

ADVERTISING OUTLAYS ASSAILED

The Federal Trade Commission, in determining rates of return for manufacturing industries, uses the stock-equity calculation. In 1969, this ranged from nearly 20 per cent for a group of drug makers to 7.7 per cent for a group of yarn and fabrics producers.

Metcalf complains that electric utilities spent seven times more on advertising and sales promotion in 1970 than on research and development. "If the utilities quit overpromoting their scarce product, they would not need as much additional new plant capacity, and research and development could lead to more pollution-free production of power," he maintains. The power companies retort that advertising promotes increased efficiency by encouraging more even use of generating equipment. Because of air conditioning, electricity use peaks in the summer.

So the power companies promote electric heating in an attempt to make full use of their power facilities in the winter. But because of rising costs, some companies have scaled down their advertising. VEPCO, which spent $2,200,000 for advertising in 1970, cut it out completely last summer and has done none since.

EXTRADITION AND GENOCIDE

Mr. PROXMIRE. Mr. President, some people who oppose the Genocide Convention do so because they believe that American ratification of the treaty will be the prelude to wholesale extradition of innocent, law abiding American citizens to foreign countries where they will be tried without any of the cherished protections of our Constitution. To see if this fear is justified it will be helpful for us to examine the extradition process as it pertains not only to genocide, but also to other crimes such as murder and robbery.

First. An American citizen must go to a foreign country.

Second. He must commit an act that is a crime according to that country's laws.

Third. He must return to the United States before being arrested and tried by that country.

Fourth. That country must ask the United States to extradite the person.

Fifth. There must be an extradition treaty in force between that country and the United States that includes the crime, be it genocide or whatever, as an extraditable offense.

Sixth. The foreign country must show that the accused will be granted all his rights under our Constitution.

Seventh. The Federal courts and the Executive must both agree to grant extradition. If all of these steps are not present the person cannot be extradited.

It is rare that an American citizen is extradited to a foreign country to stand trial. More often it occurs when an alien flees to the United States and is extradited back to his native land. In the same manner, foreign nations are obliged under extradition treaties to return American citizens to the United States to stand trial here for acts allegedly committed here.

In 1970, then Assistant Attorney General William Rehnquist, appearing before the Special Foreign Relations Subcommittee on the Genocide Convention said:

> I don't recall hearing instances of American citizens being sent abroad, I often hear of shipping citizens of foreign countries back to their country for offenses . . . but not American citizens . . ."

Because article VII of the Genocide Convention says that extradition for genocide is to be granted in accordance with the laws and treaties in force, the seven step process outlined above applies to genocide just as it does to all the other crimes for which the United States grants extradition. We can thus see that we have no reason to fear the capricious and wholesale extradition of American citizens.

Mr. President, I call upon the Senate to ratify the Genocide Convention as quickly as possible.

FUNDING CRISIS FACES PEACE CORPS

Mr. McGEE. Mr. President, an editorial published in the Washington Evening Star of Friday, January 21, warned of the consequences which could follow the current funding crisis facing the U.S. Peace Corps program.

The editorial writer observed:

> How dismaying it is that the Peace Corps, having reached a point of high effectiveness and popularity, is threatened with suffocation because of congressional fumbling and bickering over a small amount of money. There is still time to rescue the Corps from a downfall that would be both costly and shameful, but that time is running very short.

There probably never has been such overwhelming public support for a foreign aid program as there is for our Peace Corps effort. In spite of the popularity of the program and in spite of all it has accomplished, the Congress has seen fit to be less astute than the rest of the country in recognizing the value of this program. Both the Congress and the administration have been derelict in not only failing to act in authorizing funds for the Peace Corps, but also both have been derelict in not authorizing a larger expenditure.

The responsibility for the future of our Peace Corps program now rests on the shoulders of the Senate. It would be my hope that the Senate would shoulder that responsibility as quickly as possible.

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

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

PEACE CORPS CRISIS

> How dismaying it is that the Peace Corps, having reached a point of high effectiveness and popularity, is threatened with suffocation because of congressional fumbling and bickering over a small amount of money. There is still time to rescue the Corps from

a downfall that would be both costly and shameful, but that time is running very short.

The dilemma is all too familiar. Last month, the Peace Corps appropriation was among the unfinished business as the first session of this Congress was ending. So in the stampede to get out of town, Congress assured that the agency would be kept alive—at least until February 22—by hurriedly passing a continuing resolution for funding. But it approved much less than the bare minimum needed to keep the program going on its present scale. Nor was that an oversight, for it is the Corps' bad fortune that the House Appropriations subcommittee to which it must appeal is headed by Representative Otto Passman of Louisiana. A man of great power and few words, he commented at a hearing on the agency's budget: "If I had to meet my Maker in three minutes and the last decision the Good Lord would let me make . . . it would be to abolish the Peace Corps."

That sentiment is in sharp contrast with the thinking of a great majority of Americans. Surveys indicate that hardly any other program rates as high with the public as the Peace Corps. It's still regarded as a beacon of this country's idealism and altruism, shining in a cynical world. Last year alone, applications from volunteers increased 41 percent, and its services seem to be appreciated more than ever by underdeveloped countries. There will be widespread and bitter disappointment if it is snuffed out or reduced to a mere remnant.

At least the latter is definitely in prospect. Corps Director Joseph Blatchford says that under the new, reduced funding he may have to bring home 4,000 of the agency's 8,000 volunteers who are abroad. That may mean pulling out of 15 countries and cutting the activities in 40 others. And thereby the Corps quite possibly would be on its way to oblivion. The disillusionment of the many dedicated Americans who have volunteered for it, or who plan to, would be boundless.

It would be warranted, too, because only a trivial amount of money is at stake, when measured against the nation's total foreign outlay. President Nixon asked for an $82.2 million Peace Corps budget for 1972, which would permit a modest expansion. Both the House and Senate authorized $77.2 million, which Corps officials say is the rock-bottom amount needed to keep the program operative as it now stands. But, after much delay, the House appropriated only $68 million, while the Senate became paralyzed over foreign affairs just before the recess and left everything in mid-air. Finally the Corps got authority to continue functioning until next month on the basis of a $72 million budget. The trouble is that it had been spending for several months on the basis of a larger authorization, and hence is in desperate straits.

The responsibility for rescue, quite obviously, is the Senate's. It should speedily pass an appropriation that will prevent any reduction of the Corps' activities, and insist on that amount in a House-Senate conference.

SECRETARY MORTON'S MISSED OPPORTUNITY

Mr. MOSS. Mr. President, in September, together with Senators BIBLE and ALLOTT, I cosponsored S. 2542 to establish a system for the development of mineral resources. The bill repeals a large portion of the 1872 mining law and recognizes the policy of the United States as expressed in the Mining, Minerals Policy Act of 1970 (Public Law 91-631) to encourage the development of certain mineral resources while at the same time recognizing a need for sound management of our environment.

In September, I conducted hearings on S. 2542 and S. 921, a Public Domain Lands Organic Act. Our invitation to the administration to comment on these bills was not accepted.

I invite the attention of the Senate to an editorial published in the December 1971, issue of Mining Congress Journal. I would simply ask the administration, What is the public policy in regard to minerals management and who speaks for the administration?

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

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

SECRETARY MORTON'S MISSED OPPORTUNITY

The Nixon administration bill to reform the mining laws is, to say the least, a fascinating document and it is already acquiring a fascinating history.

In June 1971 the Senate Interior Committee announced that hearings on revision of the mining law would be held in late September. That was four months' advance notice. Yet when the hearings occurred, the Interior Department begged off on the grounds that an Administration position was not yet formulated.

On October 11, just 19 days after the Senate hearings, Secretary of the Interior Morton spoke at the American Mining Congress convention at Las Vegas. In any bill to reform the mining law, one thing he would not endorse, said Morton, would be a provision which would require the leasing of all mineral deposits by competitive bidding.

Well, the very next day the administration bill was sent to Congress and was introduced as S. 2727 in the Senate. Section 13 thereof reads as follows:

"The Secretary shall, under such rules and regulations as he may prescribe, issue an exploration, development, or production permit by competitive bidding for locatable lands which he has reason to believe contain commercially valuable mineral deposits. Where two or more persons file applications for an exploration, development, and production permit covering the same lands on the same day, they shall be deemed to have filed their applications simultaneously. In such case the Secretary shall require that the permits be issued to the highest qualified bidder among those persons as determined by competitive bidding. The Secretary shall reserve the right to reject all bids whenever in his judgment the best interest of the United States will be served by so doing."

Section 12(a) of the bill is also interesting since it gives the Secretary of Interior virtually unfettered power to close down a patented mining operation for, among other things, "reasons of public policy." It seems incredible but Section 12(a) reads, in part, that "the Secretary, for the purpose of encouraging the miximum ultimate recovery of locatable minerals or in the interest of conservation of natural resources or to protect the environment or for reasons of public policy, may suspend operations or production, or both, on any permit or patent."

In his address to the American Mining Congress, the Secretary of the Interior missed an excellent opportunity. Having explained his views regarding competitive bidding, he might well have defined that rather provocative phrase, "reasons of public policy."

SUCCESS IN MISSOURI VOCATIONAL TRAINING

Mr. EAGLETON. Mr. President, two of the many problems facing society today are the need for vocational training and the rehabilitation of inmates in our prisons.

I invite attention to Linn Technical College, a farsighted institution located in Linn, Mo. This exceptional school is dealing successfully with both problems.

An excellent vocational training school, Linn Technical College has initiated a program with the Missouri Department of Corrections which allows prisoners to receive vocational training while they are still incarcerated.

The graduates of this school find jobs, become taxpayers, and fulfill a real service to their community. The success of vocational education is clearly demonstrated by this institution.

The fine work of Linn Technical College and the leadership of its founder and president, Thurman Willett, is to be highly commended.

I ask unanimous consent that the article, entitled "A School Is Putting Linn, Mo., on the Map," published in the St. Louis Globe-Democrat of December 29, 1971, be printed in the RECORD.

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

A SCHOOL IS PUTTING LINN, MO., ON THE MAP

(By Karen K. Marshall)

Mention Linn., Mo., to many Missourians and, if they've heard of the small town about 20 miles east of Jefferson City, they'll tell you about the main street that just never seems to end.

But a few yards south of Main street, just behind the high school and the grade school and the kindergarten, sits a conglomeration of buildings that gradually is making Linn known throughout the country.

The buildings house Linn Technical College, an 11-year-old institution that was the dream of President Thurman Willett as far back as 1941.

"They thought I was crazy," Willett admits.

"They" was anyone, almost, who heard Willett talk about the need for vocational-technical education for rural youngsters.

"They," including many residents of Linn, still thought he was crazy when the first technical class opened 11 years ago with one instructor and 20 students.

The oppositon in Linn, in fact, was tremendous. Some people feared high school funds would be used for the technical school since they shared property and both would come under the school board and School Superintendent Willett.

But "two years later, when McDonnell Douglas came out here and took all these people (the 20 students), they stopped laughing," said DeWayne Rakes, dean of students.

Gradually, the student body, the staff and the facilities grew. Most of the students were the rural youngsters Willett had been thinking of.

Rakes remembered the boy who came to school one Friday—dress-up day to simulate the business world—without a tie. When questioned, he apologized but explained his brother was at a funeral and had worn the only tie the family owned. That boy "is with McDonnell Douglas now and has a whole closet full of ties," Rakes added with a grin.

About 70 per cent of the 550-member student body today still fits the rural category and most are not affluent. They no longer come just from the Linn area, however, but from all over the United States and seven foreign countries.

This year, Linn College took on still another type of needy student—young men serving time at nearby Algoa, the intermediate reformatory for men between 17 and 25 years old.

When the fall term began, 11 hand-selected men began leaving "the Hill" every morning

for the ride in a yellow school bus to classes at Linn.

Nine of those men still are students at Linn, but three of the nine no longer catch the school bus. They have been paroled and have moved nearer the campus so they can keep up with their classes.

The men are part of a cooperative venture between the Department of Corrections and the Vocational Rehabilitation Department.

"They've been model students here," Rakes said. "Their grades have been above average."

A visitor to the school couldn't tell the Algoa students from the others. They are not treated any differently and so far the honor system seems to be working.

"The only difference is where they happen to sleep at night," Rakes noted.

Although Vocational Rehabilitation and the Department of Corrections have had a program for several years to train parolees, the Linn experiment is the first time they've tried training in a regular school setting while the men still are incarcerated.

"I have high hopes for this program," said Jack Larson, assistant district vocational rehabilitation supervisor. "Normally they're doing nothing while they're there (at Algoa) except complete time."

Eugene, one of the Algoa students, says the only thing wrong with classes at Linn is that not enough Algoa men get to attend them.

"If you only save one out of 10, you've really accomplished something," Eugene explained. "The guy who's been on the street for 20 years and out of school since the 8th grade isn't interested in going back to grade school when he gets out. He needs technical training."

Eugene is studying auto mechanics and says he wishes he "had gone into this a whole lot earlier." But he doesn't see auto mechanics as the extent of his future.

"I was in college before I got a case," he explained. "I'd like to go back someday. I'd really like to be a coach." And with that in mind, Eugene also is taking University of Missouri extension courses at night at Algoa.

"I knew it would work out for me because I really wanted it to," Eugene added. "It's really working a lot better than people thought it would."

Larson hopes the Linn-Algoa program will overcome the transitional problems parolees have when they get out and are "suddenly free." Sitting in a classroom every day doesn't sound so good then, the explained, but by the time the Algoa men are paroled, they are so involved in school, hopefully they won't want to quit.

Willett has big plans for Linn Technical College. He expects the student body to grow to 2,500 or 3,000 within the next few years and thinks someday the school will be a state-operated institution. The only thing stopping growth is lack of money.

"Vocational-tech has been a dirty word," Willett said, "but society is fast learning and they're going to be more selective in what they pay for."

"Employers come back again and again," Willett continued. "In fact, industry says this is the only place in the Midwest to get good qualified electronics draftsmen."

"We are not a trade school, we are a technical school," pointed out James Symmonds, publications director for the college. Linn prides itself on a well-developed mathematics program and writing courses.

While Linn's campus is less than pretty because it has grown like Topsy (aviation, for example, is taught in a converted hog barn left from the county fair), it has a record most schools would envy.

Out of 191 graduates last spring, only 12 didn't have jobs on graduation day and more than 50 major companies come to Linn each year to interview students in the six technical areas offered—aviation technology, auto mechanics, design drafting, electronics, machine tool technology and auto body repair.

Because Linn has an open door policy, the students run from National Merit Scholars on down.

"Some of the boys come here not knowing the difference between a screwdriver and a monkey wrench," said Instructor James Bogue. "But, I'd rather have high 'I wills' than high IQs."

SURFACE MINING LEGISLATION

Mr. MOSS. Mr. President, the Committee on Interior and Insular Affairs has before it some nine bills having to do with surface mining legislation. In the course of our evaluation of these bills, the committee is planning to make an inspection trip February 14 and 15 into parts of Appalachia where extensive coal mining operations have taken place and are continuing. What we see and learn on that trip and on any subsequent inspection of other areas could not be more meaningful or poignant or stir us to action to adopt meaningful legislation any more than the plea contained in a handwritten letter I have received from a sixth grade student in Utah.

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

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

U.S. Senate,
Washington, D.C.

MY DEAR SENATOR MOSS: My name is Kathy DeLand I am in the sixth grade and I live in Orem, Ut.

On Nov. 16 our school class went and had a lot of fun. Clear Creek is a mountainous area and it is so beautiful.

The North American Coal Co. is going to start strip mining at Clear Creek.

I am asking you to have the North American Coal Co. cover up the land After they are finished mining so the trees will be able to grow and wildlife will want to live there.

Sincerely,

KATHY DELAND.

TRIBUTE TO ELIOT B. FELDMAN

Mr. CRANSTON. Mr. President, the Samuel Fryer Yavneh Hebrew Academy of Los Angeles has designated Eliot B. Feldman, a prominent Los Angeles attorney, as the honoree of its annual dinner on Sunday evening, February 6, 1972. The academy is a parochial school, affording quality religious and secular education to more than 400 pupils in the elementary grades.

Eliot Feldman is an ordained rabbi and a member of the California and New York bars. He has displayed rare qualities of character and leadership in his activities on behalf of the religious, civic, and political life of Los Angeles. The honorary cochairmen of the event are Nathan Shapell, a prominent southern California real estate developer and member of California's "Little Hoover Commission;" California Attorney General Evelle J. Younger, and Los Angeles District Attorney Joseph Busch. Mr. Feldman has long been active with these gentlemen in civic and community activities. Eugene L. Wyman is chairman, and California Assembly Speaker Bob Moretti is the featured speaker. Senator JOHN TUNNEY and myself are members of the honorary committee.

I am proud to join these gentlemen in this well-deserved tribute to Eliot Feldman and I add my congratulations to this fine educational institution for its outstanding contribution to the educational and moral development of our youngsters.

THE AMERICAN MEDICAL ASSOCIATION ON CIGARETTES

Mr. MOSS. Mr. President, one of the red herrings the Tobacco Institute used to throw around, and undoubtedly they will do so again at the hearings which the Consumer Subcommittee will hold shortly on tobacco legislation, is the position of the American Medical Association on cigarettes. The AMA, through acceptance of a research grant from the tobacco industry, has been variously accused of selling out, being bought off, and other crimes against the public too numerous to mention. But I do not believe that this is so. While I hold no brief for the AMA, and I must say their political arm certainly has not helped me, I think it fair to state that the AMA has taken positive steps to bring about greater awareness of the health hazards of cigarette smoking, and to foster the physician's participation in these smoking cessation activities.

In the January 10, 1972, issue of the American Medical News, the weekly newspaper published by the AMA, the association took note of the 8th anniversary of the release of the report of the Surgeon General's Advisory Committee on Smoking and Health, the AMA took note of its participation in the National Interagency Council on Smoking and Health's National Education Week on Smoking, and editorialized on the need for continued aggressive action by physicians to bring about a reduction in cigarette smoking.

That should dispel the myth about buying off the AMA. Mr. President, I ask unanimous consent that the editorial in the American Medical News be printed in the RECORD.

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

THE PHYSICIAN'S ANTISMOKING ROLE

Eight years ago this week, the surgeon general of the U.S. Public Health Service issued his landmark report on cigaret smoking, concluding that it is a health hazard of sufficient importance to warrant remedial action.

The advisory committee to Surgeon General Luther L. Terry, MD, after a 10-month study, stated that, "In view of the continuing and mounting evidence from many sources, it is the judgment of the committee that cigaret smoking contributes substantially to mortality from certain specific diseases and to the overall death rate."

Since the issuance of that report, public education campaigns—including elimination of cigaret advertising from television and the inclusion of warnings on every pack of cigarets—have led an estimated 29 million Americans to give up smoking.

The nation's physicians have been in the forefront of the effort against smoking. Estimates by the American Cancer Society show that as of 1968, more than 100,000 physicians had stopped smoking—about a third of the

entire physician population. This estimate, the ACS believes, is a conservative one.

Since 1963, the American Medical Association has been on record about the health hazards of cigaret smoking. At that time, it "recognized a significant relationship between cigaret smoking and lung cancer and certain other diseases, and that cigaret smoking is a serious health hazard."

In 1968, the House of Delegates strengthened its position, calling upon members to play a major role against cigaret smoking by personal example and by advice regarding the health hazards of smoking. The delegates also pledged that the AMA would seek to discourage smoking by means of public pronouncements and educational pronouncements.

Toward this end, the AMA offers a variety of health education materials designed to discourage smoking by both youths and adults. Among them are pamphlets entitled "Smoking: Facts You Should Know" and "Your Teen and Smoking"; two posters, one aimed at young audiences and one at adults; two "timely tips" on the subject, designed for inclusion in monthly statements; and desk and wall plaques for physicians' offices.

The National Interagency Council on Smoking and Health, of which the AMA is a member, has designated this week—Jan. 9–15—as National Education Week on Smoking. Theme for the campaign is to convince smokers to "get ready, set a date, and quit."

Physicians can play an important part in this campaign, both by providing information to patients and by setting an example for the public. One week per year is, of course, an inadequate amount of time to devote to the project; anti-smoking efforts should continue throughout the year. However, National Education Week on Smoking serves as a timely reminder to the medical profession and the public of the importance of continued participation in one of the nation's most important public health efforts.

THE SETTLEMENT FREEZE

Mr. PROXMIRE. Mr. President, the Washington Post has been publishing a series of excellent articles written by Ronald Kessler detailing the squalid mess homebuyers must face before they can purchase a home.

Settlement costs are too high. Many people who can scrape up enough money to make a downpayment on a house cannot scrape up enough money to make the downpayment and pay the settlement costs, many of which are unnecessary. Indeed, the situation Mr. Kessler uncovered is so serious that at least two Maryland county attorneys have started investigations into possible criminal violations of the law.

Mr. President, this situation need not have occurred. If our land title records were kept properly, there would be no need for such a situation. There would be no temptation to increase costs and hinder homebuyers from getting good title to their homes at minimum cost.

My bill, S. 2775, would do just this without extensive Federal regulations. By shifting the cost of title services that the lender requires to the lender, the bill will encourage the lenders to clean up the land records as being the cheapest way to insure that they are lending money on a valid title. Each State could follow whatever path it chose and I think it is fair to say that with the power of the lending institutions behind reform we will see reform very quickly. Until we reform the system these other efforts will be only pallative.

I ask unanimous consent that Mr. Kessler's articles be printed in the RECORD.

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

THE SETTLEMENT SQUEEZE: KICKBACKS VICTIMIZE HOME BUYERS

(By Ronald Kessler)

Charges paid by virtually all Washington area home buyers at settlements include a variety of kickbacks and payoffs, many of them in apparent violation of criminal laws, a Washington Post investigation has found.

These hidden arrangements account for large chunks of settlement charges paid by Washington area home buyers, amount by one estimate to millions of dollars each year, and in most instances constitute clear-cut evidence that home buyers are being overcharged.

Indeed, government comparisons show that settlement costs in the Washington area are among the highest in the nation.

Settlement costs, a mystery to most home buyers, are an array of legal fees, title insurance premiums, taxes and other services that lending institutions require as a condition to giving a mortgage on a house. The costs vary with purchase price, but on a $40,000 home they amount to $1,248 in D.C., $1,418 in northern Virginia, $2,514 in Montgomery County, and $2,562 in Prince George's County.

These charges are double to triple the settlement fees levied for the purchase of the same house in Boston, which was visited by a Post reporter as part of a two-month investigation of settlement practices. During the course of the study, more than a hundred lawyers, title insurance officials, lenders, real estate brokers, developers, and other academic, legal, and government experts were interviewed.

The most common arrangements in the Washington area were found to be kickbacks and other hidden payments given by lawyers and by title insurance companies. They are paid to developers, lenders, real estate brokers, and builders in cash or in free or cut-rate services. The one who pays for all the arrangements is the home buyer.

Although some lawyers, title insurance companies, lenders, developers, builders, and brokers will have no part of the deals, many of the practices are so pervasive that it is difficult to find exceptions.

What such kickbacks amount to, says Seymour Glanzer, chief of the U.S. attorney's fraud unit, is "commercial bribery" that directly inflates settlement costs paid by home buyers.

The purpose of giving kickbacks and hidden payments is to gain referral of home buyers' settlement business, and the referral methods are not always subtle.

Some developers refuse to sell houses unless settlement is held with the attorney or title company that gives them kickbacks. Some lenders refuse to give agreed-upon mortgage loans, or charge up to $150 extra, unless borrowers deal with the chosen attorney. Some real estate brokers include clauses in their contracts with home buyers giving them the right to select the title attorney.

Almost without exception, Maryland lawyers pocket a quarter to a third of the title insurance premium that home buyers with mortgages are required to pay. This is their commission for choosing a particular insuring company and accounts for 27 per cent of premiums paid by home buyers to Washington's four major title insurance companies.

Although they are legal, the commissions, according to the bar association officials, would violate bar ethics unless lawyers obtain buyers' permission to take them. However, buyers are seldom consulted.

Some lawyers inflate their charges by adding on to surveyors' charges. Through an inflated bill arrangement one Maryland title attorney received $8,000 a year in this way.

There are geographical variations. Virginia lawyers do not take a part of the title insurance premium, while most Maryland lawyers do. D.C. lenders do not require that customers settle with designated attorneys, while this is common practice in Virginia and Maryland.

Kickback-type payments to developers are more common than to brokers, and D.C. lawyers rarely get involved because they generally leave settlement work to the title insurance companies.

But most of the practices are so pervasive that some of the participants admit them openly.

They are "the rule rather than the exception," says F. Sheild McCandlish, who headed a special Virginia State Bar investigation into the practices in northern Virgina earlier ths year.

The investigation, conducted by a committee appointed by past and present presidents of state and local bar asscciations, compiled a 16-page "confidential" report that found a number of the arrangements to be widespread, illegal, and a factor in unreasonably high settlement costs imposed on Virginia home buyers.

Spokesmen for the Virginia and Maryland attorneys general and for the U.S. attorney in D.C. say that many of the arrangements violate state criminal and insurance laws, bar association ethics, and could violate federal fraud laws.

The lawyer who initiated the bar investigation while he headed the state bar's grievance committee in Northern Virginia, Walter L. Stephens Jr., a Fairfax attorney, attributes the pervasiveness of the practices to a feeling by established lawyers that prosecutors are "afraid" to touch members of the bar.

Although a copy of the report was submitted by the bar last April to Virginia Attorney General Andrew P. Miller in a request for a ruling on whether certain of the practices were illegal, and he determined that they were, nothing has come of it.

NO PROSECUTION SCHEDULED

Virginia Assistant Attorney General T. J. Markow explains, "We would not take any action to prosecute until the bar asks us to."

The president of the bar, C. Wynne Tolbert, an Arlington lawyer, says the report is still being studied. He calls the report and its findings "confidential" and refuses to discuss any part of them.

Since the report was submitted, "nothing has changed," says McCandlish, the chairman of the bar committee and a partner with Boothe, Prichard & Dudley, one of Virginia's largest law firms.

"Lawyers are not willing to finger one another; that's why all these arrangements have remained invisible for so long," says James E. Starrs, a George Washington University professor specializing in real estate law.

The dollar value of the kickbacks and other hidden arrangements is impossible to determine without an audit of the companies and individuals involved. Even the number of houses bought and sold in the Washington area is not known, realty agents and government officials say.

But Starrs, citing the quick turnover of real estate in the Washington area, estimates the total to be "staggering" and easily in the millions of dollars each year.

The profits to be made are illustrated by a typical kickback-type arrangement on a 200-house development. Several Virginia lawyers and bar officials estimate that by referring buyers to the "proper" lawyer, the developer with 200 houses to build brings the lawyer

$100,000 of business, of which nearly $80,000 is for work already done. In return, the lawyer rebates some $16,000 in free legal services to the developer.

Although the home buyer pays the bill, his interests often come last, says Stephens of the Virginia bar. He says those persons funneling business to a lawyer sometimes bring pressure to bear to have him overlook defects in the title or ownership of houses or to give clients less than straightforward advice.

Most home buyers have no idea why they must pay settlement fees, what the mystifying array of charges means, or where the money goes. Indeed, nearly all settlement sheets that list the charges are arranged in such a way that it is impossible to tell who gets some of the fees.

"I REALLY GOT STUNG"

But although they do not understand, home buyers generally have a feeling that the charges are too high. "I really got stung," says a White House aide of the charges he paid when he bought his Bethesda home.

The charges are required by lenders before they will give mortgages. How many of the services would be purchased by home buyers if they weren't mandatory is open to question.

"People who buy one or maybe two homes in their lifetimes just do not have the economic clout to bargain with the real estate establishment," says Sen. William Proxmire (D–Wis.), who has introduced a bill to require lenders to pay for title insurance charges.

Why the charges are at particular levels is also open to question. In many respects, settlement costs imposed on Washington area residents are a mocroscosm of a national pattern, which is crazy-quilt.

Although living costs are approximately the same among the various Washington jurisdictions, settlement costs are not. The purchase of a $40,000 home, as indicated earlier, brings with it settlement costs that vary by more than 100 per cent in D.C., Virginia, Prince George's, and Montgomery.

Many of the variations are due to differing levels of transfer taxes, which are paid, like sales taxes, on house purchase prices. The charges also include property tax escrows which vary in level with different local collection requirements and tax levels.

But comparison of legal fees, the largest and most flexible nongovernment expense, shows variations from locality to locality of up to 76 per cent for the same service.

Searching title, preparing papers, and holding settlement on a $40,000 house costs $314 in D.C. but $555 in Virginia.

The same service in Maryland costs $385 in Montgomery County but $525 in Prince George's County (including title insurance commissions taken by Maryland lawyers).

This roller-coaster pattern produces the spectacle of a law firm with offices in both Maryland counties charging 36 per cent more in their Prince George's office than in their Montgomery office for the same work.

"Custom rather than reason underlies many of the title costs the home buyers must bear," says Sen. Proxmire.

Locally, more than custom is involved. In Maryland and Virginia, lawyers' fees for title work are set by the local bar associations through minimum fee schedules, and the variations in the schedules account for the disparities among the suburban jurisdictions.

The fee schedules are often used to justify lawyers' charges when skeptical home buyers question the fees. Lawyers say they can be disbarred for not following the minimums.

But minimum fee schedules are little more than price-fixing, according to Richard W. McLaren, who recently left his post as chief of the Justice Department's antitrust division to become a federal judge.

Asked if the schedules violate antitrust laws, McLaren said before he left Justice, "I don't think there is too much question . . . that there is a *per se* violation there," and for the bar to say it is exempt because it is not engaged in interstate commerce "would be to place its faith in a rather slender reed." A Justice Department spokesman declined to say whether the bar is being investigated on antitrust grounds.

"It is rather astonishing that the bar has failed to recognize that such minimum fee schedules constitute price fixing and are in direct violation of federal antitrust laws," says an article last May in Case & Comment, a lawyers' magazine.

Last July's American Bar Association Journal, concluding that fee schedules should be abolished, said they "may well violate the antitrust laws."

LOWER FEE TO INDIGENTS

Some local bar association presidents say they are not violating the law because a lawyer sometimes charges less than the fee schedule requirement (to an indigent, for example), and because the latest American Bar Association ruling says charging less is only one factor to be considered when determining if a member is to be disbarred.

"The fee schedule is a guide, it's not a hard-and-fast rule," says Charles W. Woodward Jr., a Rockville attorney who is president of the Montgomery County Bar Association.

Asked what would happen if a lawyer charged half the prescribed minimum fee. Woodward said, "It might be a question presented to the ethics committee . . . You'd have to go into the reason for doing it and find out why."

"I guess the members would be concerned," Albert T. Blackwell, Jr., chairman of the Prince George's County Bar Association's minimum fee schedule committee, said in response to the same question.

DISBARMENT POSSIBLE

Others are more explicit. "If a lawyer consistently charges low, it's considered unethical, and he could be disbarred," says Betty A. Thompson, president of the Arlington County Bar Association.

Whatever the interpretations, practicing lawyers interviewed in Maryland and Virginia said they clearly understood that they could be disbarred for undercharging. As a matter of fact, lawyers in Virginia and Maryland agree that the schedule is hardly ever violated.

Differing explanations are given by ABA officials for the existence of a minimum fee schedule. They are to "inform the lawyers what it costs to deliver legal services," says Philadelphia lawyer William J. Fuchs, chairman of the ABA's economics committee. Others say it is a public service to show what reasonable fees might be, or to discourage kickbacks and ambulance-chasing.

However, three of the five bar associations around D.C. refused to show this reporter copies of their fee schedules. (Copies were obtained anyway.)

Asked why the schedules were not public, Woodward of the Montgomery bar confessed he knew of no reason but said bar rules prohibit it.

"If the ultimate purpose of the schedule is the protection of the public," says Prof. Starrs of George Washington, "they should be disclosed. Of course, the purpose is to protect the well-entrenched lawyers by stamping out competition and keeping rates high," says Starrs, who is a member of the D.C. Bar Association.

The lawyers' charges are far higher than charges for the same work by title insurance companies, which traditionally handle settlements in D.C. These companies perform two functions: they sell title insurance, which protects lenders and home owners against defects in the title to their houses and any other claims, such as attachments or tax liens, that might have been outstanding against a house prior to its purchase.

If a house turns out to be owned not by the seller but by some previous occupant, for example, title insurance will reimburse the purchaser of the house for any losses he incurs.

The title companies also perform in the District the jobs that lawyers perform in Virginia and Maryland: searching title, preparing papers, and holding settlements.

The companies, as indicated by the legal fees incurred at settlements in D.C., simply charge less than do the buyers in the suburbs. The lawyers, in turn, have warded off competition by keeping the title companies out of the suburbs.

SUIT IN MONTGOMERY

Some 12 years ago, the Montgomery County Bar Association filed suit against a title company, contending it was practicing law illegally. In Virginia, legislation was readied to bar title companies from the state.

The net effect, says E. Spencer Fitzgerald, president of District-Realty Title Insurance Corp., is that title companies' searching of titles is "taboo" in Virginia. In Maryland, lawyers permit the companies to search titles (the "menial work," says Fitzgerald), but the companies cannot hold settlements without alienating the bar.

This produces an anomalous situation. While the lawyers contend the title companies illegally practice law by searching titles to houses, many of the companies are engaged to do just that by Maryland lawyers, who charge clients the bar rate, rather than the lower title company rate.

Home buyers in Maryland can hire title companies to handle settlements at a substantial saving, but the closing must be held in D.C. This requirement keeps title companies' Maryland business to a minimum.

Many bar associations contend that preparation of legal documents and rendering opinions on title is a lawyer's job. The lawyers acknowledge that it is lawyers employed by title companies who do this work for the companies. But they say that unless the lawyers are practicing independently, they cannot adequately represent the interests of home buyers.

Courts in many jurisdictions have upheld this argument.

LAWYER'S DEFENSE OF PRACTICE

In defending their charges, lawyers say they and their secretaries spend far more time than is apparent to the home buyer in searching titles, preparing documents adjusting utility charges, arranging the date of the settlement, and sending out checks.

Lawyers also point out that they assume liability for the work done, because a title insurance company, faced with a loss, may try to collect it from the lawyer who searched title.

Because of archaic record-keeping by city and county agencies, a search of title records on a property may take a day to a week if it is done from scratch.

But often lawyers have searched the title to a home or the subdivision where it is located for a previous client, and the additional searching required is minimal.

Although lawyers certify they have searched title for 60 years back, it is not uncommon, according to the Virginia bar report and Virginia and Maryland lawyers interviewed, for lawyers to stop after a year or two.

It is also not uncommon for Virginia and Maryland lawyers, rather than searching the title themselves or hiring employees to do it, to buy a title certificate from free-lance title searchers who can be found in the courthouses.

Such a certificate costs $30 to $50 per house, but the lawyer charges the client up to $400 for the same service, the Virginia bar report says.

Lawyers say the markup covers their liability in event of error. Sen. Proxmire calls

this an example of protection piled upon protection: the home buyer is forced to pay for title insurance that fully protects the lender, then is forced to pay a form of insurance to the attorney to cover his own errors, which in turn are generally covered by lawyers' malpractice insurance.

"It's a matter of how much can you improve on 100 percent protection?" says Martin Lobel, an aide to Proxmire.

Lenders say they need the services and insurance to protect their interests when giving a mortgage loan on a property. For example, they want to be sure that the house is owned by the owner; for this they require both a title search and insurance. To be sure the house does not encroach on other properties, they require a survey.

While such services are required by Washington lenders, they are not required by Boston lenders. Greater Boston is about the same size as metropolitan Washington; it has about the same living costs; it is an eastern, urban city; and it is older than Washington.

SETTLEMENT COSTS LOWER

Yet settlement costs there are a half to a quarter what they are here. Besides lower lawyer fees, Boston's costs are lower because lenders either do not require or absorb the expense of title insurance, surveys, credit reports, appraisals, and notary fees.

Referring to Washington lenders' requirements, Norman McIntosh vice president of Boston's Provident Institution for Savings, Boston's largest source of mortgage money, says, "You know why they require them?"

"Because," he says, "they can get away with it."

Thornton W. Owens, president of Perpetual Building Association, the Washington's area's largest source of mortgage funds, says banks are more competitive in New England, forcing them to absorb costs to get more business.

"We feel we should be reimbursed for costs we put out," he says.

L. A. Jennings, chairman of Riggs National Bank, the Washington area's largest bank, acknowledges that the charges could be "forgone." But, Jennings, says, "We're in business to make a profit, and we're not making a large profit on it."

The chart above [not printed in the RECORD] includes all charges that buyers with conventional mortgages must pay above the price of the house. Several small lawyer charges are paid by sellers in some jurisdictions and buyers in others; for purposes of consistency, and since seller charges are theoretically passed along to buyers in the price of the house, they are all shown under buyer costs.

The figures are prevailing rates and taxes according to Commonwealth Land Title Insurance Co. in D.C. and lawyers B. George Ballman in Montgomery County, Robert K. Williams Jr. in Prince George's County, and F. Shield McCandlish in Northern Virginia.

A breakdown of the charges:

Fees to lawyers include examination or search of title, drawing of papers, preliminary report or binder, and settlement fee. In D.C., these fees go to title insurance companies rather than lawyers because the companies handle settlements. In Maryland, lawyers also take about 25 percent of the title insurance premium as their commission, and this is included in the chart under fees to lawyers. The title insurance premium is shown as being reduced proportionately. For purposes of consistency, the 25 per cent cut is shown in the D.C. under fees to title companies rather than under title insurance premium.

Title insurance includes lenders' insurance, which is required, and owners' insurance, which is optional but usually taken. The owners' policy is about a third more than the lenders' premium. The money goes to title insurance companies.

Services required by lender (misc.) include appraisal, credit report, survey, fire insurance and notary. The fees go to those providing the services.

Taxes to government include transfer taxes or stamps, clerks' fees for recording and giving tax statements, and property tax escrow required by lenders, based on typical property taxes for sale prices shown.

HIDDEN FEES BOOST HOME'S COST

(By Ronald Kessler)

Anyone who has bought a house has had the experience. You sit rather tensely before a lawyer or settlement clerk. Papers are passed, documents signed.

You are handed a sheet of mystifying charges. There is not much sense in questioning them. You will only be told they are "set" or "required."

You want your house, and with some relief, you pay.

What you pay are settlement costs, an array of legal fees, title insurance premiums, taxes, and service charges required by lenders. There is often more to the charges than meets the eye.

Consider the settlement sheets of Elmer F. Blanchard, a suburban Maryland title attorney with four offices in Prince George's and Montgomery counties. Settlement sheets list all the charges that must be paid at settlement.

Blanchard's sheets show that home buyers are charged $55 for a survey, one of the services lenders generally require. But, unknown to Blanchard's clients, the actual charge for most of his surveys is $45. Blanchard retains the extra $10.

Blanchard acknowledges that he has what he calls a "deal" with Maryland surveyor Roger M. Vales. He refers nearly all of his survey business to Vales. Vales charges Blanchard only $45, less than the going rate of $60. Vales says that he sends Blanchard a bill for $55. The higher figure appears on the settlement sheets, and Blanchard makes $10 per settlement.

Blanchard says he handles some 700 to 800 settlements in this way each year. That comes to $7,000 to $8,000 a year.

However, he says, "We're not going to be sitting here with any $8,000 at the end (of the year)."

Blanchard figures part of the money is returned to Vales when Blanchard has to pay him for surveys for which Blanchard doesn't get reimbursed. This happens when home buyers cancel settlements after the survey has been done. Other lawyers and surveyors say lawyers nearly always pay surveyors in these cases anyway.

Blanchard maintains that the "arrangement" helps everyone, since home buyers pay $5 less than the going survey rate. He says his other charges are in line with or below the usual fee.

Blanchard later said that because of the prospect of reporting of his arrangement in The Washington Post, he plans to give all the money to Vales.

Henry R. Lord, deputy attorney general of Maryland, says such a practice would appear to violate the Maryland criminal laws dealing with rebates at real estate settlements.

The law cited by Lord provides that "no person . . . having any connection whatsoever with the settlement of real estate transactions . . . shall, for the purpose of soliciting, obtaining, retaining, or arranging any real estate settlement or real estate settlement or real estate settlement business, pay to or receive from, any other person, firm, or corporation any fee, compensation, gift . . . thing of value, rebate, or other consideration . . ."

An arrangement like that described by Blanchard also would appear to violate American Bar Association ethics, according to Rockville attorney David E. Betts, the president-elect of the Maryland Bar Association.

Blanchard's arrangement is only one example of the types of hidden payments and kickback practices larding settlement costs in the Washington area. The most prevalent payments are by lawyers and title insurance companies (those who handle settlements) to developers, builders, real estate brokers, and lenders (those who bring in settlement business).

In D.C., settlements are generaly handled by title insurance companies, while in the suburbs they are handled by lawyers. Central to the pervasiveness of kickback-type arrangements by lawyers is the fact that no one, including the lawyers, knows whom the lawyers represent at settlements.

Lawyers are normally hired by one person, paid by him, and given orders by him. At settlements, however, although lawyers are supposed to represent home buyers, who pay their fees, they are given instructions by lenders, and many lawyers interviewed conceded that their first loyalty is to those who hire them—usually developers, brokers, or lenders.

"How can you represent people who are on opposite sides of the table?" asks Lawrence A. Widmayer Jr., of Bethesda * * * law firm that does a large settlement business. Conflict-of-interest is inherent in the works, he says.

Many home buyers have never heard of settlements, much less settlement attorneys, who specialize in title work. They are likely to hear the terms first from brokers, lenders, or developers when they have decided upon a house or applied for a mortgage. Brokers often tell buyers they don't need their own attorney, who would only add to expenses. One way or another, the buyer is steered to where the payments are.

The most lucrative arrangement is with developers. This is how it works:

Before new houses are built, developers hire lawyers to check the title to the raw land and to perform other legal work, such as zoning appeals.

Lawyers say a typical charge for such work on a 200-house development is $16,000. If a buyer of a finished house in the development hires the same lawyer to check title to the property, the lawyer's charge is almost pure profit, since he has already checked the title and does not reduce his fee.

Richard B. Chess Jr., a Fairfax lawyer, estimates that the additional work involved to bring a title up to date for all the purchasers of 200 homes of $40,000 would be a total of $1,600.

If the lawyer gets the business on all 200 homes, however, he gets a total title search fee of $80,000 under bar association minimum requirements. He gets another $20,000 for drawing up papers and holding settlements.

What happens is that the lawyer makes a deal with the developer: You refer buyers to me, and I'll do the initial title work for you free or at cost. The seller's settlement fee of $25 to $50 per house is also waived.

"It's an open secret that any builder that has a subdivision usually gets the entire work done free provided he refers purchasers to the lawyer," says C. Edwin Kline, president of Citizens Building and Loan Association Inc., Silver Spring, one of Montgomery County's largest savings and loan associations.

F. Shield McCandlish, who headed a special Virginia State Bar investigation of the practices earlier this year, estimates that 90 per cent of closings on new houses in Virginia developments involve such arrangements.

One developer figures he saved $14,000 in legal costs on 20 houses he built in Virginia this year. The developer said only one out of five Virginia law firms he approached did

not offer a reduced rate in return for an agreement to refer business.

"Referring cases is understood if you want to reduce fees," says Carl Bernstein, president of Berlage-Bernstein Builders, Inc., of Alexandria, one of the largest builders in Virginia and Maryland.

Bernstein's method of following through on his side of the agreement is simple: he refuses to sell a house to anyone who won't settle with the agreed-upon firm, he says.

"We'll do them (title searches for developers) at cost," acknowledges Victor A. De Leon of Conroy & Williams, a Bethesda and Prince George's County title law firm. "The general idea behind it is that they (the developers) will refer the finished business." New developers, he added, may not get a break until they are more established.

"In 21 years in Montgomery County," says Widmayer, of Jones, O'Brien & Widmayer, another established title law firm in Bethesda, "I've never heard of a law firm that doesn't give a special rate to a developer with the hope and anticipation that will get return business." Widmayer says his firm knocks off up to two-thirds of title search charges and waives other fees for developers.

The American Bar Association's code of ethics says: ". . . a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment."

Whether the "thing of value" is legal services or money is irrelevant, says N. Samuel Clifton, executive director of the Virginia State Bar in Richmond. "What it amounts to is a kickback," he says, and is "illegal."

The Virginia law cited by Clifton, by the the Virginia bar report on the practices in northern Virginia, and by the Virginia attorney general's office prohibits anyone from acting as an agent for an attorney by soliciting business for him. An agent is defined as "one who acts with or without compensation at the request, or with the knowledge and acquiescence, of the other in dealing with a third person or persons."

Both agent and attorney are subject to fines of up to $1,000 or jail terms of up to a year or both.

As indicated previously, the Maryland criminal code cited by Deputy Attorney General Lord prohibits those connected with real estate settlements from giving any "fee, compensation, gift . . . thing of value, rebate, or other consideration . . ." for the purpose of "'soliciting, obtaining, retaining, or arranging any real estate settlement or real estate settlement business . . ."

Many of the lawyers interviewed contended their arrangements do not violate the law or professional ethics because, so far as they know, developers do not insist that buyers settle with the lawyers. As a result, they say, perhaps 10 per cent of buyers of new houses settle elsewhere.

One of the lawyers, De Leon, added in a subsequent interview that the reduced rates his firm gives to developers are still within bar association minimums.

* * * * *

Referring to lawyers' arguments that developers don't insist that all buyers settle at the agreed-on law firm, Betts, the president-elect of the Maryland State Bar Association says, "It doesnt' make a hell of a lot of difference whether the developer says he'll give you all or part of it (the business)." Betts, a partner in the Rockview law firm of Betts, Clogg & Murdock, which does a large title business, says such arrangements with developers "in all probability violate the (ABA) ethics."

Kickback arrangements between attorneys and real estate brokers are harder to pin down. "I wouldn't tell you if they did (offer me kickbacks)," says Ted R. Lingo, president of Ted Lingo, Inc., a Maryland and D.C. real estate broker. However, he says that while some brokers insist on settlements with one lawyer, he gives buyers free reign.

The Virginia state bar report says that "many attorneys do legal work and/or title work for brokers at no charge in consideration of the broker directing settlements to those law firms."

Walter L. Stephens Jr., the Fairfax lawyer who initiated the investigation as head of the state bar's grievance committee for northern Virginia, says that it is common practice for realtors to designate settlement attorneys on purchases of existing houses by getting buyers to sign contracts delegating this right to the realtor.

Gilbert A. Schlesinger, a Silver Spring realtor, says brokers have told him as recently as several months ago, "'Why don't you deal wth so-and-so (lawyer). He gives a kickback." The usual payment quoted, says Schlesinger, is $25 to $35 per house.

John H. Beers, another Silver Spring broker, says, "It (kickbacks to brokers) is something that is going on. People in the trade says it's cash; $25 a case."

"A lot of brokers get a lot of kickbacks," says Kline, the president of Citizens Building and Loan Association.

"When a real estate broker is steering everyone to the same lawyer, it isn't because of a great fondness for him," notes Clifton, the Virginia bar director.

Schlesinger and others say it is not uncommon for the payment to take the form of free legal services, which an average broker's office may require once a month. In addition, says Widmayer of Jones, O'Brien & Widmayer, brokers will get a third of the legal charges knocked off when buying their own houses.

"We figure, what the hell, it's out of our pockets," says Widmayer.

Earlier this year, Robert E. Bullard, a Rockville lawyer active in bar association affairs, filed suit against Citizens Building and Loan Association, charging that since 1969 it has required that all settlements on its mortgages be held by two lawyers.

The lawyers, Herbert W. Jorgensen and Joe M. Kyle of Heise, Kyle & Jorgensen also are the attorneys for the Citizens S&L. They have their offices in the same building in Silver Spring. And Jorgensen is a member of the S&L's advisory board.

Bullard charges in his suit that he was told by Kline, the president of Citizens, that the institution was paying "approximately $17,000 a year to their attorney and had to compensate them in some other way. The feeding of all settlements to their attorneys was their solution."

Since the suit was filed, Citizens has changed its practice, according to Kline. The S&L now permits borrowers to settle elsewhere but requires that they pay Kyle and Jorgensen $70.

Kline says the fee is partly to cover the lawyers' charges for looking over the papers prepared by other lawyers and partly to prepare the required deed of trust and note, which the borrower's own lawyer should not therefore have to do.

Jorgensen said this practice protects home owners, since the lender has the greatest stake in the soundness of the title to a house on which it lends money. "When our attorney does it we know it's right," says Kline.

However, he said that in return for the funneling of business to Kyle and Jorgensen, they "give us some free services. They won't charge if it's an opinion or advice." Jorgensen did not comment on Kline's statement.

A similar arrangement exists at Metropolitan Federal Savings and Loan Association, whose Bethesda office is adjacent to the firm that gets the business—Jones, O'Brien & Widmayer. Ellis M. Jones of the law firm is also senior vice president and a director of the S&L.

Jessie Hilderbrand, president of Metropolitan Federal, said the purpose of the arrangement is to "insure safety" because the S&L's law firm can be trusted to do a good job.

The extra charge for borrowers who use their own lawyers is $150. Of this, $35 is for preparation of papers.

Some lawyers make their own charge for preparation of the same papers, doubling this cost to the home buyer.

While many S&Ls say they don't require their own lawyer at settlement, Schlesinger says some lenders will "look a little glazey-eyed at you and give the hint to the broker not to come back again" with customers who insist on their lawyers.

In Virginia, the bar report says, many banks and S&Ls require that their loans be settled with specific firms. "Usually, there is a relationship between a member of the law firm, i.e., a directorship," the report says. Other lenders charge an extra fee instead of requiring closing with their attorneys, it adds.

A Federal Home Loan Bank Board regulation that became effective last January permits S&Ls to engage in these practices. The Federal Reserve Board, which regulates banks, has no regulation either way.

The Virginia bar report, too, concluded there was nothing wrong with the practice.

One Montgomery County S&L president, called the Federal Home Loan Bank Board regulation a "farce."

"It's absurd; all you have to do is read them (the mortgage documents)," he says. "What the arrangement does is force everyone into the arms of the lawyers, when the title companies from D.C. could do the job for far less, and in my opinion, they do a far more professional job."

D.C. banks and S&Ls permit borrowers to settle with any lawyer or title company. Thornton W. Owen, president of Perpetual Building Association, Washington's largest S&L, says the mortgage documents are read over by clerks when they come in from the buyer's lawyers, and the cost is considered an ordinary business expense.

The problem with all these arrangements, says Stephens of the Virginia bar, is that lawyers wind up representing the interests of those who hire them—the lenders, brokers, and developers—rather than those of the buyers. If the lawyer gets a substantial portion of his business from a few lenders or developers, he may become dependent upon them and succumb to pressure to overlook defects in title or to give bad advice to clients, he says.

The danger is not hypothetical. Stephens says a number of lawyers have told him of attempts at such pressure.

To insure that lawyers represent only their clients, ABA ethics provide that lawyer "should not accept compensation or anything of value incident to his employment or services from one other than his client without the knowledge and consent of his client after full disclosure."

The idea behind the rule is that one giving compensation to a lawyer may exert influence over him, and the influence may not coincide with the client's best interests.

Despite the rule, nearly all Maryland title lawyers accept a "commission" from title insurance companies in return for choosing a particular company. (Virginia lawyers, by custom, do not.) And although the ABA rule requires that permission of home buyers be obtained before taking such payments, few home buyers are aware of the arrangements, and Maryland brokers say they have never heard a lawyer ask such permission.

Many Maryland lawyers believe they comply with the ethic by disclosing the arrangement in a printed line on their settlement sheets. The line, in small type, generally says the law firm acts as the agent for a title insurance company and may take a commission on the insurance premium.

I. John Ritterpusch of Ritterpusch and Gingell, a Silver Spring law firm with a large

title business, says that as a rule he doesn't expressly tell clients about the commission. Instead, the charge for title insurance is described on his settlement sheets as "Premium & Commission," with no indication that the commission goes to Ritterpusch.

Ritterpusch, who is chairman of the Montgomery County Bar Association's real estate committee, says he believes the description satisfies ethical requirements. He says if the commissions were eliminated, legal fees would have to go up.

The commission varies from 20 per cent to 35 per cent of the total premium. Some lawyers who help write the policies are paid commissions of up to 50 per cent of the premium.

Although title companies acknowledge that lawyers who get the lower commissions do no work in return, they say that any single company that dropped the payments would immediately lose substantial business.

Whether home buyers always get what they they are paying for at settlement is an open question. The Virginia bar report says that while lawyers certify they have searched title to a house back at least 60 years, "many attorneys," the report says, "do far less than a 60-year examination."

"There are some shortcutters in the business who will stop (searching) with a mortgage—maybe a year back," says T. Hammond Welsh Jr., president of Maryland State Savings and Loan Association in Hyattsville.

Welsh, a former Prince George's lawyer, says the practice has been common in Maryland for years.

Another comman practice, the Virginia bar report says, is for "an attorney to pay $75 for a certificate of title to a $40,000 house and charge the purchaser from $350 to $400." Such certificates, which are purchased from free-lance searchers who can be found in county court houses, go for $35 in Montgomery County.

Lawyers justify this practice by saying their charges are to cover their liability. But the bar report notes that when the same lawyer handles settlement on the same house several times, his "exposure (liability) has not been increased one iota, so how can the additional . . . fee be justified?"

Even the survey, a service generally required by lenders to make sure the mortgaged house is within property lines and isn't encumbered by other adjoining properties, is not always what it appears to be. Charles B. DeLashmutt, a partner of DeLashmutt Associates, Arlington surveyors, acknowledges that nearly half the surveys he supplies on existing properties are ones he has done for previous purchasers.

He takes a picture of the old survey, he says, places a new date on it, and goes out to the property to make sure there have been no changes.

DeLashmutt says he charges as if he had to do a new survey because his liability is increased when a new owner buys the house.

Rodney L. Hanson, president of the Maryland Society of Surveyors, says lawyers sometimes add on to survey charges at settlement. Often the evidence turns up years later, when a home owner calls Hanson's firm, Hanson & den Outer in Rockville, to ask a question about the survey.

The owner mentions what he was charged, and it turns out he paid as much as $120 for a $60 survey, Hanson says.

COMMONWEALTH LAND TITLE INSURANCE CO.—TYPICAL SETTLEMENT ON A $36,500 HOME IN MARYLAND SUBURBS

	Outlay	Expenses
Price	$36,500.00	
Deposit with broker		$1,500.00
Commission		
Conveyancing		
Appraisal fee, lender	35.00	
First deed of trust, lender		29,200.00
Interest		
Insurance paid policy at settlement, 1 month insurance escrow to lender	$10.00	
Deferred payments		
Insurance		
Water rent		
Taxes Dec. 22, 1971, to June 30, 1972, at $692.91 per year	363.72	
Front foot benefit charges Dec. 22, 1971, to Dec. 31, 1971, at $52.50 per year	1.26	
Taxes for 4 months escrow, lender	248.56	
Rent paid to— at $— per month		
Survey	60.00	
Title insurance and interim binder owners-mortgagees	149.50	
Examination of title	165.00	
Preliminary report	2.50	
Tax certificate and report	2.50	
Conveyancing deed	15.00	
Recording deed, trust	23.00	
Noting conveyances		
Notary fee	1.50	
Settlement fee	56.00	
Revenue stamps, State	160.60	
Service charge		
Registering and identifying note		
Tax Montgomery County	365.00	
Maryland transfer tax	182.50	
Balance		$7,641.64
Total	38,341.64	38,341.64

HOME BUYING A GRAB BAG FOR ALL

(By Ronald Kessler)

The charges look legitimate enough. Sen. William Proxmire paid $205 when he bought his $60,000 home in D.C. Sen. John E. Moss paid $161 on his $40,000 Washington home. Rep. James E. Hanley paid $180 when he bought his $48,000 Bethesda home.

What they paid for was title insurance, one of the most visible and controversial charges imposed on home buyers at real estate settlements. Lenders in the Washington area require that buyers pay for title insurance as a condition to getting a mortgage. The insurance protects the lender if any defects later arise on the title, or legal ownership, of the house. For a small additional charge, home buyers can get protection for themselves as well.

Unknown to home buyers, whether members of Congress or ordinary citizens, the title insurance premiums they must pay frequently contain sizable hidden fees, as well as kickbacks that appear to be in violation of criminal laws.

"Everybody and his brother is making money off the title insurance companies—the bankers, the brokers, the lawyers, and the developers," says William J. Kuntz, director of the Pennsylvania Insurance Department's licenses bureau, which has taken a tough stand on insurance rate regulation. "This is a grab bag for everybody," he says.

Title insurance companies sell title insurance to home buyers throughout the Washington area, and in D.C. they perform the additional function—handled by lawyers in the suburbs—of checking title to houses, preparing legal documents, and holding settlements.

Since business is referred to the companies by lawyers, developers, lenders, and brokers, the companies do not attempt to compete by lowering rates to home buyers, they concede. Rather, they offer free or cutrate services and other monetary favors to the real estate men who bring in the business.

Consumers get no benefit from the kickbacks, and have to settle with particular companies without knowledge of the arrangements, says Seymour Glanzer, chief of the U.S. attorney's fraud unit. Glanzer calls the kickback "commercial bribery."

Anthony J. Horak, manager of the Washington branch of Lawyers Title Insurance Corp., the largest of Washington's four major title insurance companies, says that giving discounts on title examination and settlement work to brokers, lenders, developers, and lawyers in return for business referred is common practice throughout the title insurance industry.

Developers, he says, generally get a 75 per cent reduction on title examination charges in return for an agreement to refer buyers of finished houses to the companies for purchase of title insurance and handling of the settlement. The idea, he says, is that the developer gets the work done at cost.

Sometimes the agreement is put in writing, he says. The contract provides that if a substantial amount of business isn't referred, the developer gets charged at the regular rate.

"It's the way we do business," Horak says.

Brokers, lenders, and lawyers also generally get a third or more of title charges knocked off when they buy their own houses, Horak says.

"It's conceivable that he might get most of it (the title charge) off if he's a real good customer," Horak says, Title company charges on a $60,000 house purchase are $220 for the title search and $111 for drawing up papers and conducting settlement. The charges vary with house price.

Horak estimates that besides these discounts, Lawyers Title this year spent at least $15,000 entertaining local lawyers, developers, lenders, and brokers, including providing them with tickets to the Redskins' games.

Ralph C. Smith, president of the Washington division of Commonwealth Land Title Insurance Co., another of Washington's four largest title companies, says most title companies, including Commonwealth, give some form of discount to developers.

"To the title company it means getting business it might otherwise not get. To the home buyer it means reduced rates" because savings to builders theoretically should be passed along to home buyers, Smith says.

"Everybody cooperates with these builders," says E. Spencer Fitzgerald, president of District-Realty Title Insurance Corp., another of the four major companies. "When you give a builder a break on these things, it should bring down the cost of the house—whether it works that way or not I don't know," he says.

Smith of Commonwealth Land Title maintained that his company doesn't give kickbacks to brokers. But Allyn J. Rickman, a partner of Schick & Pepe Inc., one of suburban Maryland's largest realtors, says that for every settlement case he refers to Commonwealth, Schick & Pepe gets a cash "rebate" from Commonwealth.

Rickman contends the arrangement is legal because the money—the amount of which he declines to disclose—is funneled through a company set up for the purpose of receiving the money from Commonwealth and giving it to the owners of Schick & Pepe.

Rickman says his salesmen, who are not aware of the arrangement, only suggest that settlement be held with Commonwealth when asked by buyers for a recommendation. Only 150 of 450 existing houses sold by Schick & Pepe this year were settled at Commonwealth, Rickman says.

Rickman says the arrangement benefits home buyers because Commonwealth's charges are lower than those of Maryland settlement attorneys. "It's not wrong; I'm using the cheapest place in town," he says. Although he concedes the arrangement "doesn't sound good," Rickman says, "As long as it's not illegal or immoral, what's wrong with it?"

Smith said he doesn't believe the arrangement is illegal, and he said Schick & Pepe gives some services in return for the payments.

Smith declined to say what the services are.

Samuel R. Gillman, president of Columbia Real Estate Title Insurance Co., the fourth major D.C. title company, says any payment

or discount by a title company to a broker, lender, or developer is illegal, and he says his firm never does it.

"You cannot give kickbacks. Anybody who is willing to take that risk is crazy," Gillman says. When told several companies had admitted to the practices, Gillman was incredulous.

Henry R. Lord, deputy attorney general of Maryland, agrees that such arrangements are illegal if they involve purchase or sale of Maryland property. Funneling the payments through a company, as Schick & Pepe says it does, doesn't alter the violation, he says.

Under the provisions of the Maryland criminal law cited by Lord, those having any connection with settlements on Maryland real estate are prohibited from giving or receiving any "fee, compensation, gift . . . thing of value, rebate, or other consideration . . ." for the purpose of "soliciting, obtaining, retaining, or arranging any real estate settlement or real estate settlement business . . ."

The Maryland insurance code, also cited by the attorney general's office, bars title insurance companies from giving—directly or indirectly—as an inducement to insurance, any "valuable consideration or inducement whatever . . ."

The insurance law provides a fine of up to $50,000 and possible revocation of the right to do business for violations. The criminal law provides a penalty of up to six months in jail or up to a $1,000 fine or both for each offense.

Such arrangements could also violate federal fraud laws, Glanzer of the U.S. attorney's office says. In government contract work, any kickback is legally presumed to constitute over-pricing and must be given to the government, he says.

Horak of Lawyers Title and Smith of Commonwealth said they don't believe they are violating the law. They offered no elaboration.

Fitzgerald of District-Realty said he believes the practices are legal because title examination charges are not set by the Maryland insurance department. A special assistant attorney general assigned to the department, Murray K. Josephson said this is not relevant.

Analysis of title insurance company financial statements on file with the D.C. insurance department shows that $8.8 million, or 27 percent, of the title insurance premiums paid by home buyers to the four major local companies was paid out by the companies in 1970 as commissions.

The commissions are paid to induce lawyers who handle settlements to buy title insurance for home buyers from a particular insurer. Maryland lawyers accept them, while Virginia lawyers do not or are not offered them. (Lawyers Title says it pays commissions only to agents who write policies.)

The commissions are specifically exempted from the Maryland law prohibiting real estate settlement rebates, and they are legal —in D.C. and Virginia. In California they are against the law. A bill to outlaw them in New York State recently died in the legislature.

"The commission is of absolutely no benefit to the home buyer," says Fairfax Leary Jr., counsel to Ralph Nader's Public Interest Research Group and former counsel and a director of Title Insurance Corp. of Pennsylvania.

Fitzgerald of District-Realty concedes the commissions are of no value to consumers and outlawing them could bring title insurance rates down substantially.

James E. Starrs, a George Washington University law professor calls commissions in the title insurance business "only kickbacks that have been legalized by the state legislatures controlled by the lawyers." He says they bear no relation to commissions paid to life insurance agents, for example, because the life insurance agents work to get more business, while lawyers are simply performing their duties by securing various services for their clients.

Further, Starrs says, the title insurance market cannot be expanded, since the insurance is required by lenders while agents can work to induce more people to buy life insurance. Every dollar spent on commissions is wasted money, he says.

Here lies the key to the title insurance problem. The title insurance companies do not make exorbitant profits. Analysis of their insurance department statements shows average annual profit last year after taxes of 9 per cent for the four major companies. By most business standards, this is not excessive. Nor are the companies falling down on the job.

"The system, with all of its irritations, costs, and delays, is a very effective consumer protection," says Allison Dunham, a University of Chicago law professor, one of many professors throughout the country who has studied settlement costs and laws.

But congressional and consumer critics say the cost of this protection is inflated by millions of dollars a year because the companies have no incentive to cut costs.

Indeed, says Sen. Proxmire, who has introduced a bill to require lenders to pay for title insurance, the structure of the title business puts a premium on raising costs to the consumer.

"The only way title companies can get more business," says Martin Lobel, an aide to Proxmire, "is by throwing away money to the real estate establishment."

"The companies don't show high profits because they give all the money away to brokers, lenders, developers, and lawyers," adds Kuntz of the Pennsylvania insurance department.

(The companies do not pay employees well, either. At Lawyers Title, clerks make $4,800 a year, title searchers up to $6,000 year, examiners up to $10,000 a year, and lawyers between $10,000 and $17,500 a year.)

Besides getting their business from those in the real estate business, title companies generally are controlled by real estate men on their boards of directors, a study by Proxmire's office found.

In Washington, for example, 20 of the 24 directors of Columbia Real Estate Title Co. are either lenders or real estate brokers.

The reason, says Charles E. Mitchell, vice president of Guaranty Land Title Agency Inc., which represents an out-of-town insurer, is that the companies hope these directors will refer business to them.

Critics such as Proxmire say title insurance premiums are far too high, and they point out that losses on title insurance policies are almost nonexistent. Last year, insurance department statements show, the four major Washington companies paid as losses 5 per cent of the premiums they took in from D.C., Maryland and Virginia home buyers.

Two of the companies—Columbia and District Realty—reported losses of 0.1 per cent. Columbia had no losses in D.C. and Maryland, and only a $1,000 loss in Virginia.

Title companies counter that their losses cannot be compared with those of other insurance companies because they try to prevent risks, rather than assuming them. Fire insurance companies, they say, have no control over the outbreak of fires, but title insurance companies, if they search title properly, should have minimal losses.

Since most losses are the fault of the title company that overlooked an outstanding claim when it searched title, many home buyers question why they should pay for a title search and pay again to insure that it was done properly.

The companies counter that they could make a lump charge for title search and insurance, and no one would question it.

Title insurance rates have remained unchanged in the Washington area for years, but since they are based on house prices, the rates bring in more money per house as real estate values go up. The Maryland insurance commissioner has authority to reject rate filings but never has, while the D.C. and Virginia insurance departments say they have no authority over rates.

Proxmire reasons that since lenders are the ones who require title insurance, they should pay for it, and he believes they would then use their economic clout to force rates down.

Although the title insurance charge would still be passed along to consumers as part of the interest rate on mortgages, Proxmire says, lenders would try to reduce the charge as a competitive measure.

Rep. William L. Hungate (D-Mo.) has introduced a bill to regulate D.C. title insurance companies, Benny L. Kass, a consumer advocate lawyer, says it reads "like an industry attempt to keep out competition; it has no provision for reducing excessive rates."

The bill, concedes a spokesman for Rep. Hungate, was prepared by the executive vice president of Columbia title company.

BOSTON AND WASHINGTON: COST DIFFERENCE SHOCKING

(By Ronald Kessler)

"Great Scott!" "You're nuts!" "I'm quaking in my shoes!"

These are the reactions of Boston bankers and title lawyers when told how much settlement charges are in Washington. Their shock is well-founded.

Purcasing a $40,000 house in the Washington metropolitan area requires double to triple the settlement cost outlay required in the Boston area. Nor is Boston out of line with the rest of the country.

A soon-to-be released Department of Housing and Urban Development study shows that it is Washington that is out of line. The highest settlement costs in the nation—exclusive of government transfer taxes and fees—are in Maryland, the study found. The fifth and sixth highest costs, respectively, are in Washington and Virginia.

Transfer taxes and government fees required at settlement also are higher in Maryland than in any state in the nation. Virginia and D.C. are seventh and eighth highest, respectively.

Those who make the charges—the lenders, lawyers and title insurance companies—generally agree that costs here are too high. "When I came down here from Ohio, I was shocked too," says Anthony J. Horak, branch manager of Lawyers Title Insurance Corp., Washington's largest title insurance company. "The buyer down here really gets clobbered," he says.

One effect of the high closing costs, a 1967 Montgomery County housing report concluded, is that fewer people can afford to buy their own homes.

Although they agree charges are too high, each of the parties to settlement blames the other. "No one has come out and said who is gouging whom and how," says Gary L. Garrity, director of public affairs of the American Land Title Association, a trade group.

As detailed in previous stories, a Washington Post investigation has found that Washington area title insurance companies, lawyers, brokers, lenders and developers involved in real estate settlements are engaged in widespread kickback-type practices.

Such hidden arrangements, says Seymour Glanzer, chief of the U.S. attorney's fraud unit, constitute clear-cut evidence of overcharging. "It's obvious that money used for kickbacks is money that consumers are being cheated of," he says.

From an economic standpoint, says Paul A. Samuelson, the Nobel Prize winner in economics, kickbacks mean that charges are being forced up by "monopoly pricing."

"If you can insist through cartel that fees are too high, the result is swag and it has to go to somebody—frequently in the form of kickbacks," says the Massachusetts Institute of Technology professor.

James E. Starrs, a George Washington University law professor specializing in real estate, says the first measure that should be taken is "stringent disciplinary action" against lawyers violating bar association ethics, and enforcement of the insurance laws dealing with rebates.

However, Starrs says: "The same lawyers who do the investigating of ethical violations are often the ones who should be investigated."

Starrs proposes creation of a special commission with subpoena power and a mandate to hold public hearings on Washington area settlement practices.

Although hidden payments and kickbacks represent a sizeable chunk of charges paid at settlements in Washington, home buyers in part are being gouged not by individuals but by the system.

Many experts compare the present system of transferring title to homes by searching title, drawing legal papers, surveying, adjusting and insuring to auto liability insurance. The costs of fixing blame for accidents under the liability system far exceed the benefits, critics say.

In Massachusetts, where liability insurance has been replaced by no-fault insurance, bodily injury premiums have been reduced by 55 per cent over two years.

Boston still has a long way to go before its methods of transferring title are as simple as the state no-fault insurance plan. But Boston, which is about the same size as the Washington area, has about the same living costs and is older than Washington, has settlement costs that are enviably low.

Settlement on a $40,000 house in the Boston area costs $753 to $843. This compares with $2,562 in Prince George's County, $2,514 in Montgomery County, $1,418 in Virginia and $1,248 in the District.

An observer of Boston settlements is immediately struck by low-key atmosphere. Passing of papers, as the process is called there, often is held in musty recorder of deeds' offices rather than in plush lawyers' offices.

Unlike Washington lawyers, Boston attorneys do not keep escrow accounts for the funds transferred at settlement. They simply endorse the checks to the proper parties, never touching the money. In Maryland and Washington, escrow accounts have led in some instances to embezzlements of home buyers' funds. (Three Maryland lawyers were jailed when it was found in 1967 that they had pocketed the new mortgage loans of 70 home buyers, who were left with old unpaid mortgages still outstanding against their properties.)

Escrow accounts kept by attorneys with large settlement practices here typically amount to $1 million and more. The accounts don't bear interest, making them lucrative arrangements for banks. As an inducement to getting the accounts, some lending institutions say they give loans at reduced interest rates to attorneys with the accounts.

By delaying dispersal of funds after a settlement, an attorney can increase the "float" or average daily balance in these accounts. While many attorneys disperse funds within four or five days—the time it takes for checks to clear—a common complaint by home buyers is that their settlement attorney took three weeks and more to complete the transaction and send them their deed.

Although title insurance rarely is bought in Massachusetts, in those instances when it is purchased for large commercial properties lawyers say they decline to accept a commission when it is offered by the title companies.

"It's a violation of bar ethics to accept money in connection with your client's business unless you get his permission," says Albert B. Wolfe, a Boston lawyer. "So most lawyers I know either give the money to the client or don't accept it."

Nearly every Washington area title lawyer and broker acknowledges hearing reports or rumors of kickbacks here. In Boston, says John S. Bottomly, a Boston lawyer who formerly was an assistant attorney general of Massachusetts, "You never hear of kickbacks."

"The lawyers have the Protestant ethic up there, and the banks don't like to see screwing around," contends Martin Lobel, and aide to Sen. William Proxmire (D-Wis.). Proxmire has introduced a bill to place the burden of paying for title insurance and other title charges on lenders. Lobel's father is a Boston lawyer.

Why Boston has this different atmosphere is hard to pin down. Periodically rocked by political scandal, Massachusetts usually looks outside its borders for models of reform.

But two differences are clear: Boston's lending institutions are highly competitive and work to keep closing costs down to get an edge; Boston's records system, even to the untrained eye, is far superior to Washington's.

The key to a good records system is the index, which is supposed to pinpoint the material wanted in one listing. Washington area indexes are more like chapters in books than indexes.

In Washington, property sales are indexed by both location of the property and by names of buyers and sellers. The location index consists of index cards placed loosely in file drawers. Since any card can be misplaced or stolen, title searchers say they cannot rely on the index because they may overlook a mortgage outstanding against a property.

The buyer-seller index, while it is reliable, is cumbersome and this leads to errors. For one thing, it is not strictly alphabetical. To find a buyer by the name of Freeman, one has to search some 10 to 20 handwritten pages listing everyone from Frederick to Fritz.

In Montgomery County, matters are worse. The seller-buyer index neglects to note the location of the property involved, and one developer or speculator may have bought and sold hundreds of properties each year. The deed to each of the transactions must be extracted from weighty record books and examined in order to find the right one.

John W. Byrnes, a deputy recording clerk in Montgomery, says that originally, locations were left out because "almost all property was acreage. Like Topsy, it's just grown that way," he says.

Defending the D.C. records systems, Eleanore D. W. Shoop, first deputy recorder of deeds, says that strict alphabetization of the indexes would be "impossible."

What is impossible here has been done for years in Boston, where the Suffolk County and Middlesex County recorders' offices, covering most of Greater Boston, keep alphabetical indexes both by first and last names, listing property locations as well.

Each index goes back 5 to 10 years, eliminating the need to pull an index book for each year to be searched.

And each of the Boston indexes lists mortgages, deeds, attachments, liens and bankruptcies, all of which are needed to search titles. In Washington, these records are scattered all over the city in various court buildings and city agencies.

Because of these defects, Washington title insurance companies keep their own set of land records. "Anybody who thinks he can do a title by going to the D.C. recorder of deeds is a jackass," says Samuel R. Gillman, president of Columbia Real Estate Title Insurance Co., one of the four major D.C. title companies that keeps its own records.

Peter S. Ridley, D.C. recorder of deeds, says he has never heard this criticism. He says he understood the companies keep their own records because it is more convenient to search titles at their own offices. He notes that the companies get the data for their records from his office, and he says, "We don't arrange our records for the convenience of any special group."

The time it took this reporter to look up the last deed to Sen. Birch Bayh's house on Garfield Street NW, ranged from 5 minutes at Lawyers Title Insurance Corp. to more than a half hour at District-Realty Title Insurance Corp. Bayh bought the house in 1966.

Such duplicate records, says Nicholas N. Kittrie, an American University law professor who recently completed a study of closing costs for HUD, massively inflate costs to consumers.

"If the government is paying for a system of recording, why shouldn't the citizen be able to go in and count on its accuracy?" asks Kittrie.

It is the lenders who dictate settlement practices. A house purchased for cash could be transferred without any expense other than taxes and recording fees. But what lenders in Washington dictate is quite different from what Boston lenders want.

Boston lenders do not require title insurance; Washington lenders do. And Boston lenders either don't require or else pay themselves for surveys, appraisals, credit reports, notaries and extended property tax escrows. Washington lenders require all these services and place the burden of paying for them on the buyer.

Bankers say Boston banks, which charge lower interest on mortgage loans than do Washington banks, are competitive for mortgage customers. This is because New England, with its manufacturing and insurance companies, has a surplus of money. Washington, without an industrial base, has a deficit of money, meaning the banks here compete to get money rather than to lend it.

As one competitive measure, Boston savings banks offer lower closing costs. "People here shop for closing costs," says Robert T. Lawrence, senior vice president of Boston Five Cents Savings Bank, Boston's second largest mortgage loan source.

Referring to protection required by Washington lenders, Norman McIntosh, vice president for real estate of Provident Institution for Savings, the Boston area's largest mortgage loan source, says, "There's such a thing as going overboard."

Instead of requiring title insurance, Boston lenders rely upon the word of lawyers that title is sound. If the lawyer is wrong, he pays.

"We have a strong tradition of lawyers making good on their titles," says Paul G. Counihan, a Boston lawyer.

Title insurance is a relatively recent development related to quicker turn-over of property in urban areas, says Ted J. Fiflis, a University of Colorado law professor who has studied settlement costs. Ralph C. Smith of Commonwealth Land Title Insurance Co. says fewer than 25 per cent of property transfers in the U.S. are covered by title insurance.

Another major difference between Washington and Boston practices is that it is unclear whether Washington area settlement attorneys represent buyers, developers, lenders or real estate brokers, while in Boston it is made clear that the lawyer represents the lender.

Massachusetts law requires banks to tell borrowers in their letters committing mortgages that the lawyer will represent the bank. The law also requires that the bank bill buyers for the lawyer's fees. And to comply with bar ethics, says Boston lawyer Wolfe, lawyers tell buyers orally at settlement that they represent the lender. Buyers are told they can hire their own lawyer if they wish.

Through this direct tie between lawyers and banks, banks keep costs down by exerting pressure on their lawyers. As a result,

a buyer can call five banks in Boston and get five different quotes on closing costs

Lawyers' charges on a $40,000 house closing range from $270 to $360 in Boston. This compares with $555 in Virginia, $525 in Prince George's County, $385 in Montgomery County and $314 in the District. (The Maryland fees include title insurance commissions pocketed by lawyers there.) The title insurance premium, that practically rules out the possibility that lawyers will have to pay for claims, is an extra $160 in the Washington area.

Boston lenders require an average of 2½ months of porperty taxes in escrow, compared with up to a year in the Washington area. Transfer taxes also are far lower in Boston, and many experts believe Washington levies should be brought into line.

Transfer taxes, says Henry J. Aaron, a Brookings Institution economist, are a poor and arbitrary way to get revenue.

"Transfer taxes are not related in any logical way either to ability to pay or benefits received," Dr. Aaron says. "Lots of people who are wealthy don't buy houses, and the fact that these people aren't taxed and others are is inequitable."

Traditionally, property taxes are the most politically sensitive taxes on a local level, and experts say transfer taxes are a less visible way to increase revenues.

A report prepared this year by the Virginia bar on kickback arrangements of Virginia title lawyers and the inefficiency of present title-searching methods concludes that "unless the bar itself makes a serious effort to rectify the injustices to the public set out above, the day will soon come when outside forces will do just that."

The report continues: "It would seem that the committee is recommending a change which would adversely affect the lawyer's pocketbook. This may be so, but we are living in times of change, and this would not be the only change that might adversely affect the income of lawyers. The no-fault rule in personal injury cases is another example of such a change which is currently being proposed."

The comparison with no-fault insurance is apt. Prof. Starrs, for one, contends that as in no-fault insurance plans, lawyers could "for almost all purposes be taken out of the title picture."

Others say that the principle behind no-fault—that changes in the law can reduce costs by eliminating needless work—can be applied to title tranfers.

Charles S. Bresler, head of Bresler & Reiner Inc., one of Metropolitan Washington's largest and most diversified developers of residential housing, office buildings, and shopping centers, says he sees no reason why sale of a house should not be as simple and inexpensive as the sale of a car.

Bresler, who studied the problem in an attempt to cut costs on his own developments, says regional computer centers should keep records on property transfers the way state auto registration bureaus keep track of car ownership.

"The cost of this would be infinitesimal," he says, and would considerably cut down on title defects.

In addition, Bresler proposes a federal title insurance program, as mortgages are insured by the Federal Housing Administration and Veterans Administration, to cover any claims that arise. The insurance, like FHA insurance, would be paid for by a premium representing less than a half of a per cent of the mortgage taken on a house, Bresler says. The premium would be paid only once for each house rather than being collected each time the house is sold, as is the practice of private title insurance companies.

"This could cut out the duplication of effort by title insurance companies and title searchers and bring costs down to almost nothing," Bresler claims.

Others are not so sure. Quintin Johnstone, a Yale University law professor, believes that the method would make property ownership "too uncertain," that the cost of computerizing might exceed the efficiencies produced, and that federal title insurance wouldn't represent any saving over private title insurance.

Garrity, of the American Land Title Association, says computerization "probably would be a great expense, and whether it would work might be questionable." Government title insurance would only create "a new federal bureaucracy" which would add to taxpayer expense to benefit those who buy houses, he says.

Prof. Kittrie of American University says it is the function of government to "tell you that title to property is valid and clear." If it did, there would be no need for insurance, he says.

"The present system," says developer Bresler, "puts a burden on every home buyer without giving him anything in return. In a day when you can put a man on the moon," he says, "the transfer of property is still back in the horse-and-buggy era."

Realty Sales Kickbacks To Be Probed

(By Ronald Kessler)

Grand jury investigations of kickback and payoff practices connected with real estate settlements were announced yesterday by Montgomery and Prince George's counties' prosecutors.

State's Attorney Arthur A. Marshall of Prince George's and State's Attorney Andrew L. Sonner of Montgomery said a joint, bi-county investigation has been started and the foremen of currently sitting grand juries notified.

Marshall called the kickback practices described in a Washington Post series on settlement costs "shocking." Sonner said Montgomery lawyers in private practice have been volunteering their services since the series began to help in the investigation.

The Prince George's County Bar Association appointed a special committee to investigate possible violation of bar ethics by lawyers handling settlements, and similar action was said to be under consideration yesterday by the Montgomery County Bar Association.

The Montgomery County Council said it will discuss establishing a committee to investigate real estate costs.

In Washington, Mayor Walter E. Washington ordered the D.C. corporation counsel to determine what corrective action could be taken to bring down settlement costs.

The Post series, which ended yesterday, reported that settlement charges in the Washington area are among the highest in the nation and that those paid by virtually all home buyers in the metropolitan area include a variety of kickbacks and payoffs, many in apparent violation of criminal laws.

The hidden payments are generally given by lawyers and by title insurance companies to lenders, real estate brokers and developers in return for referral of settlement business, the articles said.

In Virginia, the commonwealth attorneys for Arlington and Fairfax counties said they plan no action and have not heard of any move to initiate any either by the state or by the Virginia State Bar or local bar associations.

Robert F. Horan, commonwealth's attorney for Fairfax, said the procedure when investigating lawyers is to wait for referral of cases by the local bar. Although the state bar prepared a report earlier this year on hidden payoffs by settlement lawyers. "The first I heard about it was in The Post," Horan said.

Walter L. Stephens Jr., the Fairfax attorney who started the investigation leading to the Virginia bar report, said yesterday that a number of his colleagues were "irate" that he had publicly disclosed the practices.

He said some lawyers warned him that he would have "trouble" from local prosecutors because of his statement, published in The Post, that prosecutors are "afraid" to touch members of the bar.

Seymour Glanzer, chief of the U.S. attorney's fraud unit in D.C., said he was not planning any immediate investigation of the kickback practices because of the absence of any specific laws dealing with the abuses in Washington.

He said that although the practices could violate federal fraud laws, his office would wait for referral by other federal investigative agencies of specific cases to prosecute.

In response to a request by Sen. William Proxmire (D-Wis.) for hearings on Proxmire's bill to require lenders to pay for many settlement charges, Sen. John J. Sparkman (D-Ala.), chairman of the Banking, Housing and Urban Affairs Committee, said yesterday he would hold hearings on the entire problem of closing costs but has not set a date for them.

Unit Seeks Refund for Home Costs

(By Ron Kessler)

A consumer group to fight high real estate settlement charges in Metropolitan Washington was formed yesterday and said it plans to file a class action suit to recover kickback and hidden payments for home owners.

The group, National Homeowners Association, will attempt to stop allegedly illegal settlement practices through the courts and Congress and by assisting home buyers at settlements, according to Benny L. Kass, a D.C. consumer advocate lawyer who is an incorporator of the group.

"Home owners as individuals are powerless against the real estate establishments," Kass said. "We intend to give them a bill of rights and organize them because the government and law enforcement agencies have failed to protect them," he charged.

The Prince George's County Bar Association this week appointed a special committee to investigate possible ethical violations by settlement attorneys, and the Montgomery County Bar Association assigned its grievance committee to do a similar inquiry.

The insurance division of the Maryland Department of Licensing and Regulation said it intends to look into charges that title insurance companies based in D.C. and doing business in Maryland are engaged in kickback and hidden payment arrangements. Depending on the results of the inquiry, hearings and possible penalties could be initiated, Edward J. Birrane Jr., deputy commissioner, said yesterday.

The developments followed a four-part Washington Post series that ended Wednesday. It detailed a variety of kickback and payoff practices, many in apparent violation of criminal laws, connected with real estate settlements and charges.

The payments, the articles said, are generally given by lawyers and title insurance companies to developers, real estate brokers, and lenders in return for referral of settlement business.

Since the articles began appearing, The Post has received 88 telephone calls and a number of letters from home owners requesting assistance in collecting overcharges and offering additional examples of abuses at settlements.

Grand jury investigations have been announced by the county prosecutors of Montgomery and Prince Georges counties.

Home owners with complaints and information about kickbacks and settlement charges have been asked by State's Attorney Arthur A. Marshall to call 627-4540 in Prince Georges and by State's Attorney Andrew I. Sonner to call 279-8211 in Montgomery.

The Business of Real Estate Settlements

We have spent an unusual amount of time this week trying to come up with a word or phrase which fairly describes the real estate

settlement business in the Washington Metropolitan area. The possibilities we have thought of range from calling this process of kickbacks, inflated charges and unnecessary expenses the systematic robbery and rape of people who buy houses to merely saying it constitutes chiseling and cheating. We haven't settled yet on what to call it—plundering, looting, ravaging, racketeering and extorting don't quite do—because all these words have a connotation of illegality or violence. In the real world, this process of fleecing almost every purchaser of a house is carried on without violence and under color of law. Neverthless, its existence reflects the greed or the public-be-damned attitude of the lawyers, developers, real estate brokers, title insurance companies and lending institutions. And its continuation now that the whole story is on the record can only mean: (1) that those who particpate in it don't care what the rest of us think of them as long as they get their share of the loot; and (2) that those who make the laws in Annapolis and Richmond and on Capitol Hill would rather cater to them than to you.

Let us summarize, and characterize briefly, some of the facts that stand out so starkly in the series of articles written by Ronald Kessler in this newspaper this week. They explain why we find it hard to put our sense of outrage into the right words. They also explain why almost no one who buys a house in this area ever comes out of the settlement proceedings smiling and why no one ever wants to tell you, the buyer, what all those figures on the settlement sheet really mean.

1. The fees the lawyers charge for handling a settlement bear no relationship to the amount of work they have done. These fees come right out of things called "minimum fee schedules," prepared by bar associations to fix prices and used by many lawyers to fend off complaints that their fees are too high.

2. The fees charged for title searches similarly bear no relationship to the costs of the search. In the suburban counties, settlement lawyers can and do get that work done by someone else at a quarter or a tenth of what they charge you for it. They claim they deserve the rest of the money for the responsibility they assume in guaranteeing the quality of the work. Yet they are also protected by the title insurance you are required to buy and by the malpractice insurance most of them carry routinely.

3. The title insurance companies regularly pay commissions—kickbacks is a more accurate description in most cases—that averages 27 per cent of the premium. In Maryland, these go directly to the lawyer who handled the settlement. That insurance, incidentally, originated because lending institutions believed they needed to be protected against the honest mistake or the dishonesty of the lawyer. In other words, you pay the lawyer a substantial amount of money because of the responsibility he is assuming for the accuracy of his work and then he collects part of the fee you pay to a title insurance company for guaranteeing the same accuracy.

4. Real estate developers and brokers often get their legal and search work done free or at a cut rate in return for steering their customers to the right lawyer or settlement agent. So do some lending institutions. On a suburban development of 200 houses costing $40,000 each, for example, the cost of settlement work appears to run about $18,000, most of it properly chargeable to the developer. But if he succeeds in referring all his buyers to one lawyer, he gets his work done free and the lawyer may collect up to $100,000.

5. Some of the services required by the lending institutions are never performed. But they are always paid for by the buyer. The line on the settlement sheet marked "survey" is a case in point. Most surveys aren't surveyed anew each time a house changes hands but the charge is made as if they were and in some instances that charge is split between the surveyor and the lawyer.

There is more, much more, in Mr. Kessler's series. But that is enough for now. The question is what ought to be done about a system which costs residents of this area hundreds of thousands of dollars a year. The grand jury investigation promised by the prosecutors in Montgomery and Prince George's counties may produce something, but far more is needed. The lawyers, if they would, could help by junking their minimum fee schedules and playing fair with their clients. The title insurance companies, if they would, could help by abandoning the kickback arrangement. Frankly, we are not optimistic about either of these things happening; the arrangements are too cozy and too profitable. Any substantial change is likely to come only if an outraged public communicates that feeling to elected officials, who might then be moved to deal seriously with such questions as whether the present system of record keeping on property titles should be changed and how the purchase of a house can be made a simple matter instead of a complex exercise in legal and economic legerdemain. In the meantime, we can only leave you with an unhappy reminder that the settlement costs in Maryland are higher than they are in any other state and that the District of Columbia and Virginia rank 5th and 6th on that list.

Area Home Buyers Entitled to Title Insurance Discounts

(By Ronald Kessler)

More Washington area home buyers are entitled to 40 per cent to 70 per cent title insurance discounts that they have not been getting, resulting in overcharges that appear to total in the millions of dollars, The Washington Post has found.

The typical overcharge on a $40,000-home is $56.

Two of Washington's four major title insurance companies—District-Realty Title Insurance Corp. and Commonwealth Land Title Insurance Co.—said they would refund any overcharges. Lawyers Title Insurance Corp. said it was not sure what it would do, and Columbia Real Estate Title Insurance Co. suggested that home buyers ask settlement lawyers for refunds.

None of the title companies was specific about how it would handle requests for refunds.

The overcharges came to light after a series in The Washington Post disclosed that settlement costs paid by most Washington area home buyers contain a variety of kickbacks and payoffs, many in apparent violation of criminal laws. Grand jury investigations in Montgomery and Prince George's counties have been started.

The Post has since found that although they are rarely given, discount rates for title insurance are provided for in title company rate books and rate filings with state insurance departments.

The rates say that home buyers are entitle to discounts in most cases when the previous owner of a house had a title insurance policy. The policy must have been purchased by the previous owner within 10 years of the application for the new policy.

Since lenders require title insurance whenever a mortgage is given, and since most houses on the market in the Washington area had been sold previously within five years, the rates would apply in most cases.

They also apply in many instances on purchases of new houses when developers have title insurance coverage of their construction loans.

Uncovering of the discount rates has touched off a furor within the industry. Title companies, lawyers, and real estate brokers each blamed the other for failure to charge correctly.

Title company officials argued among themselves over the meaning of the rates and the legalistic language in which they are couched. One title company, Columbia, maintained that it had no rate book, although one of its Maryland agents quoted extensively from what he said was such a book.

The title companies acknowledge that the rate reductions are rarely given to ordinary home buyers, but they say this is because people don't ask for them. If they did, they would get the discounts, the companies say. But it was pointed out that it is difficult to ask for something without knowledge of its existence, and it is apparently more than home buyers who have been kept in the dark.

Many of the Washington area's largest settlement lawyers and real estate brokers said they had never heard of title insurance discounts, nor seen them given to anyone, in decades of experience in the business.

Indeed, this reporter, calling each of the four title companies and inquiring about rates as a member of the public, found that the people to whom he was referred at two of the companies—District-Realty and Columbia—denied the existence of discount rates.

During preparation of The Post's series on settlement costs, Anthony J. Horak, manager of the Washington branch of Lawyers Title Insurance Co., and other title company officials, said there was no such thing as a discount on any title company services in the Washington area.

Questioned subsequently, Horak reiterated that position, although he amended it to say the statement applied only to the District. However, a senior vice president of Lawyers Title in the home office in Richmond later said the discount rates apply throughout Metropolitan Washington, as well as in most states throughout the country.

The title companies claimed that lawyers and real estate brokers should be blamed for failing to charge clients the right rates. Samuel R. Gillman, president of Columbia, suggested that the reason for this failure was that a lawyer giving a reduction on a title premium gets a lower commission, since commissions are figured as a percentage of premiums.

The president of the Washington Board of Realtors, Foster Shannon, president of Shannon & Luchs Co., one of the area's largest real estate firms, said it would be to the advantage of real estate brokers to get lower closing costs for their customers as a selling point. In 30 years in the business, he said, he has never heard of title insurance discounts on home purchases.

The title companies agreed that the rates published in their rate books must be followed, since the booklets are distributed outside the companies and would therefore constitute advertising. In Maryland, they said there was the additional requirement imposed by the Maryland insurance department that rates be filed with the department and be followed in every case.

Edward J. Birrane Jr., Maryland's deputy insurance commissioner, confirmed that Maryland residents must be charged at rates filed with him, and that the rates do require discounts. The filings say nothing about giving discounts only when asked.

"The burden is certainly on the companies to know their own rates and charge accordingly," Birrane said. He added that his department would consider ordering refunds of any overcharges.

Title companies say the rates, including the discounts, have remained unchanged at least since 1930 and are used by most companies throughout the country. The language of the rates used by the Washington companies is almost identical, sometimes

down to the type faces used in the booklets.

The Post began looking into the rates after a lawyer and a real estate broker, saying they had read the settlement cost series that appeared two weeks ago, informed the paper that there is a way to get lower closing costs under the present system—if one knows how.

"You have to scream and yell and plead with the companies and threaten to go elsewhere, and even then you may not get the reduction," the broker, Laura A. Robinson, an independent operator, said.

The lawyer, Hershel Shanks, said he learned that such reductions could be had while handling the business of large developers, who get the discounts as a matter of course.

Shanks, a Washington lawyer, said he found he could get the special rates for ordinary home buyers because of the leverage that representing a number of clients gave him with the title companies.

Shanks said he also has been able to obtain reductions on settlement fees as well as on title examination fees if the same company previously searched title to the same house within five to 10 years.

Benny L. Kass, a D.C. consumer advocate lawyer, when informed of the discount rates by a Post reporter, termed the situation scandalous.

The discount rate that would most commonly apply is on the purchase of an owner's, or combination, title insurance policy. This policy, which has been the prevalent type in the Washington area since about 1966, protects both the owner of a house and the lender who has given a mortgage on it from any defects that may arise in its title, or ownership.

According to title company officials and the rate books, the regular rate for the insurance is $3.50 for each $1,000 of house purchase price up to $50,000; another $3 is charged for each additional $1,000 up to $100,000.

In addition, there is a flat fee of $7.50, and title companies and lawyers charge another $2.50 to $10 for a binder that represents protection until the policy is paid for and received.

All title insurance premiums are paid once.

The discount, called a reissue rate, on this type of policy is 40 per cent off. The special rate is good up to the amount of the previous policy.

Any remaining coverage is charged at the full rate.

Two conditions must be satisfied: the previous owner of the house must have had an owner's, or combination, title insurance policy; and he must have purchased the policy within 10 years of the application for the new policy.

Columbia imposes an additional requirement: that the previous policy be issued by Columbia. The other companies say previous insurance with any acceptable company is sufficient. (To make sure he gets the discount at all the companies, a home buyer can purchase his policy from the same company that issued the previous one.)

To get the discount, a home buyer or owner must ascertain from the previous owner of a house what type of title insurance policy he had, what company issued it, its date, and the policy number. This information must be presented to the title insurance company.

There is a second type of policy. It is called a lender's policy, and it protects only the lender up to the amount of the mortgage he has given on a house. The rate for this policy is $2.50 per $1,000 of mortgage loan up to $50,000; each additional $1,000 is another $2 up to $100,000. (The only additional fee is for the binder, which is $2.50 to $10.)

On this type of policy, the discount, called a substitution rate, ranges from 20 per cent to 70 per cent off, depending on the number of years that the mortgage held by the previous owner had been in effect. If the loan was three years old or less, the discount is 70 per cent; other reductions are pro-rated up to a loan that is eight years old, when regular rates apply.

Two conditions apply to get the reductions on a lender's policy: the home buyer must have a mortgage loan from the same lending institution that gave the loan to the previous owner of the house; and the previous loan must have been in effect fewer than eight years.

The reduced rate is good up to the amount of the unpaid balance of the old loan; any remaining coverage is charged at the regular rate.

The conditions can be met on the purchase of an existing house, when the lenders happen to coincide, and on the purchase of a new house, because developers often arrange with the same lender to get a construction loan and permanent loans for the buyers of the houses, real estate experts say.

If the construction loan was covered by a title policy—either owner's or lender's—the discount would apply. Some developers, instead of getting title insurance, buy title insurance interim binders to cover their construction loans. Discount rates in these cases cannot be obtained.

To get this type of discount, a home buyer or owner must ask his builder or the previous owner of the house for the name of his lender and the details of his title insurance policy.

Columbia claimed several additional conditions to its policies. It said that although no such provision is stated in its rate filings or written anywhere on policies or elsewhere, it would insist that previous title policies be surrendered before a discount is given.

Many holders of these policies may not want to comply, since the policies continue to provide coverage long after an owner has sold his house. A challenge to the title may arise years later, and the former owner could be sued. Under these circumstances he would still want a policy.

Other title companies said it was doubtful such a condition could be enforced by Columbia, since it is not in writing.

Columbia also said its re-issue rate on owner's policies applies only in Virginia and Maryland. Its substitution rate on lender's policies applies throughout the Washington area, Columbia said.

Gillman, Columbia's president, said Maryland and Virginia home owners should ask their settlement lawyers, not Columbia, for refunds, since the lawyers already had taken a commission from the premiums.

* * * * *

Several lawyers who said they had heard of the rates said they give them only when asked for them, and some noted that it was an additional "bother" to figure a lower rate.

The four major title insurance companies in 1970 took in $6 million in title insurance premiums from D.C., Maryland, and Virginia residents, primarily those clustered in the Washington area.

How much of this represents overcharging is impossible to determine precisely. Using conservative assumptions, the overcharges appear to amount to millions of dollars over several years.

SUGGESTIONS TO PARE COST OF BUYING HOME

Since publishing its series on real estate settlement costs two weeks ago, The Washington Post has received numerous requests from readers for advice on how they can reduce their closing costs under the present system. The Post interviewed lawyers, title company officials, and real estate brokers, and came up with these suggestions:

Settlement lawyers in Maryland can be asked to disclose the amount of the commissions they are receiving on a home buyer's title insurance premium and also requested to refund the money to the home buyer.

American Bar Association ethics provide that a lawyer may not take any money in connection with his client's business "without the knowledge and consent of his client after full disclosure."

Lawyers who fail to respond to the request can be reported to the local bar association.

Maryland home buyers can insist that their real estate closing be held at a D.C. title insurance company rather than at a Maryland law firm. The charge on a $40,000 house by the title companies is $314, compared with lawyers' charges of $525 in Prince George's County and $385 in Montgomery County (title insurance commissions are included).

Area home buyers can attempt to get quotes on settlement costs from lawyers and D.C. title companies to try to get a negotiated rate.

CIGARETTE COUNTRY

Mr. MOSS. Mr. President, I commend to the Senate a fine new book on cigarettes and politics that has been written by Susan Wagner. Entitled "Cigarette Country," Miss Wagner's book cuts through much of the political morass that has tied up our concern about cigarettes for lo these many years.

In reviewing the book, I found a most balanced presentation, and that balance leads me to one further conclusion—the cigarette industry has been arguing over minute questions to which answers were provided many many years ago. And thus, my conviction concerning the necessity for close Government scrunity, the activities of the cigarette industry is still warranted.

One of the more important conclusions of the book is its assessment of the potential for progressive regulation in the Federal Trade Commission. The Commission's activities in the cigarette matter clearly demonstrated that it could move, albeit through an archaic mechanism, to regulate even the most powerful of industries. With the leadership of former Chairman Weinburger and the current leadership of Chairman Kirkpatrick, the Commission is today, the most progressive Federal regulatory agency operating in the interest of the consuming public.

An interesting conclusion to the Ed Edelson book review is the relationship between the legalization of marihuana and the accusations against tobacco which have now, to a large extent been proven. We have a legal commodity which causes us great anguish in effectively regulating it. Let us be very, very cautious in any considerations which may take place on efforts to legalize marihuana. Although the evidence on marihuana today may be less significant than that on tobacco, I wonder whether we could say the same for the health effects of marihuana after thousands and thousands of studies have been conducted as have been done with cigarettes. Just think about that.

Mr. President, I ask unanimous consent to have printed in the RECORD the Book World Review of Cigarette Country, written by Susan Wagner.

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

WHAT A 2-CENT PROFIT PER PACK CAN ACCOMPLISH—CIGARETTE COUNTRY, TOBACCO IN AMERICAN HISTORY AND POLITICS

(By Susan Wagner, reviewed by Edward Edelson)

One of the first native American products encountered by Columbus on his first voyage of exploration was tobacco. A native offered him "some dry leaves which must be a thing very much appreciated among them," and some of his officers reported seeing natives who "drank smoke." By 1531, the Spaniards were growing tobacco commercially in the West Indies, by 1560 it was being grown in Europe, by 1600 it was introduced into Asia and Africa, and by 1604, King James I of England wrote a *Counterblaste to Tobacco* denouncing "a custome lothesome to the eye, hatefull to the nose, harmefull to the braine, dangerous to the lungs."

So from the start the history of tobacco has been a contest between greed and morality, with greed one clear step ahead all the way, James I was no exception; even though he hated tobacco, he found no difficulty in accepting the import duties from tobacco grown in his Virginia colony—which survived only because tobacco proved invincibly popular and profitable. Tobacco has been denounced as a subverter of manhood, an introduction to immorality, and a threat to health. Even though the cigarette is one of the few products to be formally condemned by agencies of the United States government, per capita consumption today is more than 200 packs a year. The manufacturer makes two cents profit on every pack.

All this is from Susan Wagner's *Cigarette Country*, an imperfect book on a fascinating subject—too often arid and impersonal, a summary of secondary sources. Never mind; the subject is enough to carry it all off successfully.

Some of it is funny, especially the early days during which cigarettes were dinned into the American consciousness by advertising. George Washington Hill, who raised misstatement to an art and repetition to a principle, was "just interested in one thing—selling Lucky Strike cigarettes." Muttering occasionally about the "sheep dip" in competing brands, enraging the candy industry with "Reach for a Lucky Instead of a Sweet," Hill sold a lot of Lucky Strikes.

Hill died at about the time that physicians began to be convinced that cigarettes are truly dangerous. For all practical purposes, the case was proved by 1960 and was nailed down by the Surgeon General's report, *Smoking and Health*, in 1964. That report said cigarettes cause lung cancer and are implicated in almost every other respiratory disease; since then, other reports have broadened the accusation against cigarettes, which apparently can even cause damage to the fetus when used during pregnancy. The bulk of this book is a detailed story of how the tobacco industry has used its two-cent-a-pack profit to keep Americans smoking in spite of the medical evidence.

It is depressing to read what two cents a pack can accomplish. The American Medical Association accepted $10 million for research from the tobacco industry and announced soon afterward that the evidence against smoking was inconclusive. The broadcasting industry at one point spoke darkly about curtailing public service shows and news coverage if cigarette advertising revenues were lost. Former senators, congressmen, and governors went on the tobacco industry payroll.

The hero, oddly enough, was the Federal Trade Commission, flabby in many other areas but relentless on this subject. The tobacco industry has spent most of its lobbying money and influence getting Congress to prevent action by the FTC. Fighting bitterly every step of the way, the industry eventually had to accept a ban on TV and radio advertising, although it has managed to keep most other options open. Cigarette sales seem to be going up again.

Susan Wagner has provided the chronology of this fight and many of the details but not enough background. The book comes to life just once, in the last chapter, when she discusses the way of life of the tobacco farmer. The final irony, she shows, is that the people who are really being hurt by the fight against cigarettes are those who deserve it least—the poor, stubborn, independent tobacco farmers.

Tobacco country is about the last stronghold of the small farm. Because tobacco is so profitable, a farmer can raise food for his own use on a small plot, with an acre or two of tobacco supplying all the ready cash he ever sees—perhaps no more than $1,000 a year. But these farmers, many of them black, are beginning to be squeezed out. Demand for tobacco is lessening, in part because filter cigarettes use less than the regular type. Large cigarette companies are working on methods of freeze-drying and puffing tobacco so they would need only half the present amount. Pressure against government supports for tobacco farmers is growing. "In North Carolina alone, it has been estimated that 100,000 farm families will be surplus labor by 1975," says Miss Wagner.

The cigarette companies will not suffer. They have used their cash to diversify into liquor, pet foods, anything they can think of. If price supports are dropped, they will simply pay less for their tobacco. A way of life is dying, but corporate profits survive.

One alternate crop being eyed by some farmers is marijuana. Hemp was once grown as raw material for rope in what is now tobacco land, and the plant still grows wild in some areas. But this book has an implied lesson for those who are hell-bent to legalize marijuana. There is a parallel between the histories of the two plants. Many of the accusations once made against tobacco now seem ludicrous in the extreme. But the damage done by cigarettes turned out to be about as bad as even the most wildeyed crusader ever claimed. With tobacco, all the sophisticates were wrong, and all the simples were right. Perhaps that is why the cigarette survives in spite of everything.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The time set apart for the transaction of routine morning business has now expired, and morning business is closed.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair lays before the Senate the unfinished business, which will be stated.

The assistant legislative clerk read as follows:

A bill (S. 2515) to further promote equal employment opportunities for American workers.

The Senate proceeded to consider the bill.

The ACTING PRESIDENT pro tempore. The pending question is the Dominick amendment, No. 611.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

DOMINICK AMENDMENT

Mr. BYRD of West Virginia. Mr. President, I am prepared to propound a unanimous consent request with regard to the pending amendment of the distinguished Senator from Colorado (Mr. DOMINICK). I am authorized to do so by the distinguished majority leader after having cleared the matter with the distinguished Republican leader, after having consulted with the distinguished manager of the bill, the Senator from New Jersey (Mr. WILLIAMS), the distinguished senior Senator from New York (Mr. JAVITS) the distinguished junior Senator from Colorado (Mr. DOMINICK), and after having discussed the matter with other Senators.

I ask unanimous consent that the vote on the pending amendment by the Senator from Colorado (Mr. DOMINICK), as amended, if amended, occur tomorrow at 10:45 a.m.

Provided further, that the amendment by the Senator from Colorado (Mr. DOMINICK) not be open to amendments in the second degree after today.

ADJOURNMENT TO 9:45 A.M.

Ordered further, that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. tomorrow.

ROUTINE MORNING BUSINESS

Provided further, that following the recognition of the two leaders tomorrow, there be a period for the transaction of routine morning business not to exceed 15 minutes.

UNFINISHED BUSINESS

Provided further, that at the conclusion of morning business tomorrow, the Chair lay before the Senate the unfinished business and that time on the Dominick amendment then begin running, to be equally divided and controlled by the Senator from Colorado (Mr. DOMINICK) and the manager of the bill, the Senator from New Jersey (Mr. WILLIAMS).

Mr. ALLEN. Mr. President, reserving the right to object, and I hope that I shall not object, if I understand the request by the distinguished Senator from West Virginia correctly, the junior Senator from Alabama voted for the Dominick amendment. It was voted on by the Senate on one occasion. He voted to reconsider the vote by which it failed of adoption. He is ready to vote on it right now. He is ready to vote on it at any time. He has enjoyed the discussion of this amendment and the postponement of the final vote by the proponents of S. 2515. But he is not ready, as long as this amendment is pending, to bring in any of the amendments that he and the distinguished senior Senator from North Carolina (Mr. ERVIN) have.

Does the junior Senator from Alabama correctly understand, then, that insofar as this bill is concerned, the Dominick amendment will remain the pending

business before the Senate until the vote?

I would not want to rule out bringing in other matters, but insofar as consideration of other amendments is concerned, will any other amendments be brought in prior to a vote on the Dominick amendment? In other words, the junior Senator from Alabama feels that that should be the first amendment voted on.

Mr. BYRD of West Virginia. I have already discussed this matter with the junior Senator from Alabama. He states the situation very clearly. As I understand it, there may, and in all likelihood will, be amendments in the second degree offered today.

The bill cannot be advanced to third reading, of course, certainly not before 11 a.m. tomorrow and the vote to be taken thereon. The Senator from Alabama would be under no pressure to offer his amendments today. There is no way he could be forced to. Certainly no attempt would be made to do so if——

Mr. ALLEN. Well, theoretically, of course, the amendment could be laid aside and then it would be in order to bring in other amendments, but the outcome of the other amendments depends in large measure on the outcome of the vote on the Dominick amendment.

So, for that reason, the junior Senator from Alabama would not like to see any vote on any amendment to the pending bill, although not an amendment in the second degree to the Dominick amendment. That could be offered, of course. But I would not like to agree to take up any amendment and have a vote on it or have a discussion prior to a vote on the Dominick amendment.

Mr. BYRD of West Virginia. Mr. President, if the Senator would yield, I will give the Senator that assurance, that no amendments other than amendments in the second degree to the pending amendment will be considered today. As I understand it, the Senator would object to temporarily laying aside the pending amendment for other amendments, but would not object to laying it, or the bill for that matter, temporarily aside, for the consideration of other business.

Mr. ALLEN. The Senator is correct. I would not object even to having other bills considered, or nongermane matters.

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

Mr. BYRD of West Virginia. I yield.

Mr. JAVITS. Mr. President, there is only one qualification that should be made. We have a right to amend the parts of the bill that would be stricken. The words "second degree amendment" are not inclusive enough. It should include the amendments that we have a right to make to those parts of the bill stricken, if any. I do not know of any at this time.

Mr. ALLEN. Mr. President, would that mean amendments to any section other than those to which the Dominick amendment is directed?

Mr. JAVITS. No. We could only move to amend what the Dominick amendment strikes. So the words "second degree" would include amendments to the Dominick amendment and amendments to those parts of the bill which the Dominick amendment strikes.

Mr. ALLEN. Mr. President, they would be perfecting amendments.

Mr. JAVITS. The Senator is correct.

Mr. ALLEN. With that understanding, I withdraw my objection.

The PRESIDING OFFICER (Mr. CHILES). Is there objection to the unanimous consent request? The Chair hears none, and it is so ordered.

QUORUM CALL

Mr. JAVITS. 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.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess, subject to the call of the Chair, with the understanding that the recess not extend beyond 2:15 p.m. today.

The motion was agreed to; and (at 1:13 p.m.) the Senate took a recess, subject to the call of the Chair.

The Senate reassembled (at 2:15 p.m.) when called to order by the Presiding Officer (Mr. ROTH).

QUORUM CALL

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

The PRESIDING OFFICER (Mr. ROTH). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

EXTENSION OF TIME FOR EULOGIES TO LATE SENATORS HOLLAND AND ROBERTSON

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the RECORD remain open for 10 additional days for Senators to express eulogies concerning our late departed former colleague, Senator Spessard Holland, and our late departed former colleague Senator Willis Robertson.

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

LIMITATION OF STATEMENTS DURING MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that statements be limited to 3 minutes during the period for the transaction of routine morning business on tomorrow.

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

RECESS

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess for 10 minutes.

The motion was agreed to; and (at 2:39 p.m.) the Senate took a recess.

The Senate reassembled (at 2:49 p.m.) when called to order by the Presiding Officer (Mr. ROTH).

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2819) to provide foreign military and related assistance authorizations for fiscal year 1972, and for other purposes.

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

EQUAL EMPLOYMENT OPPORTUNITIES ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 3, of the Dominick amendment strike lines 1 through 8 and insert in lieu thereof the following: "mission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall bring a civil action against the respondent named in the charge. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent"

Mr. JAVITS. I yield myself 10 minutes.

Mr. President, as we go into the Dominick amendment, because of the very odd situation in which we found ourselves yesterday, we find things in it that even the author of the amendment himself would want to see changed—not that

this is one of those, but, in any case, we do find that.

Yesterday, we were able to offer two amendments which really were essential and just, and very materially bear on the rights which would be affected should this amendment be adopted and become part of our bill. Similarly with the amendment I have now called up.

It will be noted that this amendment deals with the right of the complainant in a job discrimination charge to bring an action in his own name, and this would obtain if the Commission did not choose to sue under this amendment. The way in which that happens is that this amendment provides that if the Commission has been unable—I quote from the top of page 3—

to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge.

So far so good.

If the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent named in the charge within 180 days from the date of filing the charge, a civil action may be brought after such failure or refusal, within 90 days, against the respondent.

That means by whom? Then we go on. I have read only the words affected by my amendment. By whom? To wit, the respondent named in the charge, either by the person claiming to be aggrieved or, if the charge was filed, by an officer or employee of the Commission, by any person who the charge alleges was aggrieved by the alleged unlawful employment practice.

The missing link is this: if a complainant is cut off by the fact that the Commission obtains voluntary compliance, then, what is voluntary compliance, and what does the complainant have to say about it? Remember that you are cutting off his right to sue, and if you cut off his right to sue, does he have no voice in the matter whatever, or is he simply foreclosed by whatever the Commission decides is voluntary compliance, whatever that means? No effort is made to define it, nor can it be defined; because if you deal with a negotiated settlement proposition or a consent proposition, you cannot very well define it into things.

One problem is that the words "voluntary compliance" are not words of art such as are used in this field. The words I have used in the amendment are "conciliation agreement." Those are words of art, and they also are executive words, in the sense that an agreement has to be entered into, signed, sealed, and delivered; whereas, "voluntary compliance" is a kind of amorphous proposition which may consist of a combination of acts, letters, telephone calls, and so forth. So, in the first place, the amendment is desirable in terms of precision.

Second, the amendment will require that the conciliation agreement be one to which the complainant has consented. In short, if he does not assent, he has a right to sue. If he does assent, he has no right to sue. It seems to me that that is the very least that should be provided.

You could go further, if you really wanted to establish a complicated procedure, and say that no agreement should be binding on the complainant unless a court proceeding was had in the absence of his consent and the court approved it as fair, because the party would not be a party to the agreement; whereas, the Commission would, having accepted it in lieu of a suit by it, under the Dominick amendment.

That is what is done, for example, in derivative stockholder suits, where you face a somewhat similar situation. Should this prove to be a change which Senator Dominick would accept, I would be willing to revise the amendment in the alternative—that is, to provide that the complainant may sue or that the Commission may submit the agreement to a court of suitable jurisdiction; and if the court found it fair and equitable, the complainant would be bound.

Obviously, some element of consent, or what is tantamount to it, is urgently necessary in terms of common equity if you are not to get into a situation where you cut off a complainant's right and the complainant cannot do anything about it and the agency which cuts off his right is a party to the settlement. That is the distinction.

I, myself, have argued for the cease-and-desist order practice on the part of the Commission. But there it is not a party to any settlement. It is acting in a judicial capacity. Here, it would be a party to a settlement, and therefore something more than the sheer settlement should be required before the complainant is cut off from his right to sue. That is the essence of the agreement, Mr. President.

Again, I point out that this is not the only one that we have to face. I think it is only fair to point this out, because the majority leader yesterday talked in general terms of the fact that we are stalling or using dilatory tactics or offering amendments which may not be absolutely essential, and so forth. But I respectfully point out to the Senate that we have put in our amendments, I believe—and certainly the Senate showed it yesterday—meritorious amendments which relate to the substance of the amendment of the Senator from Colorado and which were, in a sense, overlooked in the sweeping anxiety to get on with the vote, which we did yesterday, in respect of the unainmous-consent agreement. But when put into the position where we had to examine this amendment in scrupulous detail in terms of its possibly becoming part of the bill, we found substantive matters which urgently need correction. I believe, in all decency and equity, that this is one of them; and I hope very much that the Senate will adopt this amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, according to the unanimous-consent agreement, if the manager of the bill is in agreement with the amendment, the time in oppostion is under the control of either the minority leader or his designee, and he has so designated me.

Mr. WILLIAMS. Mr. President, I support the amendment of the Senator from New York. So, under the agreement, any speaking I would do would be on our time; and, under the agreement, the Senator from Colorado has the remainder of the time.

Mr. DOMINICK. Under those circumstances, I yield myself 10 minutes in order to ask some questions on this matter and to raise some precautionary warning signals.

I say to the Senator from New York that I can understand that he wants to use perhaps some different wording—namely, "conciliation agreement" instead of "voluntary compliance." I have no objection to that.

However, I should like to point out that under the amendment as presently written it now says that if within 30 days after a charge is filed with the Commission within 30 days after the expiration of any period of reference under subsection (c) or (d), the Commission has been unable to obtain voluntary compliance, the Commission may bring a civil action.

Whereas the language of the present amendment gives the Commission the discretion to file an action, this language requires that the Commission "shall" bring a civil action.

Without trying to be too technical or too difficult about it, I believe that "shall" defeats the purpose of the 30-day delay which is simply designed to try to get, as they say in the delivery business, "a burr under the tail" of the parties. But I do not see why we should require them within 30 days to bring suit. They might be able to accomplish voluntary compliance within 40 days or it might take 32 days, but under the language of this amendment what happens if they do not file suit within 30 days? Then what do we do?

In other words, I think that the word "shall" in the second line of the Senator's amendment should be changed back to the word "may," as is the case, if the Senator will look through his amendment, to the question of whether the person aggrieved is going to sue or not going to sue.

I would therefore ask the Senator whether he would be amenable to changing that?

Mr. JAVITS. May I point out that the reason we included "shall" is, in a sense, that it goes with the original bill. If the Senator will be kind enough to refer to page 38 of the bill, subsection (f), which deals with this particular matter, he will see that it says:

(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon any respondent not a government, governmental agency, or political subdivision a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less than five days after the serving of such complaint. In the case of a respondent which is a government, governmental agency, or political subdivision, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action

against such respondent in the appropriate United States district court.

In other words, having found reasonable cause, the Commission, according to the original bill, is required to serve a complaint, and so forth.

Mr. DOMINICK. May I continue to point out that what we are trying to do whenever we can is to have the unlawful employment practice charge solved by voluntary compliance. I think that all of us would prefer to see this rather than a commission filing a cease and desist order, or as in my amendment, having to go to court. I point out to the Senator that although the word "shall" is in subsection (f) on page 38 of the original bill, the difference between that situation and the one posed by the amendment which I have prepared is the fact that there is no time limit in subsection (f) in which the commission has to determine when voluntary compliance is or is not possible. So that there is no 30-day limit. All I am saying is that we are putting a 30-day limit where we are saying, "Okay. If you have not settled by that time, we have the right to go to court."

It would seem to me that in the interest of flexibility of the Commission's schedule, and in the interest of flexibility in working something out through voluntary compliance, it would be far better to put in the word "may."

If the Senator from New York will change that word "shall" to "may," I shall be happy to accept the amendment.

Mr. JAVITS. May I ask this of the Senator: If we do that, if we change the word "shall" to "may," do we not have to have some cutoff time as far as the Commission is concerned, with respect to its exercise of that discretion in bringing a civil action assuming, for example, if the Senator's amendment—if within 30 days after a charge is filed with the Commission or 30 days after a period of reference in subsection (c) or (d)—this relates to State and local governments references and the Commission has been unable to obtain compliance, the Commission may bring a civil action. Would not the Senator agree that if we are going to adopt that suggestion, that we leave it at "may," we have to put some termination date upon the Commission itself so that the complainant may sue without necessarily sitting around awaiting 6 months.

Mr. DOMINICK. I had thought that we then go on with the rest of the Senator's amendment. We can shorten the 180-day private filing restriction as far as I am concerned, but I think we should keep in mind that this is a Commission which has been appointed for the purpose of trying to solve any employment discrimination that there may be and, consequently, I do not think that we should assume they will not take action where there is a clear case. Problems will arise where there are gray areas, or where they are not sure whether they have substantial evidence to support a case. Under those circumstances, it would seem to me that we should give them more time. If we want to say 90 days from the filing of such a charge, or on the expiration of any period, instead of 180 or 120, that is all right with me. If the Senator would do that, then we are changing the timetable which the committee has already worked out in the process of trying to determine what should be done with enforcement procedures.

Mr. JAVITS. In view of the disposition of the Senator to come to some agreement on this amendment, so that we shall not proceed improperly, I should like to suggest the absence of a quorum, if that is agreeable, and we will take a short quorum break, with the time being charged to both sides, so that we can do our best to work out some language which will carry out our intentions, in view of the fact that, in principle, the Senator thinks there is equity to this amendment.

Mr. DOMINICK. That will be fine with me.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum with the time to be charged equally to both sides.

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

Mr. JAVITS. 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 unanimous consent that the order for the quorum call be rescinded.

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

Mr. JAVITS. Mr. President, I modify my amendment by changing the word "shall" in the second line to "may".

The PRESIDING OFFICER. The amendment is so modified.

Mr. JAVITS. Mr. President, the reason for the modification is that I do not feel, with an agency of this character, that the word "shall" would have any greater meaning than the word "may" and also because I feel the Commission should not, in view of its purpose, be under the kind of strict timetable within the parameters, of course, that the amendment sets out that it would otherwise be if we left the word "shall" which is mandatory. We assume that they must obey the law in the amendment.

We have retained the greater good for the interest of the person aggrieved the ability to sue, which is the main point. That is being retained in the amendment as modified and I think this is the desirable way in which to proceed.

If the Senator from Colorado is satisfied I am prepared to yield back my time and allow action to take place on this amendment to the amendment.

Mr. DOMINICK. Mr. President, I yield myself 2 minutes.

I appreciate the courtesy of the Senator from New York. I think this change is very meritorious, as I pointed out in my first statement. I do not think the Commission should be mandated on what date an agency should bring suit when we are trying to work out matters the best we can by conciliation.

As a result, with the word "may" instead of "shall" and having preserved the right to the Commission to file suit, and the respondent if he does not feel the Commission acted properly, it would seem proper to proceed in this way. Therefore, I have no objection to the adoption of the amendment as modified.

I yield back my time.

Mr. JAVITS. I yield back the remainder of my time.

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

The amendment, as modified, was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read the amendment to the amendment of the Senator from Colorado (Mr. DOMINICK), as follows:

On page 3, line 3 of the Dominick amendment strike "the respondent named in the charge" and substitute in lieu thereof: "any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States District Court."

On page 3, line 7, insert after the word "section" the following: "the Commission or the Attorney General in a case involving a government, governmental agency or political subdivision."

The PRESIDING OFFICER. Who yields time?

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

The purpose of this amendment is to correct a very important oversight in the amendment offered by the distinguished Senator from Colorado. His amendment would substitute for the administrative hearing procedure permitting the commission, after it is unable to obtain voluntary compliance, authority to bring a civil action against a respondent named in the charge.

The amendment of the Senator from Colorado appears to treat all respondents in the same manner. During discussions of this issue in the committee there was a strong feeling that respondents which were governments or governmental agencies or political subdivisions should be given special consideration in the handling of charges brought by employees of such agencies.

Mr. President, the amendment that I am offering started as an amendment in

the executive session for the writeup of this bill. It was offered by the Senator from Missouri (Mr. EAGLETON), and the Senator from Ohio (Mr. TAFT) and it prevailed there. It is in the bill that is before us. I am now offering an amendment to have the same provision apply to the Dominick amendment.

The procedure worked out by the committee was to permit actions brought against State and local government agencies to be brought by the Attorney General in the U.S. district courts.

The PRESIDING OFFICER (Mr. ROTH). Will the Senator suspend for a moment? In order to consider his amendment, unanimous consent is required, since it is an amendment to an amendment already agreed to.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the amendment be considered in order.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. WILLIAMS. Mr. President, the amendment of the Senator from Colorado would allow actions against State and local government agencies to be brought in Federal district courts but would require the Commission to file the complaint.

I believe that this discussion in the committee and the intent of the committee in providing that the Attorney General bring such actions was basically twofold.

First, there was the strong feeling that cases of discrimination by State and local government agencies should be handled by the full force of the United States of America acting directly through the Attorney General. By placing the full weight of the U.S. district courts behind equal employment opportunity in State and local governments, the committee bill provided the necessary machinery to insure that State and local government agencies fulfill the promise of equal rights.

In addition, the special enforcement procedure when State and local government agencies are respondents provides the necessary power to achieve results without the needless friction that might be created by a Federal executive agency issuing administrative orders to States and localities.

I will say, Mr. President, as further background, that sitting on the Labor and Public Welfare Committee we have men who have had distinguished careers before coming to the United States Senate in State government, some as attorneys general of the States that they represent here. So we felt that they spoke with particular authority about the possibility of friction that might be created by a Federal executive agency issuing administrative orders to sovereign States and their subdivisions.

Mr. President, it is for these reasons that I believe the amendment of the Senator from Colorado should be amended to provide special treatment for respondents who are governments, governmental agencies, or political subdivisions. In those cases the Commission should be required, after failing to obtain voluntary compliance, to refer the case to the Attorney General who would then be empowered to bring a civil action against a respondent in the appropriate United States district court.

Mr. President, further amplification is included in the committee report, and I ask unanimous consent that excerpts from the report constituting a further discussion of the wisdom of this amendment be printed in the RECORD at this point.

There being no objection, the excerpts from the committee report (No. 92–415) were ordered to be printed in the RECORD, as follows:

EXCERPTS FROM COMMITTEE REPORT

STATE AND LOCAL GOVERNMENTS

The bill would amend section 701 of the Act (section 2 of the bill) to broaden the jurisdictional coverage of title VII by deleting the existing exemptions for State and local government employees. The Attorney General is given the authority to bring civil actions involving unlawful employment practices committed by State and local governmental agencies.

The Committee believes that employees of State and local governments are entitled to the same benefits and protections in equal employment as the employees in the private sector of the economy.

There are at present approximately 10.1 million persons employed by State and local governmental units. This figure represents an increase of over 2 million since 1964, and all indications are that the number of State and local employees will continue to increase more rapidly during the next few years. Few of these employees, however, are afforded the protection of an effective Federal forum for assuring equal employment opportunity. By amending the present section 701 to include State and local governmental units within the definition of an "employer" under Title VII, all State and local governmental employees would, under the provisions of the bill, have access to the remedies available under the Act.

In a report released in 1969 by the U.S. Commission on Civil Rights, "For All the People * * * By All the People," that Commission concluded that:

* * * State and local governments have failed to fulfill their obligation to assure equal job opportunity * * * Not only do State and local governments consciously and overtly discriminate in hiring and promoting minority group members, but they do not foster positive programs to deal with discriminatory treatment on the job.

The report's findings indicate that the existence of discrimination is perpetuated by both institutional and overt discriminatory practices, and that past discriminatory practices are maintained through *de facto* segregated job ladders, invalid selection techniques, and stereotypical misconceptions by supervisors regarding minority group capabilities. The study also indicates that employment discrimination in State and local governments is more pervasive than in the private sector.

In another report issued by the U.S. Commission on Civil Rights in 1970, "Mexican Americans and the Administration of Justice in the Southwest," the Commission found that in the five Southwestern states with the highest concentration of Spanish-speaking Americans, their representation in the vital area of law enforcement was significantly disproportionate to their demographic distribution. The report shows that in these five Southwestern states, Spanish-speaking Americans, who constitute approximately 12% of the population account for only 5.2% of police officers and 6.11% of civilian employees associated with law enforcement agencies.

This failure of State and local governmental agencies to accord equal employment opportunities is particularly distressing in light of the importance that these agencies play in the daily lives of the average citizen. From local law enforcement to social services, each citizen in a community is in constant contact with many local agencies. The importance of equal opportunity in these agencies is, therefore, self-evident. In our democratic society, participatory government is a cornerstone of good government. Discrimination by government therefore serves a doubly destructive purpose. The exclusion of minorities from effective participation in the bureaucracy not only promotes ignorance of minority problems in that particular community, but also creates mistrust, alienation, and all too often hostility toward the entire process of government.

The Constitution is imperative in its prohibition of discrimination by State and local governments. The Fourteenth Amendment guarantees equal treatment of all citizens by States and their political subdivisions, and the Supreme Court has reinforced this directive by holding that State action which denies equal protection of the laws to any person, even if only indirectly, is in violation of the Fourteenth Amendment. It is clear that the guarantee of equal protection must also extend to such direct action as discriminatory employment practices.

The Committee believes that it is an injustice to provide employees in the private sector with the assistance of an agency of the Federal Government in redressing their grievances while at the same time denying assistance similar to State and local government employees. The last sentence of the Fourteenth Amendment, enabling Congress to enforce the Amendment's guarantees by appropriate legislation is frequently overlooked, and the plain meaning of the Constitution allowed to lapse. The inclusion of State and local government employees within the jurisdiction of Title VII guarantees and protections will fulfill the Congressional duty to enact the "appropriate legislation" to insure that all citizens are treated equally in this country.

The Supreme Court has further indicated that at least part of the extension of jurisdiction as contemplated by S. 2515 is a proper constitutional exercise of power under the Commerce Clause. In its decision in *Maryland v. Wirtz*, 392 U.S. 183 (1968), the Court upheld the extension of the Fair Labor Standards Act to certain classes of public employees as a legitimate exercise of congressional regulatory authority under the Commerce Clause. The Court rejected the argument that Federal regulation of the employment practices of State and local governments is an improper infringement upon the sovereignty of the States. Pointing out that the activities of State and local governments can affect commerce, it held:

"If a State is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State too may be forced to conform its activities to Federal regulations."

A question was raised in the Committee concerning the application of Title VII in the case of a Governor whose cabinet appointees and close personal aides are drawn from one political party. The Committee's intention is that nothing in this bill should be interpreted to prohibit such appointments unless they are based on discrimination because of race, color, religion, sex or national origin. That intention is reflected in sections 703(h) and 706(w) of the law.

* * * * *

SPECIAL ENFORCEMENT PROCEDURE FOR CASES INVOLVING EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

In those cases involving a respondent which is a "government, governmental agency, or political subdivision", and in which EEOC has been unable to secure voluntary compliance as provided under section

706 (b) (f), the bill provides that the Commission shall refer the case to the Attorney General for filing of a civil action against the respondent in the appropriate U.S. district court. A person aggrieved is given the right to intervene in such civil actions.

The committee has no doubt of the need for strong enforcement of equal employment opportunity at all levels of government, and believes that governmental units should lead the way in providing equal opportunity.

Accordingly, the committee bill provides for coverage of State and local government employees and for a concomitant means of enforcement to make that coverage meaningful. By placing the full weight of the U.S. Attorney General and the authority of the U.S. district courts behind equal employment opportunity at the State and local government level, the committee believes that the machinery has been provided to insure State and local leadership in the area of equal employment opportunity.

This enforcement scheme provides the necessary power to achieve results without the needless friction that might be created by a Federal executive agency issuing orders to sovereign States and their localities. In short, the committee believes that the objective of equal employment opportunity can best be achieved by providing this particular means of enforcement where State or local governmental units fail to comply with the law.

Mr. WILLIAMS. I know that this amendment was supported when it was offered to the bill and supported in the committee by the Senator from Colorado, and I would hope that he might favorably consider it as an amendment to his amendment.

This again, Mr. President, is one of the amendments offered to the Dominick amendment now. It was not offered before the vote was taken yesterday. These amendments were discovered to be necessary when we were put to a more complete examination of the Dominick amendment, and we felt that it would be wise indeed to add those things that Senator JAVITS and I and other Senators felt would be constructive additions to the Dominick amendment. This is one of those amendments.

Mr. BYRD of West Virginia. Mr. President, I ask that staff people be instructed not to pass in front of Senators who are addressing the Chair.

The PRESIDING OFFICER. The Chair so instructs the staff. Who yields time?

Mr. DOMINICK. Mr. President, I yield myself 3 minutes.

Mr. President, I think this is an excellent amendment and I am very happy that the Senator from New Jersey brought it up. I think it is only fair for the purposes of the RECORD to remark that it is ironic that just yesterday the Senator from New York, backed by the Senator from New Jersey, eliminated the Attorney General or any of his staff from taking any case before the U.S. Court of Appeals, thereby limiting the Attorney General's office to appeals before the U.S. Supreme Court. This language provides fair representation for alleged aggrieved State, county, or local government employees in district court.

I, of course, heartily support that idea. I think it is very good; and, as the Senator from New Jersey has so properly said, it just does not seem right, and did not seem right in committee, that any agency of the Federal Government, as such, should have the right to sue, whether it be a State, city, town, school district, sanitation district, or whatever it might be, alleging that their employment practices were illegal.

It would seem to me, if we are going to provide grievance procedures for these employees it ought to be within the Justice Department so that the respondent governmental unit is dealing with one of the Federal Government's most respected and objective departments.

As a result, I am happy to endorse this particular amendment, and to have it added on to mine.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. I yield back the remainder of my time.

Mr. WILLIAMS. Mr. President, I have no further speakers on behalf of this amendment. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I again suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read as follows:

On page 5, line 7 of the Dominick amendment, insert the following after "appropriate." Back pay liability shall not exceed that which accrues from a date more than two years prior to the filing of a charge with the Commission.

Mr. BEALL. Mr. President, on this amendment I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from Maryland is recognized for 5 minutes.

Mr. DOMINICK. Mr. President, will the distinguished Senator from Maryland allow me to be a cosponsor of his amendment?

Mr. BEALL. I am very happy to make the Senator a cosponsor and, Mr. President, I ask unanimous consent that the name of the Senator from Colorado (Mr. DOMINICK) be added as a cosponsor of my amendment.

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

Mr. BEALL. Mr. President, in a brief explanation of this amendment, it is indicated in reading the amendment, that it goes to page 5, line 7, of the Dominick amendment No. 611. It includes a provision that was already in the original legislation. We are interested in being fair to all parties, whatever the outcome of the current controversy as to whether this particular Dominick amendment should be agreed to; but should there be a finding in favor of the plaintiff in one of these cases, we want to make sure that the penalty is within the balance of fairness.

In the committee, there was agreement that should there be a finding, any award of back pay liability should not go back further than 2 years prior to the time that the charges were brought before the Commission.

My amendment would amend the Dominick amendment so that were there to be an award by the court, the back pay liability would not extend more than 2 years back on which the charges were brought before the Commission again.

Mr. JAVITS. Mr. President, will the Senator from Maryland yeld?

Mr. BEALL. I yield.

Mr. JAVITS. Is it not a fact that the bill as we reported it on page 40, on lines 6 to 9, contains the same provision?

Mr. BEALL. That is correct.

Mr. JAVITS. This was fought out in committee. Those of us who wished to sustain the committee bill insofar as we could, in all fairness to what was given as well as what we received, would have to support this provision.

Mr. BEALL. Precisely. I agree with the Senator from New York on that.

Mr. President, this is a brief and I believe a sufficient explanation of my amendment.

Mr. DOMINICK. Mr. President, will the Senator from Maryland yield me a few minutes time, since I am a cosponsor of his amendment and I do not have any time of my own?

Mr. BEALL. I would be happy to yield the Senator the remainder of my time if he wants it.

Mr. DOMINICK. I will not take very long. I am very glad the Senator brought this matter up. That would be our intention, in the event my amendment is adopted, to offer this as a subsequent amendment to the bill because it was stricken in the amendment by inadvertence. It is eminently fair, and I am glad the Senator brought the matter up. I am happy to have it included in my amendment.

I hope, Mr. President, that the Senator from Maryland will be supporting my amendment as amended.

Mr. BEALL. I am making no commitments as to future action.

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

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, I support the amendment and am happy to yield back my time.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. 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.

All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Maryland.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. CANNON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alabama (Mr. SPARKMAN), the Senator from Illinois (Mr. STEVENSON), and the Senator from Florida (Mr. CHILES) are necessarily absent.

I further announce that, if present and voting, the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. MAGNUSON), the Senator from Rhode Island (Mr. PASTORE), the Senator from Illinois (Mr. STEVENSON), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Washington (Mr. JACKSON) would each vote "yea."

Mr. SCOTT. I announce that the Senator from New York (Mr. BUCKLEY) is absent on official business.

The Senator from Kentucky (Mr. COOPER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Illinois (Mr. PERCY), the Senator from Ohio (Mr. TAFT) and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from New Hampshire (Mr. COTTON) and the Senator from Arizona (Mr. GOLDWATER) are detained on official business.

If present and voting, the Senator from Illinois (Mr. PERCY) and the Senator from Ohio (Mr. TAFT) would each vote "yea."

The result was announced—yeas 73, nays 0, as follows:

[No. 9 Leg.]

YEAS—73

Aiken	Ellender	Nelson
Allen	Ervin	Packwood
Allott	Fannin	Pearson
Baker	Fong	Pell
Bayh	Gambrell	Proxmire
Beall	Gurney	Randolph
Bellmon	Hansen	Ribicoff
Bennett	Hart	Roth
Bentsen	Hatfield	Saxbe
Bible	Hollings	Schweiker
Boggs	Hruska	Scott
Brock	Inouye	Smith
Brooke	Javits	Spong
Burdick	Jordan, N.C.	Stafford
Byrd, Va.	Jordan, Idaho	Stennis
Byrd, W. Va.	Kennedy	Stevens
Case	Long	Symington
Church	Mansfield	Talmadge
Cook	Mathias	Thurmond
Cranston	McClellan	Tower
Curtis	McGee	Tunney
Dole	Metcalf	Williams
Dominick	Miller	Young
Eagleton	Montoya	
Eastland	Moss	

NAYS—0

NOT VOTING—27

Anderson	Griffin	Mondale
Buckley	Harris	Mundt
Cannon	Hartke	Muskie
Chiles	Hughes	Pastore
Cooper	Humphrey	Percy
Cotton	Jackson	Sparkman
Fulbright	Magnuson	Stevenson
Goldwater	McGovern	Taft
Gravel	McIntyre	Weicker

So Mr. BEALL's amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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.

ORDER FOR VICE PRESIDENT TO HAVE UNTIL MIDNIGHT TO SIGN ENROLLED BILL

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Vice President have until midnight to sign a duly enrolled bill after the adjournment of the Senate today.

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

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

THE PENDING QUESTION

Mr. BYRD of West Virginia. Mr. President, for the record, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending question is on agreeing to amendment No. 611, as amended, to S. 2515.

Mr. BYRD of West Virginia. I thank the distinguished Presiding Officer.

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum. I assume this will be the final quorum call of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

PRINTING OF EULOGIES TO THE LATE SENATOR WILLIS ROBERTSON AS A SENATE DOCUMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that eulogies expressed by Senators with respect to our late departed former colleague Willis Robertson be printed as a Senate document.

Mr. STENNIS. Mr. President, does the Senator refer to the eulogies expressed at the time of Senator Robertson's passing?

Mr. BYRD of West Virginia. If I may respond to the distinguished Senator, those eulogies which were expressed at that time and any eulogies which may be expressed within the next 10 days. We have asked today, and have received, consent for an additional 10 days for the expression of eulogies to our former colleague, Senator Robertson, and our former colleague, Senator Holland.

Mr. STENNIS. I thank the Senator very much. Of course I do not object.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, there will be no further rollcall votes today. There may be other amendments offered in the second degree, but if such are offered, as I understand, they will be acceptable to both sides and will be adopted by voice vote.

Senators may be assured, therefore, that there will be no further rollcall votes today.

Mr. President, when the Senate completes its business today it will adjourn until 9:45 o'clock tomorrow morning. After the two leaders have been recognized under the standing order, there will be a period for the transaction of routine morning business for not to exceed 15 minutes, after which the Chair will ask the clerk to state the unfinished business. The Dominick amendment will be the pending question, and time thereon will be under the control of the distinguished Senator from Colorado (Mr. DOMINICK) and the manager of the bill (Mr. WILLIAMS).

At 10:45 a.m. tomorrow a vote will occur on the Dominick amendment. No amendments in the second degree to that amendment will be in order after today.

May I ask the Chair if the yeas and nays have been ordered on the Dominick amendment?

The PRESIDING OFFICER. It is automatic under the existing circumstances.

Mr. BYRD of West Virginia. I thank the distinguished Presiding Officer. So there will be a rollcall vote on the amendment by Mr. DOMINICK, as amended—and it has already been amended—tomorrow at 10:45 a.m.

ADJOURNMENT UNTIL 9:45 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9:45 a.m. tomorrow.

The motion was agreed to; and (at 4:31 p.m.) the Senate adjourned until tomorrow, Wednesday, January 26, 1972, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate January 25, 1972:

DEPARTMENT OF DEFENSE

Kenneth Rush, of New York, to be Deputy Secretary of Defense, vice David Packard, resigned.

Eberhardt Rechtin of Maryland to be an Assistant Secretary of Defense; new position.

PAY BOARD

George H. Boldt, of Washington, to be Chairman of the Pay Board.

PRICE COMMISSION

C. Jackson Grayson, Jr., of Texas, to be Chairman of the Price Commission.

NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS

I. H. Hammerman II, of Maryland, to be a member of the Board of Directors of the National Corporation for Housing Partnerships for the term expiring October 27, 1974, vice Peter John Bertoglio, term expired.

SECURITIES INVESTOR PROTECTION CORPORATION

Henry W. Meers, of Illinois, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1974, vice Andrew J. Melton, Jr., term expired.

OFFICE OF ECONOMIC OPPORTUNITY

Bert A. Gallegos, of Colorado, to be an Assistant Director of the Office of Economic Opportunity, vice Donald S. Lowitz, resigned.

HOUSE OF REPRESENTATIVES—*Tuesday, January 25, 1972*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

O come, let us worship and bow down: Let us kneel before the Lord our Maker.—Psalm 95: 6.

Almighty and Eternal God, at this noon hour of a new day we reverently turn our hearts unto Thee in the mood of prayer. Grant that we may always realize our dependence upon Thee and acknowledge that only with Thee can we live nobly, plan wisely, and act courageously on behalf of our beloved country.

May Thy grace so permeate the Halls of Congress and Thy love so pervade the offices of Congressmen, that united in spirit we may ever work for peace on earth and good will among men.

In the spirit of Christ we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

PLANNED DEFICIT FOR NEXT FISCAL YEAR

(Mr. EDWARDS of Alabama asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EDWARDS of Alabama. Mr. Speaker, there is no way I can justify a planned $25.5 billion deficit for the next fiscal year on top of a $38.8 billion deficit for the current fiscal year on top of a $23 billion deficit for the last fiscal year. That amounts to $87.3 billion in deficits in 3 years. And, based on past experience, next year's expected budget will probably go over $25.5 billion. This is an economic nightmare. I am extremely disappointed that the President seems to be following the old Democrat theory that excessive Government spending is the way to cure the country's ills.

Having said this, however, I must remind my colleagues that the President cannot spend one thin dime if the Congress does not authorize and appropriate the money.

Now, more than ever before, we in the Congress must bow up our backs, sharpen our pencils, and get about the business of cutting the budget. It is easy to attack the President, but friends, the burden is on us. As Harry Truman used to say, "The buck stops here."

U.S. VESSEL ON LOAN AGAIN USED BY ECUADOR TO SEIZE AMERICANS

(Mr. PELLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PELLY. Mr. Speaker, Ecuador has seized seven U.S. fishing boats during the month of January alone, fining the American boatowners $455,380. These seizures took place in what international law considers to be the high seas. Of course, Ecuador claims jurisdiction over a 200-mile zone off her coastline.

But, again to add insult to fiscal injury, Ecuador has been using a former U.S. naval vessel for these seizures. On January 8, at 7 a.m., the *Western King* was seized by the *Manabi*, the ex-U.S. PCE 874, the *Pascagoula*, furnished to Ecuador under the military assistance program in 1960.

On January 9, the *Anna Maria*, was seized on the high seas, again by this U.S. vessel. On January 14, the *A. K. Strom* was taken by, you guessed it, the same U.S. ship; January 15, the *City of Lisbon*, nabbed by the *Manabi*, January 15, *Puritan*, also seized by this U.S. vessel given to Ecuador; and January 17, the *Blue Meridian* was taken into port by this former U.S. ship.

Mr. Speaker, the *Manabi* was given to Ecuador by the United States. We have no claim on her, despite the purpose for which she is being used. However, Ecuador still has several other U.S. vessels on loan which also have been used for the illegal seizure of U.S. fishermen, and our State Department has refused to take any steps to get these vessels back, although I believe, they have every legal and moral reason for so doing.

Mr. Speaker, I hope this Congress will stand firm in cutting off foreign aid to Ecuador for so long as she insists on seizing American citizens off the high seas, and to me it is a black mark on the United States when our own State Department continues its policy of appeasement and allows Ecuador to possess U.S. vessels which she is using against U.S. fishermen.

INTEGRATED BIOLOGICAL CONTROL METHODS TO DEAL WITH AGRICULTURAL AND FOREST PESTS

(Mr. GUDE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GUDE. Mr. Speaker, I recently introduced legislation (H.R. 12338) to authorize and earmark funds for a pilot field research project by the Department of Agriculture and the National Science Foundation to develop integrated biological control methods to deal with agricultural and forest pests. Similar legislation has been sponsored in the House by the Honorable DAVID OBEY and others and in the Senate by Senator GAYLORD NELSON. The thrust of this legislation is to eliminate once and for all the current heavy reliance on highly toxic and persistent chemical pesticides and at the same time maintain the high agricultural productivity so essential for our national welfare.

Secretary of Agriculture Butz recently announced that his Department plans to expand its research in this important area. The Department will allocate $2.25 million in fiscal year 1972 for expanded research directed toward cotton crop pests. Secretary Butz and the administration are to be congratulated for this wise move to halt the further degradation of our Nation's lands and waters by these chemical pesticides.

It is important that additional research be done on the broad spectrum of