By Mr. McCLORY:

H. Con. Res. 509. Concurrent resolution commending the President of the United States on his diligent efforts to achieve peace in Indochina and declaring it the sense of Congress that the President be supported and encouraged by Congress and the American people to continue withdrawing American forces from Indochina and to continue his efforts to bring peace to that part of the world; to the Committee on Foreign Affairs.

By Mr. SCHWENGEL:

H. Con. Res. 510. Concurrent resolution providing that the Chief Justice of the United States be invited to address a joint session of Congress on the state of the judiciary; to the Committee on Rules.

By Mr. WIDNALL:

H. Con. Res. 511. Concurrent resolution urging the review of the United Nations Charter; to the Committee on Foreign Affairs.

By Mr. WYMAN:

H. Con. Res. 512. Concurrent resolution expressing the sense of the Congress with respect to a method of determining the liability of each member state of the United Nations for contributions to the annual budget of the United Nations and the manner in which the vote of each member state in the General Assembly of the United Nations should be weighted; to the Committee on Foreign Affairs.

By Mr. JACOBS:

H. Res. 776. Resolution printing in red ink of any U.S. Government budget submitted to the Congress which on a Federal funds basis is in deficit; to the Committee on House Administration.

By Mr. LONG of Maryland:

H. Res. 777. Resolution designating January 22 of each year as "Ukrainian Independence Day"; to the Committee on the Judiciary.

By Mr. PEYSER:

H. Res. 778. Resolution commending the President for his efforts to bring about a fair and honorable end to the war in Southeast Asia, and endorsing his most recent proposals for peace as stated on January 25, 1972; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. CONTE:

H.R. 12684. A bill for the relief of the Brown Co.; to the Committee on the Judiciary.

By Mr. HOGAN:

H.R. 12685. A bill for the relief of Luther V. Winstead; to the Committee on the Judiciary.

By Mr. POAGE:

H.R. 12686. A bill for the relief of Sam Goldenberg, Jr.; to the Committee on the Judiciary.

SENATE—*Wednesday, January 26, 1972*

The Senate met at 9:45 a.m. and was called to order by Hon. FRANK E. MOSS, a Senator from the State of Utah.

PRAYER

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

Eternal Father, we lift our hearts to Thee this day in reverent thanksgiving for Thy servant Carl Trumbull Hayden. We thank Thee for his steadfast devotion to the welfare of his State and Nation, for his quiet strength, his unfailing courtesy, his integrity, his wisdom, and his faith in Thee. Make us to rejoice that he walked with us and we with him in paths of service. May his gentle but strong qualities of faithfulness and goodness abide in us and we abide in Thee forever. 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 26, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. FRANK E. Moss, a Senator from the State of Utah, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

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

ENROLLED BILL SIGNED

The ACTING PRESIDENT pro tempore (Mr. Moss) announced that, pursuant to the order of the Senate of January 25, 1972, the Vice President, on January 25, 1972, signed the enrolled bill (S. 382) to promote fair practices in the conduct of election campaigns for Federal political offices, and for other purposes, which had previously been signed by the Speaker of the House of Representatives.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, January 25, 1972, be dispensed with.

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

MESSAGE FROM THE HOUSE— ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (S. 2819) to amend the Foreign Assistance Act of 1961, and for other purposes.

The Vice President subsequently signed the enrolled bill.

ATTENDANCE OF SENATORS

Hon. VANCE HARTKE, a Senator from the State of Indiana, Hon. THOMAS J. MCINTYRE, a Senator from the State of New Hampshire, Hon. CHARLES H. PERCY, a Senator from the State of Illinois, and Hon. JOHN SPARKMAN, a Senator from the State of Alabama, attended the session of the Senate today.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

Mr. MANSFIELD. Mr. President, on the time allotted to the joint leadership, I yield at this time to the distinguished Senator from Arizona (Mr. GOLDWATER).

DEATH OF FORMER SENATOR CARL T. HAYDEN

Mr. GOLDWATER. Mr. President, this morning I wish to join with my senior colleague, Senator FANNIN, in announcing the death last evening of former U.S. Senator Carl Hayden of Arizona.

At a future date, I will place in the RECORD an extended eulogy of this unusual man. At this time, I merely want to say that we have lost a public servant who served his State and his Nation longer than any other man in history. For more than half a century Carl Hayden served in the Halls of Congress representing the great State of Arizona in a fitting and proud fashion. The passing of Carl Hayden is also a personal loss to me. His family and mine have been friends since before Arizona was a territory, and it is with heavy heart that I travel today to attend his funeral in Arizona.

Mr. President, I send to the desk in behalf of Senator FANNIN and myself, two resolutions prepared in tribute to Carl Hayden. One would provide for the renaming of the central Arizona project as the Carl Hayden project, and the other would provide for the placing of a bust of the late Senator Hayden in a proper place within the Capitol or within either of the Senate Office Buildings.

The ACTING PRESIDENT pro tempore. The resolutions will be received and appropriately referred.

LEAVE OF ABSENCE

Mr. GOLDWATER. Mr. President, I ask unanimous consent that I may be absent from the Senate after this morning until Monday next, for the purpose of attending the funeral of Carl Hayden and, on a happier note, attending the marriage of my older daughter.

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

Mr. SAXBE. Mr. President, I yield my time as acting minority leader to the Senator from Arizona (Mr. FANNIN).

Mr. FANNIN. Mr. President, it was with great sadness that I received the report of the death of our former col-

league and Senate President pro tempore, Carl Trumbull Hayden.

Carl Hayden was a son of the frontier who helped lead his Territory, State, and Nation through times of great change and progress. The Hayden name is synonymous with much of the history of Arizona.

He was a dedicated public servant who held the offices of town councilman, county treasurer, and sheriff in Arizona's territorial days. In 1912 he became Arizona's first Member of the House of Representatives. From 1927 until his retirement in 1968, Senator Hayden served in this body—and he served well, as chairman of the Appropriations Committee and as President pro tempore for 12 years.

Carl Hayden was beloved and respected by those of us who were privileged to know him. He was a fine gentleman of matchless integrity and total devotion to his duty.

I ask unanimous consent that at the close of business today, the Senate adjourn in honor of this great American, who served in Congress for 56 years.

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

Mr. FANNIN. At a later time, Mr. President, I shall extend my remarks concerning this great man.

Mr. President, I know that many Senators would like to pay tribute to former Senator Hayden and express their deep grief over his death. I ask unanimous consent that the RECORD be kept open for 15 days and that the tributes expressed be collected and printed as a Senate document.

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

Mr. MANSFIELD. Mr. President, I wish to join the distinguished Senators from Arizona (Mr. GOLDWATER and Mr. FANNIN) in expressing the deep sorrow of the Senate on the passing of one of its oldtime, outstanding, former Members.

As Senator FANNIN has indicated, Carl Hayden was an elected official in the Territory of Arizona before it became a State in 1912. In 1912, he was elected to the House of Representatives as Arizona's first Member of that body, and some years later he was elected to the Senate, where I believe he served longer than any other Member in the history of the Republic.

He was a man of kindness. He was a gentle man. He was a man who treated all alike, and those of us who had problems could always go to Carl Hayden. He would listen. He would give us sound advice.

As Carl, himself, said on many occasions, he was not a show horse; he was a work horse. I think that typified Carl Hayden's dedication to duty. It was a mark of the man who represented all that is best in a Senator and whose years of service to his Territory, to his State, and to his Nation have been marked with integrity, dedication, dignity, and understanding.

Even though Carl Hayden left us a few years ago, he never really left us, because all Members on both sides of the aisle kept in touch with him and always remembered him with affection and respect.

Mr. President, I ask unanimous consent to have printed in the RECORD an obituary published in this morning's Washington Post.

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

CARL HAYDEN, A QUIET POWER IN CONGRESS

(By Martin Weil)

Former Sen. Carl Hayden (D-Ariz.), a one-time frontier sheriff who said little but wielded great power while serving in Congress for 57 years—longer than anyone else in history—died last night in a Mesa, Ariz., hospital. He was 94.

Sen. Hayden entered the hospital for observation Dec. 30. He lapsed into a coma Sunday. His nephew, Larry Hayden, said then. "He has no particular ailment other than old age."

When he retired in 1969, Sen. Hayden had served seven full six-year terms in the Senate, and eight two-year terms in the House, which he entered a few days after Arizona became a state in 1912.

As chairman of the powerful Senate Appropriations Committee for 14 years, he was a leading member of the Senate establishment, and well known for his ability to bring dams, roads and power facilities to his state.

In the largely honorary post as president pro tempore of the Senate, he was second in the line of succession to the presidency during the years after John F. Kennedy was assassinated when the nation was without a vice president.

Yet, while highly regarded in the Senate ("there is no more influential member" said Lyndon Johnson while majority leader) and in Arizona, Sen. Hayden was little known in the nation at large.

A quiet, shy-seeming, softspoken man in public, he held but one press conference in his first 50 years on Capitol Hill. When he spoke, it was often in a mumble. Newsmen called him "the silent senator," and "the grey ghost."

The Senator explained his own philosophy this way: "When I came to Congress an old hand told me that I could play for the headlines and be a show horse, or I could buckle down and be a work horse."

It seemed apparent to Capitol Hill colleagues and observers that Sen. Hayden chose the latter course.

In his first 20 years in the Senate the taciturn westerner made only a single speech on the floor.

In later years, when he did rise in Senate debate, tall, bald, bespectacled, he would speak for no more than five or ten minutes, in a dry monotone, unembellished with rhetorical flourishes.

"When you've got the votes," he explained, "you don't have to talk."

Seldom did Sen. Hayden lack the votes. A member of Appropriations since he came to the Senate chairman since 1955, his voice was often decisive in determining whether colleagues' pet projects would get funds.

In addition, as chairman for a number of years of the Rules Committee, which voted funds for other committees, and of the Senate Democratic Patronage Committee, which dispensed jobs, he had other ways of gathering political IOUs.

Still further, he was known for political shrewdness, dedication to Senate traditions, an ability to make and keep friends, an unpretentious, homey personality, and courtesy.

"I never indulged in personalties," he said once during the heat of a political campaign, "and I don't intend to start now.

"If anybody ever heard me mention the name of my opponent, I must have been talking in my sleep."

Carl Trumbull Hayden (he seldom used the middle name) was born in Tempe, on Oct. 2, 1877, while Arizona was still a territory and the Apaches were still on the warpath.

After graduating from the Normal School of Arizona at Tempe, he entered Stanford University. There he lost an election for the first and last time.

It was for student body president. Although he was expected to win, he lost for lack of two votes—his and that of a fellow student, Nan Downing.

Sen. Hayden and Miss Downing, who later became his wife (she died in 1961), thought it would be unseemly if they voted for him.

"I've been running like a rabbit ever since," he once said.

After managing a family flour mill and general store in Tempe, and serving for two years on the town council and two more as treasurer of Maricopa County, he was elected county sheriff in 1907.

Arizona was then still a sparsely settled land of sagebrush and saguaro cactus. The growth that Sen. Hayden had a major hand in making possible was yet to come. Inevitably, legends grew about his career as a lawman.

It was once said that he had a finger shot off in a duel with a badman.

Actually, Sen. Hayden said: "I never shot at anyone and nobody ever shot at me.

"The nearest I came to shooting anyone was the day I identified a horse thief who was described as badly wanted in Utah, Colorado and Wyoming.

"I found him standing at a bar, I stuck my gun in his back and took his pistol away from him."

After jailing the suspect on a concealed weapons charge, Sen. Hayden notified authorities in the other states.

"They weren't interested enough to come get him," the big-boned, six-foot former sheriff recalled.

"So I turned him loose. I told him: " 'As long as you don't steal any horses in Arizona, it's all right with me.' "

On Feb. 14, 1912, Arizona became the 48th State. The sheriff of Maricopa County was elected congressman at large.

Turning in his star, he was sworn in Feb. 19 to begin 57 consecutive years in Congress. (A former Arizona National Guard officer, and skilled marksman, he served part of 1918 as a major of infantry.)

On Capitol Hill, he supported reclamation and roads, not only for Arizona, but also for the nation.

Asked by President Franklin D. Roosevelt to account for his intense concern with roads, Sen. Hayden replied that his home state had two things anyone would drive thousands of miles to see—The Grand Canyon and the Petrified Forest.

'They can't get there without roads," he said.

Sen. Hayden described himself as a respecter of the old political adage: "Take care of the people and they'll take care of you."

In 1927, his first year in the Senate, he broke his rule of public silence to team with a colleague in speaking for six weeks.

It was a filibuster against the bill creating Boulder (later Hoover) Dam. The bill was opposed by Arizona, which stood at first to gain none of the dam's irrigation benefits.

The bill finally passed, but not until after the Senate had compromised on the irrigation rights issue.

For decades, Sen. Hayden fought for the mammoth Central Arizona water project, calling for construction of a huge aqueduct to carry Colorado River water to Phoenix and Tucson.

After winning several times in the Senate only to see the measure die in the House, Sen. Hayden watched as it ultimately was signed by President Johnson in 1968.

Arizona grew from a population of about 200,000 when Sen. Hayden first went to Con-

gress to 1,302,161 in 1960, and more than 1.75 million today. Voting for him became a tradition in the state, a link with the pioneer past, some thought.

He was elected and reelected, passing milestone after milestone, amassing honors, awards and tributes. The silent, slightly stooped Westerner in the shapeless dark suits became a Washington legend.

There were several illnesses in his last Senate term. It was a term during which his 90th birthday came. There were strong indications that he would face a stern electoral test from Barry M. Goldwater, if he ran again. Sometimes it seemed as if he were thinking of making one last race.

On May 6, 1968, he announced his retirement, concluding with these words, a paraphrase of the Old Testament quotation:

"There's a time of war and a time of peace, a time to keep and a time to cast away, a time to weep and a time to laugh, a time to stand and a time to step aside."

Tears glistened in his eyes when he was finished.

After living for the last few years of his Senate service in the Methodist Building across from the Capitol, he moved back to Tempe after retirement.

Sen. Hayden and his wife had no children.

Mr. FANNIN. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and unanimously agreed to, as follows:

RESOLUTION

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of Hon. Carl Hayden, a Senator from the State of Arizona from March 4, 1927, to January 2, 1969, and a former President of the Senate pro tempore.

Resolved, That the Secretary communicate these resolutions to the family of the deceased.

Resolved, That, when the Senate adjourns today, it adjourn as a further mark of respect to the memory of the deceased Senator.

Mr. MOSS. Mr. President, I am deeply grieved by the news of the passing of that grand old man, and our beloved colleague, Carl Hayden. He became a legend in his own times. He preceded all of us here in the Senate, and the essence of his indomitable spirit will linger long after most of us have gone. Few men accomplished so much—and with so little fanfare.

He was proud of the fact that he was a "workhorse"—that he carried some of the Senate's heaviest burdens day in and day out—with little recognition. But because of his quiet espousal of them, many programs are built into the fabric of our country which improve the quality of our life.

Few of my colleagues have ever been more friendly and helpful to me than Carl Hayden. As another westerner, he seemed to have a special understanding of my problems, and he was always ready to listen and assist. And he was a man of his word.

The only compensating thought in viewing his passing is that he had 94 years of full living, and more than 50 years of tremendous service to his country. He set a high standard of both service and accomplishment, and few will ever equal it. America is blessed by having such a man as Carl Hayden serve for 57 years in the U.S. Congress.

Mr. TALMADGE. Mr. President, I am very saddened by the passing of Senator Carl Hayden. When I first came to the Senate, Senator Hayden was chairman of the Senate Committee on Rules and Administration. I came to know him well. I held him in the highest esteem and administration.

Senator Hayden held the alltime record, 57 years, of service in the Congress of the United States, including 42 years in the Senate. At the time of his retirement from the Senate, he was President pro tempore, and became Acting Vice President following the assassination of President John F. Kennedy.

Senator Hayden was a quiet, unassuming, and modest man. Yet, during his years here, he was one of the most influential and effective Members of this body.

I join the Senate and the Nation in mourning his passing, and Mrs. Talmadge and I extend our deepest sympathies to the family.

Mr. SCOTT. Mr. President, the Old Testament says:

There is a time of war and a time of peace, a time to keep and a time to cast away, a time to weep and a time to laugh, a time to stand and a time to step aside.

When our friend and onetime colleague Carl Hayden retired from the Senate he referred to this passage. It is still appropriate today as we mourn his loss. His great accomplishments during his more than one-half century—57 years—as a representative of the people of Arizona and the Nation are legend.

Carl Hayden was known to many as a silent Senator and as the gray ghost. He lost his first election while in college at Stanford. He never lost another election because, in his words: "I've been running like a rabbit ever since."

His career in public office began in 1912. This was before Arizona became a State. Carl appropriately enough became the Congressman-at-large when Arizona achieved statehood and he made a record for himself in the fields of reclamation and highways. He stressed the Nation was a place of beauty, but that its beauty could not be appreciated without good roads. He certainly made his point in insuring the development of roads to enable the public to visit Arizona's beautiful Grand Canyon and the Petrified Forest.

His story of success is legendary. It is doubtful another individual will achieve his record of service in the Congress of more than 57 years.

To the members of his family and to the people of Arizona I extend my personal condolences and those of the Senate.

Mr. McGEE. Mr. President, the Nation was saddened to learn today of the death of former Senator Carl Hayden of Arizona. I ask my colleagues to join me in paying tribute to the memory of a man who scored a remarkable and unexcelled record of service to the people of Arizona and this Nation.

When Senator Hayden announced nearly 4 years ago that he was not seeking reelection to this body after almost six decades of public service to his State and Nation, it marked the end of a long and distinguished career in the Halls of Congress. Many of us remarked at the time of his retirement that we would miss him; that we would miss his wisdom; and that we would miss his good nature.

Carl Hayden was the epitome of dedication as a public servant. His legislative accomplishments were not only impressive, but also far reaching in their impact. His farsightedness will continue to influence the course of American history for decades to come.

It was my fortune to serve under Senator Hayden on the Committee on Appropriations for a decade. I will always owe to him a great debt of personal gratitude for I found him to be a wise leader, a fair mediator, an enthusiastic advocate, and an effective mentor. When the occasion presented itself, Carl Hayden was also a tough opponent, but his opposition was always dedicated to principle and fairness.

We will all miss Carl Hayden. His influence and friendship will always be felt by those of us who were fortunate enough to serve with him. Although death must be inevitable for us all, we must nevertheless mourn and regret the passing of men of stature. Carl Hayden was indeed a noble man.

Mr. STENNIS. Mr. President, I rise to express my sorrow and sense of loss in the passing of former Senator Carl Hayden of Arizona.

When I came to the Senate in 1947, Carl Hayden had already served here for 20 years. He was to serve in the Senate for another 22 years, until his retirement in January 1969—12 of those years as President pro tempore. So I have been privileged to serve with him for a long time, to work with him, and to know him well.

He was a dedicated American who spent the phenomenal total of 66 years in service to the people of Arizona. He held city and county offices for 8 years and when Arizona became a State in 1912 he was elected to Congress. He served eight terms in the House prior to coming to the Senate in 1927. This long unbroken service in public office is in itself a complete testimonial to the esteem with which he was held by the people of his State.

This esteem was indeed well deserved, as all of us know who were associated with him here in the Senate. We knew him to be quiet, courteous, friendly, helpful—and above all—a hard worker and an extremely effective Member of this body. I served with him on the Public Works Subcommittee of the Appropriations Committee and in other assignments. He worked long hours and he prepared his bills meticulously. Among other fine qualities of our departed friend, I recall so pleasantly the fact that he always gave helpful attention, wise counsel, and real guidance to new Members.

This distinguished Senator and kind friend gave of his many talents, without sparing himself, toward the good of the people of his State and of this country. He leaves his memory here with us, in

the Senate, as one who in the highest degree deserves the respect and gratitude of his countrymen. May he rest in peace after a life well done.

Mr. FANNIN. Mr. President, the death of former Senator Carl T. Hayden has saddened our Nation, and the sorrow is especially evident in the State of Arizona.

Arizonans are mourning his passing, and they are recalling with pride the great services that Senator Hayden rendered to his native State, to his beloved West, and to his country.

Carl Hayden held great power in the Congress although he was a quiet and unassuming man. And he was a man who scrupulously avoided any misuse of the power he held.

Mr. President, the Arizona Republic today carries the news of Senator Hayden's death, along with several articles which detail the life of this magnificent gentleman. I ask unanimous consent to insert these articles in the RECORD.

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

ARIZONAN SERVED LONGEST IN CONGRESS

(By Gen Avery)

MESA.—Arizona's former Sen. Carl Hayden, who served longer in the U.S. Congress than any other man in American history, died last night in Mesa Southside Hospital.

The 94-year-old Democrat died at 10:35 p.m.

He had served his native state in the U.S. House of Representatives and then in the U.S. Senate from statehood in 1912 until Dec. 31, 1968—a total of 56 years and 10½ months in Congress.

The venerable old gentleman's body will lie in state at the State Capitol for several hours Friday at a time which had not been decided last night.

Public funeral services are scheduled for 11 a.m. Saturday at Grady Gammage Auditorium on the campus of Arizona State University in Tempe and are expected to draw a massive outpouring of citizens anxious to pay final tribute to the state's most famous public servant.

The Rev. John Atwood, pastor of the Pacific Beach Methodist Church in San Diego and a longtime family friend, will conduct the funeral.

Members of the family are understood to have asked former President Lyndon B. Johnson, a colleague of Sen. Hayden's for many years, to deliver a eulogy at the services.

It was also understood that Sen. Barry Goldwater, R-Ariz., also had been invited to participate in the ceremony.

Cremation will follow the funeral service. Carr Mortuary of Tempe is handling arrangements.

The National Guard of Arizona, of which the senator was an early-day member, will furnish the guard of honor for the vigil at the State Capitol.

The Arizona Department of Public Safety will supply the guard of honor at Gammage Auditorium and will escort the cortege from the mortuary to the State Capitol on Friday and from the mortuary to the funeral site on Saturday.

The family suggested that those wishing to make donations in the senator's memory contribute either to the Tempe Historical Society or to the Arizona Historical Society in Tucson.

Hayden's death ended an illustrious political career that saw him start at the bottom and work up by serving as a Tempe city councilman, Maricopa County treasurer and Maricopa County sheriff.

He lapsed into a semi coma early Sunday and doctors summoned relatives to his bedside; they had remained nearby since then. He entered the hospital for a checkup on Dec. 26 and never left.

With the senator when he died were his nephews Hayden C. Hayden and Larry Hayden, and Mrs. Hayden C. (Catherine) Hayden. Also present was a longtime friend, James Minotto of Phoenix.

Hayden C. Hayden is president of the Hayden Flour Mills at Tempe and Larry Hayden is an officer of a furniture store at Tucson. Minotto was a special assistant to the senator's staff when Hayden was chairman of the Senate Appropriations Committee.

The senator rallied on two occasions after entering the hospital. He had even sat up and smoked a cigar on Saturday but he then lapsed into the semicoma from which he never recovered.

Other survivors include the children of Mr. and Mrs. Hayden C. Hayden; Sally, a Smith College (Mass.) student: Catherine, a student at Scripps College Calif., and Carl, a Tempe High School student.

Also, the children of Larry Hayden and his wife, Rosemary: Ann, teaching in California; David, Michael, Catherine Elizabeth and Susan, all of Tucson.

Sen. Hayden, more than any other man, fathered America's system of national highways in a day when it was an adventure with many hardships to cross the continent by automobile.

But in his own state, he probably will be best remembered as the father of the Central Arizona Project to bring water from the Colorado River to the valleys of Central Arizona and the cities of Phoenix and Tucson.

He also can be credited with turning the tide of votes in Congress that made possible most of the Western reclamation projects.

However, Arizona politicians frequently were dissatisfied with him because he never was a pork-barrel senator in the sense that he would put Arizona ahead of other states. He worked just as hard for projects in California, Nevada, Washington, Oregon, Idaho, Wyoming, Utah, New Mexico, Colorado, Texas, Oklahoma, Montana and the other states as he did for his own.

Hayden's greatest service to his native state probably came in reclamation.

First, it was a fight to protect Arizona's rights to the use of Colorado River water from a politically strong and ambitious Southern California. That area, gobbling up the water of the Owens Valley in the Sierras, was determined to tie up the Colorado River to take care of its needs for at least 100 years. It did not hesitate to say so.

During Hayden's first year in the Senate, to which he was elected from the House in 1926, he and Arizona Sen. Henry Fountain Ashurst staged a six-week filibuster to block passage of a California-sponsored bill to build the present Hoover Dam in such a manner that there would have been no control on use of the water.

Through Hayden's efforts, language was inserted in the bill limiting California to 4.4 million acre-feet annually, and dividing storage in the proposed reservoir (Lake Mead) so that Arizona would get 2.8 million acre-feet per year and Nevada 300,000.

The importance of this action was not realized until more than 30 years later when a U.S. Supreme Court decision affirmed the congressional action. The court's findings of fact were based almost entirely on the Hayden debate, which clearly showed the intent of Congress to protect the rights of other states in the Lower Colorado River Basin.

As a result, no other member of Congress enjoyed such a high regard. Any time Hayden needed a showdown of votes, he had enough to carry his point, and to spare.

That does not mean he was not alert to things for Arizona. A good example is the development of air training facilities during World War II.

Hayden was alerted to the role Arizona should play in defense by the late Paul W. Litchfield, chairman of the board of Goodyear Tire and Rubber Co.

"Mr. Litchfield told me that Arizona is the best place in the country to teach people to get off the ground in an airplane," Hayden said.

After that, every group of Arizonans who journeyed to Washington seeking a big army camp near its community was advised by Hayden to change its plans and ask for an airfield. At one time major training centers were operating at Luke, Williams, Falcon and Thunderbird fields I and II in the Salt River Valley, at Coolidge, Marana, Tucson, Douglas, Kingman, Yuma, Clarkdale, Winslow, Wickenburg and Dateland, with many auxiliary facilities.

During his more than four score years, Sen. Hayden passed many milestones. Some it is doubtful any other American ever will pass.

The greatest mark in his career was when he completed his 50th year of service in Congress, a record never before achieved, and one not likely to be achieved again. To mark this event, the late President John F. Kennedy and then Vice President Lyndon B. Johnson both journeyed to Phoenix Nov. 17, 1961, to attend a dinner in his honor. More than 50 senators and representatives accompanied them, along with then Secretary of Interior Stewart L. Udall and the late Supreme Court Justice Hugo L. Black.

Although that was a significant point in his career, it did not stop Sen. Hayden. He was re-elected, and went on to serve out another full term, completing almost 57 years of service in Congress before retiring.

Carl Trumbull Hayden was born October 2, 1877, in Tempe, the son of Charles Trumbull and Sallie Calvert (Davis) Hayden. His parents founded the town, which was variously known as Hayden's Ferry, Hayden's Landing and Hayden's Mill.

He was graduated from Tempe Normal School, now Arizona State University, in 1896, then attended Stanford University for 4 years. He lost his only election at Stanford, a contest for president of the student body, which he had considered would be a certain victory.

"I have been running scared ever since," he always told voters and other candidates in explaining his success at the polls.

Hayden's first venture into political life was in 1902, which he was elected to the Tempe Town Council. At the same time, he took over his father's flour-milling business. This mill, originally operated by water power, still is a thriving business on the bank of now dry Salt River beside busy U.S. 60–70–80–90.

In 1904 he was a delegate to the Democratic National Convention in St. Louis. That year he quit the city council to run successfully for treasurer of Maricopa County. Then he was elected sheriff of Maricopa County in 1907, holding that post until he was elected to the U.S. House of Representatives in 1911.

Hayden said many times that he probably never would have ventured into the congressional race had it not been for his connection with the Arizona National Guard. He helped organize a guard unit in Tempe in 1903 and was active in its program. As a major, he served as leader of the state's rifle team and participated with the team in the National Rifle Matches at Camp Perry, Ohio, from 1907 to 1911.

While the team was at Camp Perry on Aug. 24, 1911, President William Howard Taft signed the proclamation authorizing statehood for Arizona.

A tradition observed during the years the National Rifle Matches were held at Camp Perry called for each state to fly its flag on the firing line during the team matches, but up to that time Arizona had no flag. The team decided to make one. With the aid of Mrs. Hayden, a flag was designed. She borrowed a sewing machine, scoured the

stores in Port Clinton, Ohio, for red, blue and copper-colored material and sewed together the first Arizona flag in an army camp tent.

This flag was adopted as the state's official emblem in 1916 by the state legislature.

The news of Arizona statehood was the chief topic of conversation among the jubilant Arizonans at Camp Perry in 1911. In discussing its effect, members of the team urged Major Hayden to run for Congress as a means of helping to solve many of the military problems with which they were plagued.

"I didn't think I could make it, but they told me that all of the National Guardsmen would be for me," Hayden reminisced many years later. "Before leaving Camp Perry, I finally decided to make the race."

Hayden had two popular and experienced campaigners to run against for the Democratic nomination. They were Lamar Cobb of Graham County and Mulford Winsor of Yuma. Winsor was right-hand man to George W. P. Hunt, candidate for governor, and had served as secretary of the Constitutional Convention.

However, Hayden won with 4,237 votes to Cobb's 2,662 and Winsor's 2,635. He won the general election Dec. 12 handily, beating John S. Williams, Republican; John Halberg, Socialist, and E. W. Chapin, Prohibitionist, and went to Washington in February 1912 as the state's first representative.

His first year in the House, Sen. Hayden set in motion the investigation that led to building Coolidge Dam on the Gila River near Globe by the Indian Service and the 100,000-acre San Carlos Project, half of it on state lands and half on Indian lands. He also obtained legislation to preserve Papago Park.

Throughout the years he accomplished many things for the nation and his state. Some were easy, like a simple appropriation bill rider to authorize the original Gila Project to irrigate lands near Yuma. Some were not so easy. Over a period of years as chairman of the roads part of the Post Offices and Post Roads Committee, he helped formulate the national highway program. The major legislation setting up the present federal aid system in 1934 became known as the Hayden-Cartwright Act.

Most often-repeated story of Hayden's congressional career is one he told on himself. When his first bill came up on the floor of the House, he rose and made a speech in support of it, then sat down.

Rep. Fred Tabbott of Maryland leaned over and told me: 'You just couldn't hold it in, could you? You had to make a speech. Everything you said was taken down by the clerk and it will go into the Congressional Record, and you can't ever take it out. If you want to get ahead here, you have to be a work horse and not a showhorse.' "

Hayden never forgot. He later became known as "the silent senator." Except for the six-week filibuster he and Sen. Ashurst staged in 1937, his congressional speeches numbered exactly three in 50 years. However, in the last six years he had become quite talkative, making several short speeches.

During World War II and the years that followed, including the Korean War and the Cold War, Sen. Hayden carried the heavy burden of work as acting chairman, then chairman, of the Senate Appropriations Committee. But he still found time to continue his work on the proposed Central Arizona Project and to encourage the establishment of air training fields in Arizona.

Mrs. Hayden, the former Nan Downing of Los Angeles, died in Washington on June 25, 1961. They were married Feb. 15, 1909. She earlier had suffered a stroke, and for many years was a semi-invalid. As a result, the Haydens took little part in Washington social life. The senator maintained a modest apartment near the capitol so he could be with her as much as possible. They had no children.

In recognition of his long service, Sen. Hayden had been awarded honorary doctor of laws degrees by both Arizona State University and the University of Arizona. He had served as president pro tempore of the Senate since 1957, when he became its dean. Oct. 21 of that year he set a record for continuous service in Congress, breaking the 45-year, eight-month record of Rep. Adolph J. Sabath of Illinois. On Feb. 19, 1958, he set a new 46-year record for total continuous service in Congress.

Sen. Hayden's record length of service in Congress may never be equalled. Rep. Carl Vinson, D-Ga., served 50 years from 1914 to 1964, and Sam Rayburn, former speaker, served from 1913 to 1961.

Sen. Hayden would have completed a full 57 years as of Feb. 19, 1969, had his term extended that long. He retired at the end of his term in the Senate on Dec. 31, 1968.

ERA IN STATE'S HISTORY IS ENDED—HAYDEN WIELDED POWER WITHOUT TASTE FOR FLAMBOYANCE

The death of Arizona's ex-Sen. Carl Hayden draws national attention to a political career that could only have happened in America—and in the West.

And the death symbolizes the passing of an era in the political life of the state, an era which gave Arizona its strongest voice in national affairs.

During his almost 57 years' service in Washington, Sen. Hayden climbed the seniority system steps to a position of respected power, partly in the network of friendships he wove through the years with other politicians.

As the chairman for 14 years of the influential Senate Appropriations Committee, he had a hand on the purse-strings to billions of dollars used to run the country.

So many senators were indebted to Hayden for help on their pet projects that, in the words of one observer, while he still was in office, "They'd probably vote landlocked Arizona a navy if he asked for it."

Hayden didn't request a navy for Arizona, but he did shape its future in many areas.

The Central Arizona Project, the Gila Project, later divided into the Welkon-Mohawk and Yuma Mesa projects, the San Carlos Project, the Salt River Project as it is now constituted—all are the handwork of Carl Hayden in Arizona.

He led the way for the entire country in the reclamation of arid lands of the West, in the building of the nation's great highway network and in promoting a strong national defense, particularly in the area of air power.

Under Hayden's guidence, Arizona became one of the foremost states in the training of military pilots and the testing of military equipment. Monuments to this effort include Lake AFB, Williams AFB, Davis-Monthan AFB, the Marine Corps Air Station at Yuma, the Yuma Test Station and the U.S. Signal Corps research and test facility at Ft. Huachuca.

All this was accomplished with a minimum of fanfare by the taciturn Hayden, who never had a taste for the flamboyant.

The Associated Press' Arthur Edson, in 1966, wrote of Hayden: 'In a temple dedicated to windbaggery, he has kept his mouth shut while astutely pushing our invisible tentacles of power."

Other politicians might worry about charisma, but not Hayden, who rarely called a press conference or spoke from the Senate floor and once acknowledged that, for him, "It is no fun making a speech."

When he retired in 1968 he did it with finality. The man who had spent two-thirds of a lifetime at the center of power came home to finish life in the Arizona sun.

"I never liked the climate in Washington," he confessed last spring to a newspaper reporter. "I don't like cold weather. It can't compare with the nice climate we have back here."

His post-retirement routine included reading the daily Senate summary in the Congressional Record and scanning the newspapers and otherwise he attended to private interests, which centered around Arizona history.

Several times a week, until last summer, he visited his office in the Charles Trumbull Hayden Memorial Library (named for his father) at Arizona State University.

In characteristic fashion, he declined to evaluate the nation's leaders he had worked with over the years.

"There is no way to compare presidents," said the man who had served under 10.

One of the senator's last public apparances was last April during the Tempe Centennial celebration when he joined the centennial parade, riding in a convertible and waving at well-wishers.

He celebrated his 94th birthday on Oct. 2 with a small gathering of friends. He was disappointed because the cool weather prevented him from making a football game halftime appearance at Sun Devil stadium where the ASU band was ready to play "Happy Birthday" in his honor.

Throughout his retirement he kept busy with correspondence, both with old friends and young admirers who sought the wisdom of his political experience.

Hayden himself, in his statement announcing his retirement, summarized his career:

"Arizona's foundation includes fast highways, adequate electric power and abundant water, and these foundations have been laid. It is time now for a new building crew to report, so I decided to retire from office at the close of my term this year.

"Among other things that 56 years in the House and Senate have taught me, is that contemporary events need contemporary men. Time actually makes specialists of us all. When a house is built, there is a moment for the foundation, another for the walls and roof and so on."

"There is a time of war, and a time of peace, a time to keep, and a time to cast away, a time to weep and a time to laugh, a time to stand, and a time to step aside."

NEWS OF DEATH STARTS A FLOOD OF TRIBUTES

"Sen. Carl Hayden's memory and contributions will tower over this state for as long as man is here," Gov. Williams said last night upon hearing of the senator's death.

The Republican governor's tribute was among the first to start pouring into The Arizona Republic as word of Hayden's death spread throughout the state and nation.

"The senator and his father," the governor continued, "spanned the major epochs of our nation and literally hewed the history of our state from a primitive frontier territory to magnificent statehood and maturity.

"The reward of a thing well done is to have done it and the reward of a life is to have lived it.

"Sen. Hayden lived a good life from county sheriff to U.S. senator and left a great state and a great heritage for us all."

Ernest W. MacFarland, former Democratic governor, state Supreme Court justice and U.S. Senate majority leader, said of his friend and colleague:

"The passing of Sen. Hayden is a great loss to Arizona. I'm proud to be able to say he had been a friend of mine for over 40 years. It was a pleasure to serve in the Senate with him. One person could not begin to enumerate his accomplishments. So many of them are unknown, such as serving upon the secret atomic energy research committee which resulted in the making of the atomic bomb.

"He was a man always willing to help friends. Anyone needing help could always turn to Sen Hayden. He was a great senator.

History will record him as one of the truly great. His family has my deepest sympathy."

Eugene C. Pulliam, publisher of The Arizona Republic and The Phoenix Gazette, said:

"Carl Hayden was the architect of Arizona's present status as one of the most attractive states in the West. He was a leader in bringing Arizona out of territorial uncertainties and giving it almost immediate national recognition as the land of opportunity with its unsurpassed natural beauty and a fresh and undying faith in the future of the United States.

"Carl Hayden, more than any other man, created what America knows today as Arizona. Although a loyal Democrat, both by inheritance and conviction, he believed wholeheartedly in the two party system. He always insisted that splinter parties would destroy the republic, and he wanted none of them.

"He served in Congress for nearly 57 years, and 75 per cent of his working hours were devoted to 'doing something for Arizona.' Almost all his service to the state was nonpartisan. He was for Arizona first, last, and always. He had the courage to say yes as well as to say no. He had the respect of all senators, both Democrats and Republicans, who came to know him as an honest and faithful friend. Somehow, someway, this present generation of Arizonans must find a way to keep his memory and his service forever before our eyes and in our hearts."

Sen. Paul J. Fannin, R-Ariz., declared:

"Arizona has lost one of its great statesmen.

"The Hayden name is written indelibly in the history of our state and nation. Arizona is filled with monuments to his achievements. He was a leader in the reclamation program and one of the architects in the building of the West.

"He served longer in Congress than any other man in our history, and it was my privilege to be in the U.S. Senate during his last four years in Washington. I observed personally the great respect and affection that members of Congress and our government leaders had for Carl Hayden.

"His life was dedicated to public service and I am deeply saddened by the news of his passing."

Roy Elson, the senator's chief administrative aide in Washington for many years and now a vice president of the National Association of Broadcasters in Washington, said of Hayden:

"Now an age has ended. The great heart of Carl Hayden at last is still—after more than 3 billion beats, or one for everyone on earth. He was a strange man from a world now gone, believing in actions above words, principle above politics.

"He was as old-fashioned as the frontier from which he came and as modern as the national highway system he fathered. He was one of the first activists and one of the most practical men in the government.

"He was in every fiber a servant of the people—never believing it ought to be the other way around. As he was for so many others, he was my teacher, my example, and my friend. If there is anything beyond this life, we may be sure he is sitting under the trees with old friends—with presidents and cowboys—swapping stories about the Arizona he loved and worked for, and about the West he came from so very long ago."

Rich Johnson, executive director of the Central Arizona Project Association, said:

"Through the years Sen. Hayden has championed the cause of bringing water from the Colorado River into Arizona. He is known as the father of the Central Arizona Project. Arizona owes him a great debt of gratitude not only for development of water resources but for a great many other things that people seldom even think of.

"As chairman of the Senate Appropriations Committee for many years, he probably contributed more in development of the West through reclamation and other programs than any other man who served in the Congress of the United States."

Death Denies a Last Ambition

One of former Arizona Sen. Carl Hayden's final ambitions was never realized—to see publication of a book he wrote as a tribute to his pioneer parents.

The Arizona Historical Society, with which Hayden worked closely for many years, undertook publication of the book which the longtime senator completed shortly before his final illness. But even with expedited delivery the printer said Feb. 15 was the earliest he could complete the work.

A society spokesman said 200 copies of the book detailing the life of Hayden's father, Charles Trumbull Hayden, and his mother, would be delivered to his survivors for distribution to friends he had listed. An additional 300 copies will be printed for sale.

TIME SET ASIDE NEXT WEEK FOR EULOGIES TO FORMER SENATORS HAYDEN, ROBERTSON, AND HOLLAND

Mr. MANSFIELD. Mr. President, for the information of the Senators from Arizona, Virginia, and Florida, it is the intention of the joint leadership next week to set aside a half-hour on 3 days so that on those days the Members will be able to express their feelings on the passing of three distinguished former Members—the former Senator from Arizona, Mr. Hayden; the former Senator from Virginia, Mr. Robertson; and the former Senator from Florida, Mr. Holland.

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

Mr. MANSFIELD. I yield.

Mr. GOLDWATER. May I ask unanimous consent, if it is needed, to have the eulogies printed as separate Senate documents, to be distributed to the families and friends?

Mr. MANSFIELD. Yes, indeed.

Mr. GOLDWATER. I make that request.

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

Is there further morning business?

Mr. MANSFIELD. 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. AIKEN. 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.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business, not to exceed 15 minutes, with statements therein limited to 3 minutes.

PRESIDENT NIXON'S EFFORTS TO END THE WAR IN INDOCHINA

Mr. AIKEN. Mr. President, I wholeheartily endorse President Nixon's disclosure of the efforts which have been made to end the war in Indochina and restore the countries of that area to a level of sound economy and better living.

I have suspected for some time that private talks with the North Vietnamese were underway, but I did not know definitely until the President made the announcement last night.

The people of that part of the world have suffered too much and too long.

The losses in life and property and well being have been enormous.

I grant that the United States has made mistakes over the past 10 years, but I do not forget that after the French evacuated that area that North Vietnam, without mercy, executed an estimated 200,000 people in their clamor for vengeance.

Nor do I forget that the United States at that time furnished shipping to transport an estimated 900,000 refugees out of the dangerous area in order to keep them from sharing the same fate.

It was our voluntary responsibility for the safety and well-being of these refugees that brought us into a situation in South Vietnam which eventually developed into war.

The people of the United States and the people of the world should know and they will know from President Nixon's disclosure that peace with honor and a restored economy can be achieved in that area whenever North Vietnam sees fit to abandon barbaric practices against helpless victims and expresses a willingness to cooperate in making the area of Indochina a better and decent place to live.

I do not know whether North Vietnam will agree to this cooperation or not but, if it does not, then I believe that the countries of the world and particularly the countries of Eastern Asia, large and small, should realize that this problem is their problem, too, and take such steps as may be necessary to restore the well-being of the people there.

TRUE BUDGET DEFICIT FOR 1973 IS $36.2 BILLION

Mr. ELLENDER. Mr. President, when the President submitted the budget for fiscal year 1973 on Monday, January 24, 1972, I stated for the Record that the press and other news media would misrepresent the deficit as being $25.5 billion. This misleading figure is based on the false assumption that the surpluses accumulated in the various trust funds, amounting to $10.7 billion in fiscal year 1973, can be counted as revenue and used to offset deficits in the budget.

I said that the true deficit for fiscal year 1973 is $36.2 billion, which is the deficit in the Federal funds, or administrative, budget. Under this unified concept, which was begun in fiscal year 1969, the surplus in the trust funds of $10.7 billion has been deducted in order to arrive at a figure of $25.5 billion as the deficit.

This is an erroneous figure. It actually serves the purpose of deceiving the American people as to the true cost of government.

Illustrative of what I said on Monday on the Senate floor is a headline published in the Washington Post on Tuesday, January 25, 1972, reading: "Nixon Asks $246 Billion With $25 Billion Def-

icit." That is wrong. The deficit is $36.2 billion. Here is the headline, and I show it to the Senate.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

PROPOSED LEGISLATION RELATING TO LEAVE FOR MEMBERS OF THE UNIFORMED SERVICES

A letter from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to amend section 703 (b) of title 10, United States Code, to extend the authority to grant a special 30-day leave for members of the uniformed services who voluntarily extend their tours of duty in hostile fire areas (with an accompanying paper); to the Committee on Armed Services.

REPORT ON ENFORCEMENT OF CONSUMER CREDIT PROTECTION ACT

A letter from the Attorney General, transmitting, pursuant to law, a report on enforcement of title I of the Consumer Credit Protection Act, for the calendar year 1971 (with an accompanying report); to the Committee on Banking, Housing and Urban Affairs.

REPORT OF EXPORT-IMPORT BANK OF THE UNITED STATES

A letter from the Secretary, Export-Import Bank of the United States, Washington, D.C., reporting, pursuant to law, in connection with U.S. export to Yugoslavia; to the Committee on Banking, Housing, and Urban Affairs.

REPORT OF GEORGETOWN BARGE, DOCK, ELEVATOR, AND RAILWAY CO.

A letter from the firm of Steptoe & Johnson, Attorneys at Law, Washington, D.C., transmitting, pursuant to law, a report of the Georgetown Barge, Dock, Elevator, and Railway Co., for the year 1971 (with an accompanying report); to the Committee on the District of Columbia.

PROPOSED AUTHORIZATION OF APPROPRIATIONS FOR THE SALINE WATER CONVERSION PROGRAM

A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to authorize appropriations for the Saline Water Conversion Program for fiscal year 1973, to delete section 6(d) of the Saline Water Conversion Act, and for other purposes (with accompanying papers); to the Committee on Interior and Insular Affairs.

REPORT OF FEDERAL JUDICIAL CENTER

A letter from the Director, the Federal Judicial Center, Washington, D.C., transmitting, pursuant to law, a report of that Center, for the year 1971 (with an accompanying report); to the Committee on the Judiciary.

PROPOSED EXTENSION OF COMMISSION ON CIVIL RIGHTS

A letter from the Chairman, U.S. Commission on Civil Rights, transmitting a draft of proposed legislation to extend the Commission on Civil Rights for 5 years, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes (with an accompanying paper); to the Committee on the Judiciary.

REPORT OF NATIONAL ADVISORY COUNCIL ON EDUCATION PROFESSIONS DEVELOPMENT

A letter from the Chairman, National Advisory Council on Education Professions Development, Washington, D.C., transmitting, pursuant to law, a report of that Council entitled "Windows to the Bureaucracy" (with an accompanying report); to the Committee on Labor and Public Welfare.

PROPOSED AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL SCIENCE FOUNDATION

A letter from the Director, National Science Foundation, Washington, D.C., transmitting a draft of proposed legislation to authorize appropriations for activities of the National Science Foundation, and for other purposes (with accompanying papers); to the Committee on Labor and Public Welfare.

REPORT ON NOISE

A letter from the Administrator, Environmental Protection Agency, Washington, D.C., transmitting, pursuant to law, a report on noise, dated December 31, 1971 (with an accompanying report); to the Committee on Public Works.

PROPOSED AUTHORIZATION OF APPROPRIATIONS FOR U.S. ATOMIC ENERGY COMMISSION

A letter from the Chairman, U.S. Atomic Energy Commission, Washington, D.C., transmitting a draft of proposed legislation to authorize appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes (with an accompanying paper); to the Joint Committee on Atomic Energy.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

The petition of Albert S. Sullivan, of the State of Illinois, praying for a redress of grievances; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, without amendment:

S. Res. 226. A resolution to provide additional funds for the Committee on Agriculture and Forestry for routine committee expenditures (Rept. No. 92–596).

S. Res. 240. An original resolution authorizing additional expenditures by the Committee on Rules and Administration for inquiries and investigations (Rept. No. 92–597).

S. Res. 239. An original resolution authorizing the printing of the 73d Annual Report of the National Society of the Daughters of the American Revolution (Mar. 1, 1969–Mar. 1, 1970) as a Senate document (Rept. No. 92–598).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. HUMPHREY:

S. 3073. A bill to create River Basin Waste Treatment Authorities for the purpose of assuming control over, planning, constructing, and operating waste treatment facilities throughout the United States in order to eliminate water pollution in our nation's rivers and streams. Referred to the Committee on Public Works.

By Mr. HARTKE (by request):

S. 3074. A bill to amend title 38, United States Code, to provide for the review of certain veterans' benefit cases forfeited for fraud on or before September 1, 1959, and for remission of forfeitures. Referred to the Committee on Veterans' Affairs.

By Mr. HARTKE:

S. 3075. A bill to increase the contribution of the Federal Government to the costs of employees' health benefits insurance. Referred to the Committee on Post Office and Civil Service.

S. 3076. A bill to strengthen and improve the Older Americans Act of 1965. Referred to the Committee on Labor and Public Welfare.

By Mr. McINTYRE:

S. 3077. A bill for the relief of Okechukwu Baldwin M. Ewuzie and Theresa Nwanneka Ewuzie. Referred to the Committee on the Judiciary.

By Mr. HARTKE:

S. 3078. A bill to amend title 5, United States Code, to require the heads of the respective executive agencies to provide the Congress with advance notice of certain planned organizational and other changes or actions which would affect Federal civilian employment, and for other purposes. Referred to the Committee on Post Office and Civil Service.

By Mr. DOLE:

S. 3079. A bill for the relief of Capt. Ronald W. Grout, USAF. Referred to the Committee on the Judiciary.

By Mr. KENNEDY (for himself, Mr. WILLIAMS, Mr. JAVITS, Mr. SCHWEIKER, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CRANSTON, Mr. EAGLETON, Mr. HARRIS, Mr. HART, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. MAGNUSON, Mr. McGEE, Mr. McGOVERN, Mr. MONDALE, Mr. MUSKIE, Mr. NELSON, Mr. PASTORE, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. SCOTT, Mr. STAFFORD, Mr. STEVENSON, and Mr. TUNNEY):

S. 3080. A bill to amend the Lead Based Paint Poisoning Prevention Act, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. GOLDWATER (for himself and Mr. FANNIN):

S.J. Res. 188. A joint resolution providing for renaming the central Arizona project as the Carl Hayden project. Referred to the Committee on Interior and Insular Affairs.

By Mr. BROCK:

S.J. Res. 189. A joint resolution to authorize the President to designate the period beginning March 26, 1972, as "National Week of Concern for Prisoners of War/Missing in Action," and to designate Sunday, March 26, 1972, as a national day of prayer for these Americans. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HUMPHREY:

S. 3073. A bill to create river basin waste treatment authorities for the purpose of assuming control over planning, constructing, and operating waste treatment facilities throughout the United States in order to eliminate water pollution in our Nation's rivers and streams. Referred to the Committee on Public Works.

RIVER BASIN WASTE TREATMENT AUTHORITY ACT OF 1971

Mr. HUMPHREY. Mr. President, I am today introducing the River Basin Waste Treatment Authority Act of 1972. This legislation mandates the creation of water basin regionwide sewage authorities that will be accountable for treating all water pollution—from whatever the source—within the boundaries of that river basin. The authorities will own and

manage existing plants, will plan and build new facilities.

Mr. President, only 70 percent of the Nation's population is served by sewer systems; and only about 40 percent of these treatment plants are adequate to meet needs. A majority of the sewage plants in the United States are overloaded or in need of major upgrading. Even fewer collection systems are designed to handle storm water runoff.

In addition, our current efforts at water quality control are marked by, in the words of a report from the Public Works Committee: fragmented responsibility; jurisdictional incompleteness which allows entire areas to be completely unserviced; the financial weakness of local units responsible for implementation; the irrational posture of Federal enforcement; the gap between authorization and appropriation; the sad fact that many States and localities have had to pay the Federal share of treatment works costs; the impounding of Federal water and sewer funds; and the financial havoc which promised but unpaid Federal shares have caused to local and regional organizations.

Some of these deficiencies will likely be corrected by Federal Water Quality Control Amendment passed by the Senate last session. I heartily support the good work of the Public Works Committee; but I am apprehensive because I feel that unless we take a completely systematic approach to water pollution treatment, then our programs will always be inadequate. Our approach in the past has largely been negative. We have worked with the planning agencies of States and localities to come up with plans which essentially say to communities—you build the treatment plants. And that has been all. Our financial assistance has been skimpy at best, even where it has been forthcoming at all.

It seems clear to me that when over 1,400 communities dump raw sewage in rivers; when many existing plants are inefficient with poor design, poor operation, and maintenance; when waste loads from municipal systems are expected to increase four times over the next 50 years; when over 1,000 communities outgrow their treatment systems each year; when there are lengthy delays in enforcement, then if we are ever to solve our pollution problem, we must have a new concept, an approach of new jurisdictional entities which have responsibility for entire river basins.

These new agencies must have responsibility for entire river basins. They must be charged not only to plan for interstate, interlocal, and interregional cooperation, but also for building, operating, and maintaining adequate treatment facilities.

Their operations and building programs will be financed by user charges against users of existing plants as well as new plants. The authorities will fund their building programs by issuing bonds for the entire cost of construction on the national investment markets. The Federal Government will pledge to pay 40 percent of the debt service costs. The terms of the bonds will be long so as to approximate the useful life of the facilities.

In addition, the authorities will have full powers of condemnation so that they will be able to carry out expeditiously an effective pollution control program. We must put the responsibility for pollution control in a single agency for each river basin and then give that agency the powers, tools, and assistance that will insure it can carry out its mandate.

While the financing of agency bonds will be federally guaranteed and insured, the agencies will not be Federal instrumentalities. Rather they will be supervised and operated by boards that represent States and local governments.

The Federal responsibility will be in standard setting in order to assure a minimum level of clean water for citizens throughout this country; the major responsibility and operating details remain with the States and localities.

The bill represents a new approach to solving our water pollution crises. I ask that the text of the bill and a section-by-section summary be printed in the CONGRESSIONAL RECORD.

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

S. 3073

A bill to create River Basin Waste Treatment Authorities for the purpose of assuming control over, planning, constructing, and operating waste treatment facilities throughout the United States in order to eliminate water pollution in our nation's rivers and streams

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

SHORT TITLE

SECTION 1. This Act may be cited as the "River Basin Waste Treatment Authority Act of 1971".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress hereby finds and declares that the continued deterioration of our water supply threatens the integrity of our national environment and that improvement in the cleanliness of our water supply is essential to the survival of our citizens and our system; that continued population growth and industrial expansion mean an ever mounting demand for clear, usable water; that after two decades of experience with water pollution control efforts, the purity of water is no more assured today than it was when Federal efforts first began; that an effective program of pollution control necessitates expenditures by government over and above the capital investment of $18 billion needed to meet existing water quality standards over the next five years; that State and local governments even when aided by Federal grant programs cannot provide either the funds or the personnel necessary to assure water quality; and that effective pollution control requires coordination of treatment systems, river basin-wide planning and implementation, and access to large amounts of funds.

(b) The purpose of this Act is to constitute throughout the United States River Basin Waste Treatment Authorities that will assume control over, plan, build, operate, and maintain waste treatment facilities sufficient to control and abate water pollution in entire river basin drainage systems.

DEFINITIONS

SEC. 3. For the purposes of this Act the term—

(1) "United States" includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(2) "waste treatment facilities" means installations and devices used in the treatment of sewage or industrial wastes of a liquid nature, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, and their appurtenances;

(3) "Administrator" means the Administrator of the Environmental Protection Agency; and

(4) "Authority" means a River Basin Waste Treatment Authority established pursuant to this Act.

DESIGNATION OF RIVER BASINS

SEC. 4. The Administrator, after consultation with the Secretary of the Army and the Secretary of the Interior and within ninety days after the date of enactment of this Act, shall designate river basin regions which together will encompass the entire United States. The area of each such region shall be determined on the basis of physical, hydrologic, or other relationships which will enable the provision of the most systematic and economical waste treatment for the area.

ESTABLISHMENT OF AUTHORITIES

SEC. 5. (a) There is hereby established an Authority for each region designated pursuant to section 4. Such Authority shall not be an agency or establishment of the United States Government but shall be subject to the provisions of this Act, and to the extent consistent with this Act, to the District of Columbia Business Corporation Act. The right to repeal, alter, or amend this Act at any time is expressly reserved.

(b) (1) Each Authority shall have a board of directors consisting of—

(A) the Governor, or his designee, of each State within the Authority's region;

(B) the mayor, or his designee, of each city having a population of 35,000 or more within such region;

(C) a designee of the governing board of each county which is entirely within such region and has within it a city having a population of 35,000 or more; and

(D) a representative of the Environmental Protection Agency designated by the President;

(2) The President is authorized to appoint an appropriate substitute for any director authorized pursuant to paragraph (1) but not designated as provided in such paragraph and such substitute shall serve until a director is appointed pursuant to such paragraph. Each director who is a representative of the Environmental Protection agency shall serve for a term of five years. Vacancies shall be filled in the same manner as initial appointments.

(3) For the purpose of this subsection population shall be determined on the basis of the latest decennial census.

(c) Each director, other than those in the employ of the Federal or a State government, shall receive compensation at the rate of $100 per diem. All directors shall be reimbursed for actual expenses, including travel and subsistence expenses incurred by them in the performance of their duties.

(d) A majority of the designated members of each board shall constitute a quorum for the purpose of carrying out the functions of the board.

FUNCTIONS

SEC. 6. Each Authority shall within its region—

(1) acquire, by purchase, condemnation, or otherwise, not later than June 30, 1973, and operate all public waste treatment facilities;

(2) prepare and carry out a plan for providing, as soon as practicable and for the future, such additional waste treatment facilities as are necessary to comply with State and Federal requirements and standards for water pollution control;

(3) construct, in accordance with estab-

lished priorities in such plan, such waste treatment facilities as are necessary to carry out such plan;

(4) cooperate with other Authorities in preparing and carrying out such plan;

(5) determine any disputes that may arise with other Authorities with respect to the location of facilities in border areas or other matters by appeal to the Waste Treatment Facilities Review Board established pursuant to section 8; and

(6) levy appropriate charges for the use of its facilities as are necessary to provide funds to carry out its functions, including the retirement of the Authority's indebtedness.

POWERS

SEC. 7. Each Authority shall have the following powers:

(1) to adopt, alter, and use a corporate seal;

(2) to adopt, amend, and repeal bylaws, rules, and regulations governing the manner of its operations, organization, and personnel, and the performance of the powers and duties granted to or imposed upon it by law;

(3) to appoint and fix the compensation of such personnel as may be necessary to carry out its functions, including a general manager who shall be the executive officer for the board of directors and who shall not receive compensation in excess of the maximum rate prescribed for GS–18 in the General Schedule of section 5332(a) of title 5, United States Code;

(4) to sue and be sued in its corporate name;

(5) to acquire by purchase, lease, condemnation, or in any other lawful manner, any property, or any interest therein; to hold, maintain, use, and operate the same; to provide services in connection therewith, and to charge therefor; and to sell, lease, or otherwise dispose of the same at such time, in such manner, and to the extent deemed necessary or appropriate for the conduct of the business of the Authority and to carry out the Authority's functions;

(6) to construct, operate, lease, and maintain buildings, facilities, and other improvements, as may be required to carry out its functions;

(7) to accept gifts or donations of services or personal property, tangible or intangible, in aid of any of its functions;

(8) to enter into contracts or other arrangements, or modifications thereof, with State and local governments, with any agency or department of the United States, with governments of foreign countries, with international organizations, or with any person, firm, association, or corporation;

(9) to issue and have outstanding such obligations, in such amounts, having such maturities, bearing such rates of interest, and to be redeemable at such time, as the board of directors determines to be necessary to carry out its functions;

(10) to execute, in accordance with its bylaws, rules, and regulations, all instruments necessary or appropriate in the exercise of any of its powers; and

(11) to take such action as may be necessary to carry out the powers conferred upon the authority including such other powers as are conferred upon a stock corporation by the District of Columbia Business Corporation Act.

SEC. 8. (a) There is hereby established within the Environmental Protection Agency a Waste Treatment Review Board which shall have five members appointed by the President. Such Board shall hear and decide any matters in controversy between Authorities with respect to their functions pursuant to this Act. Decisions of the Board shall be final.

(b) The Administrator shall furnish the Board with such personnel and other assistance it may need to carry out its functions pursuant to this section.

FEDERAL FINANCIAL ASSISTANCE

SEC. 9. (a) For each fiscal year beginning after June 30, 1973, the Secretary of the Treasury is authorized to make a payment to each Authority of an amount equal to 40 per centum of the amount of interest paid by such Authority during such year on obligations issued pursuant to section 7(9) of this Act.

(b) There are authorized to be appropriated such amounts as are necessary to carry out the provisions of this section.

GUARANTY OF AUTHORITIES' OBLIGATIONS

SEC. 10. (a) The Government National Mortgage Association is authorized upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on obligations issued by the Authorities. The Association shall collect from the Authorities a reasonable fee for any such guarantee and shall make such charges as it may determine to be reasonable for the analysis of any obligation proposed to be issued by an Authority. In the event an Authority is unable to make any payment of principal of or interest on any obligation guaranteed under this section, the Association shall make such payment, and thereupon shall be subrogated fully to the rights satisfied by such payment. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this section.

NATURE OF AUTHORITIES' OBLIGATIONS

SEC. 11. All obligations issued by the Authorities shall be lawful investments and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. Obligations issued by Authorities pursuant to this Act shall be deemed to be exempt within the meaning of the laws administered by the Securities and Exchange Commission to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States.

FEDERAL RESERVE BANKS TO BE FISCAL AGENTS

SEC. 12. The Federal Reserve Banks are authorized and directed to act as depositories, custodians, and fiscal agents for the Authorities, for their own account or as fiduciary, and such banks shall be reimbursed for such services in such manner as may be agreed upon.

AUTHORIZATION OF APPROPRIATIONS FOR INITIAL EXPENSES OF AUTHORITIES

SEC. 13. There is authorized to be appropriated not to exceed $——— for payments to the Authorities to cover organizing and other initial expenses until such time as is established by the Administrator when the Authorities will be self-sustaining in accordance with the provisions of this Act. Amounts appropriated pursuant to this section shall be allocated by the Administrator among the Authorities on the basis of the population served by each Authority and such other factors as the Administrator determines appropriate to be equitable for the purposes of this Act. The Administrator shall make payments to each Authority from its allocation in accordance with such requirements as are established by the Administrator to protect the interests of the United States.

TERMINATION OF CERTAIN ASSISTANCE PURSUANT TO THE FEDERAL WATER POLLUTION CONTROL ACT

SEC. 14. It is the intent of Congress in enacting this Act to make no appropriations for fiscal years beginning after June 30, 1973, for assistance to the States or local governments pursuant to the Federal Water Pollution Control Act or any other law for treatment works or planning or research with respect thereto.

PREPARATION OF OBLIGATIONS

SEC. 15. In order to furnish obligations for use by the Authorities, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Waste Treatment Facilities Review Board may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Authorities. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith, shall remain in the custody of the Secretary of the Treasury. The Authorities shall reimburse the Secretary of the Treasury for any expenditures made in the preparation, custody, and delivery of such obligations.

ANNUAL REPORT

SEC. 16. Each Authority shall submit to the Congress and to the Environmental Protection Agency a report of its progress and operations at the end of each calendar year.

TAX EXEMPTION

SEC. 17. The Authorities, their property, capital, reserves, surplus, security holdings, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority, except that (1) any real property and tangible personal property of the Authorities shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (2) any and all obligations issued by the Authorities shall be subjected both as to principal and interest to Federal, State, and local taxation to the same extent as the obligations of private corporations are taxed.

SEPARABILITY

SEC. 18. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected.

SECTION-BY-SECTION SUMMARY

Sec. 1. Citation of Act—River Basin Waste Treatment Authority Act of 1971.

Sec. 2. Sets forth the findings and purposes of the Act which are that demands are ever increasing for clean water, that previous governmental measures have failed to assure such clean water and therefore that River Basin Waste Treatment Authorities be created to build and operate treatment facilities for entire river basin systems.

Sec. 3. Defines various terms used in the Act.

Sec. 4. Directs the Administration of the Environmental Protection Agency to designate river basin regions in which the Authorities will operate.

Sec. 5. Provides for the establishment of the Authorities: (1) one for each river basin region as designated under Sec. 4 which are not to be an agency of the U.S. government; (2) governed by a board of directors representing states, cities, counties and the federal government.

Sec. 6. Outlines the functions of the Authorities within their designated basin including:

Acquiring waste treatment facilities;

Planning and building additional necessary facilities;

Cooperating with other Authorities; and

Levying user charges.

Sec. 7. Establishes the general corporate powers of the Authorities.

Sec. 8. Creates within the Environmental Protection Agency a Waste Treatment Review Board to decide all controversies.

Sec. 9. Authorizes the appropriation of federal moneys to pay an amount equal to 40% of the interest on bonds issued by each Authority.

Sec. 10. Authorizes the guarantee of obligations issued by the Authorities by the Government National Mortgage Association

and pledges the full faith and credit of the United States for any obligations so guaranteed.

Sec. 11. Provides that obligations issued by the Authorities will be lawful investments and will be exempt from registration with the S.E.C.

Sec. 12. Designates the Federal Reserve Banks as fiscal agents for the Authorities.

Sec. 13. Authorizes appropriations for start-up expenses.

Sec. 14. Terminates after June 30, 1973 the assistance activities carried out under the Federal Water Pollution Control Act.

Sec. 15. Authorizes the Secretary of the Treasury to prepare obligations to be issued by the Authorities.

Sec. 16. Directs that an annual report be submitted by each Authority to the Congress and the Environmental Protection Agency.

Sec. 17. States the tax status of the Authorities which shall be exempt from tax except as to real property and interest on their obligations.

Sec. 18. Allows the severance of any invalid provision and reaffirms the validity of the remainder.

By Mr. HARTKE:

S. 3075. A bill to increase the contribution of the Federal Government to the costs of employees' health benefits insurance. Referred to the Committee on Post Office and Civil Service.

EXTENDED HEALTH BENEFITS FOR FEDERAL EMPLOYEES

Mr. HARTKE. Mr. President, we have recently witnessed the serious situation created by the increase in health insurance rates for most Federal workers. In January of this year, health insurance rates increased for most Federal workers. The rate increase was partially offset by more Government contributions toward the biweekly premium. Existing law provides that the Government must pay 40 percent of the average high-option premium of the six major plans. Nonetheless, the impact on the pocketbook of the Federal worker was direct and substantial.

This is another example of the many inequities that have been leveled against the Federal worker. The legislation that I introduce today would alleviate to a considerable degree the inequities faced by the Federal worker in the area of health insurance. I propose that the Federal Government pay the entire cost of the Federal employee's health insurance. There are those who will say this is an attempt to give Government workers excess privileges. It is my contention that Federal employees have never been the object of excessive privileges. We tend to forget that increased wages and fringe benefits for Federal employees have served to raise the living standards of the Federal worker to those enjoyed by his counterparts in private industry, rather than to surpass them.

This is particularly relevant in the area of health benefits. Recent studies show that private firms have moved ahead of the Federal Government in the area of employee health insurance costs. The studies show a substantial number of private firms now pay all health plan charges. Industry practices from 1960 to 1970 show the percentage of factory workers covered by fully paid insurance plans rose from 48 to 66 percent. For office workers, the number in noncontributory plans during that same period rose from 39 to 53 percent. Although the trend is clear, the Federal Government has shown little inclination to ease the soaring costs of health insurance faced by Federal employees. I call upon the Senate to give serious consideration to the need to substantially increase the Government's participation in health insurance plans.

I ask unanimous consent that the text of my bill be printed at the conclusion of my remarks.

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

S. 3075

A bill to increase the contribution of the Federal Government to the costs of employees' health benefits insurance

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8906(a) of title 5, United States Code, is amended by striking out "40 percent" and inserting in lieu thereof "70 percent and increasing 5 percent per year until reaching 100 percent of the average of the subscription charges".

The amendments made by this Act shall become effective at the beginning of the first applicable pay period which commences after January 1, 1972.

By Mr. HARTKE:

S. 3076. A bill to strengthen and improve the Older Americans Act of 1965. Referred to the Committee on Labor and Public Welfare.

COMPREHENSIVE OLDER AMERICANS SERVICES BILL

Mr. HARTKE. Mr. President, today I am introducing a bill that is designed to strengthen and improve the Older American's Act of 1965. Millions of older American citizens, particularly those over the age of 65, are deprived of the opportunity to carry on normal lives because our society has failed to supply them with the minimal services to which they are entitled. The elderly are increasingly confronted by obstacles in their environments which prohibit them from living normal lives.

In the past, we have tended to emphasize the economic obstacles encountered by the aged. Major barriers exist, however, in the areas of health, housing, transportation, and other social services. We must realize that the needs of the elderly cannot be defined merely on the basis of their budgets, but must be determined on the basis of what is essential for a life of dignity. Consequently, it is our obligation to provide community services that will raise the standard of living of our elderly citizens so that in their advancing years they can maintain their self-respect as human beings.

A recent study by the Gerontological Society found that no community in the United States has developed a comprehensive network of services for the aging and the aged. This serious dilemma has been voiced at every conference on aging, yet little action has been forthcoming. A national commitment is necessary to cope with the need to establish services for the elderly. Provisions for services for the aged demands immediate consideration. The proposal I am introducing today is a significant step in that direction.

The comprehensive older Americans services bill is a very broadly based and comprehensive effort to meet the needs of the elderly. It will establish programs to provide a full scale of health, education, and social services for elderly citizens. This legislation is aimed at the coordination of the now existing fragmented services and the creation of new programs to deal with those needs that have been neglected in the past. Specifically, the comprehensive older Americans services bill would accomplish the following objectives:

First, a strengthening of the Administration on Aging: One of the key features of the comprehensive older Americans services bill is to strengthen the role of the Administration on Aging. The Commissioner is made directly responsible to the Secretary of Health, Education, and Welfare and may not delegate any of his functions to an officer who is not directly responsible to him. The increased responsibility of the Commissioner is intended to make the administration of the programs for the elderly a more effective operation. The Administration on Aging will perform the following new functions: Develop the basic policies and set priorities for the development and operation of programs for the elderly, as well as coordinate programs for the elderly—programs with a view to a nationwide network of comprehensive, coordinated services and opportunities for the elderly—to coordinate and assist in the planning and to carry on a continuing evaluation of the programs and activities concerning the elderly.

Second, this bill would provide specifically that Federal agencies proposing to establish programs related to the purposes of this act would consult with AOA prior to the establishment of such programs both in the planning and implementation stages. Hopefully this will eliminate the overlapping and competitive services among different agencies.

Third, establishment of communication center: Because many problems arise as a result of a lack of information, the bill provides for the creation of a national information and resource center for the aging which would collect, review, organize, publish, and disseminate information and data pertaining to the particular problems experienced by the elderly. The collected material would necessarily include information and data with respect to medical and rehabilitation facilities, education, vocational training, employment, transportation, and housing.

Fourth, gerontological centers to study the aging process: To provide the appropriate services to the elderly it is necessary to conduct more through research into the biological causes and effects of aging. To promote such research, the older American services bill establishes an independent agency called the gerontological research center. Not only would the center research the biological aspects of aging but it would also evaluate existing programs and develop priorities for new programs designed to increase knowledge of the biological aspects of aging.

Fifth, preretirement training program: Most aged citizens suffer social and eco-

nomic adjustment pains as they leave their highly active and productive lives and move into a state of retirement. To permit them to maintain healthy and dignified lives even in their retirement, this bill empowers the Secretary of Health, Education, and Welfare to create and administer in conjunction with any public or nonprofit private agency, preretirement programs providing education, information and other pertinent services. This would facilitate the transition into retirement.

Sixth, employment: To allow the elderly to remain as active as possible in retirement the bill authorizes grants to create programs that would provide the elderly with opportunities to engage in public service work. This would enable the utilization of skills possessed by the aged as well as providing productive work for them.

Seventh, nutrition programs: Since numerous aged citizens suffer from a lack of proper nutrition, this legislation proposes to elevate the nutritional level by grants to States that effectuate a State plan to meet the dietary needs of the elderly. Hopefully the programs would be oriented to provide balanced meals in multipurpose senior centers, home delivered meals for individuals requiring such services because they are homebound, or disabled, and nutritional counseling and information.

Eighth, senior citizen community centers: The comprehensive older Americans services bill provides for grants to public and nonprofit agencies for the construction of multipurpose senior centers.

Ninth, transportation: One of the major barriers confronting the elderly is that of transportation. Without suitable transportation many of the elderly are stranded and are forced to lead immobile, inactive lives. This proposal calls for a thorough study of the transportation problems of the elderly to be followed by the establishment of the programs to meet those transportation needs. The transportation services would be likely to include: special transportation subsystems for older persons, or similar groups with mobility restrictions, portal to portal service, demand actuated services, reduced rates for the aged, and payments directly to the older persons to enable them to obtain reasonable and necessary transportation services.

Tenth, the last, but one of the most important aspects of this bill is to provide for continuing education of the elderly. Programs would be developed to enable the older person to continue a productive life, to retrain them for other types of employment, or programs designed to broaden the education, cultural or social awareness of the elderly.

Mr. President, I believe that this legislation establishes a series of realizable goals which, if implemented, would permit the elderly of the country to live lives of dignity and economic security. I ask unanimous consent that the text of the bill be printed at the conclusion of my remarks.

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

S. 3076

A bill to strengthen and improve the Older Americans Act of 1965

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 "Older Americans Act Amendments of 1972."

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that millions of older citizens, particularly those over sixty-five years of age, in this Nation are suffering unnecessary harm from the lack of adequate services. It is therefore the purpose of this Act, in support of the objectives of the Older Americans Act of 1965, to—

(1) make available comprehensive programs which include a full range of health, education, and social services to our older citizens who need them,

(2) give full and special consideration to citizens with special needs in planning such programs, and, pending the availability of such programs for all citizens, give priority to the elderly with the greatest economic and social need,

(3) provide comprehensive programs which will deliver a full range of essential services to our older citizens, and, where applicable, also furnish meaningful employment opportunities for many individuals, including older persons, young persons, and volunteers from the community, and

(4) insure that the planning and operation of such programs will be undertaken as a partnership of community, and State and local governments, with appropriate assistance from the Federal Government.

(b) Section 101(8) of the Older Americans Act of 1965 (hereinafter referred to as "the Act") is amended by inserting after "services" the following: ", including access to low-cost transportation,".

EXTENSION OF PROGRAMS

SEC. 3. (a) Section 301 of the Act is amended by striking out "and" after "1971," and inserting after "1972" the following: ", $150,000,000 for the fiscal year ending June 30, 1973, $200,000,000 for the fiscal year ending June 30, 1974, and $250,000,000 for the fiscal year ending June 30, 1975,".

(b) Section 305(b) of the Act is amended by striking out "and" after "1970," and inserting after "1972" the following: ", and such sums as may be necessary for each succeeding fiscal year ending prior to July 1, 1975".

(c) Section 603 of the Act is amended by striking out "and" after "1971," and by inserting after "1972" the following: ", and such sums as may be necessary for each succeeding fiscal year ending prior to July 1, 1975".

(d) Section 614 of the Act is amended by striking out "and" immediately after "1971," and inserting after "1972" the following: ", and such sums as may be necessary for each succeeding fiscal year ending prior to July 1, 1975".

(e) Section 703 of the Act is amended by striking out "and" immediately after "1971," and inserting after "1972" the following: ", and such sums as may be necessary for each succeeding fiscal year ending prior to July 1, 1975".

AMENDMENTS TO TITLE II

SEC. 4. (a) Section 201(b) of the Act is amended by adding at the end thereof the following: "The Commissioner on Aging shall be the principal officer of the Department of Health, Education, and Welfare for carrying out this Act. In the performance of his functions, he shall be directly responsible to the Secretary and not to or through any other officer of that department. The Commissioner on Aging shall not delegate any of his functions to any other officer who is not directly responsible to him."

(b)(1) Section 202 of the Act is amended by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraphs:

"(9) develop basic policies and set priorities with respect to the development and operation of programs and activities related to the purpose of this Act;

"(10) provide for the coordination of Federal programs and activities related to such purposes;

"(11) coordinate, and assist in, the planning and development by public (including Federal, State, and local) and nonprofit private agencies of programs for older persons, with a view to the establishment of a nationwide network of comprehensive coordinated services and opportunities for such persons;

"(12) call conferences of such authorities and officials of public (including Federal State, and local) and nonprofit private agencies or organizations concerned with the development and operation of programs for older persons as the Secretary deems necessary or proper for the development and implementation of policies related to the purposes of this Act;

"(13) develop and operate programs providing services and opportunities related to the purposes of this Act which are not otherwise provided by existing programs for older persons;

"(14) carry on a continuing evaluation of the programs and activities related to the purposes of this Act with particular attention to the impact of medicare and medicaid, the Age Discrimination Act, and the programs of the National Housing Act relating to housing for the elderly and the setting of standards for the licensing of nursing homes, intermediate care homes and other facilities providing care for older people;

"(15) serve as a clearinghouse for applications for Federal assistance to private nonprofit agencies and institutions for the establishment and operation by them of programs and activities related to the purposes of this Act; and

"(16) develop, in coordination with other agencies, a national plan for meeting the needs for trained personnel in the field of aging, and for training persons for carrying out programs related to the purposes of this Act, and conduct and provide for the conducting of such training."

(2) Section 202(4) of the Act is amended to read as follows:

"(4) develop plans, conduct and arrange for research in the field of aging, and carry out programs designed to meet the needs of older persons for social services, including nutrition, hospitalization, preretirement training, continuing education, and health services;".

(c) Title II of the Act is amended by adding at the end thereof the following new sections:

"FEDERAL AGENCY COOPERATION

"SEC. 203. Federal agencies proposing to establish programs related to the purposes of this Act shall consult with the Administration on Aging prior to the establishment of such programs, and Federal agencies administering such programs shall cooperate with the Administration on Aging in carrying them out.

"MATERIAL INFORMATION AND RESOURCE CENTER FOR THE AGING

"SEC. 204. (a) There is hereby established, within the Administration on Aging, a National Information and Resource Center for the Aging (hereinafter referred to as the "Center"). The Center shall have a Director and such other personnel as may be necessary to enable the Center to carry out its duties and functions.

"(b)(1) It shall be the duty and function

of the Center to collect, review, organize, publish, and disseminate (through publications, conferences, workshops, or technical consultation) information and data related to the particular problems caused by aging, including information describing measures which are or may be employed for meeting or overcoming such problems, with a view to assisting older individuals, and organizations and persons interested in the welfare of older persons, in meeting problems which are peculiar to, or are made more difficult for, older individuals.

"(2) The information and data with respect to which the Center shall carry out its duties and functions under paragraph (1) shall include (but not be limited to) information and data with respect to the following—

"(1) medical and rehabilitation facilities and services, including Medicare, Medicaid, and other programs operating under the Social Security Act;

"(2) education;

"(3) vocational training;

"(4) employment;

"(5) transportation;

"(6) architecture and housing (including household appliances and equipment);

"(7) recreation; and

"(8) public or private programs established for, or which may be used in, solving problems of older persons.

"(c)(1) The Secretary shall make available to the Center all information and data, within the Department of Health, Education, and Welfare, which may be useful in carrying out the duties and functions of the Center.

"(2) Each other department or agency of the Federal Government is authorized to make available to the Secretary, for use by the Center, any information or data which the Secretary may request for such use.

"(3) The Secretary shall, to the maximum extent feasible, enter into arrangements whereby State and other public and private agencies and institutions having information or data which is useful to the Center in carrying out its duties and functions will make such information and data available for use by the Center.

"(d) There is authorized to be appropriated for carrying out this section for the fiscal year ending June 30, 1973, and for each succeeding fiscal year ending before June 30, 1975, such sums as may be necessary."

AMENDMENTS TO TITLE III

SEC. 5. Title III of the Act is amended by adding at the end thereof the following:

"ADDITIONAL CONDITIONS FOR PROGRAMS INCLUDING CONSTRUCTION

"SEC. 307. (a) Applications under this title including construction may be approved only upon a showing that construction of such facilities is essential to the provision of adequate services for the elderly, and that rental, renovation, remodeling, or leasing of adequate facilities is not practicable.

"(b) If within twenty years after completion of any construction for which Federal funds have been paid under this title the facility shall cease to be used for the purposes for which it was constructed, unless the Secretary determines in accordance with regulations that there is good cause for releasing the applicant or other owner from the obligation to do so, the United States shall be entitled to recover from the applicant or other owner of the facility an amount which bears to the then value of the facility (or so much thereof as constituted an approved project or projects) the same ratio as the amount of such Federal funds bore to the cost of the facility financed with the aid of such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

"(c) All laborers and mechanics employed by contractors or subcontractors on all construction, remodeling, renovation, or alteration projects assisted under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5). The Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

"(d) In the case of loans for construction, the Secretary shall prescribe the interest rate and the period within which such loan shall be repaid, but such interest rates shall not be less than 3 per centum per annum and the period within which such loan is repaid shall not be more than twenty-five years.

"(e) The Federal assistance for construction may be in the form of grants or loans, provided that total Federal funds to be paid to other than private nonprofit agencies and organizations will not exceed 50 per centum of the construction cost, and will be in the form of loans. Repayment of loans shall, to the extent required by the Secretary, be returned to the applicant from whose financial assistance the loan was made, or used for additional loans or grants under this Act."

AMENDMENTS TO TITLE IV

SEC. 6. Title IV of the Act is amended by redesignating sections 401 and 402 as sections 451 and 452, respectively, by striking out "title" each time it appears and inserting in lieu thereof "part", and by striking out the center heading of the title and inserting in lieu thereof the following:

"TITLE IV—RESEARCH AND DEVELOPMENT

"PART A—GERONTOLOGICAL RESEARCH PLAN

"ESTABLISHMENT OF GERONTOLOGICAL RESEARCH CENTER

"SEC. 401. (a) For the purposes of developing a coordinated national program for research on the biological aspects of aging, there is hereby established an independent agency to be known as the Gerontological Research Center (hereinafter referred to as the 'Center'). The Center shall be located within the Department of Health, Education, and Welfare for administrative purposes only.

"(b) The Center shall be headed by a Board which shall be composed of five members appointed by the President. Two members of the Board shall be biological scientists, one shall be a behavioral scientist, one shall be an administrator, and one shall be a physician. Each person nominated and appointed shall, as a result of his training, experience, and administering, be especially qualified to formulate and appraise programs and activities related to the biological aspects of aging.

"(c) The President shall designate one of the members of the Board to serve as Chairman and one to serve as Vice Chairman. The Chairman shall receive compensation at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code. Each of the other four members shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of such title.

"(d) Vacancies shall be filled in the same manner in which the original appointments were made. Any vacancy in the Board shall not affect its powers, and three members of the Board shall constitute a quorum.

"FUNCTIONS OF THE BOARD

"SEC. 402. (a) The Board shall be responsible for preparing a program, to be known as the gerontological research plan, designed to promote and conduct intensive coordinated research in the biological origins of aging on a continuing basis.

"(b) The Board shall carry out the following duties:

"(1) the collection, analysis, interpretation, and evaluation of information and statistical data related to the biological aspects of aging;

"(2) the appraisal of programs and activities related to the biological aspects of aging;

"(3) the development of priorities for new programs designed to increase knowledge of the biological aspects of aging;

"(4) the development of legislative reports and proposals for new programs to provide greater insight into the biological aspects of aging; and

"(5) conduct research in the biological aspects of aging.

"BOARD STAFF

"SEC. 403. (a) The Board is authorized to employ such officers and employees as may be necessary to carry out its functions under this part.

"(b) The Board is authorized to obtain services of consultants in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed $100 per diem.

"POWERS OF BOARD

"SEC. 404. To carry out this part, the Board shall have the authority—

"(a) to prescribe such rules and regulations as it deems necessary governing the manner of its operations and its organization and personnel;

"(b) to obtain from any department, agency, or instrumentality of the United States, with the consent of the head thereof, such services, advice, and information as the Board may determine to be required by it to carry out its duties;

"(c) to acquire by lease, loan, or gift, and to hold and dispose of by sale, lease, or loan, real and personal property of all kinds necessary for, or resulting from, the exercise of authority under this part;

"(d) to enter into contracts or other arrangements, or modifications thereof, with State and local governments, and institutions and individuals in the United States, to conduct programs the Board deems necessary to carry out the purposes of this part, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or other provision of law relating to competitive bidding;

"(e) to make advance, progress, and other payments which the Board deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529);

"(f) to receive money and other property donated, bequeathed, or devised to the Board, without condition or restriction other than that it be used for the purposes of the Board;

"(g) to accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code; and

"(h) to make any other expenditures necessary to carry out this part.

"PART B—RESEARCH AND DEVELOPMENT PROJECTS."

PRERETIREMENT PROGRAMS

SEC. 7. Title V of the Act is amended by (1) changing the title to read "TRAINING", (2) redesignating section 503 as section 504, and (3) by inserting the following new section:

"PRERETIREMENT PROGRAMS

"SEC. 503. For the purpose of easing the frequently difficult social and economic adjustments which must be made at some time by most Americans as they pass from the highly productive period of the middle years to the new retirement status of the older citizen, and to assist them in achieving health

and dignity in retirement living, the Secretary is authorized—

"(a) to develop and operate, in cooperation with any public or nonprofit private agency, organization, or institution, preretirement programs providing education, information, and relevant services to persons planning retirement;

"(b) to collect and disseminate, through publications and other appropriate means, information concerning research, studies, findings, and other materials developed in connection with activities under this section; and

"(c) to make grants to any public or nonprofit private agency, organization, or institution, and contracts with any agency, organization, or institution, for the evaluation of preretirement programs, the training of personnel to carry out such programs, and the conduct of research with respect to the development and operation of such programs."

SPECIAL IMPACT PROGRAMS

SEC. 8. (a) The Act is amended by redesignating title VII as title VIII, by redesignating sections 701 through 703 and references thereto as sections 801 through 803, respectively, and by inserting after title VI the following new title:

"TITLE VII—SPECIAL IMPACT PROGRAMS

"PART A—SERVICE ROLES IN RETIREMENT

"GRANTS AND CONTRACTS FOR SERVICE PROJECTS

"SEC. 701. (a) The Secretary is authorized to make grants to or contracts with public and nonprofit private agencies and organizations to pay not to exceed 90 per centum of the cost of the development and operation of programs designed to provide opportunities for persons aged sixty or over to render public service.

"(b) Payments under this title pursuant to a grant or contract may be made (after necessary adjustment, in the case of grants, on account of previous made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions, as the Secretary may determine.

"CONDITIONS OF GRANTS AND CONTRACTS

"SEC. 702. The Secretary shall not make any grant or enter into any contract under this part unless the grant application or contract proposal—

"(1) has been submitted by, or has been submitted for review and recommendations to, the State agency (if any) established or designated as provided in section 303(a)(1);

"(2) provides for the use of unpaid, volunteer services, if available; and

"(3) provides that the program will not result in the displacement of employed workers or impair existing contracts for services.

"INTERAGENCY COOPERATION

"SEC. 703. In administering this part, the Secretary shall consult with the Office of Economic Opportunity, the Department of Labor, and any other Federal agencies administering relevant programs with a view to achieving optimal coordination of the program under this part with such other programs and shall promote the coordination of programs under this part with other public or private programs or projects carried out at State and local levels. Such Federal agencies shall cooperate with the Secretary in disseminating information about the availability of assistance under this part and in promoting the identification and interest of older persons whose services may be utilized in programs under this part.

"APPROPRIATIONS AUTHORIZED

"SEC. 704. Such sums as may be necessary are authorized to be appropriated for grants or contracts under this part for the fiscal year 1973, and each succeeding fiscal year ending prior to July 1, 1975.

"PART B—NUTRITIONAL SERVICES FOR OLDER AMERICANS

"AUTHORIZATION OF APPROPRIATIONS; GRANTS FOR NUTRITIONAL SERVICES FOR OLDER AMERICANS

"SEC. 711. For the purpose of improving the nutritional level of older persons, there are authorized to be appropriated such sums as may be necessary for the fiscal year 1973, and each succeeding fiscal year ending prior to July 1, 1975. Sums made available under this section shall be utilized by the Secretary to make grants to any State which has in effect a State plan approved under section 303, to assist (as provided in this part) in the planning, establishment, and operation of a program designed to meet the dietary needs of older persons, particularly those of low or moderate income. Such a program shall provide for the establishment and operation in the State of projects providing such services as—

"(1) hot, nutritionally balanced meals for older persons in multipurpose senior centers, in neighborhood centers, and in residential housing for persons of low or middle income;

"(2) home delivered meals for individuals requiring such services because they are homebound or disabled or for other health reasons; and

"(3) nutritional counseling, information, and education for older persons.

"ALLOTMENTS

"SEC. 712. (a) Not to exceed 1 per centum or $200,000, whichever is larger, of the sum appropriated for any fiscal year under section 711 may be reserved by the Secretary for evaluation (directly or by grants or contracts) of programs assisted under this part.

"(b)(1) From the sum appropriated for any fiscal year under section 711, (A) the Virgin Islands, Guam, and American Samoa shall be allotted an amount equal to one-half of 1 per centum of such sum, and (B) each other State shall be allotted an amount equal to 1 per centum of such sum.

"(2) From the remainder (as determined after application of subsection (a) and paragraph (1) of this subsection) of the sum so appropriated each State shall be allotted an additional amount which bears the same ratio to such remainder as the population aged sixty or over in such State bears to the population aged sixty or over in all of the States, as determined by the Secretary on the basis of the most recent information available to him, including any relevant data furnished to him by the Department of Commerce.

"(3) A State's allotment for a fiscal year for programs assisted under this part shall be equal to the sum of the amounts allotted to it under paragraphs (1) and (2).

"(c) The amount of any allotment to a State under subsection (b) for any fiscal year which the Secretary determines will not be required for carrying out the purposes of section 711 shall be available for reallotment, from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out such purposes for sums in excess of those previously allotted to them under this section, and (2) will be able to use such excess amounts during such fiscal year. Such reallotments shall be made on the basis of the State plans approved under section 303, after taking into consideration the population aged sixty or over. Any amount so reallotted to a State shall be deemed part of its allotment under subsection (b).

"(d) The allotment of any State under subsection (b) for any fiscal year shall be available for grants to pay not exceeding 90 per centum of the cost of planning, establishing, and operating programs assisted under this part which are approved by the Secretary prior to the end of such year.

"USE OF ALLOTTED FUNDS

"SEC. 613. Funds allotted to any State under this part may be used for (1) the administration of projects described in section 701 directly by the State agency established or designated as provided in section 303(a)(1), or (2) the award, in accordance with criteria established by the Secretary after consultation with such State agencies, by such State agency of grants or contracts to any public or nonprofit private agencies or organizations for the administration of such programs by such agencies or organizations.

"(c) In allocating funds received under this part, the State agency shall give preference to programs to be established in geographic areas or in institutions having a higher concentration of older persons of low income.

"PAYMENTS

"SEC. 714. Payments under this part may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

"TREATMENT OF NUTRITIONAL SERVICES FOR CERTAIN PUBLIC ASSISTANCE PURPOSES

"SEC. 715. Notwithstanding the provisions of this I, IV, X, XIV, XVI, or XIX of the Social Security Act, services or other assistance provided to any older persons pursuant to this part or pursuant to any grant made under this part shall not be regarded (1) as income or resources of such person in determining his need under a State plan approved under any such title, or (2) as income or resources of any other individual under such approved State plan.

"REGULATIONS

"SEC. 716. (a) The Secretary, after consultation with the Department of Agriculture with respect to standards relating to food distribution, handling, and storage and with respect to the incorporation of the results of tested nutritional research in the operation of projects assisted under this part, shall prescribe general regulations concerning the determination of eligible costs with respect to which grants may be made under this part and the terms and conditions for approving such grants.

"PART C—CONSTRUCTION OF MULTIPURPOSE SENIOR CENTERS

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 721. There are authorized to be appropriated such sums as may be necessary for the fiscal year 1973, and each succeeding fiscal year ending prior to July 1, 1975, for grants by the Secretary to public and nonprofit private agencies and organizations to pay not to exceed 75 per centum of the cost of construction of multipurpose senior centers, except that the total of such grants in any State for any fiscal year shall not exceed 10 per centum of the total amount appropriated for that year for the purposes of carrying out this part.

"REQUIREMENTS FOR APPROVAL OF APPLICATIONS

"SEC. 722. (a) A grant under this part may be made only if the application therefor is approved by the Secretary upon his determination that—

"(1) the application contains or is supported by reasonable assurances that (A) for not less than ten years after completion of construction, the facility will be used for the purposes for which it is to be constructed (B) sufficient funds will be available to meet the non-Federal share of the cost of constructing the facility, and (C) sufficient funds will be available, when construction is completed, for effective use of the facility for the purpose for which it is being constructed;

"(2) the plans and specifications are in accordance with regulations relating to minimum standards of construction and equipment; and

"(3) the application contains or is supported by adequate assurance that any laborer or mechanic employed by any contractors or subcontractors in the performance of work on the construction of the facility will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a5). The Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

"(b) In making grants under this part, the Secretary shall—

"(1) give preference to the construction of multipurpose senior centers in areas covered by approved comprehensive city programs assisted under the provisions of section 105 of the Demonstration Cities and Metropolitan Development Act of 1966; and

"(2) consult with the Secretary of Housing and Urban Development with respect to the technical adequacy of any proposed construction.

"PAYMENTS

"SEC. 723. Upon approval of any application for a grant under this part, the Secretary shall reserve, from any appropriation available therefor, the amount of such grant; the amount so reserved may be paid in advance or by way of reimbursement, and in such installments consistent with construction progress, as the Secretary may determine. The Secretary's reservation of any amount under this section may be amended by him, either upon approval of an amendment of the application or upon revision of the estimated cost of construction of the facility.

"RECAPTURE OF PAYMENTS

"SEC. 724. If, within ten years after completion of any construction for which funds have been paid under this part—

"(a) the owner of the facility ceases to be a public or nonprofit private agency or organization, or

"(b) the facility shall cease to be used for the purposes for which it was constructed (unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so),

the United States shall be entitled to recover from the applicant or other owner of the facility an amount which bears to the then value of the facility (or so much thereof as constituted an approved project or projects) the same ratio as the amount of such Federal funds bore to the cost of the facility financed with the aid of such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

"MORTGAGE INSURANCE FOR MULTIPURPOSE SENIOR CENTERS

"SEC. 725. (a) It is the purpose of this section to assist and encourage the provision of urgently needed facilities for programs for the elderly.

"(b) For the purpose of this part the terms 'mortgage', 'mortgagor', 'mortgagee', 'maturity date', and 'State' shall have the meanings respectively set forth in section 207 of the National Housing Act.

"(c) The Secretary of Health, Education, and Welfare is authorized to insure any mortgage (including advances on such mortgage during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon.

"(d) In order to carry out the purpose of this section, the Secretary is authorized to insure any mortgage which covers a new multipurpose senior center, including equipment to be used in its operation, subject to the following conditions:

"(1) The mortgage shall be executed by a mortgagor, approved by the Secretary, who demonstrates ability successfully to operate one or more programs for the elderly. The Secretary may in his discretion require any such mortgagor to be regulated or restricted as to minimum charges and methods of financing, and, in addition thereto, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the foregoing matters, the Secretary may make such contracts with and acquire for not to exceed $100 such stock or interest in such mortgagor as he may deem necessary. Any stock or interest so purchased shall be paid for out of the Multipurpose Senior Center Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

"(2) The mortgage shall involve a principal obligation in an amount not to exceed $250,000 and not to exceed 90 per centum of the estimated replacement cost of the property or project, including equipment to be used in the operation of the multipurpose senior center, when the proposed improvements are completed and the equipment is installed.

"(3) The mortgage shall—

"(A) provide for complete amortization by periodic payments within such term as the Secretary shall prescribe, and

"(B) bear interest (exclusive of premium charges for insurance and service charges, if any) at not to exceed such per centum per annum on the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market.

"(4) The Secretary shall not insure any mortgage under this section unless he has determined that the center to be covered by the mortgage will be in compliance with minimum standards to be prescribed by the Secretary.

"(6) In the plans for such Multipurpose Senior Center, due consideration shall be given to excellence of architecture and design, and to the inclusion of works of art (not representing more than 1 per centum of the cost of the project).

"(e) The Secretary shall fix and collect premium charges for the insurance of mortgages under this section which shall be payable annually in advance by the mortgagee, either in cash or in debentures of the Multipurpose Senior Center Insurance Fund (established by subsection (h)) issued at par plus accrued interest. In the case of any mortgage such charge shall be not less than an amount equivalent to one-fourth of 1 per centum per annum nor more than an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any one time, without taking into account delinquent payments or prepayments. In addition to the premium charge herein provided for, the Secretary is authorized to charge and collect such amounts as he may deem reasonable for the appraisal of a property or project during construction; but such charges for appraisal and inspection shall not aggregate more than 1 per centum of the original principal face amount of the mortgage.

"(f) The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he may prescribe.

"(g) (1) The Secretary shall have the same functions, powers, and duties (insofar as applicable) with respect to the insurance of mortgages under this section as the Secretary of Housing and Urban Development has with respect to the insurance of mortgages under title II of the National Housing Act.

"(2) The provisions of subsections (e), (g), (h), (i), (j), (k), (l), and (n) of section 207 of the National Housing Act shall apply to mortgages insured under this section; except that, for the purposes of their application with respect to such mortgages, all references in such provisions to the General Insurance Fund shall be deemed to refer to the Multi-purpose Senior Center Insurance Fund, and all references in such provisions to 'Secretary' shall be deemed to refer to the Secretary of Health, Education, and Welfare.

"(h) (1) There is hereby created a Multipurpose Senior Center Insurance Fund which shall be used by the Secretary as a revolving fund for carrying out all the insurance provisions of this section. All mortgages insured under this section shall be insured under and be the obligation of the Multipurpose Senior Center Insurance Fund.

"(2) The general expenses of the operations of the Department of Health, Eudcation, and Welfare relating to mortgages insured under this section may be charged to the Multipurpose Senior Center Insurance Fund.

"(3) Moneys in the Multipurpose Senior Center Insurance Fund not needed for the current operations of the Department of Health, Education, and Welfare with respect to mortgages insured under this section shall be deposited with the Treasurer of the United States to the credit of such fund, or invested in bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States. The Secretary may, with the approval of the Secretary of the Treasury, purchase in the open market debentures issued as obligations of the Multipurpose Senior Center Insurance Fund. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtainable from other investments authorized by this section. Debentures so purchased shall be canceled and not reissued.

"(4) Premium charges, adjusted premium charges, and appraisal and other fees received on account of the insurance of any mortgage under this section, the receipts derived from property covered by such mortgages and from any claims, debts, contracts, property, and security assigned to the Secretary in connection therewith, and all earnings as the assets of the fund, shall be credited to the Multipurpose Senior Center Insurance Fund. The principal of, and interest paid and to be paid on, debentures which are the obligation of such fund, cash insurance payments and adjustments ,and expenses incurred in the handling, management, renovation, and disposal of properties acquired, in connection with mortgages insured under this section, shall be charged to such fund.

"(5) There are authorized to be appropriated to provide initial capital for the Multipurpose Senior Center Insurance Fund, and to assure the soundness of such fund thereafter, such sums as may be necessary.

"DEFINITIONS

"SEC. 726. For purposes of this part—

"(1) The term 'multipurpose senior center' means a community facility for the organization and provision of a broad spectrum of services (including provision of health, social, and educational services and provision of facilities for recreational activities) for older persons.

'(2) The term 'construction' includes construction of new buildings, acquisition of existing buildings, and expansion, remodeling, alteration, and renovation of existing buildings, and initial equipment of such new, newly acquired, expanded, remodeled, altered, or renovated buildings.

"(3) The term 'cost of construction' includes the cost of architects' fees and acquisition of land in connection with construction, but does not include the cost of offsite improvements.

"PART D—TRANSPORTATION SERVICES FOR OLDER AMERICANS

"PROGRAM AUTHORIZED

"SEC. 731. The Secretary, after an appropriate investigation and study, shall develop and carry out a program to improve the transportation services available to older persons. Such programs may include one or more of the following:

"(1) special transportation subsystems for older persons or similar groups with similar mobility restrictions;

"(2) portal-to-portal service and demand actuated services;

"(3) the payment of subsidies to transportation systems to enable them to provide transportation services to older persons on a reduced rate basis.

"(4) payments directly to older persons to enable them to obtain reasonable and necessary transportation services; and

"(5) any other program which the Secretary determines shows promise of facilitating the provision of transportation services to older persons.

"APPROPRIATIONS AUTHORIZED

"SEC. 732. There are authorized to be appropriated for the fiscal year 1973, and for each succeeding fiscal year ending prior to July 1, 1975, such sums as may be necessary to enable the Secretary to carry out the provisions of this part.

"PART E—CONTINUING EDUCATION FOR OLDER PERSONS

"PROGRAMS AUTHORIZED

"SEC. 741. (a) The Secretary, after appropriate investigation and study, shall develop and carry out a program for providing continuing education to older persons. Such programs may include one or more of the following:

"(1) programs to provide rehabilitation for older persons to enable them to lead more productive lives,

"(2) programs designed to retrain persons who are shifting to new employment by reasons of age or other conditions,

"(3) Programs to upgrade the skills of older persons to enable them to obtain more rewarding employment, and

"(4) programs designed to broaden the educational, cultural, or social awareness of such older persons so that they will be better able to lead more productive and rewarding lives in retirement.

vided for in this part through grants or contracts with public and private agencies, including other Federal agencies, State educational agencies, local educational agencies, the vocational educational agencies of the States, the vocational rehabilitation agencies of the States.

"APPROPRIATIONS AUTHORIZED

"SEC. 742. There are authorized to be appropriated for the fiscal year 1973, and for each succeeding fiscal year ending prior to July 1, 1975, such sums as may be necessary to enable the Secretary to carry out the provisions of this part."

By Mr. HARTKE:

S. 3078. A bill to amend title 5, United States Code, to require the heads of the respective executive agencies to provide the Congress with advance notice of certain planned organizational and other changes or actions which would affect Federal civilian employment, and for other purposes. Referred to the Committee on Post Office and Civil Service.

PRIOR NOTICE FOR REDUCTIONS IN FORCE

Mr. HARTKE. Mr. President, I am introducing today a bill to require the heads of the respective executive agencies to provide advance notice of certain planned organizational, and other changes which would affect Federal civilian employees. I feel that this legislation is particularly relevant in light of the expresed intention of the executive branch to carry out considerable reductions in personnel.

This legislation is designed to protect Federal civilian employees from being the victims of sudden changes in employment policies. At the present time, Federal employees are subject to dismissal or relocation without sufficient notice. In order to protect these employees, this bill provides that when an agency or executive policy necessitates the dismissal or relocation of civilian employees, the head of the executive agency shall inform the Post Office and Civil Service Committees of the Senate and House of Representatives, and the respective employee organizations at least 120 days before any such action is taken.

It is my hope that this legislation will provide Federal workers the adequate notice that is necessary prior to reductions in personnel. Fairness to the Federal worker demands that we do no less.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at the conclusion of my remarks.

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

S. 3078

A bill to amend title 5, United States Code, to require the heads of the respective executive agencies to provide the Congress with advance notice of certain planned organizational and other changes or actions which would affect Federal civilian employment, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subchapter II of chapter 29 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 2955. Advance notice to Congress of certain proposed actions of executive agencies affecting Federal civilian employment

"Whenever it is determined by appropriate authority that any administrative action, order, or policy, or series of administrative actions, orders, or policies, shall be taken, issued, or adopted, by or within any executive agency, which will effectuate the closing, disposal, relocation, dispersal, or reduction of the plant and other structural facilities of any installation, base, plant, or other physical unit or entity of that executive agency and which—

"(1) will necessitate, to any appreciable extent, a reduction in the number of civilian employees engaged in the activities performed in and through those facilities of that agency, without reasonable opportunity for their further civilian employment with the Government in the same commuting area; or

"(2) will necessitate, to any appreciable extent, the transfer or relocation of civilian employees engaged in the activities performed in and through those facilities of that agency, in order to provide those employees with reasonable opportunity for further civilian employment with the Government outside the same commuting area; or

"(3) both;

the head of that executive agency shall transmit to the respective Committees on Post Office and Civil Service of the Senate and House of Representatives and to employee organizations having exclusive recognition, at least one hundred and twenty days before any such action, order, or policy is initiated, written notice that such action, order, or policy will be taken, issued, or adopted, together with such written statement, discussion, and other information in explanation thereof as such agency head considers necessary to provide complete information to the Congress with respect to that action, order, or policy. In addition, the agency head shall provide to such committees such additional pertinent information as those committees, or either of them, may request."

(b) The table of sections of subchapter II of chapter 29 of title 5, United States Code, is amended by adding at the end thereof—

"2955. Advance notice to Congress of certain proposed actions of executive agencies affecting Federal civilian employment.".

By Mr. KENNEDY (for himself, Mr. WILLIAMS, Mr. JAVITS, Mr. SCHWEIKER, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CRANSTON, Mr. EAGLETON, Mr. HARRIS, Mr. HART, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. MAGNUSON, Mr. MCGEE, Mr. MCGOVERN, Mr. MONDALE, Mr. MUSKIE, Mr. NELSON, Mr. PASTORE, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. SCOTT, Mr. STAFFORD, Mr. STEVENSON, and Mr. TUNNEY):

S. 3080. A bill to amend the Lead Based Paint Poisoning Prevention Act, and for other purposes. Referred to the Committee on Labor and Public Welfare.

Mr. KENNEDY. Mr. President, I am pleased to take this opportunity to introduce legislation extending the provisions of the Lead Based Paint Poisoning Prevention Act. My bill authorizes the continuation of a program that was enacted January 13, 1971, to eliminate the hazards of childhood poisoning caused by lead based paints.

In 1969, when I proposed legislation to create a Federal program to fight this disease, the Senate overwhelmingly expressed support for this program by unanimously approving the provisions in that measure. Today, I am pleased to announce that 24 Senators, including the chairman of the Labor and Public Welfare Committee; and Senator JAVITS and Senator SCHWEICKER join with me in introducing this new bill that will guarantee continued Federal support in the fight against the hazards of childhood lead based paint poisoning.

The need for continuing programs in this area is clear. In one year about 200 youngsters die from lead based paint poisoning. At least 400,000 children get lead sick each year. But only 12,000 to 16,000 children actually receive treatment. Of those who are seen by physicians, it is estimated that 50 percent are left mentally retarded because the disease usually had advanced too far by the time a doctor is summoned. Indeed, the greatest tragedy of childhood lead-paint poisoning is that our society has so far

failed to prevent the disease even though we know how to do that.

Lead exists naturally in the environment. But many products are manufactured with lead additives to enhance various qualities like staying power and color in paints, and efficiency in automobile fuels. Interior paints used in houses built before World War II customarily included large quantities of lead. Today, many of those homes are dilapidated slum dwellings. They have been allowed to deteriorate to the point where wall and ceiling surface are chipped, cracked eyesores, flaked with peeling paint. Young children eat these chips. And when lead paint chips are ingested over a period of time, the victims are stricken with nausea, fever, coma, mental retardation, and death. Sadly, even the mothers who know their children eat paint chips fail to realize that it is harmful. Though her child's body is baked with fever, and trembling with convulsions, too often that mother is unprepared to tell her doctor about the paint eating episodes.

Many doctors are unprepared and unaware that these are the symptoms of plumbism—the scientific term for lead based paint poisoning. For that reason, lead sick children are often treated for the wrong thing. Those who are fortunate enough to get treatment, however, are tragically sent back to the same conditions that caused the disease in the first place. Once a child gets lead sick, he is likely to be sick again.

Community workers and health officials who have attempted to fight the hazards of lead based paint poisoning know that the effects of this debilitating crippler can be halted. Programs are needed most urgently in communities where the risk is high because of widespread conditions of housing deterioration.

These are the communities that must have awareness programs—awakening parents, teachers and medical professionals to the problems associated with lead-based paint poisoning. In these communities, screening projects to seek out youngsters with high lead levels must be established if we intend to help the children who are suffering.

The existing legislation, Public Law 91–695, authorizes Federal assistance for community-based screening programs. Health officials and lay workers in at least 50 cities have contacted the bureau of community and environmental management in the Department of Health, Education, and Welfare for assistance to establish lead poisoning programs under the present legislation. During hearings in 1970, Dr. Jonathan Fine told the health subcommittee that a city the size of Boston could spend at least $1 million in an annual program aimed at the elimination of the hazards of this disease. For a nationwide attack against lead-based paint poisoning, significantly more money will be required.

The bill I am introducing today authorizes $20 million for the Department of Health, Education, and Welfare to award contracts and grants for screening programs that will identify those youngsters who need treatment. Spurred by current concerns about this disease, many communities have attempted to establish programs that will measure the extent of the lead poisoning problem. Whenever investigators look for lead sick children, they find them. And the more they look the more they find.

I am convinced that it is vital for us to continue the provisions of Public Law 91–695 authorizing detection programs. We must provide adequate resources if we intend for these programs to make a difference. The $20 million authorized for screening and detection programs in my bill will hopefully make a significant impact in this area.

Unlike many health hazards, lead-based paint poisoning and its effects are well understood. This is not a mysterious malady demanding extensive research to seek a cure. Once a victim has been diagnosed with high lead levels doctors use chelating agents to rid the body of the excessive amounts of lead. But when those children are discharged from a hospital after treatment they are usually returned to home surroundings—peeling walls, chipped and cracked window sills—that are just as lethal as they were when treatment began.

The authorization in my bill recognizes that it is just as important to remove those surfaces from exposure to young children as it is to seek out and treat the sick child. The existing legislation authorizes the Department of Health, Education, and Welfare to assist in the development of community programs that will identify high risk areas and neighborhoods and provide procedures to eliminate the hazards detected in those communities. My bill authorizes $25 million for the Department of Health, Education, and Welfare to extend areawide detection programs. It has been clear for many years that proper maintenance of residential housing can prevent the exposure of lead paint chips to young children.

But, as well all know, peeling paint chips are usually a symptom of a much bigger problem—the gross lack of concern absentee landlords have for inner city properties. In too many cities the number of deteriorating houses has increased enormously because outmoded zoning regulations and other restrictions encourage owners to abandon rather than repair the homes occupied by poor people. Modern wall coverings as well as deleaded paints can eliminate the hazards of lead-based paint poisoning. Yet, municipal health authorities and housing officials are too often embroiled in jurisdictional disputes to produce effective action on the hazards of this disease.

I am hopeful that communities around the country will begin to obtain the assistance needed to eliminate the hazards of lead-based paint poisoning with the assistance of the resources in the bill I am introducing today.

Finally, my bill authoriezs $5 million for the Department of Housing and Urban Development to work in cooperation with the Department of Health, Education, and Welfare to determine the extent of the lead-based-paint-poisoning problem and to establish the most efficient ways to cover up exposed surfaces in residential communities.

Although we know that deleaded paints, wood wall panels, and other materials are marketed extensively, too little has been done to insure the use of such products in all housing rehabilitation and construction projects. It is my hope that this legislation will develop the action needed to protect future generations of children. Perhaps one of the most effective ways that we can develop safeguards against the hazards of this disease is by eliminating lead and lead compounds as additives to interior paints.

Although manufacturers of household paints had adopted voluntary standards years ago, that specify a limit of 1 percent lead in paints, there is increasing evidence of the need to seek the elimination of all but trace amounts of lead in paints used in houses. My bill is designed to embrace that concept. It is my hope that during hearings on this bill we will learn more about the feasibility of eliminating lead from paint intended for residential interior surfaces.

Mr. President, I am pleased to offer this bill. I respectfully request that it be referred to the Subcommittee on Health where hearings will be scheduled as soon as possible. This bill is designed to continue a very worthwhile program regarding community health needs and I look forward to favorable action on this measure by the Senate.

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

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

S. 3080

A bill to amend the Lead Based Paint Poisoning Prevention Act and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101 of the Lead Based Paint Poisoning Prevention Act is amended by adding at the end thereof the following new subsection:

"(e) The Secretary is also authorized to make grants to State agencies for the purpose of establishing centralized laboratory facilities for analyzing biological and environmental lead specimens obtained from local lead based paint poisoning detection programs."

SEC. 2. Section 501(3) of the Lead Based Paint Poisoning Prevention Act is amended by striking out "1 percentum lead by weight" and inserting in lieu thereof ".06 per centum lead by weight."

SEC. 3. (a) Section 503(a) of the Lead Based Paint Poisoning Prevention Act is amended (1) by striking out the word "and" and inserting in lieu thereof a comma, and (2) by inserting before the period a comma and the following: "and $20,000,000 for each fiscal year thereafter".

(b) Section 503(b) of such Act is amended (1) by striking out the word "and" and inserting in lieu thereof a comma, and (2) by inserting before the period a comma and the following: "and $25,000,000 for each fiscal year thereafter".

(c) Section 503(c) of such Act is amended (1) by striking out the word "and" and by inserting in lieu thereof a comma, and (2) by inserting before the period a comma and the following: "and $5,000,000 for each fiscal year thereafter".

(d) Section 503(d) of such Act is amended by striking out all matter after the semicolon and inserting in lieu thereof "any amounts authorized for one fiscal year but not appropriated may be appropriated for the succeeding fiscal year,".

Mr. RIBICOFF. Mr. President, today, in conjunction with the Senator from Massachusetts (Mr. KENNEDY) and other Senators, I am introducing a bill to provide Federal assistance for the battle against childhood lead-based paint poisoning.

The problem of childhood lead poisoning caused by the ingestion of lead-based paints is reaching epidemic proportions in most of our large cities. This problem is almost solely confined to young children living in city slums. The accessibility to flaking and peeling lead paint and broken plaster and the ingestion of these paint chips can lead to either death or irreversible brain injury. Since acute lead poisoning causes permanent brain damage which cannot be modified by medical treatment, it is imperative that prompt action be taken to eliminate this man-made environmental hazard.

The bill I am cosponsoring extends the Lead-Based Paint Elimination Act of 1970, which expires on June 30, 1972.

Our proposal authorizes $45 million for the Department of Health, Education and Welfare to extend programs for detecting and treating lead poisoning victims, for identifying areas where lead-based paint poisoning presents a high risk and for State health agencies to analyze lead samples in centralized laboratory facilities.

This proposal would also authorize $5 million for the Department of Housing and Urban Development to continue its research and demonstration program in the development of improved methods for removing the hazards of lead-based paint poisoning from residential housing.

This bill also changes the acceptable limit of lead additives in interior paints from 1 percent to .06 percent.

It is tragic that a disease which is entirely preventable continues virtually unabated. The cost per person to remove lead paint from residential housing units is miniscule compared to a lifetime of medical costs which is estimated to run as high as $250,000 for lead poisoning treatment and medical attention.

I urge Senators to pass the bill at the earliest possible date.

Mr. SCHWEIKER. Mr. President, today I join Senator KENNEDY in cosponsoring legislation to permit the Federal Government to continue to assist in attacking the disease of childhood lead poisoning. The bill which we introduce today will amend the Lead-Based Paint Poisoning Prevention Act which was signed into law on January 13, 1971, and provided an authorization of $30 million for detection, treatment, and prevention of this disease. To date, only $7.5 million of this authorization has been appropriated to carry out the provisions of this act. The Federal Government has just begun to attack this disease through research and demonstration projects. It has not yet awarded a grant to any local unit charged with the responsibility of detecting and treating cases of lead-based paint poisoning.

An article in the December 17, 1971, issue of the Washington Post gave a clear indication that the tragedy of lead-based paint poisoning is a continuing one. The District of Columbia found dangerous levels of lead in the blood of one out of three Washington inner-city children tested in the 3 months before December 1971. The chief of the District of Columbia Accident Prevention Division was quoted as having said:

> The inner city is literally a lead mine.

The tragedy of this is that poisoning resulting from eating flakes of lead-based paint can cause death, and often causes significant brain damage.

In the 91st Congress, I introduced legislation, S. 3941, to provide civil penalties for the use of lead-based paint in certain dwellings. I was gratified when the prohibition of the use of lead-based paint was adopted as an amendment to the Housing and Urban Development Act of 1970. Although the provision for penalties was not included, Congress did give significant recognition to this critical problem.

Yet, clearly much more needs to be done. I strongly supported, in the Labor and Public Welfare Committee and on the Senate floor, the Lead Paint Poisoning Prevention Act which was signed into law by President Nixon on January 13, 1971. While Congress had authorized $30 million for this 2-year program, until this summer only minimal funds had been directed for the program. Only a few people were assigned to work on the problem in the Department of Health, Education, and Welfare. I strongly urged the Congress to appropriate at least $15 million to fund this program, a small amount when compared to the cost of caring for over 400,000 children who suffer from lead-based paint poisoning each year, not to mention the varying degrees of incapacitation they must bear for the rest of their lives. Over 200 less fortunate children die each year. We have made a significant beginning now by appropriating $7.5 million for the program.

The bill which we introduced today will enable the Federal Government to continue to work against this disease.

It will authorize $20 million annually for detection and treatment of lead-based paint poisoning, $25 million annually to identify problem areas where lead-based paint poisoning presents a high risk, and $5 million annually for research and demonstration projects.

Current lead-based paint legislation expires June 30, 1972, and the new bill would give the program continuing status. The bill also lowers the definition of maximum lead content in paints from 1 to 0.06 percent lead by weight, and makes possible grants to State health agencies to aid in the operation of centralized laboratory facilities for analyzing lead samples obtained from community detection programs.

We must commit ourselves to eradicating this serious disease from our society. I will work in the Labor and Public Welfare Committee and on the Senate floor to gain approval of this legislation to commit more funds and manpower to fight this terrible tragedy which adds yet another burden to the already long list of disadvantages our inner-city children must bear.

Mr. JAVITS. Mr. President, silently, almost unnoticed, lead-based paint poisoning causes the death of many children and leaves many more with mental retardation, irreversible brain damage, cerebal palsy, blindness, kidney disease, and other severely debilitating handicaps. Most tragic, it is a manmade disease, and as such, a disease that is highly preventable. There is no rational reason for its existence, and no justification to allow lead-based paint poisoning to continue.

In New York City, lead exposure is one of the major pediatric problems. There are today, approximately, 120,000 children living in 450,000 apartment units in New York City that are in such a state of disrepair that each such child is a potential victim of lead paint poisoning. It is estimated that currently, 6,000 to 8,000 of these children have significant levels of lead in their blood.

Health officials in New York City banned the use of high content lead paint on indoor surfaces in 1959. However, dangerous buildings containing toxic levels of lead were generally built before World War II. It is in such older buildings that a child gains access to paint which contains high levels of lead.

Although deaths reported due to lead poisoning have dropped sharply in the past 10 years—In New York City, there were 12 in 1959 and two in 1970—at the same time the number of lead poisoning cases reported to the Health Department has increased over the last 10 years from 171 in 1959 to 727 in 1969. In 1970, 2,649 cases were discovered. In 1971, there were 1,900 reported cases of lead-based paint poisoning.

I have long supported increased funding for lead-based paint poisoning prevention. In October of last year, I urged the President to release funds appropriated for the act. In December, I received word that the funds had been released. The text of this correspondence was printed in the CONGRESSIONAL RECORD on December 16, 1971.

Because of the tragic proportions, and the needlessness of this disease, I sponsored with Senators KENNEDY, SCHWEIKER, and WILLIAMS and cosponsored by 25 of my colleagues, S. 3080 a bill to amend the "Lead-Based Paint Poisoning Prevention Act," the proposed amendments would insure a continued and vastly strengthened effort on our part to eradicate this most tragic and preventable disease. I, therefore, urge the swift passage of this bill to save the lives, minds, and bodies of so very many children.

By Mr. BROCK:

S.J. Res. 189. A joint resolution to authorize the President to designate the period beginning March 26, 1972, as "National Week of Concern for Prisoners of War/Missing in Action," and to designate Sunday, March 26, 1972, as a national day of prayer for these Americans. Referred to the Committee on the Judiciary.

Mr. BROCK. Mr. President, on Monday, January 25, 1971, as the first piece of legislation bearing my name in this body, I introduced Senate joint resolution 10 providing authorization for President Nixon to designate a National Week of

Concern for Prisoners of War and Missing in Action which would commemorate the anniversary of the capture of the first prisoner of war, Maj. Floyd J. Thompson on March 26, 1964. Sixty-five of my colleagues joined me in sponsoring that legislation which passed in the House version.

Today, I rise with the sad task of again asking that the President be authorized to designate a National Week of Concern at the request of the largest organization of families of prisoners of war and missing in action, the National League of Families of POW's/MIA's. We all fervently hoped that last year's Week of Concern would be the last and that another year would see husbands, brothers, and fathers reunited with their loved ones.

We were to hope in vain; and today, I again ask that this body again speak with one voice in expressing concern for our men held prisoner in the land of the enemy. I ask that we again authorize the President to designate the week of March 26 to April 1 as a National Week of Concern, and the Sunday of March 26 as National Day of Prayer for their welfare.

I ask unanimous consent that the text of the resolution be printed in the RECORD at this point.

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

S.J. RES. 189

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That to demonstrate the support and concern of the people of the United States, for the more than one thousand five hundred Americans listed as prisoners of war or missing in action in Southeast Asia, and to forcefully protest the inhumane treatment these men are receiving at the hands of the North Vietnamese, in violation of the Geneva Convention, the President is hereby authorized and requested to issue a proclamation (1) designating the period beginning March 26, 1972, and ending April 1, 1972, as "National Week of Concern for Prisioners of War/Missing in Action", (2) designating Sunday, March 26, 1972, as a national day of prayer for the lives and safety of these men, and (3) calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1973

At the request of Mr. HARTKE, the Senator from New Jersey (Mr. CASE) was added as a cosponsor of S. 1973, a bill to provide for the establishment of the Thaddeus Kosciuszko Home National Historic Site in the State of Pennsylvania, and for other purposes.

S. 2738

At the request of Mr. HUGHES, the Senator from Tennessee (Mr. BROCK), and the Senator from New York (Mr. JAVITS) were added as cosponsors of S. 2738, a bill to amend titles 10 and 37, United States Code, to provide for the equality of treatment for military personnel in the application of dependency criteria.

S. 2825

At the request of Mr. PEARSON, the Senator from Florida (Mr. GURNEY) was added as a cosponsor of S. 2825, establishing a Government-administered life insurance policy to all Vietnam era veterans.

S. 2829

At the request of Mr. BAYH, the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Hawaii (Mr. FONG) were added as cosponsors of S. 2829, a bill to strengthen interstate reporting and interstate services for parents of runaway children, and for other purposes.

S. 2898

At the request of Mr. HARTKE, the Senator from Indiana (Mr. BAYH), and the Senator from Illinois (Mr. PERCY) were added as cosponsors of S. 2898, a bill to provide college tutors for the homebound handicapped.

S. 2993

At the request of Mr. Moss, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 2993, a bill to amend the Communications Act of 1934 with respect to the renewal of broadcasting licenses.

S. 3011

At the request of Mr. TAFT, the Senator from Vermont (Mr. STAFFORD), the Senator from Utah (Mr. Moss), and the Senator from Rhode Island (Mr. PELL) were added as cosponsors of S. 3011, a bill to offer amnesty under certain conditions to persons who have failed or refused to register for the draft or who have failed or refused induction into the Armed Forces of the United States, and for other purposes.

S. 3022

At the request of Mr. BAYH, the Senator from Minnesota (Mr. MONDALE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from New York (Mr. JAVITS), and the Senator from Oklahoma (Mr. HARRIS) were added as cosponsors of S. 3022, a bill to provide for the issuance of $2 bills bearing the portrait of Susan B. Anthony.

S. 3066

At the request of Mr. JORDAN of North Carolina, the Senator from North Carolina (Mr. ERVIN) was added as a cosponsor of S. 3066, a bill to amend the Federal Home Loan Bank Act to require the Federal Home Loan Bank Board to obtain certain approvals before changing the location of a Federal home loan bank.

S. 3068

At the request of Mr. JORDAN of North Carolina, the Senator from North Carolina (Mr. ERVIN) was added as a cosponsor of 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.

SENATE JOINT RESOLUTION 171

At the request of Mr. MATHIAS, the Senator from New York (Mr. BUCKLEY) was added as a cosponsor of Senate Joint Resolution 171, designating March 1972 as "Exceptional Children's Month."

SENATE RESOLUTION 234—SUBMISSION OF A RESOLUTION PROVIDING FOR ACQUIRING A MARBLE BUST OF CARL HAYDEN

(Referred to the Committee on Rules and Administration.)

Mr. GOLDWATER (for himself and Mr. FANNIN) submitted the following resolution:

S. RES. 234

Resolved, That, in honor of Carl Hayden, who served his State and his nation longer than any other man in history, the Commission on Arts and Antiquities of the United States Senate (hereinafter referred to as the "Commission") is authorized and directed to provide for the design and sculpture of a marble bust of Carl Hayden. The Commission is further authorized and directed, subject to the provisions of Senate Resolution numbered 382 of the Ninetieth Congress, adopted October 1, 1968, to accept such bust on behalf of the Senate and to cause such bust to be placed in an appropriate location within the Senate wing of the Capitol or any of the Senate Office Buildings, or any room, space, or corridor thereof.

SEC. 2. Expenses incurred by the Commission in carrying out this resolution, which shall not exceed $3,000, shall be paid out of the contingent fund of the Senate on vouchers approved by the Chairman of the Commission.

SENATE RESOLUTION 235—ORIGINAL RESOLUTION REPORTED PROVIDING ADDITIONAL FUNDS FOR THE COMMITTEE ON LABOR AND PUBLIC WELFARE

(Referred to the Committee on Rules and Administration.)

Mr. WILLIAMS, from the Committee on Labor and Public Welfare, reported the following resolution:

S. RES. 235

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Labor and Public Welfare, or any subcommittee thereof is authorized from March 1, 1972, through February 28, 1973, for the purposes stated and within the limitations imposed by the following sections, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The Committee on Labor and Public Welfare, or any subcommittee thereof, is authorized from March 1, 1972, through February 28, 1973, to expend not to exceed $1,468,000 to examine, investigate, and make a complete study of any and all matters pertaining to each of the subjects set forth below in succeeding sections of this resolution, said funds to be allocated to the respective specific inquiries and to the procurement of the services of individual consultants or organizations thereof (as authorized by section 202 (1) of the Legislative Reorganization Act of 1946, as amended) in accordance with such succeeding sections of this resolution.

SEC. 3. Not to exceed $1,013,000 shall be available for a study or investigation of all matters within its jurisdiction under rule XXV of the Standing Rules of the Senate, of which amount not to exceed $35,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 4. Not to exceed $455,000 shall be available for an examination, investigation, and complete study of any and all matters pertaining to the United Mine Workers of America election of 1969 and a general study of pension and welfare funds, with special emphasis on the need for protection of employees covered by these funds, of which amount not to exceed $45,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 5. The committee shall report its findings, together with such recommendations for legislation as it deems advisable with respect to each study or investigation for which expenditure is authorized by this resolution, to the Senate at the earliest practicable date, but not late. than February 28, 1973.

SEC. 6. Expenses of the committee under this resolution, which shall not exceed in the aggregate $1,468,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 236—SUBMISSION OF A RESOLUTION AUTHORIZING ADDITIONAL CLERICAL ASSISTANTS FOR THE COMMITTEE ON VETERANS' AFFAIRS

(Referred to the Committee on Veterans' Affairs.)

Mr. HARTKE (for himself and Mr. THURMOND) submitted the following resolution:

S. RES. 236

Resolved, That the Committee on Veterans' Affairs is authorized, through February 28, 1973, to employ three additional clerical assistants, to be paid from the contingent fund of the Senate at rates of compensation to be fixed by the chairman in accordance with the provisions of section 105 of the Legislative Branch Appropriation Act, 1968, as amended.

SENATE RESOLUTION 237—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON FOREIGN RELATIONS

(Referred to the Committee on Rules and Administration.)

Mr. FULBRIGHT, from the Committee on Foreign Relations, reported the following resolution:

S. RES 237

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Foreign Relations or any subcommittee thereof, is authorized from March 1, 1972, through February 28, 1973, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $375.000, of which amount (1) not to exceed $50,000 shall be available for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $20,000 shall be available for the training of the professional staff of such committee, or any subcommittee thereof (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1973.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 238—ORIGINAL RESOLUTION REPORTED FROM THE COMMITTEE ON RULES AND ADMINISTRATION TO PAY A GRATUITY TO ELAINE H. DRUMMOND

(Ordered to be placed on the calendar.)

Mr. JORDAN of North Carolina reported the following resolution:

S. RES. 238

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent funds of the Senate, to Elaine H. Drummond, widow of William H. Drummond, recently deceased employee of the Architect of the Capitol, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 239—ORIGINAL RESOLUTION REPORTED AUTHORIZING THE PRINTING OF THE REPORT OF THE NATIONAL SOCIETY OF THE DAUGHTERS OF THE AMERICAN REVOLUTION AS A SENATE DOCUMENT

(Ordered to be placed on the calendar.)

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following resolution:

S. RES. 239

Resolved, That the seventy-third annual report of the National Society of the Daughters of the American Revolution for the year ended March 1, 1970, be printed, with an illustration, as a Senate document.

SENATE RESOLUTION 240—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON RULES AND ADMINISTRATION

(Ordered to be placed on the calendar.)

Mr. JORDAN, from the Committee on Rules and Administration, reported the following resolution:

S. RES. 240

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Rules and Administration or any subcommittee thereof, is authorized from March 1, 1972, through February 28, 1973, for the purposes stated and within the limitations imposed by the following sections, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The Committee on Rules and Administration, or any subcommittee thereof, is authorized from March 1, 1972, through February 28, 1973, to expend not to exceed $327,000 to examine, investigate, and make a complete study of any and all matters pertaining to each of the subjects set forth below in succeeding sections of this resolution, said funds to be allocated to the respective specific inquiries and to the procurement of the services of individual consultants or organizations thereof (as authorized by section 202(1) of the Legislative Reorganization Act of 1946, as amended) in accordance with such succeeding sections of this resolution.

SEC. 3. Not to exceed $150,000 shall be available for a study or investigation of privileges and elections.

SEC. 4. Not to exceed $177,000 shall be available for a study or investigation of computer services for the Senate, of which amount not to exceed $25,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 5. The committee shall report its findings, together with such recommendations for legislation as it deems advisable with respect to each study or investigation for which expenditure is authorized by this resolution, to the Senate at the earliest practicable date, but not later than February 28, 1973.

SEC. 6. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

ADDITIONAL COSPONSOR OF A CONCURRENT RESOLUTION

SENATE CONCURRENT RESOLUTION 33

At the request of Mr. BROCK, the Senator from Massachusetts (Mr. BROOKE), the Senator from Illinois (Mr. PERCY), and the Senator from Delaware (Mr. BOGGS) were added as cosponsors of Senate Concurrent Resolution 33, regarding the persecution of Jews and other minorities in Russia.

EMERGENCY MEASURES TO IMPROVE FARM INCOME—AMENDMENT

AMENDMENT NO. 827

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

Mr. MANSFIELD (for Mr. HUMPHREY) submitted an amendment intended to be proposed to the joint resolution (S.J. Res. 172) to provide emergency measures to improve farm income.

EDUCATION AMENDMENTS OF 1971—AMENDMENT

AMENDMENT NO. 828

(Ordered to be printed and referred to the Committee on Labor and Public Welfare.)

Mr. BAYH submitted an amendment intended to be proposed by him to the bill (S. 659) to amend and extend the Higher Education Act of 1965 and other acts dealing with higher education.

ADDITIONAL COSPONSORS OF AN AMENDMENT

AMENDMENT NO. 820

At the request of Mr. RIBICOFF, the Senator from Illinois (Mr. STEVENSON), and the Senator from California (Mr. TUNNEY) were added as cosponsors of

Amendment No. 820 intended to be offered to the bill (H.R. 1), the Social Security Amendments of 1971.

NOTICE OF HEARINGS ON CERTAIN BILLS

Mr. SPARKMAN. Mr. President, I should like to announce that the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing and Urban Affairs will hold 3 days of hearings—January 31, February 1 and 2—on S. 870, which would provide operating subsidies for urban mass transportation systems, and S. 2412, which would amend the Urban Mass Transportation Act to waive in certain cases planning requirements. These hearings are a continuation of those hold by the subcommittee during the first session of this Congress on this legislation.

The hearings will be held in room 5302, New Senate Office Building, and will begin at 10 a.m. each day.

NOTICE OF HEARING CANCELLATION

Mr. RANDOLPH. Mr. President, the hearing before the Subcommittee on Labor of the Committee on Labor and Public Welfare concerned with black lung legislation scheduled for tomorrow, Thursday, January 27, 1972, at 9:30 a.m., room 4200, New Senate Office Building, has been canceled.

The second day of hearings previously announced for Friday, January 28, 1972, at 9:30 a.m., room 4200, New Senate Office Building, will be held as scheduled.

ANNOUNCEMENT OF HEARING ON EMERGENCY MEASURES TO IMPROVE FARM INCOME

Mr. TALMADGE. Mr. President, I wish to announce the Committee on Agriculture and Forestry will hold a hearing Monday, January 31, in room 324, Old Senate Office Building, beginning at 9:30 a.m., on a substitute to be offered by the Senator from Minnesota (Mr. HUMPHREY) to his resolution, Senate Joint Resolution 172. Anyone wishing to testify should contact the clerk of the committee as soon as possible. For the information of those interested in this hearing, I ask unanimous consent that a copy of the substitute be printed in the RECORD following my remarks.

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

AMENDMENT NO. 827

Strike all after the resolving clause and insert the following: That in view of the already more than ample carryover stocks of feed grains, the danger of farmers planting too large an acreage for 1972 harvest in relation to market outlets available, thus adding to burdensome surpluses and depressing farm income, and in view of the inability to re-institute an effective base-acreage feed grain adjustment program for 1972 at this late date,

(1) the Secretary of Agriculture is directed to determine what percentage of the 1971 set aside acreage plus acreage of feed grains planted on cooperators' farms, together with the estimated production on non-cooperators' farms, will result in the production, at expected yields, of 170 million tons of feed grains in 1972; and

(2) the Secretary of Agriculture is further directed to announce that all cooperators in the 1972 feed grain program must limit their total set aside acreage plus feed grains planted, to the percentage of such acreages on the farm in 1971, as the Secretary specifies, based on paragraph (1).

SEC. 2. Because of need for increased acreages of cotton in 1972 to replenish normal stocks in marketing channels, and to maintain stable supplies for domestic users and exporters the Secretary of Agriculture is further directed to permit cooperators in the cotton program to plant cotton on any acreages set aside under the cotton program.

Amend the Title so as to read: "Joint Resolution to Provide Emergency Measures to Improve Farm Income In 1972."

ADDITIONAL STATEMENTS

PRESIDENT NIXON'S ATTEMPT TO END THE VIETNAM WAR

Mr. GOLDWATER. Mr. President, having listened to President Nixon's outstanding television presentation last night, I just want to say that any Democrat who fails to support the current initiative to end the war is either committed to total surrender of all America's strategic interests in Indochina or is more interested in gaining political advantage than in ending the tragic hostilities.

What we saw on our television screens was a Republican President once again trying to bring an end to a war which began under a Democratic predecessor and was enlarged by another Democratic predecessor.

It ill behooves any Democrat to belittle Mr. Nixon's strenuous and constant attempts to negotiate a settlement of the war. In fact, Democrats should be the very last group to take such a position. After all, President Nixon, by May 1, will have reduced U.S. troop strength by half a million men. These are the same men that a Democrat President sent off to Indochina in a major escalation of the war.

I, for one, have absolutely no respect for arguments and hair-splitting over methods used by the President and his national security adviser, Henry Kissinger. The important thing is that President Nixon is trying to end a war which began in the administration of John F. Kennedy and reached its tragic peak in death and injury and cost under President Johnson. He is attempting also to bring about the release of 1,500 men, most of whom were captured before he took office. I say President Nixon should be congratulated for his determined, nonstop attempt to find America's way out of this Democrat-manufactured mess.

THE PRESIDENT'S PROPOSALS ON INDOCHINA

Mr. MANSFIELD. Mr. President, the President's proposals indicate a long step forward in laying the cards on the table and letting the American people and the Congress know of the many attempts over the past 30 months to arrive at a basis for negotiations. The President and the Congress are coming closer together on the basis of a terminal withdrawal date in exchange for the release of the POW's and recoverable MIA's.

The concessions by the administration could lay the groundwork for the start of negotiations for the first time. It is my understanding that the administration has indicated that it is willing to consider separately the military and political aspects of the proposals. I feel that the military aspects are the most important; that is, terminal date for withdrawal, release of the POW's and the recoverable MIA's based on a cease-fire, because that is first and foremost in our interest; the political settlement relative to South Vietnam is secondary in comparison.

Overall it is an advance of previous positions but whether or not the NFL and Hanoi will consider them to have enough substance remains to be seen. It is my belief that the President's proposal should receive the most serious consideration by the other side but that is a decision which they will have to make. Certainly, it represents a degree of flexibility which has been absent up to this time.

PROPOSED LEGAL SERVICES EXPERIMENT FOR CALIFORNIA: OEO CAPITULATES ONCE MORE

Mr. CRANSTON. Mr. President, on January 14, the Office of Economic Opportunity, along with the California State Economic Opportunity Office, announced the beginning of the first phase of the California experimental legal services program. I am shocked that $150,000 of the $2.5 million allocated to this project has been granted to the State EOO to be used for preplanning grants. Let me explain why.

My colleagues may recall that last June 30 OEO released the findings of the independent judicial commission which had been called to investigate the California Rural Legal Services program. The cause of the investigation was Governor Reagan's veto of the refunding of the CRLA program, and his accompanying allegations as to the misconduct of its attorneys in their efforts to serve the poor. The Governor's charges were based on reports from the State EOO. The judicial commission completely exonerated CRLA, reporting that these charges by the State EOO were "completely unwarranted," "totally irresponsible," and "unfounded."

OEO, therefore, announced that CRLA would be refunded, but in a face-saving effort, announced too that a $2.5 million grant to conduct an experimental judicare program in California would be awarded, and that the California State Office of Economic Opportunity would be substantially involved in the experiment. At that time, and subsequently, I raised serious questions about the nature of such a grant. I did not see how the Office of Economic Opportunity could grant such an award to the same California State EOO which was responsible for the "completely unwarranted," "totally irresponsible," and "unfounded" allegations against CRLA. This, too, was the same State EOO which had been thor-

oughly discredited by OEO evaluation and audit reports—the office which OEO reported "does not intend to serve in a helpful manner as prescribed in OEO instruction 7501–1 to alleviate the conditions of poverty in the State of California"; the same office which OEO further found had clearly failed to carry out the State OEO guidelines and instructions for State OEO offices and, despite the expenditure of substantial amounts of Federal funds—in excess of $800,000—for staff and other purposes, had achieved only negligible results.

As a result of my questions, I was assured by the then Acting Director of OEO, Wesley Hjornevik, in a letter dated September 13, that the grantee of the legal services experiment would be the "California Legal Services Foundation." I was further assured by the then confirmed Director of OEO, Phillip Sanchez, in a letter dated October 27, in response to mine of September 21 that—

The Foundation will *not* be funded through the California State OEO, but rather, will be funded directly from OEO Headquarters in Washington.

The emphasis of "not" was his. Director Sanchez further assured me that he would keep me advised regarding all stages of the planning of the experiment.

It was because of this sequence of events that I was stunned to learn from newspaper accounts that the first allotment of funds for the experiment had nevertheless been awarded to and through the State OEO. Director Sanchez did not, despite his specific assurances of October 27, advise me of the abrupt change of course.

I have expressed my displeasure with these developments in a January 24 letter to Director Sanchez, the text of which I ask unanimous consent, Mr. President, be set forth in the RECORD at the conclusion of my remarks.

I know that my colleagues, particularly those who have expressed their puzzlement at the developments surrounding the struggles of legal services in California, would want me to share with them this very distressing information.

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

U.S. SENATE,
January 24, 1972.

Hon. PHILLIP V. SANCHEZ,
Director, Office of Economic Opportunity, Washington, D.C.

DEAR MR. DIRECTOR: I am writing with regard to your January 14 joint announcement with Robert B. Hawkins, Jr., Director of the California State Economic Opportunity Office regarding the California legal services experiment. According to the statement, approximately $150,000 of the $2.5 million allocated to this project will be used for pre-planning grants and the grantee will be the State EOO. I am shocked at this development in light of the following:

On August 6, 1971, I wrote Mr. Wesley Hjornevik, as Acting Director of the Office of Economic Opportunity, to express my very strong view that the experiment should not be funded through California's SEOO. Mr. Hjornevik in his reply of September 13 stated that the grantee would be the California Legal Services Foundation. In a follow-up letter to you dated September 21, I stated that I continued to hold the reservations expressed in my August 6 letter to Mr. Hjornevik. You assured me in your October 27 reply, and I quote: "The Foundation will *not* [your emphasis] be funded through the California State OEO, but, rather, will be funded directly from OEO Headquarters in Washington."

Moreover, according to a September 29 article in the *Sacramento Bee*, you indicated that Governor Reagan had sought planning funds to get the Foundation under way but you said that no funding would be provided until the Foundation board of directors was established.

Finally, in my September 21 letter to you I expressed my wish "to be kept closely advised regarding all stages of the planning of this experiment, as well as the process for the selection of the members of the board." And you assured me on October 27 that OEO would "keep me closely informed about all stages of the experiment as they develop."

Thus, it was with considerable surprise and displeasure that I learned from newspaper accounts that the very first allotment of funds for the experiment was awarded to and through the State EOO, and that, further, the State EOO joined OEO headquarters in simultaneously announcing the award. Now that I have obtained a copy of your announcement, of even greater concern to me is that the State EOO, which has been so thoroughly discredited by your own recent reports and the CRLA Commission Report, will continue to play a major role in the experiment. I have three specific reactions to the announcement.

First, not only will the State EOO apparently have a major say in deciding upon other pre-planning "delegate agencies", but the role apparently assigned the State EOO, and not the other two mentioned potential preplanners, includes the vital questions of "the make-up of the board of directors of the California Legal Services Foundation", "the objectives and methods of conducting the experiment", and the "evaluation of the experiment". I strongly object to this allocation of responsibilities in the pre-planning process. Given the State EOO's preparatory role and its role in on-going "technical assistance" and monitoring, discussed below, it very much appears to me that the cards are being stacked in such a way that the Foundation's Board of Directors, even if they are properly representative when finally selected, as you have assured me on several occasions, will be unable to run the experiment freely and fairly.

I, therefore, strongly urge that the other pre-planning agencies be specifically directed to include in the scope of their work the crucial matters I have identified above—board composition, objectives and methods of operation, and evaluation—and that participation in pre-planning be specified for present or past legal services attorneys so that the experience gained in operation of the present type of program will be fully considered.

Second, the State OEO is assigned to joint responsibility with national OEO "to provide technical assistance and monitor the operation of each model" in the operational phase. This function is, of course, the very one that your audit and evaluation reports concluded the State OEO had failed to carry out—including the misappropriation of substantial amounts of funds in connection therewith—for the anti-poverty programs in California. With such a hammerlock on the pre-planning and operation of the program accorded the State OEO what, I ask, will be the role of the Foundation itself when it is finally constituted? It seems destined to remain a shell empty of any real responsibility.

Third, the description of the experiment's evaluation stage does not include "strong client representation . . . as well as participation by those expert in legal services programs and . . . national bar associations and minority bar groups" as you assured me at your September 28 confirmation hearing would be included among "the general parameters" of the evaluation (page 8).

In conclusion, I again ask that I be kept fully advised on a continuing basis of all stages of the planning and implementation of the experiment, including the process for selection and the final constitution of the members of the Foundation's board of directors.

I am sending a copy of this letter to Senator Nelson, Chairman of the Employment, Manpower, and Poverty Subcommittee, so that he will be fully aware of my views about the announced grant as well as OEO's lack of cooperation with a subcommittee member in terms of continuing information.

I would appreciate a reply at your earliest convenience.

Sincerely,

ALAN CRANSTON.

LOSS OF DELAWARE STATE TROOPERS UNDERSCORES NEED FOR FEDERAL DEATH BENEFIT LEGISLATION FOR PUBLIC SAFETY OFFICERS

Mr. BOGGS. Mr. President, I wish to call the attention of my colleagues to a most shocking and tragic incident which occurred over the recess. I refer to the slaying of two Delaware State troopers, Ronald L. Carey and David C. Yarrington, during the performance of their duties on January 6.

Both of these fine young men were dedicated, conscientious officers and a credit to the Delaware State Police Force. They exemplified the finest qualities of young people today—selfless service to others, bravery under adverse conditions, and the highest standards of character. The loss of these outstanding young men to their families, to the State of Delaware and to the Nation is immeasurable.

Mr. President, sadly, it is all too often the case that a tragic event such as this is necessary to bring about much needed legislative action. Last year I introduced legislation to provide a $50,000 death payment to the families of policemen, corrections officers and volunteer firemen killed in the line of duty. It was subsequently included in S. 2994, The Victims of Crime Compensation Act of 1972. I can think of no more fitting time to act on this legislation.

Such a benefit is already paid in the District of Columbia but State benefits vary widely. Some States, in fact, provide no financial assistance whatsoever to the survivors of slain law officers.

The recent deaths in Delaware have left two widows and four small children without breadwinners. Their financial needs in the months and years ahead will be great. The people of Delaware have recognized this need and have already rallied to meet it. The Delaware Bankers Association has established a special fund for the troopers' families and is accepting contributions from all over the State. Other local organizations are planning benefits and fundraising drives.

As tragic as these deaths are, they are not isolated cases. In 1963 another Delaware State trooper, Robert M. Paris, was slain while on duty, and only a year ago

State Trooper William C. Keller died in a traffic accident while on duty.

Over the period from 1960 to 1970, 1,024 policemen died in the line of duty and 790 firefighters lost their lives. In 1970 alone 100 policemen were slain and 115 firefighters died in the performance of their duties. Comparable figures on the number of corrections officers who have died in the line of duty are not available, but recent disturbances at Attica and San Quentin would indicate that the number has risen sharply.

The families of public safety officers killed in the line of duty should not have to rely on private donations for their financial security. The Federal Government has a special responsibility to the survivors which I believe it should no longer evade.

RESUMPTION OF FREE PRESS HEARINGS

Mr. ERVIN. Mr. President, I wish to announce the resumption of hearings on the state of freedom of the press in America by the Senate Subcommittee on Constitutional Rights. The hearings will begin on Tuesday, February 1 and will continue on February 2, 8, and 17. This series of hearings follows 8 days of hearings on this same subject that were conducted in the fall of 1971.

The hearings have been prompted by the doubts and concern of many Americans as to the continuing vitality of the first amendment's guarantee of freedom of the press. The subpenaing of newsmen by Government, the administration's attempt to enjoin publication by several newspapers of information related to our Nation's policy in Vietnam, and the increasing scope of Government regulation and control of the broadcast media are only some of the developments which have exacerbated these doubts and deepened this concern.

Even as the subcommittee's hearings were underway, the controversy surrounding the White House-inspired FBI investigation of CBS newsman Daniel Schorr raised new fears and suspicions about the Government's commitment to first amendment principles.

Despite the widespread concern over this affair, the White House has not yet satisfactorily explained this incident to the American people. Thus far the subcommittee's requests for information have also gone unsatisfied. The White House has not yet replied directly to our invitation to have the individuals directly involved, Mr. Charles Colson and Mr. Frederic Malek, appear before the subcommittee to testify.

In addition to continuing consideration of these and other matters, the subcommittee will be examining developments in the field of public broadcasting and cable television, and criticisms of the way the broadcasting industry is fulfilling its responsibilities under the first amendment to inform the public on matters of concern to the American people.

When the subcommittee resumes its hearings next week, it will hear testimony from Americans of greatly differing backgrounds and widely divergent views. Among those who will appear are Mr. Daniel Schoor, CBS correspondent; Dean Elie Abel, Columbia University School of Journalism; Mr. Andrew Heiskell, chairman of the board of Time-Life; Mrs. Edith Efron, author of the News Twisters; Mr. Bill Monroe, NBC News; Harvard University Prof. James Q. Wilson; and Mr. Norman Lear, writer of the television program "All in the Family." The subcommittee will also hear from representatives of the American Civil Liberties Union, the National Newspaper Association, the Suburban Newspaper Association, the Newspaper Guild, Radio-Television News Directors Association, the United Church of Christ, the Writers Guild, and the Liberty Lobby.

The subcommittee has not yet despaired of convincing the administration that it has a responsibility to tell the American people what its policies are in the area of the first amendment. Although we have been advised to watch what they do, not what they say, what they do could use some explaining.

Recently Mr. Clay Whitehead, of the President's Office of Telecommunications Policy, has made some controversial suggestions about broadcasting. We hope that he will accept our invitation to appear before the subcommittee to discuss those recommendations. At the least, one important facet of the administration's policies in this area will then be explained to the public and the Congress.

SENATOR HATFIELD TO STAND FOR REELECTION

Mr. MATHIAS. Mr. President, I am delighted to be able to report that the distinguished senior Senator from Oregon has announced in Oregon that he will stand for reelection to this body. Senator HATFIELD is beginning his 6th year of service in this body, and he has made his mark here as a thoughtful, conscientious, responsible, and innovative representative of his constituents. He has displayed the courage of his convictions in fighting hard for the legislation he believes necessary to our country's welfare, and I think most of us here would agree that he has been right far more often than he has been wrong. No more could be asked of any Senator.

My pleasure at the news of Senator HATFIELD's announcement is heightened, of course, by the fact that he is a steadfast Republican. I remember well when he stood before the 1964 Republican convention and called upon all of us to unite within our party in support of the best platform and the best candidate. I remember also his speech in 1968 seconding the nomination of Richard Nixon for President of the United States. Senator HATFIELD has been a loyal Republican, and I am particularly pleased also that he has not had to sacrifice principle to remain a good Republican.

The President of the United States stood before the joint session of the House and Senate last week and stated:

The secret of mastering change in today's world is to reach back to old and proven principles and to adapt them, with imagination and intelligence, to the new realities of a new age.

We believe in independence, and self-reliance, and in the creative value of the competitive spirit.

We believe in full and equal opportunity for all Americans, and in the protection of individual rights and liberties.

We believe in the family as the keystone of the community, and in the community as the keystone of the Nation.

We believe in a compassion toward those in need.

We believe in a system of law, justice, and order as the basis of a genuinely free society.

We believe that a person should get what he works for—and those who can should work for what they get.

We believe in the capacity of people to make their own decisions, in their own lives and in their own communities—and we believe in their right to make those decisions.

These are the principles upon which the health of our country and of the Republican Party rest. And these are the same principles which have guided MARK HATFIELD's actions in this body.

Every one of us in this body knows that there are many times when the burdens of the office, and the high expectations and great needs of the people, seem so great that we are tempted to scream:

Let me out. Let me go back to a simpler private life.

I do not know whether private life is as free of turmoil as many of us sometimes think, but I do know that I am glad MARK HATFIELD has decided that he will not succumb to the great temptation to give up public service and find out.

Mr. President, I joint thousands of Oregonians and millions of Americans from the other 49 States in commending Senator HATFIELD for standing again for election as a Member of the Senate.

I ask unanimous consent that the remarks of the Senator from Oregon in announcing his candidacy be printed in the RECORD.

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

NEWS FROM SENATOR MARK O. HATFIELD

I believe the only valid motivation for one who seeks public office is to give leadership which serves the needs of other people.

For over 2 decades I have had the rare and challenging privilege of serving the people of Oregon in an elected office.

My foremost aim has been to meet the needs of my fellow Oregonians, by enhancing the livability, undergirding the economy, and preserving the uniqueness that is Oregon.

Such service has never ceased to inspire me and to excite me. It always has encompassed the widest range of activities:

Unsnarling bureaucratic red tape so that an elderly Oregonian can receive his social security payment;

Giving small rural communities a better chance to obtain water and sewer projects;

Guiding legislation through the Senate that will enhance Oregon's recreational opportunities and its environmental uniqueness;

Widening opportunities in Oregon for the right of productive work by our citizens in a diversified and vibrant economy;

Endeavoring to underscore our nation's commitment to the deserving and the dispossessed;

Seeking resolutely the road to peace for our nation and the reconciliation of the antagonisms and wars which divide and destroy fellow men.

At each point in the record of my service, I have endeavored to follow the dictates of conscience, rather than responding blindly to the tides of popular opinion, or bending weakly to the pressures of special interests.

I should state honestly, however, that public service carries with it costs to one's family life. To be candid, during the past year, I

have weighed these costs more carefully than ever before, and have sometimes found it tempting to free myself from the continuous and demanding pressures of political life.

But I have also thought about the future that awaits our children and the kind of world in which they are growing up. And I have reviewed the past and potential opportunities for service to Oregon.

My understanding of the needs before us and my commitment to serve these needs, have not only continued to shape my life, but is rooted so deeply in me that I have but one course to follow.

I will seek re-election to the United States Senate.

I feel that Oregonians will find my past record in the Senate marked by solid achievements on behalf of our state. Now, however, I believe I am on the threshold of giving even greater service to Oregonians.

My decision to seek re-election has been influenced by this consideration, as well as the enthusiastic support of my family.

When I first came to the Senate in 1967, I was number 100 in seniority, the route to power. But during the past years, with the change in my seniority position and committee assignments, I have seen the avenues of influence for Oregon in the Senate begin to open wider.

Oregon cannot afford to forfeit the investment of that time and be deprived of the benefits that we can now earn.

The combined seniority for Oregon's Senators will total 10 years at the end of 1972. For Idaho the total is 25 years; for Montana, 30 years; for Nevada, 31 years, and for Washington, 47 years. It is a political reality that Oregon's influence and welfare can be improved only if the seniority and committee assignments of its Members in Congress continues to be strengthened.

I look forward in this campaign to sharing with the people of my state the accomplishments of the past and the hopes we have for the future.

My campaign will depend on the involvement of thousands of volunteers, who will carry a common purpose, interpreting the goals and objectives of my service to their friends and neighbors across the state.

I am extremely grateful for the thousands of expressions of support I have already received.

The people of Oregon have entrusted me to serve them, for the past 20 years. I have done all within my power to maintain the integrity of that trust.

I have endeavored to speak the truth.

I have tried to keep my word.

I have done what I believe is right.

I ask the people of Oregon to extend that trust again.

HOW MUCH DO YOU KNOW ABOUT THE FOOD YOU EAT?

Mr. HARTKE. Mr. President, at a time when we are beginning to ask questions about ourselves and our environment that have not been asked before, it is ironic that we are beginning to discover that we know so little about the food we eat.

During the last session, I introduced S. 2079, a bill to require open-dating on all perishable and semiperishable foods. All such foods presently carry a date which indicates their useful shelf life, but this date is almost always expressed in the form of a code which few consumers can decipher. Because the consuming public cannot police the food shelves of supermarkets, that responsibility rests with the store managers. Yet, either because of a lack of concern or a lack of understanding of the codes, there is gathering evidence that foods which are not fresh are being sold in food stores throughout the Nation.

S. 2079 would require all perishable and semiperishable foods to bear a "pull" date—a date beyond which that product cannot be sold as fresh. This is a common sense proposal which a few supermarket chains have already implemented with success on their house brands. There is no reason that this approach should not be adopted by all food stores.

Mr. President, I ask unanimous consent that a recent series of articles on food freshness written by Susan Giller in the Delaware County, Pa., Daily Times be printed in the RECORD.

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

DO YOU REALLY KNOW WHAT YOU EAT?

(By Susan Giller)

This is the day and age of the consumer, or is it?

Consumer awareness definitely is growing. Since the days of Upton Sinclair's epic, The Jungle, describing in all its gory details the atrocities the Chicago stockyards were passing on to the consumer, the desire to know what is in food has grown.

Now, perhaps, it is the realization that the food industry—worth billions of dollars—is primarily profit-oriented that further scares consumers into the quest for knowledge.

But while this age is acclaimed one of consumer enlightenment, the average consumer still does not know what he is eating.

Basic knowledge even about food freshness, when an item was produced and how long it should be saleable is almost inevitably withheld from the consumer. Although few ask these questions—many do not even know food dating exists—those interested are brusquely turned away by most manufacturers.

While the consumer is denied knowledge of the age of his daily bread, freshness-dating does appear on almost every product on the grocer's shelves. It appears, however, in the form of intricate codes. These codes, which differ with each producer, may be in numerical or alphabetic arrangements that are frequently meant and usually do defy any seemingly logical order of dating.

The codes can either represent the date produced or the "pull" date—the last date the item should be sold. However, neither code guarantes the product will not be sold after the recommended "pull" date.

Frequently, store managers do not know the codes themselves and sometimes the shelves are just not checked carefully to see if products have expired.

It was this piteous plight of the unknowing consumer that got an Illinois consumer group mad enough to demand code keys from manufacturers and later to demand open dating.

The National Consumers Union (NCU), which calls itself a grassroots consumer movement, has published two booklets of codes extracted from manufacturers. The code-dating system was then termed by NCU as "the conspiracy of 10,000" in honor of the approximate number of items in the average supermarket.

NCU Director Jan Schakowsky said in a telephone interview that the booklet, a helpful guide, was published primarily to "encourage shoppers to be furious about manufacturers' deceptions and to fight for the consumer's right to know."

Admittedly, the latest booklet, "Codebook," is a meager guide which is of little value in deciphering local codes. But the booklet does contain some national brand codes and more important it shows the intent of coding. The intent, of course, is to keep information from the consumer, Mrs. Schakowsky stated.

For instance, the code of the American Tobacco Co., producer of Lucky Strike, Pall Mall and others, uses the 12-letter word "ambidextrous" as the base of the code. Each letter represents one month in this expiration date sequence. The year is signified by numerals zero to nine.

Another oblique code is Peter Pan peanut butter's concoction. It is based on the 12-letter word "peanut butter," January being "p." The year is determined by a notch on the label, if at the top, it was produced in an even year, at the bottom an odd one. The notch is placed above or below a letter in "peanut butter." The code denotes a production date and designates a six-month shelf life.

But not all codes are so bizarre. There are four basic codes, each with as many variations as manufacturers.

The simplest code is the calendar method. This method, a type of open dating, consists of a four or five digit series, which includes in some order the day, month and year of production or expiration. However, if the consumer does not have a key or guide for an individual product, it is almost impossible to know which number represents what.

Another popular method of coding is the day-of-the-year method. Usually a manufacturer's date, the digits 1 through 365 or 366 are used consecutively. In addition, manufacturers sometimes include the year of production. With this method it is imperative to know the standard shelf life for the product, which the NCU booklet provides.

Some codes are complicated to the point of intentionally evading consumer understanding. But if peculiar codes are not enough, trying to find the codes will keep any consumer occupied for hours. The code may be stamped, with ink frequently smudged; embossed, with lettering barely visible; or even placed under an outer wrapper, which is frequently the case with frozen foods, according to Mrs. Schakowsky.

Since codes are not expected to interest the consumer, they may be marked only on bulk lot cartons and be missing from individual containers.

Some manufacturers themselves are quick to admit they do not want the consumer to know the shelf lives of their products. The National Biscuit Co. (Nabisco), one of the largest manufacturers of cookies and crackers, has repeatedly refused to reveal its intricate code to the public, although NCU and other groups have asked for it.

In a telephone interview, Mary Hoban, a spokesman for Nabisco in New York, stated Nabisco will not release the codes because they "are meaningless to the consumer."

She said the shelf life of identical products can vary depending on the climate and humidity where they are stored. And the consumer would not understand this concept.

Admittedly, shelf lives do vary with temperature and humidity, but a simple chart can explain the differences. The Storage and Material Handling Departments of the Army have devised such charts for perishable foods (produce, bakery goods, meats and milk), semi-perishable goods (canned foods, flour, etc.) and frozen foods.

Shelf lives vary greatly between products too, according to the Army chart. While some canned goods may last three years, under normal conditions, mayonnaise should be kept only six months.

The chart, which was read into the Congressional Record, also breaks down storage lives at temperatures of 40 degrees Fahrenheit, 70 degrees and 90 degrees. Flour, for instance, can be kept 48 months at 40 degrees F, but only 18 at 70 degrees F and six months at 90 degrees F.

But even with charts available Miss Hoban stated, "consumers just would not understand it."

But she stated Nabisco products are always fresh because sales representatives are responsible for stocking and checking grocers' shelves.

Nabisco's closed mouth attitude about codes is not unique, however. Campbell Soup Co. is also reticent to release its code.

A public relations spokesman for the Camden, N.J., firm did not want to release the code. He stated the subject of code is somewhat controversial now and "Campbell wants to sit back and watch what happens" before it releases any form of the dating code to the public.

Doug Robinson, a member of the quality control division, stated public knowledge of codes could be detrimental. If people knew the codes they would buy the newer products, while those produced earlier—and still edible—would sit on the shelf.

"There is no need for this: canned goods can last three years easily," he stated.

But products do not stay on the shelves that long. "There is a rapid turnover of stock both in the store and the warehouse," he stated.

For all Robinson's assurance about rapid turnover, there are outdated products on grocers shelves.

According to the NCU investigations of major chain stores in the Chicago area turned up many thousands of dollars of out-of-date food items on grocers shelves . . . "food items that should not have been sold for days and sometimes weeks and would you believe?—years!"

In Washington, D.C. one consumer group found a canned baby formula over ten years old still on the grocer's shelf.

With the freshness of food sometimes in question, consumer protection, though loudly proclaimed, may still be a myth.

According to NCU the only way to explode a myth and protect the consumer is to know the facts—in this case to have the codes.

Mrs. Schakowsky herself advocated an open dating system as a way of allowing the consumer to protect himself. Only through his own knowledge can the consumer be safe, she said.

DATING LACKS LEGAL CONSIDERATION—ARE FOODS FRESH?

(By Susan Giller)

The struggle for fresh food is one every consumer faces. But the marketplace is shaky ground for the average shopper to fight on.

Although he does hold that mighty weapon, the buying dollar, he has little choice but to buy foods.

The consumer's position in the fresh food struggle is even more tenuous when he attempts to fight, on legal grounds, the selling of old food, because there is nothing illegal about selling most of it.

There are no federal or Pennsylvania laws requiring aged food to be removed from shelves.

When asked, a spokesman for the U.S. Department of Agriculture said he did not know whether freshness dating was mandatory. After a search, one department produced the Wholesome Meat Act and rules for the inspection of poultry and poultry products.

But the acts do not require either an inspection date or expiration date be visible to the consumer. According to one Department of Agriculture pamphlet. USDA-inspected products must carry labels with "an accurate name or description of the product, a complete listing of the ingredients . . . the net weight of the product, the packer or distributor's name and address, and the mark of inspection." But nothing is said about a date.

The handling of semi-perishable foods is the work of another USDA division. But even though this department sent us a bundle of material on home storage of foods, and suggestions for buying foods, there was no information on required dating or the removal of old food.

While the shelf lives of most foods are not required or enforced, some Delaware County municipalities do require the dating of milk.

David Crisman, milk control officer and chemist for Haverford Township, said Upper Darby, Springfield, Marple and Haverford Township all have milk dating ordinances.

The ordinances differ with each municipality, according to Crisman.

In Haverford Township, for instance, milk must be removed from shelves 96 hours after the midnight of the day it was pasteurized, he said.

In Upper Darby, the milk dating ordinance requires milk to be removed from the shelf 60 hours from the midnight of the day of pasteurization.

However, this ordinance has been a sore point with local dairies, four of which have asked for a court injunction to prevent its enforcement. The dairies contend the ordinance is unconstitutional and that the authority to enact it was never delegated to the township by the state legislature.

Aside from milk dating, the lack of food freshness laws has tied the hands of consumer protection agencies.

Fred Karch, director of the Consumer Hotline for Delaware County, stated he is not aware of any legal restrictions on the selling of outdated items.

His department, a part of the county's public relations department, therefore cannot enforce the selling of fresh food. But, he said protection can come through "enlightened self interest" on the part of the consumer.

The state's Bureau of Consumer Protection in Philadelphia also does nothing to handle dated food problems. A spokesman said the bureau does not have the personnel or training to handle such complaints.

"We handle things like consumer fraud, deceptive advertising, problems with door-to-door salesmen and things like that," she said.

Robert Davis, chief of milk and foods subdivision of the Philadelphia Health Department, said that although there are no laws governing food dating in Philadelphia, his department checks the wholesomeness of perishable items in markets. Canned goods and other semi-perishables are not checked at all.

"Canned goods are not going to lose their wholesomeness, after all they are in air tight seals," he said. They are good indefinitely.

But all food, even canned goods do start to deteriorate after a point. Now, legislators have introduced bills in both Houses of Congress that will require all products to carry a pull date in "commonly used letter abbreviations for such months."

U.S. Rep. Bob Eckhardt (D-Tex.) introduced H.R. 8417 and at the same time U.S. Sen. Vance Hartke (D. Ind.) introduced a Senate version of the open dating bill, S.R. 2079.

The bills, if passed, will require all manufacturers to label products with pull dates, to be set for each product by the Secretary of Health, Education and Welfare.

In addition, labels will be required to include the "optimum temperature and humidity conditions for storage."

The bills also include a possible $5,000 fine or a year's imprisonment for violations for the act.

Until now, codes have been used by industry "because they want to check on how fast products move and in case something were wrong with a lot and had to be recalled. It was not done because of the nutritional value of the product," according to Howard Marlow, legislative assistant to Hartke.

The two bills, now in subcommittees, and a 1969 predecessor, which did not pass, are among the first attempts to implement mandatory open dating, Marlow said.

And at first the food industry was against the bills, according to Steve Marcowitz, legislative assistant to Eckhardt. But now the industry seems to be more agreeable because it is "scared states will start enacting their legislation which would require different standards for different localities."

Both bills are expected to come up in committee after the first of 1972.

THEY DESIRE OPEN DATING—FOOD CODING BAFFLES BUYERS

(By Susan Giller)

The traditional roles of the homemaker are varied and time consuming.

She is, among other things, responsible—at least in part—for the health, education and welfare of those in her care.

One of her major responsibilities is to provide fresh, wholesome meals for her family. And this is not always an easy task.

Sure, she can pinch a tomato or hit a watermelon to determine its ripeness, but how can she tell the freshness of canned goods, boxed items or things in a bottle?

Several area women were asked for their thoughts on problems of food freshness: Most admitted they do not always know if they are getting fresh food.

Some were not even aware of the problems concerning food freshness.

One Prospect Park woman said she did not know groceries have shelf lives. "I know with fruit and produce you can get spoiled things if you are not careful, but I just assumed canned foods last forever."

Another Prospect Park housewife said, she just assumed store managers "keep stuff up-to-date on the shelves."

And a Chester nurse said she only knew milk and coffee are stamped with a date, "but that's about it."

A Wallingford woman said she had only recently learned that canned goods cannot be used indefinitely. Now, she added she is definitely concerned about whether she is getting fresh food.

A Drexel Hill teacher learned about coding when she saw a copy of the National Consumers Union "Codebook."

"I never realized what numbers on cans were for. Now I seriously wonder what I have been buying," she said.

After seeing the pamphlet, she said she would try deciphering codes the next time she went shopping.

But, she, like most of the other women interviewed complained that the time involved in deciphering incomprehensible codes is more than she can afford.

One Delaware County mother of 11, said she sometimes tries to decode items, but she has so much shopping to do and stores are so crowded, it is too much trouble to do all the time."

However, she said, often she has opened cans that just do not smell right and has had to return them. "And that takes just as much time as decoding."

One Prospect Park teacher, said she knows manufacturers code-date items, but does not have time to decode items while shopping.

"It really burns me, too," she said. "The numbers are there, but when I shop after school, I am so tired, I am just not willing to spend an extra half hour or so checking dates.

"I think it is a dirty practice for manufacturers to code-date things. It is impossible for housewives, let alone working women, to know how fresh their food is," she said.

All of the women interviewed said it was impossible to decode all of the products their families use. And only one of the women said she is able to make a point of buying food on the basis of freshness dates.

An Upper Darby housewife, said she al-

ways checks the dates on milk and eggs, both of which are open dated with expiration dates.

She also said she tries to shop at stores where at least the house brand is open dated. "I cannot decipher any of the other codes," she said. "And I really don't trust the manufacturers, so I avoid them as much as possible."

She, however, was not alone in a desire to have all foods open dated. All of the women even those previously unaware of coding, thought open dating was a good idea.

"I guess, open dating is the only way we will ever know the age of our food," one woman said, after she was told about codes.

Another woman, aware of the intricacies of code dating, said open dating ought to be as visible as the weight on the item, least it be hidden from the consumer.

All of the woman also favored legislation that would mandate open dating on all edibles.

"If it isn't required by law, it will take manufacturers a hundred years to get around to open dating, if they ever do it at all," one woman said.

The majority of the women, contrary to what many store personnel believe, stated they would buy on the basis of dates. Many of the women were eager to have open dating available, and were very ready to use it.

Comments ranged from, "I would appreciate open dating very much," to, "of course I would use dates, I too am interested in what we eat."

Only one woman said she would not bother checking even open dates. Her husband does the shopping.

FDA'S FAILURE TO CHARGE FEES FOR PROCESSING DRUG APPLICATIONS

Mr. RIBICOFF. Mr. President, the Food and Drug Administration, which continually argues it is short of funds, is ignoring a significant source of financing in its day-to-day operations. Rather than charge private drug companies for the cost of processing applications for new drugs as authorized by law, the FDA funds these operations out of its limited budget. This policy has cost the agency almost $12 million in fiscal years 1968–70 and is continuing at the present time. At the same time, the backlog of new drug applications gets larger and larger every year to the detriment of the private companies as well as the public. The amount of money is relatively small from the companies' standpoint, but makes up 5 percent of the FDA's budget. The companies no doubt would gladly pay for this processing cost if they knew it would improve the operations of the agency.

I am writing Secretary of Health, Education, and Welfare Richardson and Commissioner Edwards, of the FDA, today, calling their attention to a GAO report regarding this problem and urging them to change this policy promptly.

The FDA has the responsibility for assuring that the drugs Americans take are safe, effective, and properly labeled and marketed. Before distributing prescription drugs in interstate commerce, manufacturers are required to obtain FDA approval. In administering this requirement, the FDA processes—without charge—three types of applications:

Investigational new drug applications for clinical testing of new products;

New drug applications to demonstrate that new products are safe, effective, and ready for marketing; and

Abbreviated new drug applications to demonstrate effectiveness for drugs that have previously been approved for safety.

It is general Government policy that Federal agencies should charge fees for services they provide when those services result in special benefits beyond those which accrue to the public at large. An example is the Government's policy of charging fees for quality control tests for insulin and food color additives. Nonetheless, the cost of processing drug applications has been borne by the FDA.

There is no question that the drug companies can afford to pay reasonable fees for FDA's services. Drug sales in the United States total about $14 billion a year, and the industry earns about two and a half billion dollars in pre-tax profits each year, a rate of return of 37 percent on stockholders' equity.

In spite of the profits drug companies receive through the marketing of FDA-regulated drugs, the FDA has taken the position that the processing of drug applications does not result in benefits to the companies beyond those which accrue to the public at large. The agency has therefore failed to charge the companies fees for processing applications.

At the same time, the processing of applications has placed significant strain on the FDA's own, already overburdened operations. The costs of processing constitute approximately 5 percent of the agency's total operating costs, thereby diverting funds from other activities the FDA leadership agrees should be performed. In testifying last May before a Senate Appropriations Subcommittee, Commissioner Edwards stated that—

> It is indeed true that our resources are limited. Also, there are a tremendous variety of products and industries within the FDA's regulatory jurisdiction. The establishment of priorities and allocation of resources, therefore, is a difficult task.

In these circumstances, the FDA is failing to fulfill its public responsibility by unnecessarily diverting 5 percent of its operating budget from other priorities.

In addition, this policy has actually hindered the testing and marketing of new drugs. Pharmaceutical companies have long complained of the delays involved in getting FDA approval of their applications. Indeed, there is a large backlog of pending applications. One of the reasons for this backlog is that the cost of running an adequate program of processing applications is more than the FDA can afford. If the drug companies—rather than the FDA—paid the costs of processing applications, it would be possible for the FDA to hire the personnel necessary to do the job adequately, without diverting funds from its other operations. More efficient processing of applications would allow pharmaceutical companies faster access to the market and increase their sales.

On several occasions, the FDA has stated that it was reviewing the matter. First, a report analyzing the problem was supposed to be completed by the FDA by the end of fiscal year 1971. Now, 7 months and several million dollars later, that report still has not been done. Once the report is finished, the Department of Health, Education, and Welfare has said it will meet with the Office of Management and Budget to discuss the matter. All this delay seems entirely unnecessary; the problem is not a complex one. A simple solution that would benefit the public, the FDA, and pharmaceutical companies could be found and instituted virtually immediately. It is time for the FDA, HEW, and OMB to address the problem.

The GAO report concludes that the FDA should set fees for the processing of drug applications. I strongly concur with that recommendation. In addition, I believe this recommendation should be implemented promptly, without more bureaucratic red tape, delay, or study.

I ask unanimous consent that the GAO report be printed in the RECORD.

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

COMPTROLLER GENERAL OF THE UNITED STATES,

To the President of the Senate and the Speaker of the House of Representatives:
Washington, D.C.

This is our report on fees not charged for processing applications for new drugs by the Food and Drug Administration, Department of Health, Education, and Welfare.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Office of Management and Budget, and to the Secretary of Health, Education, and Welfare.

ELMER B. STAATS,
Comptroller General of the United States.

FEES NOT CHARGED FOR PROCESSING APPLICATIONS FOR NEW DRUGS—FOOD AND DRUG ADMINISTRATION DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

(Report to the Congress by the Comptroller General of the United States)

DIGEST

Why the review was made

Manufacturers of new drugs, or any other persons seeking the distribution of drugs in interstate commerce, are required to file applications with the Food and Drug Administration (FDA) and to obtain its approval before the products may be sold to the public.

In administering this requirement FDA processes—without charge—three types of applications: investigational new drug applications to clinically test new products; new drug applications, including supplements, to demonstrate that new products are safe, effective, and ready for marketing; and, abbreviated new drug applications to demonstrate effectiveness for drugs that previously have been approved for safety.

In view of the Government's general policy that Federal agencies charge fees, for services they provide when such services result in special benefits beyond those which accrue to the public at large, the General Accounting Office (GAO) examined into why FDA was not charging a fee for processing applications for new drugs.

Findings and conclusions

The Federal Food, Drug, and Cosmetic Act contains no specific requirement that FDA charge fees for processing applications for new drugs.

FDA's costs of providing these services averaged $3.9 million annually for fiscal years

1968–70, or about 5 percent of its total operating costs. During this period FDA received an average 3,400 applications annually.

According to the Department of Health, Education, and Welfare (HEW), fees have not been charged for processing drug applications because HEW believed that the benefits received by the general public from the services involved were primary and that the benefits received by the manufacturers were secondary. HEW undertook a study of the need for establishing fees for its services in processing applications involving new drugs.

GAO believes that, although the general public accrues immeasurable health benefits, the drug manufacturers acquire benefits through the right to market the approved product for profit. Therefore GAO believes that it would be appropriate to consider establishing fees for FDA's services in processing applications involving new drugs. Such fees would help to defray a portion of FDA's cost of providing such services.

GAO believes also, however, that fees should not be so high as to deter submission of drug applications or to seriously affect the cost of medical care. (See p. 9.)

Recommendations or suggestions

GAO recommends that the Secretary, HEW, establish fees for the services rendered by FDA in processing investigational new drug applications, new drug applications including supplements, and abbreviated new drug applications, unless the results of the HEW study convincingly demonstrate that such fees should not be established.

Agency actions and unresolved issues

HEW stated that FDA would analyze all the possible ramifications that might arise if fees were charged for processing applications for new drugs. FDA had undertaken such a study with the intent of completing it prior to the end of fiscal year 1971; however, as of September 30, 1971, the study was still in process. (See p. 8.)

The Office of Management and Budget (OMB) has requested a meeting with the Secretary, HEW, to discuss the matter. OMB also has indicated that it would review the HEW study when completed. (See p. 8.)

Matters for consideration by the Congress

GAO is submitting this report to the Congress because of the current interest of its committees and members in the operations and practices of FDA and because of the congressional interest in the fees and charges of regulatory agencies.

CHAPTER 1. INTRODUCTION

The Food and Drug Administration, a constituent agency of the Department of Health, Education, and Welfare, is responsible for administering the Federal Food, Drug, and Cosmetic Act of 1938, as amended (21 U.S.C. 301), which is intended to prevent the manufacture, distribution, and sale of adulterated or misbranded foods, drugs, devices, and cosmetics through interstate commerce. The act requires that manufacturers of new drugs, or any other persons seeking the distribution of drugs in interstate commerce, file applications with FDA and obtain its approval before the products may be sold to the general public.

In carrying out its responsibilities, FDA reviews three types of applications: (1) investigational new drug applications to clinically test new products, (2) new drug applications, including supplements, to demonstrate that new products are safe, effective, and ready for marketing, and (3) abbreviated new drug applications to demonstrate effectiveness for drugs that previously have been approved for safety.

FDA's cost of providing these services averaged $3.9 million annually for fiscal years 1968–70, or about 5 percent of its total operating costs. During this period FDA received an average 3,400 applications annually.

INVESTIGATIONAL NEW DRUG APPLICATIONS

The legislation requires that, before a new drug may be introduced into interstate commerce, FDA must approve the drug for both safety and efficacy. To satisfy FDA requirements for safety and efficacy, the manufacturer must, among other things, clinically test the drug under closely controlled conditions. Because this may involve the interstate shipment of an unapproved drug to qualified experts, FDA requires the manufacturer to submit an investigational new drug application to exempt the drug from the ban on interstate commerce.

As part of the application, FDA requires the manufacturer to submit a report of the results of preclinical tests, usually performed on animals, to justify the proposed clinical tests on humans. If the data is sufficient to justify testing the product on humans, the clinical testing of the drug may begin. After the manufacturer has completed the clinical testing and evaluated the test results, he may file a new drug application for the approval of FDA.

New drug applications

Under existing procedures the manufacturer, on his own initiative, files a new drug application when, in his opinion, he has developed evidence that the product is safe and effective for its intended purpose.

The application must be accompanied by a full report of the investigations of the product; a full list of the substances used in the synthesis, extraction, or other method of preparation of the product; a full statement of the product's composition; a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the product; samples of the product and its proposed packaging; and specimens of the product's proposed labeling. If FDA is satisfied that the evidence submitted by the manufacturer substantially demonstrates the safety and effectiveness of the product, it approves the product for marketing.

Abbreviated new drug applications

An abbreviated new drug application allows manufacturers of certain drugs that were approved only for safety during 1938–62 to continue marketing their products while demonstrating the products' effectiveness to FDA. The procedure requires the manufacturer to submit only the most essential data to demonstrate effectiveness, inasmuch as abbreviated new drug applications are accepted by FDA only when no unusual manufacturing problems or doubts about the safety or efficacy of the drug exist.

Scope of review

We reviewed the legislation which authorizes FDA to process applications for new drugs and FDA's policies and procedures for providing such services. We reviewed also the legislation which authorizes Federal agencies to establish fees for special services provided for the benefit of any person and the implementing instructions issued by OMB. We also obtained information from FDA regarding the cost that would be subject to recovery by the Government.

CHAPTER 2. FEES NOT BEING CHARGED BY FDA FOR PROCESSING APPLICATIONS INVOLVING NEW DRUGS

The Federal Food, Drug, and Cosmetic Act contains no specific requirement that FDA charge a fee for its services in processing investigational new drug applications, new drug applications, supplements to new drug applications, and abbreviated new drug applications submitted to FDA by manufacturers or other persons seeking the distribution of drugs in interstate commerce.

HEW has not charged fees for these services because it believed that these services primarily benefited the general public and only incidentally benefited the applicants. HEW did not consider that the Government's general policy, under which Federal agencies recover the costs of special services from the users who benefit, was applicable to the processing of drug applications.

We believe that, in addition to the general public's accruing immeasurable health benefits, the drug manufacturers acquire benefits through the right to market approved products for profit. Therefore we believe that it would be appropriate to consider establishing fees for FDA's services in processing applications involving new drugs. Such fees would help to defray a portion of FDA's costs of providing such services. We believe also, however, that fees should not be so high as to deter submission of drug applications or to seriously affect the cost of medical care.

CRITERION FOR CHARGING FEES

The Government's general policy of charging fees for special services is expressed in title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), commonly called the User Charge Act, as follows:

"It is the sense of the Congress that any work, service publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency * * * to or for any person (including groups, associations, organizations, partnerships, corporations, or businesses) * * * shall be self sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation * * * to prescribe therefor such fee, charge or price, if any, as he shall determine * * * to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts * * *."

Instructions to executive agencies for the implementation of this policy are contained in OMB Circular No. A–25, dated September 23, 1959, as amended. On May 18, 1962, HEW adopted the requirements of Circular No. A–25 as its official policy. Specifically, this circular provides:

"(1) Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service. For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values * * * than those which accrue to the general public * * *,

(b) Provides business stability or assures public confidence in the business activity of the beneficiary * * *, or

(c) Is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public * * *.

"(2) No charge should be made for services when the identification of the ultimate beneficiary is obscure and the services can be primarily considered as benefiting broadly the general public (e.g., licensing of new biological products)."

Our review showed, however, that HEW did not consider that the Government's general policy for charging fees was applicable to the processing of drug applications. For instance, an HEW official informed us that HEW considered that charging fees for processing new drug applications was not in the public interest, as the ultimate beneficiary of the services was the public at large and that any benefits accruing to the manufacturers involved were secondary and incidental to those accruing to the general public.

We believe that, although the general pub-

lic accrues immeasurable health benefits, the drug manufacturers acquire a valuable right—the right to market the approved product for profit.

COST TO FDA OF PROCESSING DRUG APPLICATIONS

We attempted to identify the unit cost of processing drug applications but were unable to obtain an accurate count of the number of applications processed during a given fiscal year and the related costs. Therefore we calculated an average cost of processing drug applications on the basis of the number of drug applications received and the cost of processing the applications in fiscal years 1968, 1969, and 1970. We recognize that the costs of processing drug applications in a fiscal year may not be allocable directly to the applications received in that year, but we believe that an average cost computed on this basis can be used as a general indicator of the cost of processing a drug application.

The following table shows that, on an annual basis, the number of applications received in fiscal years 1968–70 averaged 3,400. The costs, exclusive of overhead costs, incurred by FDA in reviewing these applications during the same fiscal years averaged $3.9 million annually—mostly for salaries—or about 5 percent of FDA's total operating costs, and were distributed as follows:

ANNUAL AVERAGE FOR FISCAL YEARS 1968–70

Type of applications	Number received	Cost of services (thousands)	Cost for each application
Investigational new drug applications	1,343	$1,372	$1,022
New drug applications	286	1,555	5,437
Abbreviated new drug applications [1]	123	83	675
Supplements to new drug applications	1,631	871	534

[1] 1st full year of operation was fiscal year 1970.

On the basis of our computation, the average cost of processing a drug application that is ultimately approved has been about $9,700, comprising the cost of processing (1) an investigational new drug application ($1,022), (2) a new drug application ($5,437), and (3) six supplements (at $534 each); which FDA informed us was the average number filed for each new drug application.

Agency comments

We solicited the views of HEW and OMB, respectively, on a draft of this report in which we suggested that HEW establish fees for services rendered by FDA in processing drug applications. By letter dated December 30, 1970 (see app. II), the Assistant Secretary, Comptroller, submitted HEW's comments on our report. HEW stated that, on the basis of information in our report, it would not be reasonable to implement our suggestion to establish fees and that a more intensive study of all possible ramifications would be needed. HEW stated also that FDA would undertake such a study with the intent of completing it prior to June 30, 1971. HEW informed us that the study was still in process at September 30, 1971.

In a letter dated April 20, 1971 (see app. III), the Deputy Director, OMB, advised us that OMB had requested a meeting with the Secretary of HEW to discuss the Secretary's views on the institution of user fees for processing drug applications. OMB advised us further that it intended to review HEW's study and that, depending on the outcome of the study, a reinterpretation of Circular No. A–25 and 31 U.S.C. 483a might be appropriate.

We consider it appropriate for HEW to make an intensive analysis of all possible ramifications involving the assessment of user charges. It is our view, however, that the Government's general policy to collect fees for services resulting in special benefits to persons or organizations, as discussed in our report, constitutes a sufficient basis for establishing such fees.

HEW said that the objective of an investigational new drug application was not to license the marketing of a new drug but rather to protect the human subjects of clinical research. HEW said also that the promotion and sale of investigational new drugs was strictly regulated by FDA to ensure that the application was not used as an overt mechanism for financial gain. Therefore HEW stated that charging fees for investigational new drug applications did not appear to be warranted because the maufacturer did not receive any value.

We do not agree that a manufacturer does not receive value from the processing of an investigational new drug application. This service allows the manufacturer to clinically test a product and to gather the evidence necessary to substantiate claims for safety and efficacy—the *major* requirements for obtaining FDA approval of the product for marketing.

HEW agreed, however, that approval of a new drug application resulted in the manufacturer's receiving some benefit but questioned charging a fee for the application itself. HEW stated that a manufacturer would not realize any benefit from a new drug application that was disapproved.

When a manufacturer files an application, FDA has a legal duty to process and review the application in a manner commensurate with statutory requirements. In our opinion the costs of fulfilling these requirements in the processing of an application are essentially the same, regardless of FDA's final decision as to whether an applicant has been successful or unsuccessful.

Moreover we believe that the disapproval of a new drug application may benefit the manufacturer, because FDA informs the manufacturer of the deficiencies involved in the application. This information provides the manufacturer with an opportunity to revise the product or to conduct additional tests to prove that the product is a safe and effective drug.

HEW stated also that our suggestion for a fixed average fee for new drug applications appeared to be inequitable. We did not suggest, however, that a fixed average fee be established but suggested that fees be established for services rendered by FDA in processing the different types of applications.

Conclusion

According to HEW, fees have not been charged for processing drug applications, because HEW believed that the benefits received by the general public from the services involved were primary and that the benefits received by the manufacturers were secondary.

HEW informed us that an intensive study of the matter was necessary, however, and that FDA would undertake such a study. Also, OMB advised us that it intended to review the results of the HEW study and that, depending on the outcome of the study, a reinterpretation of Circular No. A–25 and 31 U.S.C. 483a might be appropriate.

We believe that services provided by FDA in processing drug applications benefit both the general public and private identifiable parties and should not be excluded from the Government's general user-charge policy. Although the regulatory legislation has been enacted primarily for the protection of the public, the fact remains that manufacturers complying with the requirements of the legislation acquire a valuable right—the right to market the approved product for profit.

In the absence of a specific provision in FDA's authorizing legislation prohibiting fees for these services and in view of the Government's general user-charge policy, we believe that the Secretary of HEW should establish fees for processing applications for new drugs. We do believe, however, that fees should not be so high as to deter submission of drug applications or to seriously affect the cost of medical care.

As previously stated HEW informed us that, as of September 30, 1971, the study referred to in its comments on our report was still in process. We consider it appropriate for HEW to make such a study, which would include an analysis of all possible ramifications that might arise if fees were assessed for the processing of applications for new drugs.

The concern of the Congress over the adequacy of fees charged by Government agencies for services rendered to special beneficiaries was expressed by the Senate Committee on Appropriations in its report on the Independent Offices and Department of Housing and Urban Development appropriation bill for 1969 (S. Rept. 1375, 90th Cong., 2d sess.), as follows:

"The committee joins with the House committee in its concern that the Federal Government is not receiving sufficient return for all the services which it renders to special beneficiaries, and in its recommendation that the applicable agencies review their schedule of fees and charges with a view to making increases or adjustments as may be warranted, taking into consideration beneficial certificates and privileges granted to offset in part the increasing needs for direct appropriations for operating costs of the agencies concerned."

Thus in the light of congressional concern, as expressed by the Senate Committee on Appropriations, that the Federal Government is not receiving sufficient return for all the services it renders to special beneficiaries, we believe that, unless the results of the HEW study convincingly demonstrate otherwise, appropriate fees should be established for processing drug applications.

Recommendation to the Secretary of HEW

We recommend that the Secretary, HEW, establish fees for the services rendered by FDA in processing investigational new drug applications, new drug applications including supplements, and abbreviated new drug applications, unless the results of the HEW study convincingly demonstrate that such fees should not be established.

APPENDIXES

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., December 30, 1970.

Mr. DEAN K. CROWTHER,
Assistant Director, Civil Division, U.S. General Accounting Office, Washington, D.C.

DEAR MR. CROWTHER: The Secretary has asked that I reply to the draft report of the General Accounting Office entitled, "Processing of Drug Applications without Charging Fees." Enclosed are the Department's comments on the findings and recommendation in your report.

We appreciate the opportunity to review and comment on your report.

Sincerely yours,

JAMES B. CARDWELL,
Assistant Secretary, Comptroller.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

COMMENTS ON THE DRAFT OF A GAO REPORT TO THE CONGRESS ENTITLED "PROCESSING OF DRUG APPLICATIONS WITHOUT CHARGING FEES"

GAO recommendation

The Secretary of HEW should establish fees for the services rendered by the Food and Drug Administration in processing investigational new drug applications, abbreviated new drug applications, and supplements thereto.

Department comments

We do not believe that it would be reasonable to implement GAO's recommendation solely on the basis of the information contained in the GAO report. We believe that this area needs a much fuller and more intensive study that would include analysis of all the possible ramifications that might arise if this recommendation were implemented. Therefore, the Food and Drug Administration (FDA) will undertake such a study with the intent of completing it prior to the end of the current fiscal year. During the course of this study, the FDA will fully evaluate the merits of GAO's recommendations as well as explore other alternative courses of action.

We believe that there are many fundamental problems connected with the concept of charging drug application fees that are not readily apparent. For example, in connection with charging fees for "Investigative New Drug Applications" (INDs) the GAO rationale is that a fee would recover from the manufacturer some part of the value that he receives as a result of obtaining the right to market a drug. The objective of the IND is not to license the marketing of a new drug; its intent is to protect the human subjects of clinical research. The promotion and sale of drugs covered under INDs is strictly regulated by FDA to assure that the IND is *not* used as an overt mechanism for financial gain. Consequently, the stated rationale for drug application fees does not appear to apply to INDs.

For similar reasons, the justification for the New Drug Application (NDA) fee proposed in this report seems questionable. Obviously, the approval of an NDA gives the manufacturer some benefit which has a market value as long as there is an adequate demand for the drug. But the report recommends a fee for the application itself, not the approval of the application. Clearly, a firm realizes no market value from an NDA that is not approved. The only beneficiary in such a case is the general public, which is protected against exposure to an unsafe or ineffective drug. Since less than 20 percent of the NDAs reviewed in the years 1968–1970 were approved, most applicants who submit NDAs receive no market benefits. Consequently, the rationale for NDA fees might be considered somewhat inconsistent and inequitable.

The recommendation for a fixed average fee for NDAs appears to be inequitable. By recommending a fixed average for NDA fees, the report implies that the cost of processing one NDA is roughly comparable to any other. In fact, however, the resources required to review an NDA vary from a few man-months to several man-years of review effort. Since an average fee would exceed the costs for many NDA reviews, a fixed fee structure would be unfair to many individual firms.

The preceding comments are not intended to reflect insurmountable objections to drug application fees. They are examples of factors, similar to the many cited in the report itself, which we feel deserve a most careful and thorough analysis before we can accept the desirability of drug application fees. We recognize that the Office of Management and Budget shares FDA's interest in developing feasible drug application fees. Although we cannot support the report's recommendation on the basis of current evidence, FDA will, as stated, candidly evaluate the merits of this and related alternatives in the coming months.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, D. C., April 20, 1971.

Mr. A. T. SAMUELSON,
Director, Civil Division,
General Accounting Office, Washington, D.C.

DEAR MR. SAMUELSON: This is in reply to your November 2, 1970, letter requesting the Office of Management and Budget to reconsider its position on the charging of fees by the Food and Drug Administration for the processing of drug applications.

A reinterpretation of Circular Number A–25 and Regulation 31 U.S.C. 483a might be appropriate in the case of the proposal that FDA institute user charges. While we feel that there are more fundamental issues concerning the financing of FDA operations than those raised in the report, we are requesting that the Secretary of Health, Education, and Welfare discuss with us his views on the institution of user fees for this service.

In regard to the broader question raised above, FDA is conducting a thorough evaluation of possible financing options. We are requesting that this study be submitted to this Office for review upon its completion by the agency.

Sincerely,

CASPAR W. WEINBERGER,
Deputy Director.

Principal Officials of the Department of Health, Education, and Welfare Responsible for the Activties Discussed in This Report—Tenure of Office

Secretary of Health, Education and Welfare

Elliot L. Richardson, June 1970 to Present.
Robert H. Finch, January 1969 to June 1970.
Wilbur J. Cohen, March 1968 to January 1969.
John W. Gardner, August 1965 to March 1968.
Anthony J. Celebrezze, July 1962 to August 1965.

Assistant Secretary, Comptroller

James B. Cardwell, August 1970 to Present.
James F. Kelly, October 1965 to August 1970.

Assistant Secretary (Health and Scientific Affairs) [1]

Dr. Merlin K. DuVal, July 1971 to Present.
Roger O. Egeberg, July 1969 to July 1971.
Philip R. Lee, November 1965 to February 1969.

Commissioner, Food and Drug Administration

Dr. Charles C. Edwards, February 1970 to Present.
Herbert L. Ley, Jr., July 1968 to December 1969.
James L. Goddard, January 1966 to June 1968.
Winton B. Rankin (acting), December 1965 to January 1966.
George P. Larick, August 1954 to December 1965.

PRESIDENT NIXON'S PROPOSALS TO END THE VIETNAM WAR

Mr. CURTIS. Mr. President, today is a day of reckoning on the Vietnam war issue about which we have heard so much for so many years.

Today the people of the United States have a chance to take stock of what President Nixon has been saying and doing compared with what his critics have been saying and doing.

Today we can compare notes and make a judgment as to whether the President has been justly or unjustly criticized for his efforts, or lack of them, to bring that terrible, tragic war to a conclusion.

With this in mind, Mr. President, I have been reading, and listening to, the President's comments of last night and the analyses of others who have been speaking on the war for months and years, and I keep coming up with one strong conclusion:

The President's harsh critics are not leveling with the American people. They are closing their eyes to the facts, to reality. Their "credibility gap" is showing.

I will cite some examples that are particularly striking to me.

The Washington Post in a front-page article this morning reported that "opponents of the war" said the President "added nothing new except to report publicly a formula which they predicted would not work and which the North Vietnamese have ignored since October."

"Opponents of the war"?

That includes me, Mr. President, but, of course, I was not identified or quoted in the article. What the writer really meant was "critics of the President," but the writer exercised his own license of rhetoric and called them "opponents of the war" in contrast to those of us who think the President has been doing the best job possible of bringing the war, which we also oppose to a conclusion.

"Nothing new"?

Now I ask, Mr. President, is it not "new" that the President's national security adviser, Dr. Henry Kissinger, has gone to Paris 13 times to conduct secret negotiations with top North Vietnamese leaders to try to bring the war to an end?

Is it not "new" that Dr. Kissinger in behalf of President Nixon has offered a plan in secret negotiations that goes farther than any offered publicly to try to end the war?

Is it not "new" that President Thieu of South Vietnam is willing to resign his office and allow an international commission to supervise new elections as a condition for getting the North Vietnamese to agree to end the war?

I submit that it was "new" enough to occupy the top position on the front page of every newspaper published in America this morning.

One of President Nixon's critics is quoted as saying the President's proposal "will not work" because "North Vietnam wants a date set for withdrawal. President Nixon wants an agreement first. There's a great difference between offering to set a date and setting a date."

On this point, I ask, "What is the great difference?"

Is this "the important difference between settlement and surrender" which the President mentioned in his speech last night? If so, the critic is advocating what the President calls surrender, and both the critic and the North Vietnamese have to be smart enough to know that neither the President nor the people of the United States will stoop to that.

Or is this "great difference" merely a matter of holding another meeting, the 14th, if you will, to agree on a specific date? Is it not fair to all minds to ask that both or all parties to a peace settlement agree to a date when hostilities will end? Is that too much for the President to ask of his critics at home along with his enemies in North Vietnam?

How can any conflict of arms between

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[1] In March 1968, the Assistant Secretary was given direct authority over the Public Health Service and the Food and Drug Administration and the functions of the two organizations were realigned.

nations be settled without some kind of an agreement between the parties for the cessation of hostilities? I submit, Mr. President, that even a surrender agreement contains such a basic provision. I submit that no settlement is possible by unilateral action because such action obviously would contain no provision for the return of American prisoners or the ending of the war. I think somebody is trying to make "a great difference" out of the political squirming that is taking place both in the United States and throughout the world today, as the result of the President's speech of last night.

One of the President's critics is quoted as saying it was "clear" that the President "had refused to set a specific date for withdrawal, which is required to stop the bloodshed."

As a matter of fact, the President's offer to withdraw all American troops 6 months from the date of agreement between the parties to stop shooting and to return our prisoners is an offer of a specific withdrawal date.

How can it be interpreted any other way? All the North Vietnamese have to do is agree to it—and they won't even do that.

For months the President's critics have been saying to Americans and the world:

Agree to withdraw all the troops and the war will be ended and American prisoners returned.

Some of these critics have come away from meetings with North Vietnamese political leaders and made statements to this effect. And all the while, President Nixon in a series of secret meetings was offering within a specific time frame to withdraw all American troops in return for a complete prisoner exchange and an end to the war.

I am sorry to say, Mr. President, the critics of President Nixon on this day of reckoning have cast themselves in the role portrayed by the comic of yesteryear, remembered by many in this Chamber, who countered praise of any individual with the constant rebuttal, "Even if he was good, I would not like him."

As a positive alternative, I am issuing a counterchallenge.

I herewith appeal to all Americans, in and out of the Congress, who have had contacts with the North Vietnamese, and who appear to have their confidence, to use their influence to get the North Vietnamese to take the next step of compromise that will put the final end to this war and bring back our prisoners of war and the missing in action who are still alive. This they can do, and this they owe to their country and to humanity at large. I urge them to stop carping at the President and do what they can to end the war.

BROADCASTING FOUNDATION OF AMERICA

Mr. HARTKE. Mr. President, recently I learned of an outstanding organization which is seeking to make the vast wasteland of television fertile ground for knowledge and entertainment.

The Broadcasting Foundation of America has spent more than 16 years improving the content and quality of broadcasting. I ask unanimous consent that a letter written by the BFA's vice president, Howard L. Kany, be printed at this point in the RECORD.

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

BROADCASTING FOUNDATION OF AMERICA,
New York, N.Y., January 20, 1972.

Senator VANCE HARTKE,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR HARTKE: Knowing of your continuing interest in communications in the United States, and particularly in improving the content and quality of broadcasting, I would like to call to your attention the outstanding programming being provided to more than one hundred and fifty stations by the Broadcasting Foundation of America.

Since 1955, BFA has disseminated a unique variety of informational, public affairs, and cultural audiotape programs, assembled from professional broadcasting organizations throughout the United States and forty other countries and produced on a daily basis at its studio and production headquarters in New York.

Both commercial and non-commercial educational stations throughout the United States are kept advised of new and continuing weekly program series available from BFA. Duplicates are produced on BFA's high speed stereo equipment and rushed to stations for immediate use. Listening audiences for BFA programs are estimated in the millions.

BFA provides weekly half-hour program series in such areas of contemporary interest as science, education, literature, and the performing arts, assembling such spoken word programs from tapes flown to New York from England, France, Italy, Germany, The Soviet Union, Yugoslavia, Japan, Australia, Brazil, Canada, and numerous other nations. Weekly press reviews are supplied by BFA, in which opinions expressed in leading foreign newspapers are compiled by country. Through these series American listeners learn of international reaction to such significant world issues as the U.N. China question, the India-Pakistan dispute, President Nixon's economic policy, issues before the Soviet Communist Party, and manned flights into outer space.

Other BFA programs report on events behind current developments from news centers throughout the world. An especially popular program series, entitled "This Is Your World," focuses on environmental situations facing serious citizens, and includes thoughtful discussions on problems of ecology, social change, cultural expression and racial friction.

Listeners to BFA programs frequently are transported vicariously to the scene of the great music festivals of Europe. Live recordings of prestigious concerts from Salzburg, Vienna, Spoleto, Prague, and Bregenz, among others, are made available to BFA subscribing stations. Leading orchestras and individual artists are represented, on festival recordings, as well as on a weekly two-hour music series which BFA distributes.

Outstanding American production is represented by two long running programs produced at WFMT, the highly successful Chicago FM station, of which Raymond Nordstrand is President. These programs are: The Studs Terkel Show, hosted by the best selling author who conducts lively discussions and probing interviews; and Midnight Special, a fast paced variety series embracing contemporary music, skits, and humor.

BFA originated from an idea expressed on the University of Chicago "Round Table" radio program nineteen years ago, wherein it was suggested that Americans, while eager to dispense information about themselves on a world basis, may not listen enough to what persons in other nations are doing and saying. Stemming from this premise, BFA was formed in January 1955, as an independent, non-profit, non-governmental, educational organization, chartered by the Board of Regents of the State of New York. Its principal objective was stated in these words: ". . . to invite nations throughout the world to share their views, arts and music, culture and traditional materials with the American people via taped radio programs; and to establish an international structure for a two-way conversation between them and other nations."

BFA's founders included the then moderator of the "Round Table" and current BFA Chairman of the Board of Trustees, George Probst; Seymour Siegel, BFA President and long time Director of WNYC's Municipal Broadcasting System; Calvin W. Stillman, Professor of Environmental Resources at Rutgers University; the late Lewis Hill, former President of Pacifica Foundation; and the late Robert R. Redfield, Dean of the Division of Social Sciences and Professor of Anthropology at the University of Chicago. It was Dean Redfield who asked on the "Round Table" program, "Would it be untactful to suggest that America needs a hearing aid?" BFA's formational activities were embarked with the assistance of a Rockefeller Foundation grant, and its continuance through the years was made possible through grants from the Ford and the Benton Foundations.

Today, after 17 years of operation, BFA's role in international communications is as unique and significant as ever. The Foundation, which seeks and requires support from other foundations but whose costs are met more than half way by subscriber stations, distributes thousands of spoken word and music programs each year. Duplicates are made available not only to AM and FM radio stations, but also to universities, libraries, and other educational organizations.

As more broadcasting and educational organizations become familiar with the scope and quality of BFA material, the future becomes ever brighter for this unique international communications enterprise.

Sincerely yours,

HOWARD L. KANY,
Vice President and Executive Director.

FEDERAL ASSISTANCE TO LOCAL TRANSIT OPERATIONS

Mr. ALLOTT. Mr. President, one of the serious problems which confronts the Federal Government as it moves to assist local transit operations with the purchase of new equipment is to insure that citizens actually benefit from these transportation changes. In my judgment the Chicago Transit Authority, under the leadership of its imaginative chairman, Michael Cafferty, has moved very constructively to solicit and project public opinion in conjunction with a grant application to the Department of Transportation to fund a $121 million capital program.

The CTA developed a program entitled "Project Suggestion Bus" through which it obtained the views of more than 30,000 interested citizens who informed the authority on how equipment and service could be improved. Mr. Cafferty recently wrote Members of the Senate about this excellent program, which I believe should serve as a model to other cities who desire similar Federal funding.

So that all Senators may benefit from the knowledge of this unique citizen participation program, I ask unanimous

consent that Mr. Cafferty's letter be printed in the RECORD.

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

CHICAGO TRANSIT AUTHORITY,
Chicago, Ill., December 14, 1971.

Hon. GORDON ALLOTT,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ALLOTT: We here at Chicago Transit Authority have just completed what we think of as the largest public hearing ever held for a federal funding application, and we thought you might like to hear about it. It was conducted in conjunction with a grant application to the U.S. Department of Transportation to fund a $121 million 2-year capital program.

We called it "Project Suggestion Bus" and we've enclosed one of the few remaining car cards which we utilized to promote the experience.

We began with two vintage buses, both of which will be replaced when our grant application is approved. The interiors of those buses were totally redesigned but the exteriors were left untouched. In each bus, the first one-third of the interior was refurbished with new lighting, different color schemes, various wall treatments and alternative style seating. In effect, it suggested to the public a variety of atmospheres and environments, and we invited comment.

The rear two-thirds of the bus became a virtual gallery of renderings and information pertinent to the $121 million, two-year capital replacement program. The walls were wood-paneled, there was carpeting throughout, and the CTA staff was present to guide, explain and answer questions.

The buses went to the people, locating at twenty-five busy sites during an ensuing two-week period.

Advertisements in the metropolitan and community newspapers told when and where the buses would be present and asked people to visit and give us their comments. The ads and promotional material all utilized the basic theme that you have in the enclosed poster.

At the time we began, we publicly estimated that 6,000 to 7,000 visitors would have pleased us. In fact, we registered 35,000 persons! More than 30,000 took the time to fill out our questionnaires concerning the Capital Program. They made certain selections, expressed preferences and commented on how we at CTA could provide better service to the community.

The CTA is proud of what appears to be a quantum breakthrough for citizen participation conducted on a truly productive basis rather than in the characteristic "charged atmosphere".

We felt that as one who is vitally concerned with public transportation, you would want to hear of our experiences and results. We think the project has demonstrated its merit and its adaptability to any location in the nation.

Sincerely,

MICHAEL CAFFERTY,
Chairman.

HELP NEEDED FROM JUSTICE DEPARTMENT AND FBI

Mr. ALLEN. Mr. President, J. W. C. Smith, of Fairfield, Ala., sent me a UPI news dispatch which describes systematic blackmail by black panther pickets who demand contributions from merchants in Oakland, Calif., as a condition of their continuing to do business in that city. Mr. Smith points out that in the past gangsters used these methods and when merchants refused to pay they would bomb them out of business.

Mr. President, the merchant mentioned in the news release is a black businessman and there can be little question but that activities of the sort described violate the civil rights of merchants and customers who are victimized by these tactics.

Under the circumstances, I am at a loss to understand why the Department of Justice sits on its hands while this type of activity goes on. Mr. President, I ask unanimous consent that the UPI dispatch, published in the Birmingham Post-Herald of January 17, 1972, be printed in the RECORD at the conclusion of these remarks.

Mr. President, in this connection, the civil rights of blacks and whites alike are being flagrantly violated in Wilcox County, Ala. Public schools and businessmen in this county are being subjected to a boycott. It has been charged that the boycott has been organized and led by an organization funded by the Department of Health, Education, and Welfare. The allegations of violence and unlawful actions of boycotters are set out in a letter which I addressed to the Attorney General on December 15, 1971. I request unanimous consent that a copy of this letter be printed in the RECORD at the conclusion of my remarks.

Mr. President, there is no excuse for failure of the Federal Government to investigate these cases and to prosecute if the evidence warrants it. But instead, the Department of Justice permits its personnel by the score to be used for surveillance of little schoolchildren and to interrogate and question parents in their homes in connection with the crime of sending one's child to a neighborhood school.

In Wilcox County, Ala., local newspapers carried pictures of agents of the FBI engaged in photographing the records of schoolchildren. More recently, the Concerned Parents for Public Education, Inc., of Birmingham, Ala., addressed a letter to the Honorable J. Edgar Hoover in which it is complained that FBI agents are following little schoolchildren from schools to their homes and questioning their playmates and their parents in their homes.

Mr. President, I have always had great respect and utmost confidence in the integrity of the FBI under the leadership of J. Edgar Hoover. Therefore, it is difficult for me to imagine that Mr. Hoover would ever willingly permit agents of his Department to engage in such a demeaning enterprise as "tailing" and "shadowing" little schoolchildren and harassing and intimidating parents in their homes. Under the circumstances, I am convinced that if these charges are true, it is because the FBI has been ordered to misuse its agents under directions of insensitive radicals in the Department of Justice or else on orders of judicial dictators who direct such police state tactics under authority of U.S. district court judges.

It is a sad commentary of the times when the Federal Bureau of Investigation, under the direction of the Department of Justice, is compelled to spend its funds and resources on investigating and interrogating little children and parents concerning school attendance while rampant crime and violence throughout the Nation threatens the very foundations of our society.

Mr. President, it is difficult to fix responsibility where misfeasance is involved. However, I believe that it is important to determine who is responsible for such a fantastic distortion of priorities in the area of law enforcement. I fervently hope that the Senate Judiciary Committee might inquire into the matter before parents and schoolchildren throughout the Nation are subjected to the same type of investigation and surveillance after Federal courts complete their wrecking job on the public schools of our Nation.

Mr. President, I ask unanimous consent that the letter from the Concerned Parents for Public Education, Inc., of January 20, 1972, addressed to Mr. J. Edgar Hoover be printed in the RECORD.

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

BLACK BOYCOTT FORCES FUNDS FROM STORE

OAKLAND, CALIF.—Black Panther pickets demanding contributions, who marched for five months outside Bill Boyette's liquor store, were withdrawn Sunday after the "broke" black businessman signed a peace pact requiring regular payments to ghetto programs.

Congressman Ronald V. Dellums negotiated the settlement in which Boyette and other members of his ad hoc committee for the promotion of black business agreed to make donations to a new "united black fund of the bay area," which will support community programs sponsored by the Panthers and other organizations.

Huey P. Newton, the Panther's minister of defense, said that the successful boycott of Boyette's store will be followed with similar picketing of white food and furniture chains operating in Oakland.

"The fight is just starting," he said. "Large chains of white merchants are making money in the black community without donating any to black programs. We shall ask them for donations. We think we can do the job much faster than five months. We will use whatever tactic we feel is effective."

The struggle between the Panthers and Boyette, president of the California Package Stores and Tavern Owners Association, began last August when he and other black businessmen refused to make weekly contributions to the militant organization. They offered food for the Panthers' ghetto breakfast programs, but Newton spurned it and organized the boycott.

Under the compromise drawn up by the staff of Dellums, a Democrat from neighboring Berkeley, the black businessmen will make regular cash contributions to the United Black Fund.

U.S. SENATE,
Washington, D.C., December 15, 1971.

Hon. JOHN N. MITCHELL,
Attorney General of the United States, Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: Charges have been made which, if true, would indicate that agents of the Department of HEW are using set-aside funds appropriated under provisions of the Emergency School Assistance Act to finance activities which may be in violation of provisions of Title 18, USC, Sections 241 and 245.

For example, a grant in the amount of $30,000 was made to the Wilcox Progressive

Civic League of Wilcox County, Alabama, despite the fact that the application by this organization was opposed by state and local public authorities, including the county Superintendent of Education, the local county Board of Education, the State Board of Education, and the Governor of Alabama. Funding of the organization was objected to on grounds, among others, that the organization was not responsible, not representative of the community, and not competent to perform the services for which it requested funding.

The Wilcox Progressive Civic League has been charged with instigating, organizing, and encouraging a boycott by black pupils of public schools. The boycott has been enforced by threats and intimidations, such as:

"They have threatened parents with burning their homes. They have threatened to harm the school buses on which these children ride. They have threatened to harm the children at school and while riding the buses. They have destroyed school property. They have punched holes in bus tires with ice picks and they have slashed several tires so that they were not usable. They have gone to people's homes at night and threatened them if they sent their children to school.

"The group mentioned above has led a boycott of the schools in Wilcox County beginning on the opening day of school and continuing up to the present time. They have done everything in their power to create turmoil and disrupt the schools. Students have been threatened by the boycotters. They have been stopped on the way to schools and turned back from school. Bomb threats have been called in to the schools. Parents have been threatened with having their homes burned who sent their children to school. School buses and school buildings have been vandalized.

* * * * *

"Last night, after writing you concerning the appropriation of $30,000 to the Wilcox County Progressive Civic League . . . a school bus was set afire and the home of one of our school guards was set afire and burned to the ground. These cases were definitely arson.

"A verbatim copy of a letter from a mother reads:

" 'Dear Principle, I have been threat over the telephone about my children—on Friday night Because they was in School.'

"Miss ETHEL L. JACKSON."

In addition, a Camden, Alabama merchant describes an economic boycott in progress, allegedly organized and presently led by the Wilcox County Progressive Civic League. He alleges, in part, as follows:

"There have been four fires, and ladies are being insulted and bumped on sidewalks. Local negroes are being threatened and told not to come into stores, and if they do, they snatch their packages and threaten to burn their homes."

A local newspaper, the *Wilcox Progressive Era,* in commenting on the $30,000 grant of Emergency School Aid funds to the Wilcox County Progressive Civic League said:

"It is generally held that a portion of these funds are being used to finance the economic boycott."

Additional evidence in the form of printed "demands" promulgated by the Wilcox County Progressive Civic League clearly indicate that the interest of the organization in education is only peripheral. The "demands" as they relate to education reveal a ludicrous ignorance of problems of school finance in the county.

However, the object of this particular letter is not to raise the issue of qualification of the organization to receive Emergency School Assistance funds. The point is that if the allegations against the organization can be proven, then certain individuals in the organization are denying civil rights of all citizens and particularly the rights of blacks who are being denied enjoyment of constitutionally protected rights by threats and intimidation at the hands of individuals and organizations financed by Emergency School Aid funds.

The allegations seem to me to be of sufficient seriousness to justify an indepth investigation by the Department of Justice with the view of possible prosecutions under appropriate provisions of Title 18, USC, Sections 241 and 245.

Furthermore, because of widespread acts of violence which have occurred in southern schools following the grant of Emergency School Assistance funds to certain private groups and organizations in the South, I suspect that there may be a causal connection between the grants and the ensuing violence. In view of the fact that danger to life and property is involved, I know you will want to expedite an investigation. I look forward to an early reply and report.

With kindest regards, I am

Sincerely yours,

JAMES B. ALLEN.

CONCERNED PARENTS FOR PUBLIC EDUCATION, INC.,

January 20, 1972.

Mr. J. EDGAR HOOVER,
Director of the F.B.I.,
Washington, D.C.

DEAR MR. HOOVER: I have been contemplating for weeks on whether or not to attempt to inform you as to the injustices carried on here in the State of Alabama under the name of the F.B.I. Since we have a "do or die" emergency coming up here in my community of Sandusky and surrounding communities on Monday, January 24th, I decided to go ahead knowing full well the letter will never be given to you.

We have felt here in Alabama for some time that the President was trying to destroy quality education; that the so-called Supreme Court was against *any* education and others too numerous to mention who have had a hand in destroying local schools. The biggest blow of all came when we found out the F.B.I. is also apparently aiding and abetting the communist forces to take over our schools and subsequently us.

Nothing I have ever read or heard about the F.B.I. prepared me for this as I have always held the F.B.I. in highest regard and had complete faith in the fact that that organization above all others would always fight against communism.

A few weeks ago these dreams were shattered as a lot of other American dreams and ideals have been shattered lately, when the F.B.I. started following little children home from school to see where they lived; when they started questioning playmates of little children as to where their friends lived and when they started going into people's homes, flashing their badges and questioning them about these children's residences and asking the parents questions meant to intimidate them such as where they work and implying by these questions that they could have them fired if they failed to tell the truth.

These are not criminals or law breakers that I am speaking of. These are above average patriotic Americans who are only trying to keep their children in a school here in this community that they, the parents and in some cases grandparents attended.

Under the H.E.W. Guidelines and Federal Judges' order, these children have been rezoned to go to a school several miles away—too far to walk and no transportation provided when the community school is within sight of their homes. This school is already substantially integrated, therefore it is not a racial issue.

Monday morning these children *will* attend this school as they always have.

We wanted you to know this because under the Constitution this is still our right regardless of what any Federal Judge, F.B.I. Agent, Supreme Court or President says.

Sincerely,

ANN J. BAKER,
Secretary.

CHILDREN'S DENTAL HEALTH ACT OF 1971

Mr. PEARSON. Mr. President, one of the most significant achievements of the Senate during the 1971 session was the passage, on December 10, 1971, of the Children's Dental Health Act. This important proposal was adopted by a rollcall vote of 88–1. I was particularly gratified by the broadbased support which the Children's Dental Health Act received, for I had the honor to serve as a Senate sponsor when the act was introduced. The act as originally introduced was based upon legislation prepared in close cooperation with leading dental authorities. It has the support of the American Dental Association, the American Association of Dental Schools, the American Dental Hygienists Association, the National Congress of PTA's, the AFL–CIO, the American Academy of Pediatrics, and the Consumer Federation of America.

The Children's Dental Health Act reflects an effort to deal with dental disease in its early stages. A total of $50 million would be used for pilot dental care projects providing preventive, corrective, and followup care to disadvantaged children. The amount of $9 million would be used to assist communities and schools which wish to fluoridate their water supplies. The sum of $57 million would be used to train dental auxiliaries and $56 million would be used to train dentists and dental students how to best utilize dental auxiliaries.

Other provisions of the bill include the appointment of a Dental Advisory Committee, consisting of seven members, who shall appraise the programs established under the bill and report to the Secretary of Health, Education, and Welfare. The bill further provides that the Secretary submit a report to Congress each year regarding progress of the program and a final report containing his recommendation concerning the need and feasibility of a national dental health program for children.

Today our children suffer from a shocking incidence of dental disease. Before they reach the age of 2 years, about half of all American babies suffer tooth decay. The first stages of peridontal disease, which affects the soft tissues of the mouth, can be detected in more than half of our children. The average American child—at age 15—has developed cavities in one-third of his teeth.

This National dental health problem may be attributed, in part, to these facts: nearly half of the children in this country under 15 years of age have never been to a dentist. Among children from the poorest families, more than 80-percent have never been to a dentist.

Immediate Federal initiatives to correct this situation are appropriate. Millions of children urgently need professional care. Tooth decay and other diseases of the mouth should be treated in those cases where, for one reason or another, no care has been available. Federal participation in the attack on dental disease is wholly appropriate, for broadbased programs of preventive dental medicine for children is the most rational and least expensive method of bringing the total problem under control.

PILOT DENTAL CARE PROJECTS

Pilot dental care projects would be established by the first section of the proposed act on an independent statutory basis under the Public Health Service Act. Comparable projects are authorized currently under section 510 of the Social Security Act, but this authority will expire on July 1, 1972. Section 510 dental care projects, moreover, have suffered from chronic underfunding. Only $500,000 was appropriated for fiscal year 1971, and $1.5 million has been appropriated for the current year. Those pilot projects envisioned in the Children's Dental Health Act deserve better support from the Office of Management and Budget, and from the Congress.

The Children's Dental Health Act contemplates a number of well-planned and funded projects which would extend preventive dental care to children not now receiving such care. Approximately 2 million youngsters would receive care during the 5-year life of the act.

KANSAS STATISTICS DOCUMENT NEED

Mr. President, I am especially pleased to serve as cosponsor of this legislation, for conditions in Kansas reflect the need for its prompt congressional approval. There are currently about 1,600 dentists in Kansas, with a dentist-to-patient ratio of 1 to 2,000. The average national ratio is 1 to 2,100. The most recent studies reveal, however, that the average dentist has only 1,320 patients in his practice.

The need for dental care is particularly acute in rural areas. In Kansas, for example, there are eight rural counties without the services of a dentist. In addition, 34 Kansas counties have a dentist-to-patient ratio of more than 1 to 3,000. The eight-county area around Garden City has an overall ratio of 1 to 3,500. Clearly such areas could benefit significantly from the establishment of dental care projects for children. Rural projects should include mobile dental care to rural and semirural residents.

Kansas City, Kans., and Wichita have inner-city locations that lack an adequate number of dentists, and could also benefit from pilot children's dental care projects.

FLUORIDATION

In past years fluoridation has been the subject of some controversy among health officials and the general public. Those communities which have installed fluoridation equipment, however, now report a reduction in tooth decay as high as 65 percent. Thus most communities which can afford installation costs have concluded that the benefits of fluoridation are unchallengeable, and little serious opposition remains.

Nevertheless, the Children's Dental Health Act has been carefully structured to avoid any vestige of Federal coercion on the fluoridation question. A community or school authority must first decide whether fluoridation is appropriate. After the decision has been made at the local level, this legislation provides for a Federal matching grant to procure and install the appropriate fluoridation equipment. The Federal share of the overall cost may approach 80 percent—but the act contemplates that the average grant will be 66.6 percent of total equipment and installation cost.

The bill provides an authorization of $9 million over 3 years to assist communities in fluoridation—a modest sum when one considers the private sector expenditure of $2 billion per year for repair of tooth decay.

DENTAL AUXILIARIES

Mr. President, this act also deals with the pressing shortage of dental auxiliaries—dental hygienists, dental assistants, and dental laboratory technicians. Today there are 17 dental hygienists and 101 assistants for each 100 dentists. An appropriate ratio would be 40 hygienists and 200 assistants for every 100 dentists. Based upon projected graduation rates, the United States will have a shortage of 25,000 hygienists and 137,000 assistants by the year 1980. The shortage of dental laboratory technicians, who do not provide chairside care and are generally not employed directly by the dentist, is expected to approach 23,000 by 1980.

The Children's Dental Health Act would provide two types of Federal assistance. First, it would increase the funding available for the training of hygienists, assistants, and technicians. Second, it would provide funds for the instruction of dentists and dental students in the proper utilization of auxiliary personnel.

It is true that the purposes of this section could be accomplished under authority of the Health Training Improvement Act of 1970. This act, regrettably, has been consistently underfunded. Entire sections of the Health Training Improvement Act, and its predecessor, have gone unfunded for protracted periods of time.

Enactment of the Children's Dental Health Act would mean better educational and employment opportunities for our returning Vietnam veterans. Those men who have been trained by the military in some form of dental assistance would be encouraged to continue their education and practice in the dental field.

I was deeply pleased when the Children's Dental Health Act passed the Senate. There is no question that prompt consideration by the House is merited, for the authorization must be approved before the programs can be funded for the next fiscal year.

The dental health of our children is extremely important, and this legislation for the first time establishes dental health as a priority of the Congress. The Children's Dental Health Act of 1971 will provide the dental profession, and the allied dental professions, with the tools for a truly effective program of preventive care.

CAMPAIGN "SPOTS" ON TELEVISION

Mr. HARTKE. Mr. President, during the debate on campaign spending legislation during the last session, I joined with the distinguished Senator from Illinois (Mr. STEVENSON) in offering an amendment which would have eliminated short campaign spot advertising.

No candidate can provide useful information on any issue in 30 seconds. To reduce a candidate for high public office to the same advertising techniques as a purveyor of detergents and deodorants is to demean both the office and the candidate. Spot ads emphasize image at the expense of issues.

Recently, an article on this subject appeared in the Columbia Journalism Review. Mr. President, 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:

LET US ABOLISH TV POLITICAL SPOTS

Recently, during a taxi ride to National Airport in Washington, D.C., I thought about all the elected officials in that city who had used TV in campaigns in ways that would never be tolerated for product advertising. I thought of abuses and misuses which, were they for a product, would never get past a continuity acceptance department. And I got angry. Not only because of the importance of the electoral process, but because I am tired of the advertising business being blamed for these excesses.

All of us in advertising agencies, and particularly people in broadcasting, can do something about it. We can learn from the mistakes of 1970—and there is some evidence that mistakes have been made. A week after the November elections Foote, Cone & Belding interviewed more than 1,600 people through our Monthly Information Service and the Gallup Organization. We wanted to know if voters shared our concern with the way TV was used. We found three-quarters of the sample favoring restriction or control of political advertising on TV. Most were concerned about the inequity of TV time and funds among the candidates. Of those favoring restriction, 23 per cent felt that the content wasn't truthful or honorable enough.

How did we reach this sorry state? It all began in 1952. Gen. Eisenhower, with the help of Robert Montgomery and Rosser Reeves, did a series of spot announcements in which he answered questions asked by voters, usually ending with: "Let's clean up the mess in Washington." From there, for nineteen years the political use of TV has for the most part gone downhill. There have been brilliant exceptions: the Kennedy-Nixon debates, for example. But there has been little subsequent use of debates and longer-length expositions. In the 1968 campaign, 70 per cent of the TV advertising was in "spots."

TV is getting a larger and larger proportion of the campaign media expenditure: $38 million in 1968. And TV time has gotten more and more expensive. As a result, the standard campaign today is a big reach/frequency spot effort of ten-, twenty-, thirty-, and sixty-second commercials: the most expensive form of communication this side of Telstar. If you can't afford it, you don't play.

With that much cash going into media, needless to say a lot of people got their hands into the creative work. Professional image-builders began to emerge and take over the creation and production of the messages. In the public mind, these people were lumped into the pejorative designation "Madison Avenue," although many of them did not represent any recognized advertising agency. They talked like the worst huckster stereotype, and the statements they made about their craft would get one forcibly ejected from any reputable advertising agency: "Our job is to glamorize them and hide their weaknesses. . . . It's much more important to know the man than to know his stand on an issue. . . . If I had only three weeks for a campaign, I'd pick a pretty boy. . . . He was a beautiful, beautiful body and we were sell-

ing sex. . . . Voting is an emotional response."

The people behind those statements are making some mistakes about product advertising. But their fundamental error, if not sin, is in equating the communications program of a candidate for public office with the advertising of a consumer product. Most packaged goods are minor purchases. Most depend for their survival on establishing a predisposition to repurchase. The consumer's most effective response to a disparity between advertising claim and reality is never buy it again. When you "buy" a political candidate as a result of his advertising, you're stuck with the "purchase" for four years—with results that can be far more devastating than not getting your teeth as white as you had hoped.

If you draw the comparison with a big-ticket purchase, the analogy crumbles just as quickly. An appliance, an automobile, an insurance policy are not sold by advertising. They are sold by a dealer or an agent. Advertising can only establish, in the mind of the prospect, an appropriateness between his need or lifestyle and the product, then direct him to the personal salesman and the actual product.

Unfortunately, this essential second step is missing if you apply the same techniques to selling a candidate. And the candidate offers you neither a money-back guarantee nor any kind of service warranty. Furthermore, none of the safeguards imposed upon contemporary TV advertising apply to political spots. Even the libel laws are suspended. The National Association of Broadcasters and network continuity acceptance departments wouldn't think of challenging the statements, claims, and promises made by a political commercial. Indeed, I wonder if the Federal Trade Commission is going to insist on the same kind of documentation from candidates as it demands from automobile manufacturers in 1972.

There have been commercials that didn't mention, much less provide an opinion on, a single issue. They include: a John F. Kennedy montage of banners and stills with the theme song, *It's Up to You;* a montage of Nixon shaking hands to the theme, *Nixon's the One;* a Johnson spot showing an H-bomb explosion, over a voice quoting Senator Goldwater that "this is merely another weapon"; a Humphrey spot consisting of rising laughter over a billboard which reads Agnew for vice president.

When communication like that can form an important part of a major political campaign, there is something very wrong. And since the advertising industry is being blamed for it, I think we ought to initiate some remedies. One possibility is for advertising agencies not to accept a political account. This is the simplest solution. It is our agency's solution at the moment. But I am not sure it is the right solution. The talents that reside in an agency could, under the right conditions, be ideal for creating and placing meaningful messages for a candidate.

The system adopted in England seems very reasonable to me. Under the Independent Television Act, political commercials are forbidden. However, during general elections the two network organizations—BBC and ITA—allocate a certain number of free broadcasts to each party, the number based generally on the membership of the party. In the 1970 elections, the Conservative and Labor parties each received five TV broadcasts of ten minutes duration and seven radio broadcasts of either ten- or five-minute length. The Liberal party was given three TV and four radio broadcasts.

After a year-long study headed by Newton Minow, the Twentieth Century Fund recommended something similar for the U.S.—one of the few nations in the world, incidentally, that allows political candidates to purchase TV time. The Fund suggested that, during the last five weeks of a Presidential campaign, all TV and radio stations simultaneously carry six prime-time half-hour programs featuring the candidates and attempting to "illuminate campaign issues and give the audience insight into the abilities and personal qualities of the candidates."

That sounds pretty reasonable. As an absolute minimum, we should have the restrictions on TV expenditures put forth in the bill approved by the Senate on Aug. 5. This bill—which would also rescind the ridiculous equal-time proviso, at least for Presidential candidates—made so much sense to both parties that it passed with an 88-to-2 vote. But the House has turned it into a partisan political joke composed, as far as one can perceive through the procedural pandemonium, of a multiplicity of plans.

Equally important is the *kind* of message to be used. Notice the word "message." The idea and terminology of political TV "spots" should be dumped forever. Ten-second, thirty-second, even sixty-second lengths are inadequate and inappropriate for presenting a candidate to the voter. These lengths defy a discussion of issues and encourage the shallowest kind of imagery, the shoddiest kind of logic, and the most reprehensible mudslinging.

I am in total agreement with Ward Quaal, of WGN Continental Broadcasting, who will not allow a political message of less than five minutes on his stations. If, in an uncharacteristic display of responsibility, the broadcasting industry would follow Quaal's example and set a five-minute minimum on political messages, many of the abuses would automatically be eliminated. I don't think political image-builders would risk the ennui inherent in five minutes of groovy music and up-shots of a grinning candidate. I don't think they could successfully refrain from giving us a glimpse of their man for five minutes or manage to elude every issue. And I am at least hopeful that they would see the peril in a full five-minute implication that the other man is a fascist freak.

But just in case, I suggest a few guidelines that would not unduly restrict the creative construction of the message. These guidelines would be a code for political broadcast messages that the candidate himself would assent to in writing before he or his supporters would be sold time on any station:

(1) The message should be designed to help the voter know and understand the candidate, his character, and his ability to communicate.

(2) The message should establish what the issues are which the candidate feels are important.

(3) The message should clearly state where the candidate stands on these issues.

It is very simple—so simple that I am sure many of the professional image-builders would smile at the naïveté of this kind of proposal. They would probably point out that longer lengths would blow their reach and frequency and render their TV campaigns ineffective. However, a study by the School of Journalism and Mass Communication at the University of Wisconsin refutes that view. The study, on political broadcast advertising, was done among 512 voters in Wisconsin and Colorado after the 1970 campaigns. The introduction states:

"The results of this study suggest that a moderate number of high-quality, substantively informative advertisements may be more effective than a saturation presentation of superficial image-oriented spots. . . . Thus, the most effective advertising strategy would be one that allocates campaign funds away from a high frequency of exposure into a more modest number of ads containing substantive informational content that is presented in an interesting and entertaining manner by skilled producers."

I am urging the broadcast industry to set a minimum length of five minutes on all political messages, and to insist that the content concern itself with the candidate, his view of the issues, and his proposed solutions. And I am urging all of us in the advertising business not to be beguiled into making commercials that confuse a candidate and an office with a deodorant and an armpit.

WEATHER MODIFICATION TECHNIQUES

Mr. PELL. Mr. President, I yesterday made public an exchange of correspondence I have had during the past 4 months with the Department of Defense regarding military application of weather modification techniques.

As chairman of the Subcommittee on Oceans and International Environment, I have been very much concerned over unofficial and unconfirmed reports that the United States has in fact attempted to modify weather conditions in Southeast Asia as an instrument of warfare.

I believe that my correspondence with the Defense Department is self-explanatory. I ask unanimous consent that it be printed in the RECORD. The Department, when pressed for definitive answers, declined to answer publicly questions regarding possible military use of weather modification techniques in Southeast Asia, citing national security reasons.

In my own view, attempts by any nation to harness the weather, or to use geophysical modificated as an instrument of warfare, would be shortsighted. It would be the final ironic commentary on man as an intelligent being, if he should deliberately use the natural environment as a weapon against his fellow man, inviting retaliation in kind.

In the closing days of the first session of this Congress, I urged the President to announce that this country would dedicate all geophysical and environmental research to peaceful purposes. I also stated my intention to introduce a resolution in the Senate pointing toward an international agreement to prohibit all environmental and geophysical warfare.

I regret very much that the Defense Department has concluded that it cannot trust the American people with information regarding its possible military weather modification activities.

This reluctance only reinforces my belief that we must move quickly to place weather, climate, and geophysical modification off limits in the international arms race. I will in the near future submit my resolution, with the intention of conducting hearings on it at the earliest possible time.

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

SEPTEMBER 23, 1971.

Mr. RADY JOHNSON,
Assistant to the Secretary (Legislative Affairs), Department of Defense, Washington, D.C.

DEAR MR. JOHNSON: During the past few weeks, the Foreign Relations Committee has received a number of inquiries concerning the Air Force weather modification activities against the North Vietnamese. In view of my position as Chairman of the Subcommittee on Oceans and International Environment, I would appreciate the Department providing

the Committee with whatever information it may have on this matter, including answers to the following questions:

1. What are the objectives of the project known by the code name "Intermediary—Compatriot"?

2. How long has this project been in existence? Would you provide a rather detailed description of this project?

3. In what specific countries is this project conducted?

4. What amounts have been spent on this project over the last three years?

5. Is the Department conducting any similar offense—oriented weather modification programs? If so, what are the names of these projects and where are they being conducted?

Sincerely yours,

CLAIBORNE PELL,
Chairman, Subcommittee on Oceans and International Environment.

OFFICE OF THE SECRETARY OF DEFENSE,
Washington, D.C., September 24, 1971.

Hon. CLAIBORNE PELL,
Chairman, Subcommittee on Oceans and International Environment, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This will acknowledge your recent letter concerning the Air Force weather modification activities against the North Vietnamese.

I have asked the Director of Defense Research and Engineering to look into this matter. You may expect a further reply from his office at an early date.

Sincerely,

RADY A. JOHNSON,
Assistant to the Secretary for Legislative Affairs.

NOVEMBER 9, 1971.

Mr. RADY JOHNSON,
Assistant to the Secretary (Legislative Affairs), Department of Defense, Washington, D.C.

DEAR MR. JOHNSON: On September 23, 1971, as Chairman of the Subcommittee on Oceans and International Environment, I requested information about the Air Force weather modification activities against the North Vietnamese. I have not yet received a reply.

Attached is a copy of my original communication. I would appreciate a written response to that inquiry.

Sincerely yours,

CLAIBORNE PELL,
Chairman, Subcommittee on Oceans and International Environment.

OFFICE OF THE SECRETARY OF DEFENSE,
Washington, D.C., November 23, 1971.

Hon. CLAIBORNE PELL,
Chairman, Subcommittee on Oceans and International Environment, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The following information is provided in response to your recent inquiry with respect to military use of weather modification techniques by the Department of Defense.

The possibilities inherent in weather modification techniques to support military operations have been the subject of discussion for more than 20 years. For a number of these years the Department of Defense has been conducting several modest research and development programs relating to various forms of weather modification. These programs are carried out, in concert with other Government Departments and Agencies, under the aegis of the Interdepartmental Committee for Atmospheric Sciences (ICAS). The results of the programs are reported annually to ICAS, and are additionally reported in appropriate scientific journals for consideration by the scientific community.

Weather modification research on the part of the Department of Defense stems principally from two major interests. The first of these is the enhancement of our own operational posture through weather modification activities. Two examples of this type of employment are: the suppression of hail and lightning (to reduce damage to military property and equipment, and to increase safety of operations), and the dissipation of fog at airfields and within harbors (to enhance operational safety of aircraft and ships). The other interest is an understanding of what capabilities our potential enemies may possess in the area of weather modification operations. For example, the Soviets have demonstrated a technique for hail suppression. Suitably designed artillery shells are fired into cumulus clouds to reduce hailfall from these clouds. These experiments are conducted by Soviet military personnel using military equipment.

DoD research in this area is conducted in the laboratory and in the field. The field efforts, usually joint ventures with one or more other government agencies, are all carefully controlled operations, based on the best available theoretical knowledge. One example of fruitful field research has been the investigation of precipitation augmentation. This research has established a significant point: There is no known way to "make rain" under all conditions. When the proper meteorological conditions prevail (that is, when clouds capable of producing natural rain exist), it is a relatively simple matter to increase the amount of rain which will fall. The amount of increase is frequently of the order of 30 to 50%. This augmentation is well within the natural limits of rainfall for regions within which experiments have been conducted. Massive downpours, far in excess of natural occurrences, have not been produced, and theoretical knowledge at hand indicates that this will probably always be the case. Similarly, there is no known technique which will permit the steering of storms into a specific area. The closest approach to large storm modification thus far attempted is the Department of Commerce (NOAA)/Department of Defense joint effort known as Project Stormfury. In this project, studies are being made on ways to ameliorate the maximum wind speed in hurricanes and typhoons in order to reduce the severity of damage caused by these very destructive storms.

The field capabilities of the Department of Defense have been utilized on several occasions in attempts to alleviate severe drought conditions. In 1969 at the request of the Government of the Philippines, the Department of Defense conducted a six months' precipitation augmentation project in the Philippine archipelago. The Philippine Government considered the undertaking so successful that they have subsequently taken steps to acquire an independent capability to augment rainfall on an annual basis when required. Similarly, we have just completed a one-month project in Texas at the request of the Governor of that State. The operation appears to have been moderately successful in alleviating Texas' severe water shortage. On the other hand, attempts to solve similar problems in India and at Midway Islands were near or total failures due to the absence of suitable cloud formations.

Laboratory efforts conducted by the Department of Defense are designed in large part to explore the questions concerning ecology. Many of these experiments are numerical investigations which utilize large computers to model the atmosphere. Because of the magnitude of the problem, this effort is currently quite limited by the size and capabilities of existing computers. When new computers now being designed are placed in service, however, we hope this effort can be expanded to include models on a global scale. Such work is being undertaken because DoD recognizes that large scale weather modification operations must not be attempted until there is full and reliable theoretical knowledge which assures that such operations will not have an adverse effect upon the World's climate.

I trust that the foregoing information will be helpful to you and regret the delay in responding to your inquiry.

Sincerely,

RADY A. JOHNSON,
Assistant to the Secretary for Legislative Affairs.

DECEMBER 3, 1971.

Hon. MELVIN R. LAIRD,
Secretary of Defense, Washington, D.C.

DEAR MR. SECRETARY: On September 23 of this year, I submitted to your department several questions regarding weather modification activities in Southeast Asia by the Air Force.

Subsequently, Mr. Rady Johnson, your assistant for legislative affairs, asked to meet with me in my office to discuss the questions I had raised. I advised Mr. Johnson that I would prefer a written response to my questions before participating in a briefing or discussion of the matter. Mr. Johnson on November 23 of this year provided a reply, in writing, as I had requested. I have enclosed a copy of this correspondence.

As you can see, Mr. Johnson's letter, while providing interesting background information on some Defense Department weather modification activities, does not respond to the specific questions in my letter of September 23.

I am deeply concerned over the entire question of military application of weather modification technology, and would appreciate very much a written response to the specific questions submitted in my letter of September 23.

Sincerely,

CLAIBORNE PELL,
Chairman, Subcommittee on Oceans and International Environment.

DIRECTOR OF DEFENSE
RESEARCH AND ENGINEERING,
Washington, D.C., December 16, 1971.

Hon. CLAIBORNE PELL,
Chairman, Subcommittee on Oceans and International Environment, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of 3 December 1971, which was addressed to the Secretary of Defense, has been referred to this office for reply. In your letter you expressed dissatisfaction with information previously furnished to you by Mr. Rady Johnson on the subject of Department of Defense weather modification activities.

Certain aspects of our work in this area are classified. Recognizing that the Congress is concerned with the question of the military application of weather modification technology I have, at the direction of Secretary Laird seen to it that the Chairmen of the Committees of Congress with primary responsibility for this Department's operations have been completely informed regarding the details of all classified weather modification undertakings by the Department. However, since the information to which I refer has a definite relationship to national security and is classified as a result, I find it necessary to respectfully and regretfully decline to make any further disclosure of the details of these activities at this time.

Sincerely,

JOHN S. FOSTER, Jr.

FOREIGN VIEWS OF AMERICAN JUSTICE

Mr. McCLELLAN. Mr. President, nations, like individuals, often lose the capacity to see themselves as others see them. In such a situation, the observa-

tions and views of outsiders can be a most useful aid and corrective.

A distinguished authority on comparative criminal law, Prof. W. J. Wagner, recently forwarded to me a copy of an address by the Honorable Sir Reginald Sholl, former Justice of the Supreme Court of Victoria, Australia, entitled "Law and Order—American or Australian Model?" Although delivered in 1968, the piercing insights and rational analyses of the Australian jurist are as relevant today as they were then. I do not necessarily personally subscribe to all of the Justice's conclusions on desirable changes in American law, but I think his views should be brought to public attention in this country.

More recently, on January 24, the New York Times published on page 1, column 1, a dispatch by Reuters from Paris on a new travel guide for French citizens preparing to visit the United States in general and New York City in particular. It is a shock to all of us, I know, to realize that America, the land of freedom and ordered liberty, is becoming known abroad as the land where it is not safe to walk the streets. An article responding to the French travel writer was published on page 1, column 3, of the New York Times for January 25.

As we approach the great task of revising and reforming all the criminal laws of the Federal Government, we should bear in mind that our friends around the world are watching us to see if we can provide that minimum of personal security without which freedom may be without meaning.

I ask unanimous consent that the address and articles be printed in the RECORD.

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

A FRENCH VIEW OF NEW YORK: PERILOUS CITY TO VISIT

PARIS, January 23.—French youths, expecting to invade New York this summer following the lowering of trans-Atlantic air fares, have been warned that they had better avoid half the city if they want to come back home in one piece.

The travel writer of the daily newspaper L'Aurore, in a long article on the dangers of New York, gave an extensive list of hints on how to avoid being mugged—which included walking in the middle of the sidewalk and boarding only yellow-colored cabs.

"There are about 20,000 drug addicts in New York," L'Aurore said. "They are unable to work but they need $50 to $100 a day for drugs. So they attack and rob anyone, anywhere."

The article was accompanied by a map of Manhattan that showed some areas of the city as unsafe after dark and others as unsafe at any time.

Considered unsafe at any time were almost all the area along the East and Hudson Rivers as well as the entire part uptown from 96th Street.

The only way to see Harlem is to go on a visit organized by a black-owned tour company, L'Aurore said.

At night, prospective tourists were warned, stay out of a quadrangle formed by First and Third Avenues and 57th and 68th Streets.

They can visit Greenwich Village, Little Italy and Chinatown after dark, but the tone of the story showed that anyone touring Central Park, the 42nd Street area or virtually the entire West Side in the evening was a candidate for a hospital bed.

Among the long list of don'ts was advice on how to choose hotels, mainly by the number of locks on doors, and how to navigate a course in a deserted street.

The youths were also told not to count on the help of passers-by if they were assaulted and it was suggested that the best travel companion would be a ferocious dog.

Despite all this French youths were told they would be wrong if they avoided the city.

"There are a tremendous amount of things to see and a host of beautiful city beaches," the paper said.

LES PERILS DE NEW YORK ARE DISPUTED

(By Eric Pace)

"C'est très exagéré,"—it's very exaggerated—exclaimed Manhattan Borough President Percy E. Sutton yesterday after reading of a Paris newspaper's descriptions of the perils of New York.

"There's a high incidence of robbery in Paris, and there's their wine problem over there," said Mr. Sutton, the chief spokesman of a multitude of defenders of New York and of counterattackers of Parisian "delights," in comment on a long recent article in the Paris daily L'Aurore. The article said New York had a bad drug problem and it found much of Manhattan "dangereux le jour et la nuit." The article ran with a cautionary map of Manhattan that advised visitors where it was safe or perilous to venture.

New Yorkers who had read a dispatch from Paris about the article manifested forcefully their pique over L'Aurore's assertion that while New York might have joie de vivre, it was not too safe.

Many retaliated with what they said were the perils of Paris, although these seemed fairly modest. Women travelers complained of being pinched and pursued by boulevardiers, and even seasoned male travelers complained of hotel theft in the City of Light.

Mr. Sutton offered to guide French youths around to show them that New York was safe. The article was addressed to the young, who are expected to invade New York this summer following the lowering of trans-Atlantic air fares.

The Association for a Better New York sent a cable to L'Aurore calling the report "a paranoid, negative picture of the greatest city in the world" and said "perhaps it can be ascribed to time-honored French provincialism."

On a kindlier note, George Kocolatos, the owner of a German restaurant, the Blue Ribbon, offered a free Wienerschnitzel "to any French student who has any of the perilous experiences to which they are alluding." The article warned particularly against mugging.

Mr. Kocolatos said: "We have been in business 52 years and we've never been exposed to peril. Fifty-two years without a stickup—that's thousands and thousands of schnitzels."

$40 STOLEN IN PARIS

"I've lived in New York all my life and never have lost a penny," a newspaper editor observed, adding that "the first day I was in Paris a chambermaid stole $40 in traveler's checks from me and when I complained to the manager he called my boss and got me in trouble for being so impolite as to protest."

Some officials were less outspoken. Mayor Lindsay, who was making a speech in Washington, was not available for comment. But a City Hall spokesman, loath to make foreign-policy pronouncements, said he would have to study the L'Aurore article further before commenting.

Alfred de Cabrol, a New York executive of Air France, the French national airline, said of the L'Aurore article, "I thought it was funny."

At his East 72d Street residence, Mr. de Cabrol declared: "I walk only to go to the office on 55th Street and I come back walking every day in good weather. Fortunately, I haven't been exposed to anything."

But Robert Daley, the Police Department's security-conscious spokesman said grimly: "L'Aurore is a paper of somewhat sensational bent, you know."

Mr. Daley, who has taken to carrying a pistol in his rounds of New York, said he loved Paris and had lived and worked a decade in France as a writer. But he observed, "They have very exciting burglaries in Paris, and in all of France."

"They have the most marvelous *crimes passionels,* too, he said nostalgically. "Their hatchet murders are beyond compare; in Paris I had bars on the windows of my apartment."

Mr. Daley said that at night the Bois de Boulogne, Paris' renowned park, had its hazards. L'Aurore said that Central Park was "dangereux la nuitt" [dangerous at night] which all of Manhattan north of 96th Street was termed dangerous 24 hours a day.

BOIS CALLED UNSAFE

"You would not want to walk around in the Bois at night," Mr. Daley cautioned an interviewer. "People have been robbed and mugged there."

A more charitable view was taken by Leo Pierre, a French-born vice president of the Chase National Bank.

"The Bois de Boulogne by night may have some elements of insecurity and in that there exists a certain analogy with Central Park," Mr. Pierre conceded, but he added that "the Bois also serves for all sorts of amorous meetings, which Central Park does not."

"BASIC KINDNESS OF PEOPLE"

Mr. Pierre said, "I am one of many Frenchmen who live in New York and I love the diversity, the intellectual stimulation, the basic kindness of people, even when it is sometimes hidden behind a crusty exterior due to the difficulties of life."

A Spanish-born restaurateur ridiculed L'Aurore's appraisal of Harlem's dangers.

Jack Palacio said his restaurant, La Paella, at 136th Street and Broadway, attracted "fancy people." "I am there three years now and I never see any trouble at all," he observed.

"I think these French are a little bit timid," said Mr. Palacio, a trim six-footer who keeps in shape playing handball. He added, "When I am on 136th Street, I feel safe a hundred per cent."

Like many New Yorkers queried, Mr. Palacio said he had relished his past visits to France. But there were several who had unpleasant memories of raffish Parisians such as the streetwalkers said to frequent the area of the Boulevard Sebastapol and *clochards* (bums) near the Church of Saint-Séverin, among other places.

A brunette Manhattan teenager named Elisa complained of being "pinched and patted" near Les Halls, the site of an ancient Paris market.

William Brownstein, now a Harvard student, said his father was harassed by a "dotty" bystander while taking pictures near Paris' Marmottan Museum last summer.

Mrs. Linda Magyar of Northport, L. I., said she had felt "much safer" when she worked as a secretary in Paris than she did now in New York City. But she said that when a lawyer friend of hers was mugged in Paris "the police almost made it seem like it was his fault."

"It was 2 in the morning—right at the Boulevard St. Germain and the Boulevard St. Michael," Mrs. Magyar recalled. "The police said he shouldn't have been out alone that late—he should have been at home in bed with his wife."

LAW AND ORDER—AMERICAN OR AUSTRALIAN MODEL?

(An address to the Philadelphia Bar Association, Thursday March 7, 1968; by the Hon. Sir Reginald Sholl*)

I begin, Mr. Chancellor, by tendering to you publicly here those warm felicitations on your elevation to your present office, which I have already tendered to you privately as a much valued friend, and a most distinguished alumnus of my own College at Oxford. It is an honor to congratulate you before your professional colleagues in this lovely city, where my wife and I have had so many warm and friendly welcomes during our two years in this country.

You have invited me to speak to this formidable gathering of legal talent on the subject "Law and Order—American or Australian Model?" I know you did this because of some vigorous discussions which you and I have had, and you have therefore fair warning that I come to offer no formal panegyric.

You have invited me to speak to you and your colleagues on this topic as a visitor and an Australian lawyer, and I have elected to exercise the privilege you have given me. If I seem critical of some trends in the administration of criminal justice in this country, you will of course understand that I am not stating any official Australian view; I speak strictly as a visiting lawyer only, and I say what I do because I have, as have almost all Australians, a deep affection and admiration for America and Americans. I have visited this country several times during my life. I have had a good deal to do with Americans in Australia, and I am indeed married to that happy combination of two great traditions, an American who has become an Australian citizen.

To a lawyer like myself, trained in the law schools and systems of England and Australia, both the substance and the administration of criminal law in this country present many aspects which are unfamiliar, save from reading, and some which are, frankly, not a little startling. To me this community appears, in some critical areas, to be setting the pursuit of ultra-liberal theories of personal freedom above the urgent need of the ordinary citizen for a more practical, useful, expeditious and effective administration of the criminal law for its essential purpose, the protection of the law-abiding against wrongdoers.

In 1926, when I was a law student at Oxford, I visited this country, and was taken with other law students to see courts in New York, Philadelphia, Baltimore, and other places, the location of which I no longer remember. My chief impressions of that early visit were and still are of what, to an English or an Australian lawyer, was the remarkable informality of the court atmosphere, the curious phenomenon of elected judges, and the extraordinary latitude enjoyed by the press—presumably as a result of the First Amendment of your Federal Constitution—not only in reporting crimes, publishing highly prejudicial pre-trial matter, and reporting criminal trials, but in purporting in their newssheets to solve the crimes and decide the trials. None of this seems to have changed much in the intervening 41 years, though it is interesting to find today, at long last, in the Reardon report, advocacy of what has been, I believe, standard fair trial procedure in almost every other English law jurisdiction in the world for several generations.

It is impossible for someone who has spent so much of his life in the day to day work of maintaining law and order in his own country to avoid drawing comparisons when he comes to live in another. No one can live in America at present—and certainly no foreign lawyer can live here,—without being greatly surprised and genuinely alarmed—and I say it advisedly—in this great Jeffersonian democracy at the amount of violent crime from which you suffer all over the country, at the insecurity of life and property, indeed at the cheapness of human life, at the growing tendency of communities (Buffalo, New York, is one example, and Chicago is another) to resort to self help in the form of lay law enforcement officers and the like, in an attempt to speed up the lumbering and imperfectly effective processes of the law. In Buffalo, the F.B.I. statistics show an increase in crime figures of 22.8% for 1967 over 1966.[1] In the City of New York, with its 80 precincts in five boroughs, and a population of over eight million, there were in 1967 619 reported homicides—called "murders" in the report.[2] In my state of Victoria, with a population of over three million, a pro rata calculation would give a figure of 232 homicides—yet the actual figure given in statistics which include in Australia attempted murder and manslaughter, was 81 for the last full year available (1965),[3] so that New York has three times as high a reported homicide rate per 1,000 of population as we have. For the whole of Australia (113 million people) the total was 271 in 1965. In the case of other crimes also, especially crimes of violence, the New York incidence is many times higher than in Victoria, where the capital city of Melbourne has 2¼ million of the 3 million odd people of the state. In New York in 1967, there were over 22,000 serious assaults; in the whole of Australia, with 50 percent more people, there were in 1965, 1,024 only. There were 1,611 rapes in New York in 1967 and 257 in the whole of Australia in 1965. There were in 1967 121,000 burglaries in New York, and 46,616 in the whole of Australia in 1965.[2 3]

This kind of comparison has not escaped the notice of a substantial number of your citizens who in the past year or two have come into Australian consulates in America, or written to them, with comments on the violence and prevalence of crime here, and a yearning for a more ordered life in another land. Migrants notoriously have many and varied motives for migrating, but of the two or three thousand per year who in the last three or four years have begun to migrate from U.S.A. to Australia, not a few have said frankly that they wanted a securer society for themselves and especially their children. This is the kind of "voting with one's feet" which the Soviet and Eastern Germany so much hate to see in their own lands, and it surely should and must put intelligent and patriotic Americans on urgent inquiry. We in Australia do not want to encourage migration on that ground; our own society is far from perfect, and we have law enforcement problems of our own. We want to keep you as our great and powerful ally, and it is to our interest to see your society ordered, efficient, contented, prosperous and powerful. But we have been fortunate in having a better record, as I believe, of law and order. Much of your crime no doubt stems from the vast mixture of many races, in a pioneering land. But I want to examine other reasons, especially the question how much this may nowadays be due to our different constitutional histories.

There are on every hand today, in U.S.A., Committees and commissions reporting on crime and its threat to society. Many of them, with a sympathy, an insight, and a genuine altruism which commands, at any rate in my country, the same warm and affectionate admiration for your great qualities of generosity and compassion as your fantastic foreign aid programmes have engendered in two generations, are recommending vast expenditures to eradicate poverty and slums; and who could deny that if so vast an objective could be accomplished many of the present contributing causes of crime would be reduced? But would human nature be changed?

I fear not. Crime is always with us. Lawyers are practical people, and one hears today—though still too much in the background—some responsible voices urging a revision of the whole of your machinery affecting the detection and punishment of crime, beginning (let me say it softly) with the Bill of Rights itself. As a foreign lawyer, may I briefly tell you how this problem strikes me?

We took your Federal Constitution as our model when Australia federated in 1901. We adopted your federal plan, in that the Federal Parliament was given certain exclusive legislative powers and certain powers concurrent with those of the States, and the States were left as the repository of residuary sovereign powers. But there are significant differences between our system and yours. Most important for my present purpose, we did not adopt your Bill of Rights of later constitutional measures. We have no First, Fourth, Fifth, Sixth or Fourteenth Amendments. There are no entrenched constitutional guarantees of freedom from self-incrimination of the right to a speedy trial and the assistance of counsel, or of due process. Our founding Conventions, like your own, preferred to leave these rights to the British common law which we both inherited, and to local legislation, but warned by your experience, our states did not bargain for a Bill of Rights as the price of adopting the draft constitution.

None the less, we vigorously maintain that the substance of all those rights and freedoms is still to be found in our laws, but almost all of it either in the common law which we inherited from England, and have developed by Court decisions, or in the statute law of the States and Territories—not in the Constitution itself. And after a limetime in the law, my own very firm opinion is that we are just as free a people as you are; and that indeed we are better off, and our legal system more adaptable to changing conditions of the times, without any constitutional Bill of Rights. It is noteworthy that in several parts of the British Dominions reform has rejected the adoption of true constitutional guarantees of rights.[4]

In the field of criminal law; the times are certainly changing, as we all well know. Modern science has put new means of wrongdoing within the reach of everyone who is evilly disposed; but at the same time it has put new means of detection within the reach of those who undertake the vitally essential task of protecting society from the criminal. It is one of the theses of this talk that society in your country, and to a lesser extent in mine too, is unwisely weakening to its own security by refusing to make full and proper use of these new means of detection. An exaggerated liberalism defends this curious abstention in the name of personal freedom, forgetting that any freedom worth having is freedom under the law; that no individual freedom is secure or lasting except in an ordered society; and that you cannot have order without law, justly and firmly administered. The cry of "civil liberties" is a great vote and headline getter, but it cannot mean individual license. In an interesting and useful book, recently published, two Australian professors of law have said:

"What many civil libertarians fail to realise is that most freedoms involve abridgements of the freedoms of others."[5]

There is nothing very novel in that statement, but it is a useful piece of analysis, which is worth repeating again and again in my country and in yours, where so many social and legal reformers exhibit more emotion and enthusiasm than they do historical knowledge or sound judgment. Recently one of these civil liberties bodies, with apparently unconscious humour, solemnly proposed legislation in New York State to require that the police obtain Court authorization before using undercover agents to detect breaches of the law.[6] What is so often overlooked—

Footnotes at end of article.

and the so-called liberal newspapers and periodicals are by no means blameless in this—is that as individuals become more enlightened, so does the community which is the sum of them, and the government which it sets up. Compared with most countries in the world, yours and mine are wonderfully well governed societies. It seems to me, with respect, to be of the most arrant nonsense to behave as if your country, or mine, is in danger of becoming a police state.

The parliamentary and executive governments you and we elect are democratic; they can be changed through the ballot box. The police and other authorities whom they appoint are our fellow citizens, and their powers are given them by our elected representatives. Will you then kindly allow a stranger humbly to ask why in this country so many people—lawyers included—apppear to suspect constituted authority rather than respect it, and even in many cases to revile it? Constituted authority—whether we feel we can improve it or not—is the best that we have been able to put between ourselves and anarchy, and we should never forget that.

Let me now, therefore, say something about crime and punishment.

It is a fine thing for humanity that men are now beginning to understand more of the human mind and its functions, as in the past 300 years they have come to understand so much of the human body. But in this country, as in mine, enthusiasm in this field outruns judgment, and there is a great tendency to forget that most crime is the product of rational thought by persons whose physical and chemical processes are within what modern medicine accepts as normal limits. In the more enlightened countries of the western world, including yours and mine, we see more and more emphasis on the reform of the wrongdoer, on his rehabilitation and re-education, and on the objective of restoring him, if possible, as a useful and productive unit of society. Yet this laudable and constructive policy will not be furthered by making it more difficult for society to convict the wrongdoer, whatever it does to him when convicted. Nor will it be furthered by removing or weakening the fear of genuine punishment and retribution for the properly convicted wrongdoer. Many years of experience in the criminal jurisdiction have convinced me of two things—that the deliberate wrongdoer (who is responsible for most of the crime statistics) will go on planning and committing crimes so long as he thinks the law is weak and yielding enough to give him a chance to evade it, and that he will have no respect for a legal system which is marked by feebleness in the application of its sanctions,—i.e., of its punishments for proven crime.

I hope I may claim that in all the years I sat in the Supreme Court of Victoria in its criminal jurisdiction, I saw to it, to the best of my ability, that every accused person arraigned before me got a perfectly fair trial. But once fairly convicted, it has always seemed to me essential that the prisoner should realise that in the legal system of the community he encounters an immovable object, a force inevitably stronger than the criminal or any combination of criminals. Especially did I find this to be so with the young recidivist, usually the product of an orphanage and a reformatory, and accustomed to talk inferior courts out of any real firmness towards him. One of my pet aversions is the magistrate or judge, uncomfortable in the loneliness of judicial responsibility, who tells a prisoner, "You are lucky not to get a heavier sentence." What he really means is, "You deserve such and such a penalty, if I really do my duty to the community, which puts me here to administer the law for its protection. But because I am too weak to do my duty I will let you off with an inadequate penalty." In Australia we are plagued by a few such people at every level of the trial courts; in America, if you are firmer, on the whole, in this respect than we are, I strongly hope you stay that way. Nothing—literally nothing—so undermines law and order as a weak and maudlin Bench. It is even better to be muddleheaded and strong, than clear-headed and weak. In the former case you may at least sometimes be right for wrong reasons.

I should like to speak to you now of some of your criminal laws and procedures which are strange to a British lawyer.

On the subject of election of judges, which touches the criminal law indirectly but nevertheless in an important way, I would only say that I do not believe there would be a single judge in the whole British Commonwealth, which universally uses appointed and not elected judges, who would opt for your system of judicial election on political party tickets. Only those who serve under a system of life appointment like your Federal judges in this country, and the State judges of a few States like Massachusetts, which never gave up the old British system, fully enjoy here the independence and the prestige which such a system confers everywhere in the British Commonwealth on the judicial office. Is it discourteous to ask why you give that status to some and not to others? Which system do you distrust? Or do you distrust both, really, and so stop half-way?

Your system of appeals in criminal cases, with its extraordinary delays—which, if I may respectfully say so, seem inexplicable to the rest of the world—appears to be partly a product of your entrenched Bill of Rights, and the consequent availability to a convicted defendant of appeals to the Federal courts on constitutional grounds as well as, and often after, appeals to the appropriate State courts for non-Federal errors of other kinds. What I see here makes me gratified that we do not have such a parallel system of State and Federal courts as you do.

In my country, a prisoner convicted of indictable crime may, generally speaking, appeal to a State Full Court, and by special leave, to the High Court and/or to the Privy Council in London. But it would be a rare case indeed where finality was not reached in 12 or at the most 18 months. In the normal case the time is much shorter. Here so many cases go on for years,—with appeals, injunctions, stays of execution, rehearings, reconsiderations, etc., etc.,—that the rest of the world marvels, and wonders why you allow it, and what real benefit society, or even the individual, gets from it all. If you had to make out a special case for bail on appeal, appeals might become really urgent. If, as in Australia, Federal jurisdiction were conferred on your State courts, so that constitutional points could be decided in the same appeal as non-Federal points, and the Bill of Rights were made subject to time limits, might not that help? Justice delayed is justice denied, and that applies to the community as well as to the accused. If a criminal trial cannot be finally disposed of in, say, a year, or at the outside a year and a half, then is not the system in urgent need of amendment, even if it means constitutional amendment?

Has your system become too slow and cumbersome for your vast modern society? How can it be streamlined for 200 million people? The task cannot be beyond the ingenuity of American lawyers and statesmen.

Speaking of delays, another feature of your criminal procedure which startles an English or Australian lawyer is your method of jury selection. At home in Victoria, we allow eight premptory challenges in non-capital and twenty in capital cases. Even in a murder trial, with two accused, or a felony trial with three or four accused, I do not recollect ever to have taken more than half a day to enpanel a jury. After the preemptory challenges are exhausted, an accused may challenge for cause, but he must assign and establish the cause (for example, bias or personal enmity), and the court will determine the issue. Such challenges are exceedingly rare, and in a lifetime in the law, I never personally encountered an instance of one, although I know they have occurred in Australia. In England, by the way, even the preemptory challenge is not used to any great extent—or at all events it used not to be when I visited those courts.

The liberty which counsel have, in so many jurisdictions in this country, of questioning jurors on the voir dire before selection, in an endeavor to ascertain possible bias or disqualification, and which takes up so much time,—sometimes running into days of a trial,—is totally unknown in England and Australia. Nor is it allowed, I believe, in Massachusetts. I have not heard,—and I know of no evidence whatever to support,—the proposition that jury trials in those places are any less fair, or result in any greater risk of wrongful conviction.

Nor, finally, do we permit in my country the interviewing of jurors after a trial. Nor will an appellate court act on evidence derived from such interviews.

If I had had time, I should have wished to go on to say something rather more fully of self-incrimination, confessions to the police, wire-tapping, and eavesdropping. But this is a luncheon address, and I have already been allowed in this country the privilege of making those views known in law schools and schools of police science, and in their journals.[7] I shall say only a few things, and briefly.

I believe it is now time to remove, both in my country and here, the privilege against self-incrimination, for reasons which I have elaborated elsewhere.

We still find it in Australia (as you did for nearly two centuries, until quite recently) a sufficient safeguard against improper procurement and use of confessions, to rely on the British rule that a confession should be proved to be voluntary in the legal sense.[8] To a visitor like myself it seems, with respect, that your Supreme Court, in the series of cases culminating in the Miranda decision,[9] has removed to the exalted and intractable realm of constitutional invalidity much detail that could have been the subject merely of reforms in police procedure, of rules of court, of better judicial appointments, and of the exercise of a sound discretion in the trial courts. It is this same view which the Supreme Court of New Jersey seems to me recently to have been urging. Over-elaboration of the constitutional guarantees avoids or prevents convictions in many cases where no sensible jurist could otherwise allege unfairness, and merely punishes the community as a whole by giving unnecessarily wide protection to the criminal classes; and all this, one fears, in a mere crusade against the backwardness of some State courts and legislatures. I know many lawyers postulate the existence of dishonest police, but the remedy in that case surely is to improve the quality and standard of police work, to test police evidence, and to educate the police to provide corroboration of it—not to render police evidence wholly unavailable, where the common law has always admitted it. The police are, after all, and are likely to remain, society's principal executive agency for the investigation and proof of crime. The police forces of this country could, in my respectful opinion, even though some of them may need reform or improvement, do with a lot more genuine support and encouragement from the mass media and the academic lawyers of America.

Evidence obtained by wrongful searches and seizures,[10] or otherwise illegally obtained,[11] or resulting from wrongly obtained confessions,[12] is as admissible in Australia (and in England) as any other evidence, if it is relevant, even though steps may be taken to punish by other process the persons guilty of the

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Footnotes at end of article.

illegality. It used to be so also in this and many other American States. Can you any longer afford the highly technical and expensive, but quite recently acquired, luxury of excluding it?

We have in Australia some restrictions on wiretapping, but there is a strong opinion in favour of reducing them. We have no restrictions on eavesdropping of "bugging", and we have never found it necessary to invent a "right of privacy" to justify any such laws. Such bugging as may be used does not prevent 12 million Australians leading reasonably comfortable lives without, apparently, any of the evil consequences contemplated by so many American writers of books and magazine articles. And so far as I know, 5 million people in Great Britain exist well enough without any such restrictions.

Personally, I have no doubt that the modern provisions against wiretapping, and the outcry against mechanical eavesdropping, so far as they affect the detection and proof of crime, have been taken far too far, and that intelligent legislators and judges must before long return to that view.

My general feeling on these matters, if I may respectfully state it as a foreign lawyer, is that, in your enthusiasm for liberalism at all costs, you are, perceptibly more than we are in Australia, throwing the baby out with the bath water. It is no good making individual liberty so cast-iron, by constitutional guarantees, that one's neighbour can rob one, or rape one's daughter, with a better chance of escaping justice than in other civilised countries. How stands life, liberty, and the pursuit of happiness, in that situation? It is indeed an empty freedom, a vain individual liberty, which is accompanied by a significantly increased risk to oneself or one's family of being the victim of crime. What is the real value of greater individual liberty, so-called, if it is obtained at the price of making crime harder to detect and punish, and therefore safer to commit? What is the real value to a decent law-abiding citizen of being in less danger of possible abuse of power by the police, but in greater danger of fraud, theft, violence or death from criminals large and small, organised or unorganised?

Have not your State courts, legislatures, and police lost stature through the recent constitutional decisions? I have also noticed, personally, a tendency even among some reputable citizens to revert to the practice of carrying arms—a sign of increasing social insecurity. There is, in those circumstances, danger of some reversion to private or local mob vengeance, on the ground that the law is powerless or insufficiently effective. You have recently seen in this city violence applied by the family of a victim to a confessed murderer freed by what seems, even to a foreign lawyer, at best a romantic technicality, and at worst a piece of social injustice. One trusts that that made us all reflect, not on the nobility of the legal system, but on its inefficiency. Sooner or later, may not the American people be forced back upon a substantial revision of "constitutional rights" as presently interpreted—either by the Supreme Court's reversal of some of its decisions, or by constitutional amendment,—and upon a vast expediting of criminal processes? Is the present achievement, in terms of law and order, the best this great country can do? If not, do you credit the proposition that you can buy all the improvement you need by merely subsidising more prosperity and leisure? Must you not also,—indeed must you not as a matter of at least equal priority,—with energy, with courage, and with a measure of ruthlessness born of a new urgency,—set about the vigorous and extensive legal and constitutional reforms necessary to achieve, so far as human measures can do it, the really swift detection and the speedy, certain, and final punishment of criminal offenders?

I believe one important difference between law and order, your model, and law and order, our model, is that we obstinately regard that principle as a vital bulwark of civil liberty.

FOOTNOTES

*M.A., Melb.; M.A., B.C.L., Oxon.; Australian Consul-General in New York since 1966; formerly a Justice of the Supreme Court of Victoria, Australia (1950–66); Chairman, Victorian Supreme Court Rules Committee 1960–66; and member of the Victorian Chief Justice's Law Reform Committee 1955–66; sometime Official Law Fellow, Brasenose College, Oxford; lecturer in classics and in the law relating to journalism, University of Melbourne; King's Counsel; and member of the Bars of England, Victoria, New South Wales, and Tasmania; Rhodes Scholar for Victoria 1924.

[1] N.Y. Times 22 Jan. 1968, p. 21.

[2] N.Y. Times 29 Jan. 1968, p. 22.

[3] Aust. Cwlth. Year Book, 1967, p. 523.

[4] In 1959 a proposal was in fact made in Queensland to adopt as an entrenched state law (not a federal constitutional law) a declaration of rights which could only be altered by a referendum of the electors of the state. But even that Bill was withdrawn. Canada has a Bill of Rights (1960), but it is not entrenched; it may be abrogated wholly or in part by subsequent legislation. In South Australia a recently elected Labour Government abandoned a proposal to embody in a State statute the so-called English "Judges' Rules" relating to confessions. Even if this statute had passed it would have been amendable by Parliament. And in any event the Bill itself proposed to preserve to the courts a discretionary right to admit statements obtained in contravention of it, if there were reasonable grounds for non-compliance and the accused had not been unfairly prejudiced thereby.

[5] Campbell & Whitmore, Freedom in Australia, Sydney, 1966, p. 1.

[6] N.Y. Times, 10 Feb. 1968, p. 23.

[7] e.g. Washburn Law Journal, Vol. 6 (1967), p. 462; "Police", Vol. 12 (1967), p. 81.

[8] Lee and Others v. R., 1950, 82 C.L.R. 138; Nokes, Introduction to Evidence, 3rd Ed., London, 1962, p. 300.

[9] Miranda v. Arizona (1966), 384 U.S. 436.

[10] Kuruma v. R., 1955 A.C. 157 (P.C.); Wigmore on Evidence, Vol. 8, Sec. 2143, pp. 6–7; Cwlth. v. Dana, 1841, 43 Mass. 329.

[11] Campbell v. Whitmore, op. cit., pp. 50–51; Cross & Wilkins on Evidence, London, 1964, p. 161.

[12] Cross & Wilkins, loc. sit.

SAFETY AND THE AIR TAXI

Mr. HARTKE. Mr. President, on October 21, 1971, a twin-engine Chicago and Southern Airlines plane crashed while approaching the Peoria, Ill., airport, killing all 14 passengers and a crew of two. The plane was coming in under a 300-foot cloud ceiling when it hit electric powerlines about 100 feet above the ground.

Recently, it was brought to my attention that Chicago and Southern had been involved in three previous fatal crashes and a number of nonfatal mishaps. Surely, much of this information was available to the Illinois Commerce Commission when it awarded the lucrative Chicago-Springfield route to Chicago and Southern Airlines. My purpose today, however, is not to criticize State officials, but to highlight a situation which I fear may be symptomatic of greater problems in one part of this Nation's aviation system.

Mr. President, I ask unanimous consent that several newspaper articles reporting the Peoria crash and its aftermath be printed in the RECORD.

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

[From the Chicago Sun-Times, Oct. 22, 1971]

CRASH SITE "LIKE THE FOURTH OF JULY"

PEORIA.—Farmer Robert Johnson, first man to reach the scene of Thursday's plane crash near here, described it as looking "like the Fourth of July."

The Chicago & Southern Airlines plane, bound for Peoria and Spingfield from Chicago, fell into a field adjoining Johnson's farm on Cameron Lane, about two miles from the Greater Peoria Airport.

The plane, which Johnson said caught fire after striking a high-tension-wire tower, fell on the farm of Julius McCluagge, adjacent to Johnson's.

SOUND NOT NORMAL

Johnson said he and his wife, Susan, were eating lunch when they heard the plane's engines at about 12:50 p.m. Mrs. Johnson told her husband: "It sounds unusual. It seems to be slow."

Said Johnson: "A few years ago we had an explosion in a strip mine near here, and that thing today sounded just like that. I saw a huge ball of fire after the plane landed. It sounded like cases of dynamite going up.

TWO TOWERS

"I drove out there and it was burning real bad. I did a lot of hollering but nobody answered. It was real foggy and the flames were pretty high."

Mrs. Johnson added that the sound she heard was "like a bomb." She said she looked out her window and saw in the distance "a large ball of fire and smoke rolling into the air."

[From the Chicago Today, Oct. 22, 1971]

IDENTIFY 10 VICTIMS OF PEORIA AIR CRASH

Ten of the 16 persons aboard the ill-fated Chicago & Southern plane have been tentatively identified thru the passenger list or thru papers found on their bodies.

Because of the severity of the crash, Peoria County Coroner Horace Payton said he was trying to establish the identity of the remaining six thru dental records.

Dead are:

Morris J. Wexler, 44, of 2626 N. Lake View Av., a prominent attorney who was on his way to Springfield to meet with Gov. Ogilvie. He was to report on the Governor's Advisory Committee on Organizing Uniform Codes for State Prisons and to testify before a House committee on his investigation of the 1968 Presidential election vote fraud.

A 1950 graduate of Harvard Law School, he served on a number of Chicago and Illinois Bar Association committees and as counsel to state legislative committees and state commissions.

An independent Democrat, he was slated in 1970 by the Republicans for the Illinois Appellate Court, but his campaign was unsuccessful.

Wexler also was president of the John Howard Association, a prison watchdog group, in 1962 and at the same time served as vice president of the Illinois Academy of Criminology.

Emerson T. Chandler, 50 of 215 Maple Ct., Lake Forest, was president of the Civic Federation of Illinois, a taxpayer watchdog group, from 1965 to 1968. He was a partner in the law firm of Sidley & Austin, 1 First National Plaza.

Timothy Selleck, 25 of 8970 Parkside Dr., Des Plaines, director of governmental affairs of the Illinois State Medical Society, the chief lobby group for medical legislation in the state.

A University of Illinois political science

graduate, he had worked for passage of the Drug Labeling Act, the Blood Hepatitis Act and a drug abuse law allowing minors to legally consent to treatment for drug abuse.

Robert S. Anderson Jr., 31 of 1512 Dartmouth Lane, Deerfield, was identified by A. G. Becker & Co., Inc., as vice president and manager of the firm's Chicago commercial paper department. He had been with the company since 1965.

John L. Hendrickson, 26, of 10353 Dearlove Rd., Des Plaines, who joined the Becker firm in 1969 and also was a member of the commercial paper department. Both he and Anderson were en route to Peoria on business, a company spokesman said.

Roger C. Ganobcik, 28, of 1146 Morse Av., an attorney with the Illinois Environmental Protection Agency. He was a graduate of Harvard University and the University of Chicago Law School.

Richard Hoerger, 35, of 1817 N. Lincoln Park West, was an attorney with the firm of Palmer and Hoerger, 10 S. La Salle St., and a lobbyist for Peoples Gas Light & Coke Co.

Donald L. Pollack, of Chicago, chief personnel officer for the Bureau of Employment Security, Illinois Department of Labor.

Frank Hansen, the pilot, and president of Chicago & Southern Airlines.

Robert Muller, the copilot.

The coroner's office was still attempting to learn the identity of the following, whose names appeared on the manifest without addresses; Terry Green, F. Weisler, R. Peters, E. Anderson, P. Thomas, and William Carson.

PEORIA CRASH THAT KILLED 16 WAS 4TH DISASTER FOR AIRLINE

(By John Camper)

SPRINGFIELD, ILL.—The airplane crash that killed 16 persons near Peoria was the fourth fatal accident in seven years on airlines run by Frank Hansen, the pilot who died in the wreck.

Hansen's airlines also were involved in at least five other accidents and slapped with at least four violations by the Federal Aviation Administration since 1967.

Federal investigators at the Peoria crash scene Friday were checking reports that the modified Beechcraft E–18 was faulty. Pilots for the line reportedly had complained about the converted turboprop's performance.

The Illinois Commerce Commission took no notice of the accidents or violations a year ago when it gave the lucrative Chicago-Springfield route to Hansen's latest airline, Chicago & Southern.

The air route between Chicago's Meigs Field and Springfield is used extensively by state officials, lobbyists and attorneys with business in the capital.

The commerce commission awarded the route to Chicago & Southern last October, four months after the previous franchise holder, Commuter Airlines, went bankrupt, mainly because of losses on its Chicago-Detroit run.

Commuter was taken over by Hub Airlines of Fort Wayne, Ind., which ran planes between Chicago and Springfield for the four months between Commuter's bankruptcy and the award of the route to Chicago and Southern. Hub, which expected to be allowed to keep the route, is appealing the commerce commission action to the Illinois Supreme Court.

The Springfield City Council and the Springfield Airport Authority officially opposed the state commerce commission's awarding of the route to Chicago & Southern. The commerce commission decision was branded "arbitrary and contrary to public policy, public convenience, necessity and welfare."

The airport board wrote the FAA and the commerce commission last July 20, outlining incidents the board said had been reported to the airport security office.

In its letter the board also noted reports of one-engine landings by Southern, which flies primarily two-engine aircraft, by planes with engine trouble.

The FAA and commerce commission also received official letters of complaint from John Lanigan, Illinois commissioner of savings and loan associations.

Lanigan wrote that he had "frequently warned others not to use the airline" because of its safety record. He said the commission told him his complaint would be taken under consideration.

Lanigan noted that air commuter firms are not as closely regulated as larger airlines. He said there should be stricter regulations governing the air-taxi companies.

A commission spokesman said Friday that airline safety is a federal matter, and that the commission deals mainly with scheduling, regulation of insurance and the economic aspects of airlines operations.

But commission Chairman David Armstrong Friday contended that the commission tried to keep the airlines under surveillance.

"We even had this (particular) plane checked and ridden by people (acting) on our behalf, and they found it to be satisfactory," Armstrong said.

Hansen was president of Chicago & Southern. He, his co-pilot and the plane's 14 passengers were killed Thursday when the plane struck a utility line when attempting to land at the Peoria Airport.

The previous fatal crashes involved Chicago & Southern and a number of other airlines owned by Hansen, some of which were the same airline under different names. They included Airways Inc., Mid Continent Airways Inc. and Hansen Air Activities.

The most recent fatal crash occurred last Aug. 27 when a charter plane operated by Chicago & Southern crashed into a home in the Cleveland suburb of Fairview Park, killing the pilot and the owner of the house and injuring two other persons.

On Oct. 29, 1967, a Mid Continent plane crashed into a tree-covered ridge near Iron Mountain, Mich., killing the pilot but causing no other injuries.

And on March 8, 1964, a DC–3 owned by Midco Leasing Inc., with a crew supplied by Hansen Air Activities, crashed into a building near O'Hare Airport, killing one person.

Hansen's airlines were involved in a number of minor, but frightening, mishaps that caused no injuries.

Only last Tuesday, a Chicago & Southern plane from Chicago blew a tire landing at Springfield's Capitol Airport and skidded off the runway.

Last Nov. 23, a Chicago & Southern plane broke a landing gear on landing at the Springfield airport and skidded along the runway on its wing.

On Dec. 11, 1968, an Airways Inc. plane left the runway at O'Hare Airport in a crosswind, ran onto the grass and hit a concrete marker, causing substantial damage to the aircraft.

On Jan. 9, 1968, the landing gear on a Mid Continent plane collapsed at O'Hare Airport, causing minor damage and no injuries.

And on Oct. 10, 1967, a Mid Continent air mail plane ran off the runway at Marquette, Mich., after the pilot tried unsuccessfully to abort the takeoff. The crash caused extensive damage to the nose gear, both propellors, the fuselage and the canopy.

Federal Aviation Administration records show Hansen and Mid Continent paid $750 in fines for four violations of FAA regulations in 1967. Two were for operating overweight planes, one was for failing to have an annual inspection on an airplane and the fourth was for failing to have a six-month instrument check.

In awarding the Chicago-Springfield route to Chicago & Southern, the state commerce commission took note of several paperwork violations of FAA regulations by Hub, but did not mention Chicago & Southern's safety record nor the FAA fines levied against Hansen.

The main point the commission made in favor of Chicago and Southern was that it "has demonstrated an ability and a willingness to conduct prudent and financially responsible operations." The commission pointed out that Hub was in debt, but Hub said this was because of another falling airline it had acquired.

The ICC also said Chicago & Southern could effect "substantial economies" by including several Peoria stops on its daily Chicago-Springfield runs. This particularly angered Springfield public officials, because Hub had been making nonstop flights.

"Service between Peoria and Chicago is not involved in this case," complained the Springfield council and airport authority in their petition for a commerce commission rehearing (which was denied). The petition also contended that "Hub has maintenance facilities surpassed by only four or five of the commuter air carriers in the country, while Chicago & Southern has none."

The Springfield complaint went on: "The past record of the management of Chicago & Southern was not investigated but ignored. Had a proper investigation been made, the violations . . . would have been disclosed. These include fatal accidents."

[From Chicago Daily News, Oct. 23, 1971]

PILOTS SAY AIRLINE BROKE SAFETY RULES

(By Robert Signer)

Former pilots and mechanics of Chicago & Southern Airlines have given statements to the Federal Aviation Administration charging the airline violated federal safety requirements, The Daily News learned Saturday.

One of the airline's turboprops crashed Thursday near Peoria, killing all 16 persons aboard.

The pilots and mechanics—all of whom have federal licenses—said they told the FAA their employer refused to remedy what one source called a "very bad system."

The employes were among a number of pilots and mechanics either fired or put on furlough in late August and early September in a dispute over union membership.

In statements to two FAS officials from the Springfield office, John Dorsey and John Bloom, the pilots and mechanics said they made these charges:

FAA requirements about duty time and rest periods for pilots were violated in a number of instances.

Maximum weight requirements for the different kinds of aircraft flown by Chicago & Southern were sometimes violated.

Time allowed for maintenance of aircraft between flights was often insufficient.

Important testing equipment was not provided in some instances.

Peter Cleary, the airline's director of maintenance, refused to comment on the charges. Benjamin Newman, the company's vice president and top officer, could not be reached.

The company's president, Frank Hansen, was the pilot of the plane that crashed Thursday.

Roy William True, who worked for Chicago & Southern for two months last summer until he was furloughed Sept. 1, said he had once been scheduled to fly as co-pilot on one of the airline's DHC–6 Twin Otter aircraft for 20 hours in one 25-hour period.

He said he was the co-pilot on a flight that left St. Louis at 8 p.m. last Aug. 27 and that landed eventually at Minneapolis at 3 a.m. He said he took off again 8 a.m. Aug. 28 and was flying constantly until 9 p.m. that night, when the plane landed in Peoria.

FAA regulations say a pilot can fly only a total of 10 hours in a 14-hour period and only if he has rested 10 hours beforehand.

True, who is 27, is licensed both as a co-pilot and a mechanic.

At times when he served as co-pilot, he said, "I was just hoping it would fly." He said the company didn't always provide the necessary equipment for safety checks. Other pilots and mechanics made the same charge.

True said, for example, that static testers—necessary for a sensitive check of altimeters—were not provided in a number of instances.

Another former employe, a licensed mechanic for 24 years who has a federal inspector's rating, charged there was not always sufficient time between flights for maintenance.

"It wasn't really what you would call unsafe, but you have to ask where you draw the line," the employe said. He asked his name be withheld.

"It seemed that we just couldn't get our maintenance schedule organized," he said. He said maintenance work could be done only at night because Chicago & Southern used space leased from Manufacturers Air Transport Service, an air freight hauler.

Edward Carnes, 42, who was captain of a DHC–6 Twin Otter for the company, said he had flown the aircraft with excessive weight loads a number of times on the Springfield-Meigs Field route along which the 16 were killed Thursday.

Carnes said a Twin Otter was permitted to weigh a total of 11,579 pounds, but that, because of fuel needs and full passenger loads, he sometimes exceeded the limit.

In the union dispute with the company, eight employes were petitioning for an election to decide whether to join Teamsters Local 627.

Jim Feree, a field examiner for the National Labor Relations Board in Peoria, said an investigation of the election has been completed, but no action had been taken.

Feree said the company had filed charges with the NLRB charging threats had been made against employes to force them to vote for membership. The board's examining team Friday dismissed the charges.

[From Chicago Today]

REPORT UNSAFE RECORD IGNORED

(By Edward T. Pound)

SPRINGFIELD, ILL.—The Illinois Commerce Commission was accused of "blatant disregard of the public interest" last year when it granted the coveted air taxi route between Chicago and Springfield to Chicago and Southern Airlines, Inc.

A Chicago and Southern aircraft yesterday crashed near the Greater Peoria Airport, killing 16 persons and placing the spotlight on the bad safety record compiled by the management of Chicago and Southern.

The Commerce Commission in late 1970 awarded the lucrative route to Chicago and Southern despite vigorous protests lodged by the Springfield Airport Authority and the city of Springfield.

At the time the two Springfield groups accused the Commerce Commission, a regulatory agency, of refusing to investigate—and even ignoring—documented evidence of a poor safety record on the part of Chicago and Southern management.

The Airport Authority, which operates the Capitol airport here, and the city charged in November of last year that the Commerce Commission approved Chicago and Southern despite hearings which showed that the airline "did not maintain and operate adequate aircraft and had no maintenance and repair facilities."

The two Springfield protesters also concluded:

"The commission acted in blatant disregard of the public interest by granting a certificate to a carrier [Chicago and Southern] which has never demonstrated an ability to operate profitably and which is managed by a chief executive officer whose safety record manifestly demonstrates that the commission's order is detrimental to the welfare of the people of the state of Illinois."

In unsuccessfully asking the Commerce Commission to reconsider its approval of Chicago and Southern, the two petitioners contended that the aircraft then being used by the carrier were manufactured in 1941 and 1943.

They charged further that "spare parts for the air frame are no longer manufactured."

The protest petition was also sharply critical of Frank Hansen, president of Chicago and Southern and one of yesterday's 16 crash victims. Hansen was piloting the plane.

The petitioners listed various Federal Aviation Administration and other federal records which showed numerous past safety violations by Hansen and aviation operations with which he was associated.

Thru records of the National Transportation Safety Board, the Springfield protesters also said they had documented at least two crashes, in 1964 and 1967, in which persons were killed in planes operated by Hansen-connected aviation operations.

Chicago and Southern was awarded the route in a commission order Oct. 28 of last year. The firm had applied to the Commerce Commission for authority to fly passengers and property between the state capital and Meigs Field in conjunction with its already existing taxi service between Peoria and Chicago.

After Chicago and Southern got the go-ahead, reports circulated here that the firm had benefited from "political clout." Spokesmen for the carrier denied the allegations at the time.

Thruout the Commerce Commission hearings the airline was represented by a law firm in which Francis F. Lorenz, a former state public works director, was a partner.

Last November, Lorenz, a Democrat, was elected a state Appellate Court judge in Chicago and ironically, his opponent was Atty. Morris J. Wexler, one of yesterday's 16 crash victims.

Asked about his role, if any, in getting Chicago and Southern the route, Lorenz told Chicago Today:

"Hansen came into the office one day and wanted us to represent him. I turned him over to William Ward, then one of my partners, and he handled it because he was more familiar with the Commerce Commission business than I. I never handled the account."

In deciding in favor of Chicago and Southern, the commission said that the firm "has demonstrated an ability and a willingness to conduct prudent and financially responsible operations and, with the inclusion of Springfield-Chicago service, should have an economically viable system of operations."

The commission held that, although Chicago and Southern had at one point incurred substantial financial deficits, its activities had been "financially marginal."

The city of Springfield and the local airport authority, in calling the commission order "frivolous" and "impertinent," charged there were examples of crashes involving Hansen-connected aviation operations which resulted in death.

They cited, for example, a crash in Auroraville, Wis., in 1967 in which the pilot was killed. The plane was operated by Mid-Continent Airlines, Inc., which they said was owned by Hansen and headquartered in Morris, Ill.

Moreover, the Springfield groups contended, there were numerous FAA violations against Mid-Continent, including violations of maximum weight regulations and operating an aircraft without proper inspection.

Hansen himself was cited for operating a plane in October, 1967, without having had an instrument check by an authorized check pilot within the preceding six months.

Commerce Commission files also showed that in May, 1969, Mid-Continent was informed by the FAA that it had not maintained a satisfactory operations manual. As a result, the federal agency threatened to suspend the firm's air taxi commercial operator certificate.

The threat was not carried out because Mid-Continent discontinued its air operations.

Mr. HARTKE. Mr. President, in one of these articles, a spokesman for the Illinois Commerce Commission is quoted as saying that airline safety is a Federal matter and that the State commission was concerned primarily with scheduling, regulation of insurance, and the economic aspects of airline regulation. This may be the case, but it is little comfort to the 16 people killed in the Peoria crash that their safety and well-being was not a prime consideration of State aviation authorities.

I do not seek to condemn State aviation officials. On the contrary, I am well aware of the excellent work which these men and women are doing. I do, however, seek to raise the question of the relationship between Federal and State aviation officials. Where does the authority of one end, and the other begin? How much cooperation is there between the two levels? What can be done to assure that there is no communications gap between the two—such as the one which existed in the case of Chicago & Southern Airways?

I asked these questions of FAA Administrator John Shaffer and was told:

It has been determined that although the Federal Aviation Administrative (FAA) has complete authority over aviation safety matters, it does not have the authority to pre-empt state officials in economic realms.

If that means that the awarding of intrastate lines is within the sole authority of State aviation officials, I have little objection. But if it also means that such authority shall be exercised without the supervision of the FAA so that the awarding of a route to a carrier with a history of fatal crashes and nonfatal mishaps can occur, I must object strenuously. The FAA has a responsibility to every American who flies to protect his safety. It cannot—no matter what the reason—abrogate that responsibility to State officials.

Mr. President, I ask unanimous consent that the text of Mr. Shaffer's letter be printed at this point in the RECORD.

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

FEDERAL AVIATION ADMINISTRATION,
Washington, D.C., November 26, 1971.

Hon. VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: This is in reply to your letter dated 1 November 1971 in regard to the fatal crash of a twin-engine commuter plane while approaching Peoria, Illinois.

A copy of your letter has been forwarded to Mr. Lyle K. Brown, Director of our Great Lakes Regional Office, 3166 Des Plaines Avenue, Des Plaines, Illinois 60019, for response to your inquiry as to the Systems Worthiness Analysis Program (SWAP) inspection of Chicago and Southern Airlines. As a matter of chronology, however, it should be pointed out that the SWAP inspection report was issued on 15 April 1971 and thus preceded the 21 August fatal accident which you referenced by an interval of well over four months.

In response to your inquiry regarding Fed-

eral pre-emption over state aviation officials, it has been determined that although the Federal Aviation Administration (FAA) has complete authority over aviation safety matters, it does not have the authority to preempt state officials in economic realms.

The FAA has continually recognized the benefits to be derived from a close working relationship with the state aviation organizations. Throughout the past decade particularly this rapport has been enhanced through concerted and cooperative programs not only at the regional level, but more significantly through projects conducted jointly. These programs have included mutually relevant matters such as accident investigations, violation enforcement actions, as well as aviation education programs, pilot flight clinics, and aviation safety seminars.

In order to further encourage the closest possible working relationships between the FAA and officials of state and local governments, on 21 May 1971 the FAA established a new Office of General Aviation. Within this office is an Industry and Government Laison Division with a specific mission to promote and encourage the development and safety of general aviation through coordination and communication with state and local aviation officials. The Assistant Administrator for the Office of General Aviation and representatives from the Industry and Government Liaison Division met with the National Association of State Aviation Officials on 7–10 September of this year. Subsequently, a letter was sent to the State Aviation Director of each state expressing FAA's policy for cooperation between Federal and State Governments.

A more recent meeting was held on 12–13 October in the FAA's Southwest Region for state aviation officials to discuss, in detail, matters of mutual interest or concern. As is evidenced, the FAA has established an excellent working relationship with the state aviation organizations and particularly so with Allan Landolt, Director of the Illinois Department of Aeronautics.

In response to your last question, Part 135 of the Federal Aviation Regulations does provide the authority for and, in fact, requires an investigation and evaluation of a prospective air taxi commercial operator to determine compliance with specified safety standards.

If we can be of further assistance in this matter, please let us know.

Sincerely,

J. H. SHAFFER,
Administrator.

Mr. HARTKE. Mr. President, there are other questions raised by the Peoria crash that must be answered. Air taxi operations are increasing rapidly, and there is every reason to believe that they will continue to increase. Often, a passenger on a scheduled airlines must complete his journey on an air taxi flight. As commercial jets get bigger, the airlines are finding that they can no longer serve airports in smaller cities. Their place is being taken by the air taxi operator who can operate his smaller aircraft on an economical basis. It is imperative that a passenger who begins his flight on a scheduled flight have the same protection and assurance of safety on the air taxi portion of his flight as he had on the first portion.

While simple reason would dictate that this be the case, it is not at present. What is more important, much of the American flying public may not be aware that it is not the case. Take the Peoria incident, for example. A person boards a plane in Washington bound for Springfield, the State capital of Illinois. His scheduled flight takes him from Washington to Chicago, where he must change planes to reach Springfield. When he leaves his scheduled flight, he must board an air taxi. Why should he not be protected by the same safety regulations on the air taxi portion of his flight that protected him on the scheduled airline portion?

I am further disturbed by the fact that the FAA did a study of Chicago & Southern Airlines 6 months before the Peoria crash and 4 months before another fatal crash involving the same airline. This systems worthiness analysis program — SWAP — inspection should have uncovered serious questions concerning the airline's ability to perform adequately. Presumably, had the SWAP inspection discovered the facts about this airline's previous history, a full investigation could have been held, and—it is possible—the FAA could have revoked its air taxi certificate. Apparently, however, the SWAP investigation revealed nothing untoward.

Mr. President, the National Transportation Safety Board met last month in Peoria to study this crash. I note that its agenda included the question of FAA certification and surveillance of air taxi operators in general and Chicago & Southern Airlines in particular. The agenda also included the question of safety considerations, if any, by the State of Illinois in the award of intrastate air routes. I suggest that we pay close attention to the outcome of this study and that we place a high priority in this session of Congress on our own study of air taxi operations and the relationship between Federal and State aviation officials.

DAVID PACKARD

Mr. PERCY. Mr. President, as we consider the new budget requests for the Department of Defense, we shall miss the testimony of David Packard, who has resigned his post as Deputy Secretary of Defense. We could count on David Packard to be vigorous in his presentations, candid in his answers, and utterly fair in his relationships with Members of Congress.

Even more important, the administration will miss the important contribution of David Packard who, for 3 years, served so ably in seeking new efficiencies in the Department of Defense.

I recall that during the debate on David Packard's confirmation, I told Senators how many sleepless nights executives of Bell & Howell Co. and other competitors had in years past because of the effectiveness of David Packard of Hewlett-Packard. In his role as Deputy Secretary of Defense, David Packard was as effective as he had been in business, and I think we all owe him our gratitude.

CEREMONIES AT EISENHOWER CENTER, ABILENE, KANS.

Mr. DOLE. Mr. President, October 14, 1971, marked an auspicious occasion in Abilene, Kans. On that day a distinguished gathering was held to commemorate the 81st anniversary of the birth of Dwight David Eisenhower and to rededicate the redesigned and enlarged museum of the Eisenhower library. Under the chairmanship of former Kansas Senator Harry Darby, a fitting and deeply moving tribute was paid to the man who meant so much to Abilene, the State of Kansas, the United States, and the cause of freedom in the world.

Present for the occasion and as gracious, charming, and dignified as ever was Mrs. Eisenhower, whose appearance was the highlight of the day for all in attendance. Former President Lyndon Johnson and Mrs. Johnson also attended, and President Johnson spoke with great feeling of his respect, regard, and affection for his predecessor upon whose advice he relied frequently while in office.

Many others, including Dr. Milton Eisenhower, attended those ceremonies and paid tribute to the fond memory of Dwight Eisenhower, soldier, statesman, and symbol of American strength, honor, warmth, and integrity.

Mr. President, the Eisenhower Center is a unique and inestimably valuable national asset. It serves as a fitting monument to General Eisenhower's life as well as a repository of valuable historical information and material. The ceremonies there last October added significantly to both of those aspects of the center, and I ask unanimous consent to have printed in the RECORD the text of the official program and a transcript of the day's ceremonies.

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

REDEDICATION CEREMONY AT EISENHOWER MUSEUM AND LIBRARY

PRESIDENT EISENHOWER'S INAUGURAL PRAYER

Almighty God, as we stand here at this moment, my future associates in the executive branch of the Government join me in beseeching that Thou will make full and complete our dedication to the service of the people in this throng and their fellow citizens everywhere.

Give us, we pray, the power to discern clearly right from wrong and allow all our words and actions to be governed thereby and by the laws of this land.

Especially we pray that our concern shall be for all the people, regardless of station, race or calling. May cooperation be permitted and be the mutual aim of those who, under the concept of our Constitution, hold to differing political beliefs—so that all may work for the good of our beloved country and for Thy glory. Amen.

PROGRAM—PLACE OF MEDITATION

MEMORIAL SERVICES AND WREATH-LAYING CEREMONY COMMEMORATING THE 81ST BIRTHDAY OF PRESIDENT DWIGHT D. EISENHOWER

Invocational reading of President Eisenhower's inaugural prayer, Ch. Col. W. W. Wessman.

Laying of the Presidential Wreath, the Honorable Robert H. Finch, Representing the Honorable Richard Nixon, President of The United States.

Musket Salute, Fort Riley Firing Squad.

Taps, the Bugler of the 371st Army Band, Fort Leavenworth, Kansas.

REDEDICATION CEREMONY, EISENHOWER MUSEUM, DWIGHT D. EISENHOWER LIBRARY

Invocation, Ch. Col. W. W. Wessman.

Presiding, the Honorable Harry Darby, Chairman, Eisenhower Museum Dedication Committee.

National Anthem, Pfc. Dean Durst (Vocalist), 371st Army Band, Conducted by CWO

Randolph A. Rockne, Fort Leavenworth, Kansas.

Introductions, the Honorable Harry Darby.

Greetings from President Richard Nixon, the Honorable Robert H. Finch, Counselor to The President of The United States.

Remarks, the Honorable Robert L. Kunzig, Administrator of General Services; Dr. James B. Rhoads, The Archivist of The United States.

Introduction of Mamie Doud Eisenhower, the Honorable Harry Darby.

Address, General Lauris Norstad, USAF retired.

Benediction, Ch. Col. W. W. Wessman.

THE EISENHOWER MUSEUM

The museum at the Dwight D. Eisenhower Presidential Library is housed in a separate building directly opposite the Library. This provides the museum collection with a unity and a specially unique character. In order to better carry out its responsibilities in the area of museum presentation, the National Archives and Records Service, General Services Administration, launched a museum extension program which has greatly enlarged the space available for display and preservation of the museum objects. Now, for the first time there also will be provided adequate work space for the museum staff.

The designs prepared by the library director and the present museum curator were approved by the General Services Administration in 1969, and construction on the structure was begun in the early summer of 1970. In its redesigned and expanded form the museum of the Eisenhower Library will be devoted to a biographical presentation of the life and times of the 34th President of the United States. The new museum will feature continuously rotated exhibits displaying thousands of objects never before seen by the American people. The exhibits will carry an educational emphasis as well as satisfying the natural curiosity of the visitors about the material objects acquired by a President.

ADDITIONAL COMMENTS

Constructed of Kansas Limestone

15,000 additional square feet of display space

Construction costs approximate $690,000

Reasons for Enlargement . . .

Increase Conveniences and Safety of Visitors

Increase Exhibit Space

A good teaching tool for scholars and researchers

Better storage and work space for . . .

Building of Exhibits

Preservation in a Better and Modern Fashion

Humidity Control

Temperature Control

DISTINGUISHED AND HONORED GUESTS

The Honorable Richard M. Nixon, President of the United States

The Honorable Robert Docking, Governor of Kansas

Mamie Doud Eisenhower

The Honorable James Pearson, U.S. Senator–Kansas

The Honorable Robert Dole, U.S. Senator–Kansas

The Honorable Garner Shriver, U.S. Congressman–Kansas

The Honorable Joseph Skubitz, U.S. Congressman–Kansas

The Honorable Larry Winn, Jr., U.S. Congressman–Kansas

The Honorable Keith Sebelius, U.S. Congressman–Kansas

The Honorable William Roy, U.S. Congressman–Kansas

The Honorable Robert H. Finch, Counselor to The President of the United States

Gen. Lauris Norstad, USAF (Ret.)

The Honorable Robert L. Kunzig, Administrator of General Services

Dr. James B. Rhoads, Archivist of the United States

The Honorable Jeffrey P. Hillelson, Regional Administrator–GSA, Region 6

The Honorable Harry Darby, Chairman, Dwight D. Eisenhower Dedication Committee

Mr. C. A. Scupin, Abilene, Kansas

Dr. John E. Wickman, Director, Dwight D. Eisenhower Library

Hon. & Mrs. Dee Adams
Hon. & Mrs. K. S. Adams
Dr. & Mrs. Clark Ahlberg
Congmn. & Mrs. Carl Albert
Hon. George E. Allen
Sen. & Mrs. Gordon L. Allott
Hon. & Mrs. John Anderson, Jr.
Hon. & Mrs. Herbert E. Angel
Hon. Mrs. & Daniel R. Anthony, III
Hon. & Mrs. Edward F. Arn
Hon. Stuart Aubrey
Hon. & Mrs. Whitley Austin
Hon. & Mrs. William Avery
Hon. & Mrs. William Baker
Hon. E. J. Basgall
Hon. & Mrs. Seth Barter
Hon. & Mrs. Richard Becker
Congmn. & Mrs. Page Belcher
Hon. & Mrs. W. Fletcher Bell
Hon. & Mrs. Henry Blanchard
Hon. & Mrs. Elmer Bobst
Mrs. Mamie Boyd
Hon. & Mrs. McDill (Huck) Boyd
Congmn. & Mrs. Richard Bolling
Gen. Omar N. Bradley
Hon. & Mrs. C. L. Brainard
Hon. & Mrs. Fred Bramlage
Hon. Robert F. Brandt
Gen. & Mrs. John W. Breidenthal
Hon. Mary Brooks
Dr. & Mrs. Philip Brooks
Hon. Britt Brown
Hon. & Mrs. Harold Brown
Hon. & Mrs. Kenneth Brown
Miss Lillian Brown
Judge & Mrs. Wesley E. Brown
Dr. & Mrs. George Budd
Hon. Frank Busboom
Marquis of Bute
Sen. & Mrs. Harry F. Byrd, Jr.
Hon. & Mrs. Robert Campbell
Hon. & Mrs. Willard Carkuff
Hon. & Mrs. Frank Carlson
Hon. Darrell Carlton
Lt. Gen. & Mrs. Patrick F. Cassidy
Hon. Frank Cayton
Mrs. Ralph Clark
Gen. Lucius Clay
Jacqueline Cochran
Gen. J. Lawton Collins
Hon. Bill Colvin
Hon. Clement Conger, Curator
Hon. & Mrs. Edward F. Cox
Hon. & Mrs. Howard Crandall
Sen. Carl T. Curtis
Hon. & Mrs. Kirke W. Dale
Hon. A. J. Dawson
Hon. & Mrs. Edward Dawson
Hon. & Mrs. J. H. DeCoursey
Hon. Fred Dexter
Hon. & Mrs. Jay B. Dillingham
Mrs. Virginia Docking
Sen. & Mrs. Peter H. Dominick
Hon. & Mrs. Jack Drown
Hon. & Mrs. A. L. Duckwall, Jr.
Hon. & Mrs. Roy A. Edwards, Jr.
Hon. & Mrs. John D. Ehrlichman
Mrs. Arthur Eisenhower
Mrs. Earl Eisenhower
Mrs. Edna Eisenhower
Amb. & Mrs. John S. D. Eisenhower
Dr. Milton S. Eisenhower
Hon. George M. Elsey
Hon. J. Earl Endacott
Hon. & Mrs. Ray Evans
Mrs. George Faelber
Hon. & Mrs. William Falstad
Ch Just. & Mrs. Harold R. Fatzer
Hon. & Mrs. R. J. Fegan
Hon. & Mrs. E. L. Fiedler
Hon. & Mrs. Leonard K. Firestone
Hon. & Mrs. Forest D. Flippo
Just. & Mrs. John F. Fontron
Comm. & Mrs. J. Richard Foth
Dr. Noble Frankland, Dir.
Sec. & Mrs. Roy A. Freeland
Secy. of the Army & Mrs. Robert F. Froehlke
Just. & Mrs. Alex M. Fromme
Hon. & Mrs. L. E. Garrison
Brig. Sir James & Lady Gault
Hon. & Mrs. R. O. Gemmill
Margaret Gibson
Hon. Edward Gillard
Maj. Gen. & Mrs. Roland M. Gleszer
Hon. E. S. Graham
Hon. & Mrs. Jack Grubb
Hon. & Mrs. M. C. Gugler
Hon. & Mrs. William A. Guilfoyle
Dr. & Mrs. John Gustad
Hon. & Mrs. Wm. R. Hagman, Sr.
Hon. & Mrs. Donald J. Hall
Hon. & Mrs. Joyce C. Hall
Mrs. Myron Hall
Dr. & Mrs. Robert J. Hall
Hon. & Mrs. Joe Hake
Hon. & Mrs. G. D. Hampton
Hon. & Mrs. P. W. Hampton
Comm. & Mrs. Jerome Harman
Comm. & Mrs. Earl H. Hatcher
Hon. & Mrs. R. W. Hart
Hon. & Mrs. Robert D. Hartley
Hon. Robert Hatfield
Lt. Gen. Leonard D. Heaton
Hon. & Mrs. Clay E. Hedrick
Dr. & Mrs. John Henderson
Judge & Mrs. Delmas Hill
Miss Debra Ann Hillelson
Miss Jan Hillelson
Hon. J. D. Hoffman
Hon. Reed Hoffman
Hon. & Mrs. Lee Horst
Hon. Edgar M. Howell, Curator
Sen. & Mrs. Roman L. Hruska
Col. Alfred F. Hurley
Hon. & Mrs. Paul G. Hutchinson
Judge & Mrs. Walter Huxman
Hon. Jewell Isley
Hon. & Mrs. Elmer C. Jackson
Hon. & Mrs. Henry Jameson
Hon. & Mrs. Balfour Jeffrey
Hon. & Mrs. Joe F. Jenkins, Sr.
Hon. & Mrs. Lyndon B. Johnson
Hon. & Mrs. William Jones
Hon. & Mrs. Herbert W. Kalmbach
Hon. & Mrs. William A. Kats
Just. & Mrs. Robert H. Kaul
Hon. & Mrs. W. W. Keeler
Hon. & Mrs. Donald M. Kendall
Hon. & Mrs. Warren Knoll
Hon. Henry K. Knouft
Hon. & Mrs. Rod Kreger
Hon. Jack Lacy
Hon. & Mrs. R. B. Laing
Sec. of Def. & Mrs. Melvin R. Laird
Hon. & Mrs. Sigurd S. Larmon
Hon. & Mrs. Barry Leithead
Hon. & Mrs. John H. Lehman
Gen. & Mrs. Lyman L. Lemnitzer
Hon. Philip Lundberg
Gov. & Mrs. John A. Love
Mrs. Ruth Love
Dr. & Mrs. James A. McCain
Col. John M. MacGregor
Hon. & Mrs. Arthur Mag
Hon. & Mrs. Paul Martin
Hon. & Mrs. Lyman K. Marshall
Hon. & Mrs. William E. Maurer
Chmn. & Mrs. Cordell Meeks
Hon. & Mrs. Max Meyers
Hon. Harry Middleton
Sen. & Mrs. Jack Miller
Hon. Nyle Miller
Col. & Mrs. Paul C. Miller
Atty. Gen. & Mrs. Vern Miller
Hon. & Mrs. Paul Miner
Hon. Wendell H. Mitchell
Lt. Gen. & Mrs. V. P. Mock
Dr. & Mrs. Jack Mohler
Miss Betty Monkman
Hon. & Mrs. John Montgomery
Dr. & Mrs. Malcolm Moos
Hon. Ray Morgan
Hon. & Mrs. Kenneth S. Morrison

Hon. & Mrs. Ernest A. Morse
Hon. & Mrs. C. I. Moyer
Congmn. & Mrs. John T. Myers
Hon. & Mrs. Reilly S. Neil
Hon. & Mrs. Aksel Neilson
Hon. John R. Nesbitt
Hon. & Mrs. Clifford Nesselrode
Hon. & Mrs. Ray Nichols
Lt. Gen. & Mrs. Joe Nickell
Hon. Thomas P. Nickell, Jr.
Hon. & Mrs. D. M. Nicolay
Hon. & Mrs. Edward C. Nixon
Just. & Mrs. Earl O'Connor
Hon. & Mrs. Floyd Odlum
Hon. & Mrs. Kenneth Olson
Hon. & Mrs. Cruise Palmer
Hon. Dee A. Patterson
Hon. & Mrs. Homer E. Patton
Hon. & Mrs. J. O. Peck
Hon. & Mrs. Walter H. Peery
Hon. & Mrs. E. Ross Perot
Hon. Milton F. Perry
Mrs. Dewey Peterson
Dr. Forrest C. Pogue
Hon. David Powers
Mrs. Florence Pratt
Hon. Robin Prentice
Hon. & Mrs. Robert T. Price
Hon. & Mrs. Herbert Ramsey, Jr.
Mrs. Leon Ramsey
Congmn. & Mrs. William J. Randall
Hon. Joe Rauh
Hon. Harry Reasoner
Hon. & Mrs. Clyde Reed
Dr. & Mrs. Daniel Reed
Hon. Robert W. Richmond
Hon. & Mrs. Robert L. Roberts
Hon. Robert J. Roth
Hon. & Mrs. Ronald Rice
Hon. & Mrs. Robert B. Riss
Hon. Ian Robinson
Hon. & Mrs. David Robson
Mrs. Ames P. Rogers
Hon. & Mrs. H. W. Rohrer
Hon. & Mrs. D. V. Romine
Dir. U.S. Scrt. Serv. & Mrs. Jas. J. Rowley
Hon. & Mrs. Paul H. Royer
Hon. R. H. Royer
Hon. & Mrs. Bernard Ruysser
Hon. Thad Sandstrom
Hon. & Mrs. Dale Saffels
Hon. Robert R. Sanders
Mrs. Andrew F. Schoeppel
Hon. & Mrs. Taft Schrieber
Just. & Mrs. Alfred G. Schroeder
Brig. Gen. Robert L. Schulz
Sen. & Mrs. Hugh Scott
Brig. Gen. & Mrs. J. A. Seitz
Mrs C. Y. Semple
Hon. Elwill M. Shanahan
Lt. Gov. & Mrs. Reynolds Shultz
Hon. & Mrs. Wm. H. Shute
Hon. & Mrs. H. R. Sidener
Hon. & Mrs. Dolph Simons, Jr.
Hon. Ellis D. Slater
Hon. & Mrs. George Smith
Hon. & Mrs. Glee Smith
Hon. Henry Smith
Col. James E. Smith
Hon. & Mrs. Wint Smith
Hon. Stanley Sohl
Chmn. & Mrs. George M. Stafford
Hon. & Mrs. Arthur J. Stanley, Jr.
Hon. Charles J. Stapf
Hon. & Mrs. John Stauffer
Hon. & Mrs. Oscar Stauffer
Hon. & Mrs. Stanley H. Stauffer
Hon. John F. Stewart
Hon. & Mrs. John G. Stewart
Col. Richard Streiff
Hon. Lawrence Strouts
Hon. & Mrs. Calvin Strowig
Hon. William Stuart
Hon. & Mrs. Jess Taylor
Judge & Mrs. George Templar
Hon. Thomas T. Thalken
Judge Frank G. Theis
Hon. Elon Torrence
Hon. Harold S. Trimmer
Hon. & Mrs. Thomas Van Cleave
Miss Ethel Vanderwilt
Hon. & Mrs. Stewart Verckler
Dr. & Mrs. John E. Vissor
Secy. of Trans. & Mrs. John A. Volpe
Hon. & Mrs. John M. Wall
Dr. Paul W. Ward
Hon. & Mrs. Gene Watson
Dr. & Mrs. A. D. Weber
Mrs. Barbara Wentworth
Gen. William C. Westmoreland
Hon. & Mrs. W. L. White
Hon. & Mrs. Emmett Wilson
Dr. James L. Whitehead
Mrs. C. Taylor Whittier
Col. & Mrs. J. F. Wilhm
Hon. & Mrs. Herbert H. Wilson
Hon. & Mrs. Charles W. Wolf
Hon. Clio Woodward
Hon. & Mrs. Paul Wunsch
Hon. Gary Yarrington
Dr. & Mrs. Benedict Zobrist

SIGNIFICANT QUOTES OF DWIGHT D. EISENHOWER

"Whatever America hopes to bring to pass in the world must first come to pass in the heart of America. More than escape from death, it is a way of life. More than a haven for the weary, it is a hope for the brave. This is the hope that beckons us onward in this century of trial." (Inaugural Address as President of the United States, January 20, 1953)

"When this library is filled with documents, and scholars come here to probe into some of the facts of the past half century, I hope that they, as we today, are concerned primarily with the ideals, principles, and trends that provide guides to a free, rich, peaceful future in which all peoples can achieve ever-rising levels of human well-being." (Speech at the Ground Breaking Ceremonies for the Library, October 13, 1959)

"In this day every resource of free men must be mustered if we are to remain free; every bit of our wit, our courage, and our dedication must be mobilized if we are to achieve genuine peace. There is no age group nor race that cannot somehow help." (Speech to Associated Press, New York, New York, April 25, 1955)

"Our system entitles every political voice to be heard—but let each voice be named and counted. Let every political medicine be offered in freedom's market place, but let it be plainly labeled—especially if it is poison." (Speech at Milwaukee, Wisconsin, October, 3, 1952)

"When the shallow critics denounce the profit motive inherent in our system of private enterprise, they ignore the fact that it is the support of every human right we possess, and that without it, all rights would soon disappear." (Inaugural Address as President of Columbia University, October 12, 1948)

"Before all else, we seek, upon our common labor as a nation, the favor of Almighty God. And the hopes in our hearts fashion the deepest prayers of our people:

May we pursue the right—without self-righteousness.

May we know unity—without conformity.

May we grow in strength—without pride of self.

May we, in our dealings with all peoples of the earth, ever speak truth and serve justice."

(Second Inaugural Address as President of the United States, January 20, 1957)

EISENHOWER IN RETROSPECT

34th President of the United States—1953–61

Supreme Allied Commander, NATO

Supreme Headquarters Allied Powers (SHAPE) 1950

President, Columbia University 1948

Army Chief of Staff 1946–48

Supreme Commander of Allied Expeditionary Forces 1944

Married—Mamie Geneva Doud 1916

West Point Graduate 1915

Abilene High School Graduate 1909

COMMITTEE AND OTHER OFFICIALS

The Honorable Harry Darby, Chairman

Dr. John E. Wickman, Director, Eisenhower Library

Mr. C. A. Scupin, Abilene, Kansas

The Honorable Robert L. Kunzig, Administrator of General Services

Dr. James B. Rhoads, Archivist of the United States

Mr. Walter Robertson, Executive Director of NARS

Mr. Jeffrey P. Hillelson, Administrator, GSA Region 6

TRANSCRIPT OF THE PROGRAM FOR THE MUSEUM REDEDICATION

Senator DARBY. Now we will have the invocation by Chaplain Colonel W. W. Wessman, then the national anthem of our great country by the 371st Army Band from Fort Leavenworth, conducted by Chief Warrant Officer, Randolph Rockne, with Pvt. 1st Class Dean Durst as vocalist.

Chaplain WESSMAN. Let us pray. Almighty and Eternal God, Thou who has guided the destiny of our great nation, we give Thee thanks. We are grateful for our ideals of service unto Thee and to our country, ideals which have been the very foundation upon which our country was founded, and upon which it has grown. As we have assembled on this historic portico to commemorate the birthday-anniversary of a great American, General Dwight D. Eisenhower, we are reminded of the full measure of dedication and loyalty with which he served our country so long, as a proud soldier and loyal statesman. As he labored to build a better society, a better country, a better world, may we give unselfishly of our time, talents, and energies to the fulfillment of those same goals. Lead us in a dedication of this expanded facility, that it may bring honor unto Thee. May this renovated museum symbolize the high ideals of our American Way of Life, and challenge each one of us to greater patriotism and service to our God, our country, and our fellow men. These petitions, we pray in Thy Holy Name. Amen.

(The National Anthem).

Senator DARBY. Please be seated. Governor Docking and Mrs. Docking, Mamie Doud Eisenhower, our most distinguished Guest of Honor, former President Lyndon Johnson and Mrs. Johnson, Senator Dole, Dr. Milton Eisenhower, Counselor to the President Robert Finch and Mrs. Finch, Administrator Kunzig of GSA, United States Archivist, Dr. Rhoads, General and Mrs. Norstad—distinguished guests all—fellow Americans. It is our pleasure and honor to join together in this special salute on the occasion of the 81st birthday anniversary of one of the great men and leaders of our time, the late President Dwight D. Eisenhower, and also to join together in the dedication of the new wing of this Eisenhower Museum. This Museum, carrying the Eisenhower name, is indeed one of the finest historical and educational facilities of its kind in the world.

The entire Eisenhower Center will be an asset to all Americans for years to come. It is a real contribution to the preservation of the history of the period it represents. All of us are proud to be active in its further development. All citizens of Kansas are equally proud of the Eisenhower name and tradition, and that Ike and Mamie made it possible for this great Center to be located in our state. It will attract for generations to come the scholars and researchers, historians and visitors from every walk of life, for study of the past and to illuminate the future.

As we gather here today with Mamie at this Eisenhower Center, we are all thinking of Dwight Eisenhower—from a Kansas farm boy to a Supreme Allied Commander in Eu-

rope to the Presidency or the United States—Dwight Eisenhower symbolized all that is good about America. He came from the humble beginnings right here in this neighborhood, where he was taught to revere God, to love his country, and to honor his fellow man. He grew up in this 34th State of the Union, and was elected and re-elected to be 34th President of the United States. He personified those enduring qualities that are universally admired and respected. We thank God for knowing him, and for the privilege of living with him right here in Abilene as our neighbor and close personal friend, and we can be proud he wanted to come back home to Abilene to be with us. He was probably loved by more people in more parts of the world than anyone who ever served in public life. We salute him again today, as one of the all-time greats in history.

He was a symbol of world peace to all people in all lands, and especially today, as always, we think of Mamie Eisenhower, our most distinguished Guest of Honor, on this occasion. She shared his trials and his triumphs, and she contributed much to his life and his happiness. We offer her our admiration and esteem, and of course, I'll present her later. Right now, ladies and gentlemen, I want to present Governor Docking, but before I do that, I want to present his wife, the first lady of the State of Kansas. She is smart, charming and gracious, and I am thinking now that there isn't anyone more important than a pretty girl, especially when she is the wife of the Governor of Kansas: Mrs. Robert Docking. (Applause.)

It's great to have our Governor here with us on this occasion. He has affection for his associates and his friends, and seems to be a master of the art of popularity; the people of Kansas like his record in office; they have spoken about this record and elected him three times as their Chief Executive. Quite an achievement, because this hasn't happened to anyone else before. He has supported our every effort here at this Center, and responded promptly when he was called upon to help. It is my privilege to present the fine governor of this great state of Kansas, the Honorable Bob Docking. (Applause.)

Governor DOCKING. Thank you very much, Senator Darby. Senator Darby, Mrs. Eisenhower, President and Mrs. Johnson, distinguished ladies and gentlemen. It is with great personal interest and pride that I have this opportunity to speak in the dedication today. The Docking family has a fond association with the development of the Eisenhower Center in Abilene. When my father was governor he served with Senator Darby, as co-chairman of the National Committee which worked for the creation of the Eisenhower Library. Established by the Kansas legislature, the Library Commission worked through a number of persons who offered themselves, their time and their energy, without regard for party politics. On October 13, 1959, the President turned the first shovelful of dirt for the Library groundbreaking. My father was here that day, and I know he was proud to be a part of the project's early development. We are dedicating an expanded Museum today.

It is difficult to separate the parts of the Eisenhower Center—each complements the other. This is not just one building dedicated to a famous Kansan, but a complex which reflects the entire career of a General and President of the United States, and all the members of his much-admired family.

The gifts from heads of state, the photographs, the books, the manuscripts and military memorabilia provide both the scholar and the tourist with a view of the noted military leader who sought just and lasting peace in the world. On behalf of all Kansans I am pleased to be here for this dedication of another addition to this much-visited and much-admired portion of our state. Dwight D. Eisenhower, his family, his friends and the men and women who served in World War II, are fittingly memorialized here today, and will continue to be memorialized for generations to come. Mrs. Eisenhower, we are so very proud of you, your husband, and your family and we are very honored and proud to have this great addition to the United States of America noted in your family name in Kansas. (Applause)

Senator DARBY. It's wonderful to have President Johnson and Mrs. Johnson with us today. They are close friends of President and Mrs. Eisenhower, and have helped in a great big way to the development of this Eisenhower Center. Certainly it is an honor and a privilege to present one of the greatest presidents of the United States, the Honorable Lyndon Baines Johnson, and Mrs. Johnson. (Applause)

Former President JOHNSON. Mr. Chairman, Senator Darby, Mrs. Eisenhower and Dr. Eisenhower, Governor and Mrs. Docking, and "my fellow Americans." More than 100 years ago my grandfather would come from the Johnson ranch in Texas regularly to Abilene, Kansas. This is my third visit to the Eisenhower Library, and both Mrs. Johnson and I feel it a very great privilege and a pleasure to us to be invited to come here and participate in this ceremony today. For more than a quarter of a century Dwight D. Eisenhower was a towering figure in our American national life. From the crucial battles of World War II until the very last days of his life, he caught and he held the imagination and the respect and the affection of the American people.

In 1968, nearly a decade after President Eisenhower had left the public spotlight, Americans were asked "What man that you have heard or read about that is living today in any part of the world, do you admire the most?" Dwight D. Eisenhower's name led that list, and I shared that admiration of him. I knew General Eisenhower first as a soldier, and then as our President, and finally as a former President who was loyal to his political party, but loyal above all to his country. Watching him and working with him through these years, I observed three elements in his character and personality which I believe accounted for his strong hold over the minds and hearts of the American people. First, his competence.

No man rises as far as he did in the American military system or political system without intelligence and energy and judgment. We Americans like a man who knows how to get the job done, and Dwight Eisenhower, coming from very modest origins, was a man who could handle any task that came his way. Second, Dwight Eisenhower was a good man, and a decent man, and a fair man. That might be an old-fashioned way of putting it, but those very simple adjectives still mean a great deal to most Americans, no matter how complicated the twentieth century has become.

Dwight Eisenhower was a proud man, but he also respected others. He knew his own mind, but he was always ready to put himself in the other fellow's shoes and listen to another point of view. I know that, because we had different points of view on many occasions. He was a healing and a unifying leader. He always, it seemed to me, tried to find the things that brought men together, rather than those that divided and separated them. And that is why he was picked to lead one Allied command after another, and that is one reason that he was elected and re-elected to the Presidency of the United States.

Third, Dwight Eisenhower was a patriot. He loved this country. The motto of his West Point days, "Duty, Honor, Country," all burned deep within his words. He was not a "jingo"; he knew America's faults, but this was the land from which he came, and this was the land that he loved. Although he closed his career in the arena of politics, I never did think he had a partisan bone in his body. He did not believe that the narrow partisans, always carping and criticizing, ever helped to solve any of the nation's problems. I can remember a story that he used to tell as President about the people who were constantly trying to make life difficult for him. He said that there were two Irishmen riding up a hill on a tandem bicycle. The hill was so steep that they just did make it to the top, and when they did the front rider jumped off, mopped his brow, and sat down to catch his breath. "Begorrah," he said, "it was so steep that I thought we would never make it at all." And the rear rider said, "And faith, if I hadn't kept my foot on the brake, I think we would have rolled backwards." (Laughter)

Well, Dwight Eisenhower remembered that lesson long after he had left high office, and when I became President, he was my first appointment on my first day in office. And I can say that he was never once guilty of putting on the brake. He never contributed in any way to making life any more difficult than it was already. And this wasn't because he was just a kind man, either. When I visited with him on my last visit to his hospital room, he made a point of telling me that he didn't engage in public criticism of me, but that I shouldn't take that to mean at all that he approved of everything that I did. (Laughter)

He said to me, "Mr. President, I think you are doing what's right in foreign affairs, but I do disapprove of a good many of your Great Society programs." And he said that he wanted me to know that because he didn't want silence to mean consent. He said he hadn't spoken out publicly at any time against these programs because, frankly, he just thought that he shouldn't make the burden for the President any heavier than it already was, because he didn't see how one could carry any more. Well, maybe I'm prejudiced, really I am (Laughter) but I consider that kind of talk to be the sign of a statesman and a patriot and a very great American. And I believe that history will bear out that judgment.

And it is with great pride that I come here and appear on this platform with his beloved helpmate, who was his greatest single source of strength, and his wonderful brother who served him faithfully and well, and has also served every other president faithfully and well during his time. Senator Darby, I want to thank you for your loyalty and your friendship to Dwight Eisenhower, and to personally thank you for your loyalty and friendship to me. There is nothing that I have ever tried to do for my country where you could help, that you haven't been there, and I am so happy that you are here today. Thank you very much. (Applause)

Senator DARBY. Thank you very much, ladies and gentlemen, Mr. and Mrs. Johnson. Dr. Milton Eisenhower is another very capable and distinguished Eisenhower, very active on a national basis, in the field of big business, and the very important field at a very high level of the Health, Education, and Welfare. Milton and Dwight were very close; they were very active and associated together in many enterprises. Each liked to advise and counsel the other. We all remember, of course, that Dr. Eisenhower was president of K State University; he was also president of Pennsylvania State University, also Johns Hopkins University in Baltimore, and now President Emeritus of Johns Hopkins. A native Kansan, of course, and one of the most distinguished sons of our great state of Kansas. He was born and raised right here in Abilene.

We wish that he had stayed at home in Kansas so that we could have had an Eisenhower governor, an Eisenhower congressman, or an Eisenhower United States Senator. I am sure we could have had one with Milton Eisenhower on the ticket. Milton Eisenhower is a highly respected writer and recipient of

many doctoral degrees from many colleges and universities. He is really tops in the field of education and public affairs. It is my pleasure to present to you a man with a typical Eisenhower personality and charm—Dr. Milton Eisenhower. (Applause)

Dr. MILTON EISENHOWER. Senator Darby, President Johnson, distinguished guests all—Early in 1946 word reached us in the east that friends in Abilene wanted to do something to memorialize the leadership of the Supreme Commander of the Allied Forces in World War II. I was commissioned by the family to come and meet with these friends to see in what way we could be helpful. I shall never forget in the days discussion that with the approval of other members of the family I offered these acres for whatever use the Foundation might care to make of them. I'll also never forget that our dear friend and one of the esteemed men of Kansas, Charles Murrow Harger, a revered friend of the Eisenhowers, turned to me and said, "But Milton, it's so out of the way, no one will ever go down there." (Laughter)

Since that day I have watched the development of this Museum, then the Library, then the Place of Meditation and these beautiful and meaningful entablatures and finally, today, the expansion of the Museum. To mention a dozen of those early days and since who have helped make this possible, would be a slight to thousands in this country and abroad who have contributed time, energy and resources to make this one of the historic spots in America. But I am sure that all the others will forgive me if I say that for a quarter of a century, no man has worked harder with his leadership than Senator Harry Darby. (Applause)

To us of the family, this place is not only an expression of love and admiration and gratitude for a man who devoted his whole life to the service of his country, but to us it is also a monument to an ideal, a philosophy, a philosophy of human dignity, mutuality and human relations, a representative form of government, ideals that caused our forefathers to transform a great continent into the most powerful nation in the world, ideals which radiate with hope from this country today to all the billions who inhabit a troubled earth. Thank you all very much. (Applause)

Senator DARBY. Thank you very much, Milton. It is my pleasure at this time to present Mrs. Arthur Eisenhower, a member of the Eisenhower family—Mrs. Arthur Eisenhower. (Applause)

Virginia Docking is here—you know she is the wife of former governor, George Docking, who rendered outstanding service to this Eisenhower Center. He was co-chairman of our very successful fund-raising drive. Virginia is also the mother of the present governor, Bob Docking, who is one of the most influential boosters and co-workers we have, for the present and future development of this Center. It is my privilege to present Mrs. Virginia Docking. (Applause)

We all know Skip Scupin; he's Mr. C. A. Scupin, President of the Eisenhower Foundation, my associate in everything good for the Eisenhowers and for Abilene—the Honorable C. A. Scupin. (Applause)

We have with us today the Commanding General of the 5th United States Army, of Fort Sam Houston, Texas—ladies and gentlemen, my pleasure to present the Lieutenant General Patrick F. Cassidy.

George Stafford is here—you all remember that he is the chairman of the Interstate Commerce Commission now. Kansas has had Dwight Eisenhower as President, and Charlie Curtis as Vice-President of the United States, but not until now has Kansas had a chairman of the Interstate Commerce Commission.

K. S. Adams and his wife are here—we call him Boots, you know—he's head of Phillips Petroleum Company and a close friend of Mamie's and Ike's—he's been a tremendous help to us, has been very generous with his time and his money, to help us set up and operate this Eisenhower Center—it is my privilege to present Mr. and Mrs. K. S. Adams. (Applause)

Senator Bob Dole, of course, is here—who is turning in a perfection performance as Chairman of the Republican National Committee as well as looking after our interests in the United States Senate.

I am proud to present the very capable and distinguished United States Senator from Kansas—the Honorable Bob Dole. (Applause)

And we have Frank Carlson with his lovely wife here; they're close friends of Ike and Mamie's—we all remember Frank to be a former congressman, former governor and former United States Senator. It is my pleasure to present the Honorable Frank Carlson and Mrs. Carlson. (Applause)

The Counselor to the President of the United States is with us. Bob Finch attended the public schools in California, graduated with honors from the University of Southern California with many advanced degrees and recognitions. He received many other doctorate and law degrees from colleges and universities throughout the United States. As a Marine he fought for his country and served outstandingly as a first lieutenant in the United States Marines in the Korean War and also in World War II. Always been an active business, civic and political leader, active in the Republican National Committee always; served as campaign director for President Nixon's campaign in 1960; he managed George Murphy's senatorial campaign in California in 1964; he was California chairman of President Nixon's successful campaign in 1968; served as lieutenant governor of California, served as a member of President Nixon's cabinet, served outstandingly as Secretary of Health, Education and Welfare, then moved to the White House to be closer to the President as his Counselor and Liaison to the President's many commissions and other activities. Ladies and gentlemen—I give you the Counselor to the President of the United States, representing President Nixon on this occasion—the Honorable Robert H. Finch and Mrs. Finch. (Applause)

ROBERT FINCH. Thank you, Senator Darby, Mamie, President and Mrs. Johnson, Governor Docking, Senator Dole, friends all of Dwight Eisenhower. When the President knew he could not be here, much to his regret, and asked if I could represent him, and reminisced a bit as Carol and I were fortunate enough to do just this morning with Mrs. Eisenhower, we recalled that when Dwight Eisenhower was suffering his final illness then president-elect Nixon knew it would be fruitful if each Cabinet officer would visit the General, and I think he probably had in mind that we would somehow cheer him up, but each one of us came back, having been cheered by him.

I remember in that final conversation that I had, he talked of a recent book which he had just finished reading. He was disappointed because he was a favorite friend of the President's, and the book itself had ended on a despondent note. He said, "A man with that author's stature has to hold out hope to those who are coming along."

In London, shortly after V–E Day in 1945, Dwight Eisenhower received the freedom of the City of London, he said, "We should turn to those inner things, call them what you will, I mean those intangibles that are the real treasures that free men possess." As a soldier he was guided by those inner things; as a President he was strengthened by their wisdom. President Nixon said his life reminds us that there is a moral force in this world more powerful than the might of arms or the wealth of nations. And adding an additional dimension to his character, too, is this woman, Mamie Eisenhower, with us today, who stood beside him; her wisdom giving her support and her love giving strength. I remember in 1960 right after then-Vice President Nixon was nominated by his party for the Presidency, the two of us flew up to Newport to President Eisenhower's summer place; we talked about the campaign, how it should be run.

In his wisdom President Eisenhower hit upon a basic tenet of politics, he said, "remember you don't win by running away from your record, the record of our administration." I know of no better tribute to the boy from Abilene than to say that he made Americans proud of their President, proud of their country, and mostly and most importantly, proud of themselves. And now through this Library and Museum, as the greatness of Dwight Eisenhower is studied by scholars and observed by young and old, I know its inspiration will continue to bring out the best in people, to hold out hope for those coming along. Thank you very much. (Applause)

Senator DARBY. The General Service Administrator is here. He is well educated, well prepared for public life. He received his Bachelor of Arts Degree in 1939, his law degree in 1942, both from the University of Pennsylvania. Not only has he been politically successful, he has also achieved outstanding recognition for his activities in the field of law, business, and many worthwhile civic endeavors. Along with President Nixon and the Congress, he is the one most responsible for the fine addition to this Museum. He furnished the leadership to obtain the appropriations for this new addition, together, of course, with Dr. Rhoads and our United States Senators and Congressmen.

He has a big job, truly a big job, as the head of the General Service Administration. He has 40,000 career Civil Servants under his jurisdiction—40,000—I say he's big enough to handle that kind of job.

He's really big enough and good enough to be a Kansan, and you can see what I mean when I stand him up—and he's a fellow we've known favorably for a very long time. He started at the bottom and followed a very long and interesting and attractive road clear up to the top. We knew him when he was a young Republican in Pennsylvania helping State Attorney Generals, State Chairmen, Governors, Congressmen, United States Senators and other VIPs in the State of Pennsylvania to make an outstanding record in public life. Now he is doing a tremendous job helping President Nixon run the country, and he is turning in a fine performance. It is my privilege to present the General Service Administrator, the Honorable Robert L. Kunzig. (Applause)

ROBERT KUNZIG. Governor Docking and Mrs. Eisenhower, President and Mrs. Johnson, Senator Darby and distinguished guests all—I'm on a diet, Senator, so I guess I'm losing status. (Laughter) 26 pounds at the moment, 5,000 more to go. (Laughter) A few weeks ago in Virginia we were donating a park to the people of Virginia, a new big park as part of President Nixon's Legacy of Parks Program that is extending all over America. It was not a gorgeous day like today, as a matter of fact it was just pouring; drenching rain pouring down, and the Secretary of the Interior, the Honorable Rogers Morton, got up and he was holding an umbrella—everybody had umbrellas, it was raining that badly—the audience was sitting out there with umbrellas, some soaking wet, most of them soaking wet, and Rogers Morton had a big thick speech, and he looked at the speech and he looked at the audience, the rain was pouring down his face, and he said, "Ladies and gentlemen, as I look at this speech I think it is going to self-destruct in two minutes." (Laughter) He sat down, and it was the greatest speech he ever gave in his life. (Laughter)

As I listen to all the speeches we have here today and the many distinguished guests, I just made up my mind sitting over there

in the corner, to self-destruct my speech—don't applaud now, please; that's the wrong moment—I'm self-destructing the speech today, except to thank Harry Darby and all those who helped to build this wonderful new great Center here, which we are opening and dedicating today, and let me just say along with all of you today, that I cherish the memory of a great General, a great President, a great man. Thank you very much. (Applause)

Senator DARBY. There is only one Archivist of the United States, and that's Dr. James B. (Bert) Rhoads. He's here; you all know him to be the keeper of the public records of the United States, so this Center is operated under his jurisdiction, and in this capacity he serves as Chairman of the National Historical Publication Commission, as Chairman of the Archives Advisory Council, Chairman of the Board of Trustees for the Woodrow Wilson International Center for Scholars; he is a writer, a contributor to publications; he is a Fellow of the Society of American Archivists, and various other professional associations. It's great for all of us to have an opportunity to work with Dr. Rhoads in the development of this Eisenhower Center. His advice and counsel have been invaluable. He has been especially helpful in obtaining appropriations for the proper operations here and we thank him specially for helping us get this much-needed appropriation for this fine addition to this Museum. It is my honor and privilege at this time to present the Archivist of the United States, Dr. James B. (Bert) Rhoads. (Applause)

Dr. RHOADS. Mrs. Eisenhower, President and Mrs. Johnson, Senator Darby, distinguished guests; I am very happy to be able to be here today to express my pleasure, and that of the National Archives and Records Service of the General Services Administration, on the completion of this handsome and important addition to the Eisenhower Museum. It will enable us to fulfill our responsibility to preserve and make known for educational purposes the important historical objects that General Eisenhower entrusted to the Eisenhower Foundation, or gave to the United States, as well as gifts from other donors.

This goal that we seek today reminds us of the goal of the original incorporators of the Eisenhower Foundation, which was to erect a museum in honor of the veterans of America's wars, the Eisenhower family, and the leadership of Dwight D. Eisenhower. Our thanks are due to that far-sighted group of Abilene citizens, friends of General Eisenhower, who formed the Eisenhower foundation in 1945, and to a host of friends and benefactors too numerous to name, who have followed their example through the years to this present date. As we all know, the Foundation designed the original building for General Eisenhower's military mementos, and though the Museum now includes the historical memorabilia of the President and Elder Statesman, the overall emphasis is on American citizenship, whether in the military or civilian sphere, just as it was in the life of General Eisenhower.

We hope to fulfill the trust that has been placed upon us in the administration of this fine building and its priceless contents to instill anew in the minds and hearts of all who come here, an appreciation of Dwight David Eisenhower's lifetime of devotion to the ideals of freedom. (Applause)

Senator DARBY. Of course we are all proud, pleased and privileged to have Mamie Doud Eisenhower with us on this occasion. It's good to get her back home in Abilene; certainly she is the belle of this affair, and actually the first lady of the Eisenhower Center. It is just wonderful having her here, making one of her customary visits now, so that we can have her here as our most distinguished guest of honor on this occasion. All of us think of her often, but especially today we think of her as our dearly beloved Mamie. We know her to be carrying on so valiantly and turning in a perfection performance, always in her own right, because she is a person of talent, dedication, imagination, determination and competence. She has merited many honors, and recognitions; the Gallup and other polls have her as number one on their list of America's most admired women.

She is the first recipient of a Blue Ribbon, so to speak, the Military Wife of the Century. Mamie is gracious, capable, charming, doing things in a great big way, and in her own way. She is the best-known and most popular of humanitarians, dedicated and devoted to the task of doing big things, such as building universities, hospitals and, of course, presidential libraries. Mamie is a gorgeous lady, and I'm proud and privileged to present her now, as the wife of the General of the Army, Dwight D. Eisenhower, the 34th President of the United States. (Applause) (Army Blue played in the background)

MAMIE DOUD EISENHOWER. Ladies and Gentlemen, it's very nice, what you've said about Ike, that could have been said today, but his love for his town of Abilene was something that words just can't express. No matter where he went in the world, how high, how low, Abilene would always be home, always be home to him, and he *was* "the boy from Abilene, Kansas." (Applause)

Senator DARBY. Dr. John Wickman is director of this library and Eisenhower Center; a most capable and distinguished leader in this profession, and he is turning in a very fine performance in this position. I am pleased to present him at this time. Dr. John Wickman. (Applause)

Dr. WICKMAN. Thank you, Senator Darby, Mrs. Eisenhower, President Johnson. I just want to use a moment of your time for a very short story. When we started planning the Eisenhower Museum, I had the help of C. L. Brainard from Abilene, who helped me sketch on some very rough sheets of paper, our ideas. Although we thought we knew what we were doing, after I'd taken it to General Eisenhower in 1967, he wanted to know how I thought I was going to put it all together. In 1968 I hired the young man who is responsible for this, and I would like to have recognition for him at this time—my Museum Curator, William K. Jones. (Applause)

Senator DARBY. It's wonderful to have General Norstad with us. He flew in here this morning with his wife in his own plane, especially to be with Mamie on this occasion. He always comes out here when we need him, because of his tremendous interest and friendship with President and Mrs. Eisenhower. You will remember, he served as one of the pallbearers at General Eisenhower's funeral. He is a distinguished business and civic leader, as well as a big, number one man in the military.

He heads the very important Owens-Corning Fiberglass Corporation, and with it does big business around the world. He is soldier-statesman, a philanthropist, and everything else that's good. He has had a distinguished career of service to our country and to the world. Some may equal but none will excel his record. He served the military 37 years; the last six years he served as Supreme Allied Commander in Europe and Commanding General of the United States Forces in Europe. His United States decorations include the Distinguished Service Medal with two Oak Leaf clusters, a Silver Star, the Legion of Merit, the Air Medal, and many others.

His foreign decorations were from ten countries: Portugal, Germany, Greece, Italy, Belgium, Norway, Netherlands, France, Luxemburg, United Kingdom Commanders. General Norstad was further honored with many honorary doctorate degrees from 15 colleges and universities. Ladies and gentlemen, I am proud and privileged to present the very capable and distinguished soldier-statesman, business and civic leader, General Lauris Norstad. (Applause)

General NORSTAD. Senator Darby, Mrs. Eisenhower, Mamie, Milton, President and Mrs. Johnson, distinguished guests. I'm moved by the tributes that have been made to our great friend, and perhaps everything has been said, but I am encouraged by the strains of music, "Army Blue," that introduced Mamie, to take a few minutes of your time because it is proper that one voice this morning from this platform should represent General Eisenhower's first, his chosen, and his longest career. And so, while I am long retired that I can claim no competence in the field, I would like to speak as a soldier. We're here today to note the anniversary of General Eisenhower's birth, to dedicate, or re-dedicate an institution which preserves and concentrates the essence of a soldier, a president and, above all, a faithful American and a true world citizen.

For those of us who knew him, we would wish this to be an American rededication to what Dwight Eisenhower believed, what he stood for, what he worked so hard and so successfully to achieve. I am sure that *he* would have wished that, too. It is important, therefore, that this Museum and our pilgrimage here today, should recall for us values that were important in the Eisenhower life, values which helped him achieve so much and which made him one of the most respected and best loved Americans in all of our history.

Here in Abilene, we are at the wellspring of much of the understanding and the strength which were fundamental to his greatness. In an environment that was simple, strong, and almost starkly American, fundamentals were seen clearly and principle was given stature. Responsibility and duty were part of life; belief in country, dedication to ideals associated with love of country, these interacted with responsibility and duty. For all his life, Eisenhower would be marked by Abilene and by that other molder of the young man, West Point, and he would always be identified with the lesson of this early exposure—respect for Duty, Honor, Country. His devotion to principle, his conception of his personal obligations, the code by which he lived as soldier, statesman, citizen, supported and served his belief in his country and in its institutions.

He was a patriot, as President Johnson has stated; he was patriotic with knowledge and with pride, because he knew that his country had shown merit that justified pride.

But as he derived satisfaction from its accomplishments, he felt the weight of great obligation imposed by his country's imperfections, his country's inadequacies. He recognized that a nation, like an individual, must grow. He saw the challenge of change as something to be approached positively if this country were to continue to fulfill expectations. And all of this he saw in a very personal sense; he was strongly aware of his own obligation to contribute constructively to his country and to its development; he recognized the need to encourage, to nurture healthy change; he knew that passive accommodation was unacceptable. General Eisenhower's view of change and his sense of personal obligation made him a builder and not just a critic. These same attributes directed his patriotism—he could not be satisfied with mere faithfulness to form, mere respect for dogma.

In seeking constructive change and in identifying his own obligation to foster such change, he showed one other important dimension of his patriotism. He always put his country first but in a context of values shared with other people who also put their countries first. This man who, in war and peace, so completely demonstrated his love for his country was at the same time the great world citizen. This seeming contradiction, this apparent conflict of interest, was

neither one—it was indeed the intelligent, the necessary, response to the world and to the times in which he lived and in which we live.

Another response to living in our world—realistic but regrettable—is military strength. General Eisenhower saw our armed forces as constituting a necessary strength, strength with purpose, to support the nation's movement, its growth, its aims. Indeed, he said in what has come to be considered his farewell address that:

"A vital element in keeping the peace is our military establishment. Our arms must be mighty, ready for instant action, so that no potential aggressor may be tempted to risk his own destruction."

Surely, General Eisenhower loved the Army which brought him to full manhood; certainly we here know that he honored and respected the uniform of his country. Against this background it is evidence of the very broad wisdom of the man that he could, in that very same speech, caution his fellow citizens when he said:

"Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together."

Eisenhower is now of the past. But his words, his actions, his principles, his ideals remain, as they always will, an essential part of the American heritage; and for this reason it seems particularly appropriate that as this Museum is re-dedicated, the man we honor should be revisited; that we should reexamine, in the light of the 1970's, some of his ideals and principles, the hopes he cherished for us as a nation, for us as a people. It can be said that in the beginning there was Abilene and his family and his friends here and, in the beginning, there was the Army.

This country has never been of a military orientation. Except for those few who have chosen it as a career, army service has seldom been popular—and this is part of our character. We are a nation of citizens, of citizen-soldiers. But the Army has earned respect for fighting the nation's wars, for maintaining our freedom, and for its contribution to the many more normal and constructive activities of the United States from the time of our very beginning as a nation. But now an unpopular war, a painful and protracted ordeal of unparalleled duration, broad public questioning of the necessity for the cost and the extended involvement—all these adversely affect the public standing of the Army.

It would be foolish and wrong to suggest that everything about the Army has been right and good. Particularly because we do have a citizen Army, interaction between the public and the military is complex, constant and pervasive. In this interaction, the national stresses and strains, the frustrations of a distressed citizenry have created reading pressures and perhaps some mistaken responses. Certainly the public's esteem for the armed forces has been affected by Viet Nam, but, I suggest that this is really a symptom, springing from political and social strain, a symptom which tells of deeper disaffection and disturbance. Symptoms are interesting only to the extent they help identify causes.

The real issue, the one which justifies the deepest concern is considerably more basic than just one manifestation, the depreciated standing of the military. We as a people have experienced—and, to an extent, are still experiencing—a difficult period, one characterized by alienation, by a tendency to overreact, to over-state, to polarize differences, by too steady resort to thinking in terms of "they" not "we" when the nation and its activities are considered. We have heard demands for change, often warranted change. But with this, we have seen a quick, perhaps too quick impatience with our progress and what indeed sometimes seems a willingness to destroy rather than to build in the process of change.

Dissatisfaction with our nation's social development and surely the unhappiness, and great personal tragedies associated with the Viet Nam war—these have been, and are and should be among the most prominent aspects of the American scene. But accompanying each of them, shaping them, driving them, has been something more fundamental, more determining in impact. Whether we call it a loss of conviction, a weakening of belief in someone or something, a deterioration of confidence, whatever it is, the source of our motivation, our inspiration as a nation and as a people has been damaged.

The worst of this unhappy period may be past. There is evidence to suggest that extreme reactions are losing some of their attractiveness; that the destruction of institutions is increasingly recognized as offering no answer to the acknowledged need for change; that thoughtful planning and patient, progressive building—both guided by goal and by principle—are again accepted as the true and necessary means to any useful accomplishment.

This had to come about. Responses that are driven by frustrations, motivated by violence, expressed in terms of alienation, these cannot bring together nor unite our individual capacities to speed change and enhance achievement. Man's talent for constructive purpose requires a foundation of faith and hope. It needs, above all, the stimulus of strong belief.

Today as we rededicate this memorial to a great man—above all, a man of strong belief, of faith, of hope—may we recognize that its true value in the years to come is not to remind us of what he did or the way he did it, but rather to demonstrate what is possible, the contribution that man can make when his goals, his plans, his values have the kind of quality on which Dwight Eisenhower's entire life was built. In this respect, he offers an eternal example—one which this Museum will illuminate for generations to come.

To define, to epitomize what Eisenhower, by precept and example, has left us as a heritage is no easy task. But an earlier president, Abraham Lincoln, once said: "Let us have faith that right makes might; and in that faith let us dare to do our duty as we understand it." This was Eisenhower's credo, as it was Lincoln's. Americans need seek no better teachers. Thank you. (Applause)

Senator DARBY. Now I think I should introduce my charming and understanding wife, Edith. (Applause) We apppreciate the efforts of all who have helped on this ceremony. There have been many that we would especially like to mention: those here at the Center, the Commanding Officer and his men at Fort Riley and at Fort Leavenworth, Jeff Hillelson and his associates of GSA in Kansas City, and at the Washington level, and the law enforcement and public services under the jurisdiction of Governor Docking, and Attorney General Miller, the press, radio and TV—obviously we could not have had this successful occasion without their help. Now we will conclude our ceremony with the benediction by Chaplain Colonel W. W. Wessman, at Fort Riley.

Chaplain WESSMAN. Let us pray. Our Father and our God, we would ask Thy divine favor upon this beautiful Museum in honor of a truly great American. Bless all who shall enter its doors, that they may be challenged with an equal measure of devotion, loyalty and patriotism. May it always remain as a remainder of our freedom, good fortunte and benefit others have provided for us. And now may the spirit of Almighty God go with you and strengthen you for your every task. Amen.

THE WEST COAST STRIKE

Mr. TAFT. Mr. President, it seems most timely to call to the attention of the Senate a perceptive statement by my colleague from Oregon, and I ask unanimous consent to have it printed in the RECORD.

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

STATEMENT BY SENATOR PACKWOOD BEFORE THE COMMITTEE ON LABOR AND PUBLIC WELFARE

LEGISLATION TO END THE WEST COAST DOCK STRIKE

Mr. Chairman, for the last eight months, I have been urging, pleading, begging and cajoling my colleagues in this Chamber to face up to the desperate need for new legislation covering emergency labor disputes in the transportation industry. The increasing frequency of transportation crises should make the inadequacy of existing statutes clear to one and all. But this seems not to have been the case, as the current emergency on Oregon's docks, and all along the west coast, openly signifies. The President, having used his one available option, the Taft-Hartley 80-day cooling off period, now has no alternative legal course of action at his disposal to protect the public from this new crippling tie-up. He is forced once again to come to Congress—the most inappropriate arbitrator I know—to request Ad Hoc emergency legislation.

In the 25 years since Congress passed the Taft-Hartley Act, its emergency provisions have been used in 30 disputes where the national health and welfare have been threatened. Strikes occured in 25 of the 30 disputes, resulting in the loss of over 86 million mandays of work. It is significant to note that fully 11 of these 25 strikes which threatened the national welfare were in the longshore and maritime industry. Cooling off periods were required in each of the 11 disputes, but—and this is important to notice—in only two cases out of eleven were the disputes fully resolved within the 80 days. Nine out of eleven times saw resumption of the strike at the end of the cooling off period.

The rail industry, which is not covered by Taft-Hartley, has similarly experienced an increasing number of crippling work stoppages. Eight times in less than a decade, and four times since 1970, Congress has been forced to pass Ad Hoc legislation to prevent or end rail strikes which threatened to create national emergencies.

Just from these figures, it should be clear to all Senators that the existing emergency provisions of Taft-Hartley and the Railway Labor Act have not fulfilled their promise of protecting the public.

It was in response to this obvious need for a new approach to emergencies in the transportation industry that the Administration, two years ago, sent to Congress proposed legislation to provide a new framework for dealing with emergency transportation disputes. When no action was taken during the 91st Congress, it was re-introduced again last year, (S. 560).

This proposal has the dual objective of protecting the public health and welfare from the crippling effects of unresolved transportation disputes, while at the same time minimizing governmental interference in the collective bargaining process. The vehicle for achieving these objectives is to provide the President with three new alternatives, which would be available under law should the 80-day cooling off period expire without a settlement. One of the most obvious advantages of these new Presidential options is that Congress would be taken out of the business of arbitrating labor disputes at the 11th hour once and for all. I know of no Senators who relish the current authority which they

have imposed upon themselves simply by failure to act on legislation to provide these desperately needed new permanent legal procedures. Nevertheless, having failed to act decisively in providing new permanent procedures, we are once again faced with the reality of a transportation crisis. The parties to the dispute have negotiated since October 1970 without reaching an agreement. The President has exhausted his last statutory option. The buck stops here.

Which brings me, Mr. Chairman, to the current crisis, or should I say re-current crisis, which exists now in my State of Oregon, and throughout the west.

On July 1, 1971, when collective bargaining negotiations failed to resolve differences between the I.L.W.U. and the P.M.A., longshoremen at all west coast ports walked off their jobs, and did not return for 100 long days. During that period, lumber and agricultural producers in the west and mid-west were cut off from their markets, crops rotted and layoffs were commonplace. Foreign agricultural markets which had taken years and years to build up were not only lost for the duration of the strike, but will probably be lost to foreign competitors for years to come.

After 100 agonizing days, President Nixon invoked the emergency procedures of the Taft-Hartley Act calling for an 80 day cooling off period, and the longshoremen returned to the docks. The cooling off period has now expired and the parties are still without a settlement. On January 17, the I.L.W.U. again called its members out on strike, bringing dock operations on the west coast once again to a grinding halt.

To some of my colleagues, Oregon's docks—3,000 miles away—may seem like a not very significant part of the overall economy. I have tried to dispel this misconception over the months in numerous speeches here in the Senate on this subject, and I shall try again now.

Basic economics tells us that ours is a complex and interwoven economic system in which the breakdown of even one seemingly small part can have the catastrophic effect of the proverbial monkeywrench. This being the case, closure of our ports affects not only dock and seaport workers and businesses directly involved in shipping, but also has widespread impact throughout the region and the nation, hitting each and every aspect of our economy. And what is too often forgotten is that the working man is hurt just as badly as the businessman, and is frequently hurt worse. As the Federal Maritime Commission has pointed out, "A peculiar aspect of the current west coast shut down is the fact that the economic hardship through loss of wages has been largely incurred by innocent workers in seafaring and other shipping related operations who stand to gain nothing from benefits conferred in a settlement with the I.L.W.U."

Mr. Chairman, two points need to be underlined. One is that the impact of the west coast strike is, as I have said, very widespread and reaches like a shockwave into every aspect of the economy. The second concerns Congress' inconsistency—or hyocrisy—in dealing with emergency labor disputes in the transportation industry. Let me illustrate what I am saying by relating the current emergency to two of the most serious and perplexing issues now facing the Congress and the Nation: unemployment and our trade deficit.

The last session of Congress saw tremendous efforts to ease unemployment. We approved emergency employment funds to create jobs in the public sector for the unemployed; we provided additional unemployment compensation benefits for those who cannot find work; we extended manpower programs under the Economic Opportunity Act; we gave tax breaks to business to generate new jobs; and we offered new job opportunities and subsidies for students so as to reflect the increasing difficulty of finding work. Much of this legislation, I might add, originated in this very Committee.

Last but not least we have screamed mightily over our high rate of unemployment and have assured our constituents that we are doing everything possible to remedy the situation.

But are we? Let's look at what our other hand is doing—or perhaps I should say, more appropriately, what it is *not* doing—on the unemployment front.

During the first 100 days of the west coast dock strike, 15,000 longshoremen were idled, incurring a daily loss of over half a million dollars in wages and fringe benefits, totalling over $50 million during the 100-day period. Additionally, about 2,000 U.S. seamen were left without work for an estimated loss of $150,000 a day in wages and fringe benefits, adding up to nearly $15 million for the duration.

At the same time, we were handing out $247 million in emergency employment funds to the State of California, Washington and Oregon. They were reporting 42,000 unemployed (in *addition* to the longshoremen and seamen) as a direct result of the dock tie-up. The wage losses of these innocent victims were estimated at $1.1 million a day, with the cumulative total at over $100 million.

Interestingly, Puget Sound and Southern California, two of the areas designed to benefit from emergency provisions we passed at the end of the last session to extend unemployment compensation benefits, were among the hardest hit by the dock stoppage.

Just as the last session of Congress exerted great energy in dealing with unemployment problems, we also spent a great deal of time and energy trying to solve, or help solve our balance of payments problems. As all Senators know, our balance of trade has been deteriorating steadily over recent years. One of the bright lights on our trade sheet has been agricultural exports, which reached a new high of $7.8 billion in Fiscal 1971. One out of every four harvested acres in this country is for export, supplying over one-sixth of the world's total agricultural exports.

And yet, Mr. Chairman, during the 100-day west coast dock strike this summer, producers were facing potential export losses estimated as high as $9.5 million a *day*. The lumber industry alone reported losing nearly a million dollars a day in exports. To this figure should be added the long term losses which will result from the irrevocable loss of foreign markets to alternative suppliers, a loss which is likely to be permanent.

Japan, our largest purchaser, bought $1.2 billion worth of U.S. agricultural products in Fiscal 1971, but because of the strike has now established other suppliers, primarily Canada and Australia. Whether our farmers can ever get these markets back again is a question we may be asking ourselves for a long time to come.

In terms of agricultural losses, two inconsistencies come to mind. At a time when we are spending $2.77 billion to subsidize farm production, how can we then deny our farmers access to their markets? During Fiscal 1971, we spent $880 million on wheat subsidies. Although 53% of all wheat produced in this country is for export, during the peak period July–September, port closure prevented all but about 2% of the harvested wheat from getting out to its markets abroad. How can we in Congress ignore this expensive folly?

In terms of our trade deficit, certainly a subject of the highest national concern, we have recently taken bold and unprecedented steps to reverse our deteriorating position, including floating the dollar and imposing a 10% import surcharge. Does it not seem highly irrational and irresponsible then to ignore the far-reaching implications of the west coast dock dispute for our balance of payments situation?

Mr. Chairman, the legislation which the President has requested and which I have introduced, S.J. Res. 187, would authorize the Secretary of Labor to appoint a three-member arbitration panel to arbitrate the west coast dispute to finality. It would also initiate a new no-strike prohibition.

As I made clear in introducing this Resolution, I am firmly and irrevocably committed to the free collective bargaining process, without interference from the government. The parties to the West Coast dispute have had the opportunity to bargain collectively without hindrance from the government for twelve months before the President invoked the emergency provisions of the Taft-Hartley Act, and for over three months since then, but tragically no settlement has resulted.

Mr. Chairman, no union or industrial baron, individually or collectively, should have the right to strangle an economy and inflict untold injury on thousands and thousands of innocent victims. At some point, the public interest must take precedence, and I think we have reached that point.

UKRAINIAN INDEPENDENCE DAY

Mr. PERCY. Mr. President, in commemoration of Ukrainian Independence Day this month, I invite attention to the plight of the people of the Ukraine. It is a time to remind Americans that the Ukrainian people, free and independent only from 1918 to 1920, still yearn for freedom and independence.

As we reflect on this, let us reaffirm our dedication to the goal of liberty and self-determination for all the oppressed peoples of Eastern Europe, no matter how remote that possibility may seem at this time. We who enjoy freedom in our own country must not forget those who have yet to secure their freedom.

CONTINUING PROGRESS IN DRUG ABUSE CONTROL

Mr. HRUSKA. Mr. President, last April I reported to the Senate on the highly effective enforcement efforts being made by the Nixon administration to stem the tide of drug abuse. These remarks may be found at page 9368 of the CONGRESSIONAL RECORD of April 1, 1971.

Today I would again like to address this subject, describing the additional activities which have been taking place during the interim. Although these comments will primarily be concerned with the efforts of the Justice and Treasury Departments, I do not mean to suggest that these are the only agencies participating in drug abuse prevention and control. On the contrary, with the passage of S. 2907 by the Senate shortly before adjournment, recognition was given to the fact that a greater overall coordination of the many programs in progress is necessary. The Special Action Office for Drug Abuse Prevention authorized by this bill will provide this needed coordination, and I am hopeful that the House will act swiftly to approve this legislation.

As I mentioned last April, however, it is law enforcement which must hold the line which our long-range programs have an opportunity to take hold.

In this regard, some preliminary comments are called for prior to getting into the actual facts. I believe everyone looking at the facts objectively will agree that, given the limited enforcement resources of the Federal Government, outstanding efforts are being made to cut down the availability of harmful illicit drugs. Nevertheless, we continue to hear sporadic criticism from certain factions I prefer to call the "not-enoughers." This epithet is suitable because many of these people adopt a recurring tactic when it comes to the accomplishments of the Nixon administration. The administration's efforts on behalf of veterans are a step in the right direction, but not enough. The President's troop withdrawals from Southeast Asia are good but are not fast enough. William Rehnquist has the intellect and legal ability to sit on the Supreme Court, but in the civil rights area he has not done enough. The administration's efforts to halt inflation and bolster the economy are a step in the right direction, but are not early enough nor are they strong enough. And so on.

Mr. President, the few who insist on repeating this same old refrain are not fooling the American people. But I find it particularly distressing to hear this approach being used on the subject of drug abuse control. In this area the not-enoughers are just about as wrong as they have ever been—and that is saying a good deal. My remarks last April plainly demonstrated the progress which was being made at that time. I will now proceed to describe some of the many noteworthy accomplishments which have been made since then, recognizing full well that we must have much more of the same if we are to keep up with the devious and innovative criminals who continue to profit from the misfortunes of others.

DOMESTIC EFFORTS

Last July an intensified heroin enforcement program aimed at prime and secondary distribution centers that supply our central, southern, and western communities was initiated by the Bureau of Narcotics and Dangerous Drugs. The eastern seaboard communities have historically been the receiving and distribution centers for heroin. The program has, therefore, been given the appropriate name Operation Seaboard.

In cooperation with a number of State and local enforcement agencies, this project was simultaneously initiated in several major cities throughout the eastern seaboard of the United States. The program is designed as a comprehensive domestic effort centered at the east coast cities, coupled with cooperative foreign-country programs to reduce the availability of heroin in this country.

To date, this concentrated effort has resulted in the initiation of 573 criminal cases involving heroin, as well as cocaine, in which 1,081 defendants have been implicated with 752 of these already arrested. These 573 cases have so far resulted in the removal from the illicit drug market of over 315 pounds of heroin and 115 pounds of cocaine.

Operation Seaboard has made a fine start since its inception, and holds out much promise for future control of illicit traffic on the east coast. This operation is just a part of the whole domestic picture of additional aspects of which I will now discuss.

As significant as the statistics on drug seizures were for 1970 as compared to previous years, far greater progress has been made in 1971. For example, the two largest heroin seizures ever made by U.S. authorities took place last year. On June 3, 1971 Bureau of Narcotics and Dangerous Drugs special agents worked in cooperation with Spanish national police to seize 249 pounds of heroin in Valencia, Spain—a record seizure of illicit drugs worth over $50 million in street value. During the preceding month 246 pounds of heroin had been seized in San Juan, Puerto Rico—at that time the second largest amount so obtained. However just this month, on January 5, BNDD agents seized an initial 238 pounds of heroin with this latest effort. Following these arrests an additional 147 pounds were collected, making a total of 385 pounds of heroin and a new record for the new year.

Heroin is not the only substance confiscated in raids and arrests. On December 1, 1971 Federal agents arrested three persons and seized some two tons of marihuana in New York City. Worth approximately $1 million on the illegal market, the marihuana had been smuggled in from Jamaica and filled 60 barrels in the warehouse where it was seized. And several days later, on December 8, a record 810 pounds of amphetamine powder were seized in Tijuana, Mexico by Bureau of Narcotics and Dangerous Drugs agents and local police. Also confiscated were 500,000 finished amphetamine tablets which, together with the 37 million tablets which could have been made from the powder, would have brought some $15 million in the illicit U.S. market. Eight persons were also arrested in the amphetamine raid.

The Bureau of Customs has also been very active in seizing illicit drugs. Increases in manpower and improvement in techniques have resulted in dramatic increases in seizures over the past year. As an example, the hard drugs confiscated last year exceeded the amount seized in the preceding 7-year period. The heroin alone would have produced almost 96 million doses selling for $574 million on the street. When added to the seizures by the Bureau of Narcotics and Dangerous Drugs, only a few of which I have mentioned, it is difficult to imagine that the suppliers of these dangerous substances have not suffered substantial financial setbacks. Not to be overlooked are the arrests and convictions which have taken place, with some of these involving key personnel in illicit drug distribution systems.

Mr. President, I ask unanimous consent that comparison charts showing drug seizures for 1970 and 1971 by the Bureau of Customs and the Bureau of Narcotics and Dangerous Drugs be printed in the RECORD at the conclusion of my remarks.

The many other steps which have been taken, without fanfare, by Federal enforcement agencies on the domestic front are too numerous for me to catalog here. Many of these have resulted in the arrests and seizures I have already mentioned, while others have contributed to the general improvement in law enforcement which must continue if we are to keep pace with drug traffickers throughout the country.

The Customs Bureau has established a pattern of Customs-to-Customs cooperation not only with our neighbors in Mexico and Canada, but with countries in Europe and Southeast Asia. The aid to antismuggling activities has been pronounced. In addition, new funds provided by the Congress last June are being used to procure major equipment additions, primarily aircraft and boats, for increased detection and interception of illegal drug trafficking.

In the Bureau of Narcotics and Dangerous Drugs a new Office for Strategic Intelligence has been created, to develop information on the political and economic aspects of illegal drug production and traffic. Training of State and local law enforcement officers in drug control has continued at an intensive pace. Increased cooperation between Federal agents and their local counterparts has resulted in a doubling of cooperative arrests during 1971.

Under the authority of the Comprehensive Drug Abuse Prevention and Control Act of 1970 the Bureau of Narcotics and Dangerous Drugs has placed quotas on amphetamine production by American producers for 1972 which will decrease the amount manufactured by 40 percent below last year. The amount permitted will be 70 percent less than the figure which the manufacturers wanted to produce in 1972.

These notable efforts on the domestic scene are being supplemented by international programs which are geared to stopping illicit drugs at their source or in transit. A number of these efforts deserve both comment and praise for the solid progress which is resulting from their implementation.

INTERNATIONAL PROGRAMS

It has become increasingly clear that, until recently, we have failed to recognize drug abuse as an international problem requiring a worldwide response. The elevation of this problem to the foreign policy level has been one of the administration's chief accomplishments in the war against drug abuse. In furtherance of these global goals the President created a Cabinet Committee for International Narcotics Control last September, which now coordinates all U.S. efforts to interdict the flow of narcotics into America.

International diplomatic efforts have resulted in a pledge by the Turkish Government to eliminate all opium cultivation at the end of the 1972 crop year, and a ban has been issued forbidding the growing of opium poppies in Turkey after June 30, 1972. The Government of Laos has taken similar action, passing a law banning the manufacture, trading, and transportation of opium and its derivatives including heroin. Tough new anti-narcotics laws are also under consideration by the Legislature of the Republic of Vietnam. And last September the

United States and Thailand signed a memorandum of understanding pledging a mutual effort to control and eliminate the flow of narcotics from and through Thailand.

Part and parcel of the increased international awareness of this problem is the tendency toward formalizing attitudes in terms of treaties and agreements. The United Nations Commission on Narcotic Drugs has therefore been pushed by the United States, with the help of other countries, to consider and approve amendments to the single convention on narcotics drugs which will strengthen international supervision. Better control over the production and distribution of opium is the aim which, hopefully, will be realized this March during the plenipotentiary conference scheduled to take up the amendments at that time. And in the Senate, the Convention on Psychotropic Substances which was negotiated last summer is now awaiting the advice and consent of this body. The convention seeks to bring under international control the dangerous nonnarcotic drugs including amphetamines, barbiturates, and hallucinogens.

International enforcement efforts received a boost last August when Director John Ingersoll, of the Bureau of Narcotics and Dangerous Drugs, announced the formation of a new Office for International Affairs in the Bureau. The program manager of this Office, Mr. George Belk, is responsible for recommending international enforcement policy to Director Ingersoll and for preparing country programs for submission to the Cabinet Committee for International Narcotics Control.

International cooperation in this area has increased tremendously. This is not just talk. Results can be seen around the world, such as in locations like Hong Kong where in December it was announced that more than 10 times as many dangerous drugs were seized in 1971 than in 1970. Cooperative arrests by American and foreign agents increased by more than a third in fiscal 1971 over 1970.

Crosstraining of foreign and U.S. agents has been active and productive. A 2-week seminar was recently held in Washington and attended by top ranking police officials from 13 foreign countries. All aspects of the international drug traffic were discussed. Shortly thereafter AID sponsored a 1-week meeting of public safety officers from 26 countries, also in Washington, at which extensive briefings and discussions on this problem took place.

The Bureau of Narcotics and Dangerous Drugs has been taking the education program overseas, and will continue to do so this year. Schools for law enforcement organization in Europe, the Middle East, the Far East, and the Caribbean are already scheduled. Both Director Ingersoll of the Bureau of Narcotics and Dangerous Drugs and Commissioner Miles Ambrose of the Bureau of Customs have continually met with foreign government officials to urge greater cooperation and to exchange information on the drug abuse situation.

There is every indication that Operation Cooperation, our joint drug control program with Mexico, continues to be a success. Last August the Deputy Attorney General of Mexico announced that 10,356 fields of opium poppy had been destroyed; 700 pounds of seed had been captured; 176 pounds of crude opium; 116 pounds of heroin, and 319 pounds of cocaine had been seized; and 2,468 fields of marihuana burned. A good deal of this was of course accomplished with the assistance of U.S. experts.

THE ROLE OF CONGRESS

In the 92d Congress legislative assistance continues to be forthcoming in support of the all-out efforts against drug abuse. Appropriations in support of the Customs Bureau and Bureau of Narcotics and Dangerous Drugs have been extensive and responsive to the budgets requested by President Nixon for these agencies. Increases in funds for these agencies, and for others involved in the drug abuse control effort, have contributed to the accomplishments I have just described. In the Senate, S. 2097 has been passed. As I have mentioned, this bill will provide for greater domestic coordination by establishing the Special Action Office for Drug Abuse Prevention. Also in the Senate agreement has been reached on the conference version of S. 2819, the Foreign Military Assistance Act of 1971, which contains a separate chapter on international narcotics control. Chapter 8, Section 481 International Drug Control. The Senate showed wisdom in accepting this chapter, which the administration supports. It gives the President authority to conclude agreements with and assist foreign countries in controlling the international drug traffic, and requires him to cut off assistance to those countries which he determines are not taking adequate steps to control drug traffic within their jurisdictions.

CONCLUSION

As I did last April, I have attempted to highlight some of the progress in reducing the supply of illicit and dangerous drugs in America. There is a good deal more that could be said about the dedication and energy which are being expended by many fine people, often at considerable risk to themselves, in order to resolve this problem. But, as I said at the outset, we need to continue and improve still further upon these efforts to hold the line.

We are fighting a huge problem. The Attorney General recently observed in Scottsdale, Ariz., that retail sales of heroin alone reach about $3 billion each year. He stated that if heroin marketing were handled by a single retailing company it would be the sixth largest in sales in the United States. This fact speaks for itself.

On the whole, however, there is cause for hope rather than despair. The Federal Government is taking strong and positive steps against drug abuse which are having their effect. For this all Americans should be proud and thankful.

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

TOTAL WORLDWIDE AND DOMESTIC SEIZURES BY BUREAU OF NARCOTICS AND DANGEROUS DRUGS

	January–December 1970	Janaury–December 1971	Increase (percent)
Heroin equivalent of opium (pounds) [1]	136	144	6
Morphine base (pounds) [1]	811	?, 777	242
Heroin (pounds) [1]	646	1, 369	112
Cocaine (pounds)	429	782	82
Marihuana (pounds)	35, 514	106, 490	200
Hashish (pounds)	3, 445	15, 288	344
Dangerous drugs (d.u.)	3, 476, 858	206, 973, 116	5, 853
BNDD domestic arrests	1, 771	3, 512	98
BNDD State/local cooperative arrests	1, 531	2, 612	71
BNDD foreign cooperative arrests	188	394	110

[1] Represents heroin or heroin equivalent of 4,290 lbs.

Note: Total street value of all drugs in excess of $900,000,000.

TREASURY DEPARTMENT: BUREAU OF CUSTOMS NARCOTIC AND DRUG SEIZURES 1ST 9 MONTHS OF CALENDAR YEAR 1971

	1970	1971	Percentage change
NUMBER OF SEIZURES			
Heroin	192	400	108. 33
Opium	63	96	52. 38
Cocaine	93	159	70. 97
Other narcotics	222	199	−10. 36
Marihuana	4, 761	4, 623	−2. 90
Hashish	851	1, 205	41. 60
Dangerous drugs	1, 074	1, 142	6. 33
Total	7, 256	7, 824	7. 83
QUANTITY IN POUNDS			
Heroin	25. 65	1, 050. 97	3, 997. 35
Opium	22. 39	42. 57	90. 13
Cocaine	137. 18	102. 56	−25. 24
Other narcotics	15. 86	76. 04	379. 45
Marihuana	110, 191. 50	143, 827. 74	30. 53
Hashish	3, 330. 20	4, 569. 68	37. 22
Dangerous drugs (5-grain units)	8, 449, 214	3, 569, 315	−57. 76

THE HONORABLE ALF M. LANDON

Mr. DOLE. Mr. President, the State of Kansas is immensely proud of Alf M. Landon, its former Governor, past Republican presidential nominee and current leading citizen. For many years, he has been an involved and active participant in our State's and Nation's affairs and a wise observer of people and events. The Kansans have come to look forward to hearing from and about him from time to time as he continues to build upon his long-established reputation as a refreshing and candid commentator and an accurate forecaster of coming trends and happenings.

Thus, it was with special pleasure and fair measure of pride that I noted a front-page article on Alf Landon in the December 30, 1971, edition of the Wall Street Journal. The article by staff reporter Eric Morgenthaler captures the wisdom, wit, and character of Governor Landon, and I believe that his many friends in the Congress would find it of great interest. I ask unanimous consent that this article be printed into the RECORD.

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

AT 84, ALF LANDON IS UP EARLY, TO BED LATE AND BUSY IN BETWEEN—HE JOGS, FEEDS HIS FIVE PONIES, WRITES, COUNSELS, AND PROVES RIGHT ON DEVALUATION, CHINA

(By Eric Morgenthaler)

TOPEKA, KANS.—The U.S. devalues the dollar. Mainland China is admitted to the United Nations. Congress begins moving toward reforms of campaign financing.

The times are finally in tune with Alf M. Landon.

Now a peppy 84, Mr. Landon is the former Kansas governor who suffered one of the worst defeats ever for a major party presidential candidate. In 1936, against incumbent Franklin Delano Roosevelt, Republican presidential hopeful Landon received 36.5% of the popular vote but carried only two states, Maine and Vermont, with a combined total of eight electoral votes.

But some of today's headlines read like the platform planks of Mr. Landon in that long-ago race. "I warned in 1936," he says with an "I-told-you-so" smile, "that unchecked inflation would inevitably lead to devaluation of the dollar—and only Maine and Vermont believed me."

OLD HAT TO MR. LANDON

Some other Nixon surprises, such as the so-called China policy, are old hat to Mr. Landon. "Since 1946 when the UN charter was being written, I said it wouldn't work without a nation the size of China," says Mr. Landon. But he adds: "I didn't say it would work with China in, and I still don't."

The current furor in Congress over financing of political campaigns also is squarely on target with an issue Mr. Landon has been pressing for decades. "For many years," he says, "I've been a voice crying in the wilderness that we're in danger of becoming a democracy governed by a plutocracy because of campaigns being so expensive."

Although Kansas turned against him, too, in that 1936 debacle—he attributes his defeat to Roosevelt's economic reforms—Mr. Landon is hardly a prophet without honor in his home state. Rejecting suggestions that he run for the Senate after the 1936 race, he chose instead to return to Topeka and assume the roles of political commentator, counselor and grand old man for Kansas politics.

And today, as he approaches the midpoint of his ninth decade, the sprightly ex-governor is still doing just that—counseling politicians, corresponding with an improbable mixture of friends that ranges from President Nixon to Arthur Schlesinger Jr., and alertly holding forth on the affairs of the day from his 30-acre estate on the outskirts of the Kansas capital. In addition, he maintains a daily regimen that might tax a man 50 years his junior.

Mr. Landon rises around five each morning and—as he has done for the past 20 years—jogs the two blocks to the foot of his winding gravel driveway, where he picks up the morning paper. Thus begun, his day might not end until the early hours of the next morning (a recent visit by a reporter began at nine in the morning and ended after one the next with the lively ex-governor spinning fireside tales of the political past.)

By six, he typically has fed his five aging Shetland ponies a soft grain mixture ("Their teeth are getting bad," he explains). Then he saddles a horse for a morning ride across the grounds of the Kansas governor's mansion (the present occupant is a Democrat) and up the banks of the Kaw River.

Around 11, the white-haired but erect Mr. Landon arrives at his office in a neat, green frame house near downtown Topeka. (The office walls are adorned with framed political cartoons and photographs, including two of Herbert Hoover, and on the mantle is a ceramic elephant with the Constitution wrapped in its trunk; on the base is inscribed: "Life begins in '40.") Mr. Landon looks over reports from the radio stations he owns and from his oil properties; he no longer drills oil wells that aren't close enough to Topeka for him to visit during the day, and he generally applies the same rule to speaking engagements.

At noon on a typical day, Mr. Landon goes to the Topeka Club, atop a bank overlooking the state capital building, for lunch. Sitting next to a potted plastic fern, he eats lightly, sips black coffee and holds court with local businessmen and politicians. One visitor is a GOP gubernatorial candidate who stops for a half-hour strategy discussion. Another is Oscar Stauffer, the 85-year-old Kansas newspaper publisher who managed Mr. Landon's preconvention campaign in 1936. The two swap stories about current and not-so-current events.

Mr. Landon leaves no doubt that he's a keen observer and that he has some specific ideas about what's right and wrong with the country. Back in the paneled library of his colonial white-brick mansion, he explains some of those ideas. He seriously doubts, for example, that today there could be a successful grassroots presidential candidate, the label applied to him by many in 1936. "McCarthy (in 1968) had probably the closest thing to a grassroots campaign since my own in 1936," Mr. Landon reflects, drawing rhythmically on a briar pipe. "But the campaigns have speeded up immensely since 1936," he adds, "with trains, planes, radio, television all increasing the cost of campaigning."

Noting that his supporters spent only about $200,000 on his preconvention campaign, Mr. Landon says he never accepted more than $2,500 from any one individual. He says he advocates legislation to limit political campaign costs, and he suggests this be done through federal establishment of low rates for political advertising on television and radio, to be enforced by the Federal Communications Commission.

Mr. Landon is intrigued by the 1972 presidential election and notes he "can't recall a presidential campaign that had as many angles to it as this next one does," ticking off such imponderables as the success of the Nixon economic policies, the wide field of Democratic candidates, the possibility of a Kennedy candidacy and the youth vote. However, he feels that recent endorsements of Maine's Sen. Edmund Muskie—particularly his endorsement by California Sen. John Tunney, a close friend of Sen. Edward Kennedy—"pretty well set Muskie up" for the Democratic nomination.

PREFERENCE IS CLEAR

Although he won't predict the outcome of the election, it's clear who his candidate is. He says flatly: "It's fortunate for all mankind that we have a President like Nixon—for his vision, and even more important, for his politically realistic appraisal of how to go about accomplishing his purposes."

Such an assessment is a turnaround for Mr. Landon, who never supported Richard Nixon for the GOP nomination because he felt Mr. Nixon lacked "the capacity to be a good President." Now the ex-governor admits: "I was wrong—completely. Nixon is making a great President. He already has made his mark on history."

Mr. Landon praises the Nixon China policy, calls Mr. Nixon's economic moves "as important a domestic development as has ever taken place in our entire history" and says of the so-called "Southern strategy": "If Nixon succeeds in making the Republican Party a majority party in the South, for the first time we will have two major national parties instead of regional ones. And I think that will be one of the major plus-marks historians will give Nixon."

An early supporter of the European Common Market, Mr. Landon says he believes that peace in the world can be found through economics. "It's the marketplace where you understand each other—where you find who you can trust—and that's the basis of peace," he says.

NEW LEADERS, NEW GOALS

He thinks it significant that a "new generation of leadership" is emerging in the world. These new leaders, he says, aren't tied to the mistakes of their predecessors. "They'll have to get acquainted with each other and can set new policies and new goals."

But even as he projects his views of the future, Mr. Landon is fond of recalling the past. He impulsively flips open a volume of his collected speeches and turns to one he made at Washington's Gridiron Club banquet in December 1936. He calls in his wife, the attractive, soft-spoken Theo Cobb Landon, to listen as he reads it aloud.

Early in the address, he jokingly suggests that the running of government be turned over to the Gridiron Club, whose members are Washington journalists. "What a cockeyed administration that would be," goes the speech, "and I wonder if our critics would be quite so free and easy with their typewriter if they had the responsibility." A bit later in the speech, he reads: "Just as competition is the lifeblood of business, so intelligent and constructive opposition is the heartbeat of democracy."

Looking up from that long-ago address, Mr. Landon muses: "This could have been written yesterday; I'd forgotten how good it is."

TAX REFORM NEEDED

Mr. ALLEN. Mr. President, many people of our Nation are acutely aware of the need for tax reforms. Yet, tax reform means many things to many different people. I think that it is helpful to examine the views of as many people as possible.

Along this line, the views expressed in a letter to the editor of the Birmingham News of Friday, October 29, 1971, by a constituent from Cottondale, Ala., are worthy of thoughtful consideration. I ask unanimous consent that the letter from Mr. Bart Fulton be printed in the RECORD.

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

INCOME TAX REFORM

In the words of one tramp to another, "If you're so smart, palso, why ain't you rich?" Fair question! Neither smart nor rich, and born to the old school that still holds that two and two add up to four, and that a straight line marks the shortest distance between two points, I've some ideas—voice of the layman—concerning a problem that is well on the way to reaching a point of no return in the body politic: About a great American tangle of tears and frustration known as the income tax. A levy on your and my earnings so complex, so slanted in favor of this group or that, and so autocratically administered, that the best of your Philadelphia lawyers are sometimes stymied in their effort to protect rich clients against the imposition.

Unfortunately for the run of us, too many tax-accountant legallights have found ways of dodging payment of the income tax—at a cost to the federal government of more than 50 billion untaxed dollars a year. Fifty billion dollars that millionaire Americans, foundations, churches, colleges, earn annually on which they pay no taxes, leaving it to middle-class Americans in the $7000 to $20,000 earnings bracket to pay—for them.

Today, as never before, we are come face to face with the inexorable truth that the power

to tax is the power to rule, to destroy. Tens of millions of middle-class Americans, those of us who pay more than half of all income taxes collected annually, are now the unwilling victims of income tax laws that are slowly but surely wreaking our destruction as free men. Gradually, the rich wax richer, the poor—or comparatively so—work and sweat and pay, a condition accounting for a state of near-tax-revolt now sweeping the country.

Any remedies? Yes! (With one big if: If tax writing congressmen can develop tin ears to the pleas of special interests, to tax-dodging foundations, to religious groups, fraternal orders or what-have-you, and think only, for once, in terms of the greatest good for the greatest number of constituents.)

Here are some thoughts of a layman on how to correct the income tax tangle and burden:

First off, present income tax laws in their entirety, no exceptions, would be nullified. Next, we'd start writing a new and simple measure, in which there'd be no exemptions, save the costs attendant to earning a dollar. There'd be no loopholes for the well-heeled, the powerful, to jump through. No chance for cheating, lying, parasiting, evading:

Every man, every business, would be taxed on dollars received, after costs, on the following scale:

On earnings up to $10,000, no tax.

On earnings of 10 to 25 thousand, 10 per cent tax.

On earnings of 25 to 50 thousand, 15 per cent.

On earnings of 50 to 100 thousand, 25 per cent.

On earnings of 100,000 or more, 35 per cent.

On corporation earnings, ten per cent tax, thus avoiding the current penalty of double taxation for the stockholder who in fact owns the corporation and is taxed on dividends received.

Some explanations:

In placing a tax of but 35 per cent on earnings of $100,000 or more we would bring into being a new and numerous army of persons eager to succeed in business, willing to take capital risks. New plants, new enterprises, would follow—and resultantly, the creation of millions of additional jobs.

In lowering corporation taxes from 52 per cent to ten per cent, and at the same time doing away with subsidies and tax incentives, we could expect great expansion of capital in the interest of more jobs—of more tax-paying workers.

But, the greatest good of all in a new and fair and simplified income tax structure would be a return of personal honesty in the country, a lessening of the need to cheat, of a temptation to ride free at the expense of the other fellow. Not to mention the great good feeling all of us would get in seeing returned to the plow countless thousands of briefcase toting I.R.S. bureaucrats who delight in staying in our taxpaying hair.

BART FULTON.

CONSUMER PROTECTION

Mr. BEALL. Mr. President, much has been said and written concerning the issue of consumer protection. I receive countless communications from concerned citizens protesting deceptive advertising, but few have the impact of a group of letters I recently received. These letters were from students at Highland School in Silver Spring, Md. These students, under the direction of their teacher, Mrs. Helen Cotton, have much to say in their own way, about the problems in consumer affairs and I thought that my colleagues might enjoy reading these letters and contemplating the thoughts expressed in them.

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

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

HIGHLAND SCHOOL,
Silver Spring, Md., January 5, 1972.

Senator BEALL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BEALL: I am forwarding these letters to you knowing you will understand that I couldn't dampen the children's enthusiasm for this project by asking for further rewrites.

Thank you for your cooperation.

Sincerely yours,

Mrs. HELEN COLTON.

HIGHLAND SCHOOL,
Wheaton, Md., January 5, 1972.

Senator BEALL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BEALL: I saw an ad about the Slinky toy. I bought it and it did not go down the stairs. It did not do the tricks they said it would. It also gets all tangled after the first or fourth time.

I would like you to try to take this commercial off television, because kids always think it is good and believe what they say about it.

Yours truly,

KAREN STEARMAN.

HIGHLAND SCHOOL,
Silver Spring, Md., January 5, 1972.

Senator BEALL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BEALL: I am writing about truth in advertising.

A while back I was watching television.

I saw a commercial about a toothpaste called Close-Up. It's supposed to get your teeth their whitest and shiniest. Well, my teeth were the usual.

I would like you to pass some laws about truth in advertising.

Sincerely,

MIKE ROBERTSON.

HIGHLAND ELEMENTARY,
Silver Spring, Md., January 5, 1972.

Senator BEALL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BEALL: I am writing about the shampoo Protein 21. On television it says it helps get rid of the frizzies and split ends. My sisters and I tried it and it only made them worse.

Please try and help get this commercial off the air.

Sincerely,

PEGGY PHARES.

HIGHLAND SCHOOL,
Wheaton, Md., January 5, 1972.

Senator BEALL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BEALL: I saw a product advertised on television called Glo-Coat where a little boy came running in and slid and didn't scuff the floor.

So my mother got Glo-Coat and waxed the floor. Then the boy (me) came sliding in and scuffed the floor.

Glo-Coat is not any better than other waxes. Would you please ask the advertisers to please put truth in advertising.

Sincerely,

DAVID WEAVER.

HIGHLAND SCHOOL,
Wheaton, Md., January 5, 1972.

Senator BEALL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BEALL: I saw the ad about Pearl Drops toothpaste and thought that it would help my teeth. So I went and tried it. It made my teeth white, but it took the enamel off my teeth. My dentist said don't use it.

Can you do something about taking this commercial off the air because it is bad for your teeth?

Sincerely,

BRUCE KUYATT.

HIGHLAND SCHOOL,
Silver Spring, Md., January 5, 1972.

Senator BEALL,
Senate Office Building,
Washington, D. C.

DEAR SENATOR: I saw the Rumbler Commercial on T.V. so I got it. The wheels were bent. Would you put truth in the commercials?

Sincerely,

MARSH WHITLOW.

HIGHLAND SCHOOL,
Wheaton, Md., January 5, 1972.

SENATOR BEALL,
Senate Office Building,
Washington, D. C.

DEAR SENATOR: I saw an ad on television about Class A Racing cars and I got it and it does not work like they tell us it would. I am asking you to tell them to tell the truth on television.

Sincerely,

ROBERT LUDINGTON.

HIGHLAND SCHOOL,
Wheaton, Md., January 5, 1972.

SENATOR BEALL,
Senate Office Building,
Washington, D. C.

DEAR SENATOR BEALL: I am writing this letter because I want you to try and help us about commercials. We were discussing in school about commercials and someone was thinking about the things that men put on television. We decided sometimes they don't put the truth on television.

So I was hoping you will pass some law so they will tell the truth about the commercials. One of them is about Protein 21. They say it works beautifully so my family tried it and it didn't work. That is what I mean about the commercials.

Yours truly,

LETRICIA.

Wheaton, Md., January 5, 1972.

SENATOR BEALL,
Senate Office Building,
Washington, D. C.

DEAR SENATOR BEALL: I am writing about advertising. I don't like the way advertising companies put false advertisements on television. For Diet Pepsi they say that once you drink it you can't stop drinking it. But when I drank some I was able to stop.

Sincerely,

STEVEN DOVE.

HIGHLAND SCHOOL,
Wheaton, Md., January 5, 1972.

Senator BEALL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: For a long time I have seen this commercial about Baby Tender Love. They say her skin is so soft and water wouldn't ruin her. So I was thinking about getting my niece one for Christmas. I went to the store and bought one for her.

Christmas morning she opened it. A little while later she had to take a bath. She took the doll in the water and then the doll was ruined. Her hair was real stiff.

We had to buy her something else.

I think you should put more truth into commercials. Small children see toys on television and start asking for them. Then the parents buy these toys and things for their children and then they fall apart.

I do hope you could do something about truth in advertising.

Thank you.

Sincerely,

WANDA BLAIR.

HIGHLAND SCHOOL,
Wheaton, Md., January 5, 1972.

Senator BEALL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BEALL: I think that the commercial about Tide is not true that people prefer Tide more than any other detergent.

I think that Tide is just as good as any other detergent. My mother uses Bold then she uses Tide in the thought it was just as good as Tide.

Yours truly,

JEAN TIGERT.

HIGHLAND ELEMENTARY,
Silver Spring, Md., January 5, 1972.

Senator BEALL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Hi! How are you? There is one thing I would like to ask.

Do you know that commercial on Class A Racing Cars? I got one for Christmas and it did not work. I could not take it back.

Yours truly,

JAMES ROBERTS.

THE UNITED NATIONS BUDGET

Mr. PERCY. Mr. President, on December 22, 1971, Congressman EDWARD J. DERWINSKI, of Illinois, in his role as a U.S. Representative to the United Nations, spoke at the U.N. for the U.S. delegation on the subject of the U.N. budget estimate. His explanation of the U.S. position was especially direct and pertinent, and deserves the attention of all Members of Congress. I ask unanimous consent that the text of Congressman DERWINSKI's statement be printed in the RECORD.

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

STATEMENT BY CONGRESSMAN EDWARD J. DERWINSKI

I wish to explain the vote which the United States Delegation will cast on the United Nations budget estimates for 1972.

First, I wish to comment on a matter related to the budget about which many delegates have addressed questions to the United States Delegation. This is the announced intention of the United States to seek a reduction at the earliest possible opportunity of its assessed contribution percentage from its present level to 25 per cent.

A Presidential Commission headed by Ambassador Henry Cabot Lodge reported last April that, as new Member States are admitted to the United Nations, their assessed contributions to the regular budget would call for a redistribution of the financial burdens reflected in the scale of assessments. It recommended that the United States, while maintaining its overall commitment of resources to the United Nations system, should seek over a period of years to reduce its current assessment percentage so that eventually its share would not exceed 25 per cent. We have decided that the recommendation of the Lodge Commission is an appropriate goal for the United States to pursue as rapidly as possible, and hopefully in connection with the admission of new Members.

Mr. President, we believe that a reduction of the United States assessment percentage to 25 per cent would be beneficial to the United Nations because the Organization ought not to be overly dependent on the contribution of a single Member. We do not believe it is politically advisable for an organization of sovereign and juridically equal States, which is approaching universality of membership, to perpetuate the existing extreme disparity between voting power on the one hand and financial contributions on the other.

Let me turn now to the budget estimates. The proposed expenditure level for 1972 of about $213.3 million represents an increase of about $21 million over the original appropriation level for 1971. We note, however, that the magnitude of the increase (about 11 per cent) is not as great as it was last year (about 14.3 per cent). We believe that this cutback in the rate of increase reflects an effort by the Secretary General, and particularly by the Controller and his staff, to limit budgetary requests for 1972 to what they consider essential for high-priority activities. Our delegation cannot say that we are satisfied with the success of the effort made, but it was a move in the right direction.

Mr. President, we feel that, in voting on United Nations budgets, governments tend to give too much weight to the dollar level of these budgets and to ignore other important aspects of the problem. The budget level is less important than what the budget discloses about the manner in which this Organization is administered and managed.

For example, Section 3 of the budget, which deals with salaries and wages, discloses several important facts. First of all, it provides not only for a sizeable increase in established posts but also for very significant increases in the use of temporary assistance consultants, and experts. It may well be that the Organization should have greater recourse today, than in the past, to temporary assistance, consultants, and experts than to established posts. However, we cannot accept such a substantial increase in all of these elements at the same time, particularly when the United Nations is experiencing a financial crisis. In the Fifth Committee the United States Delegation proposed a substantial decrease of about $900,000 in funds provided for temporary assistance, consultants, and experts. We regret that this was not accepted by the Committee.

Section 3, with its provisions for increased manpower for the Secretariat in 1972, also focuses attention on several other points. There is the question of whether all of the many programs initiated by the United Nations years ago are today of sufficient importance to warrant the continued utilization of the Organization's resources. We believe the Secretary General should review each and every on-going program and, where appropriate, suggest to governments which activities no longer retain high-priority status in relation to new and more important ones.

There is also the question of the productivity and effectiveness of the present staff. We all know that a substantial portion of the United Nations staff members are highly qualified. However, it is unfortunately true that a number of individuals employed by the United Nations do not have the requisite ability of training to perform at a very high level, and this leads to the recruitment of extra staff to get the job done. A number of governments which have been critical of the size of the Secretariat would perform a greater service if they made certain that the candidates they propose for Secretariat service were fully qualified. It is of critical importance that the United Nations obtain from all Member States the services of only highly competent individuals who serve the interests of the United Nations and are not improperly influenced by their own or other governments.

Section 7 of the budget represents an area in which there is room for improvement. At the present time the United States is engaged or about to be engaged in the construction of new buildings in Geneva, Santiago, Addis Ababa, and Bangkok. As a result of building simultaneously in a number of locations, there has been a substantial increase in Section 7, which has had an abnormal impact on the budget. We find it particularly difficult to accept a building program of this magnitude when the Organization is virtually bankrupt.

Part VI of the budget is a cause of serious concern, and here the responsibility must fall squarely upon governments. This year an amount of $1.8 million was added arbitrarily to Part VI. We continue to oppose strongly such increases in Part VI, particularly because of the difficulties which have arisen in connection with the financing of that Part and the need to avoid such difficulties if further erosion of the Organization's financial stability is to be avoided. We believe a solution might be to remove Part VI from the budget and redistribute its components elsewhere, both within and without the budget.

Mr. President, we hope that other delegations realize how seriously we view the increase in Part VI of the budget for 1972. As we have stated for many years, we believe that the UN Technical Assistance Programs should be financed by voluntary contributions. I am sure that the General Assembly will realize that the United States cannot accept indefinitely a situation in which it pays increased dollar contributions while the Soviet Union and a few other States continue to derive a one-sided advantage by offering payments in nonconvertible currencies.

My final comments concerning the budget itself relate to the substantial provisions contained therein for meetings and documentation. We believe that too many meetings are scheduled at times of the year when the meeting program is already overloaded rather than in the slack periods. The attempt appears to be to ensure the convenience of delegates rather than economy. We also find that a number of committees are wandering about the world holding meetings here and there and spending substantial sums of money with very little to show for their efforts. Discipline must be developed in this regard.

For many years governments have wept bitterly about the unmanageable amount of documentation which is produced each year, but they have done almost nothing to limit or control it. Last year the United States Delegation proposed an overall budgetary decrease of $1 million in documentation in an attempt to force some reduction in volume, but that proposal was rejected. We are pleased that this year the Fifth Committee decided to make an overall reduction in the budget of $1.25 million to reflect a reduction which it called for in the volume of documentation.

My remarks demonstrate, Mr. President, why we have serious reservations both about the level and about the content of the 1972 budget estimates. We are very concerned about the budget because of its relationship to the financial deficit facing the Organization and the attitude which it reflects with respect to that deficit.

A review of the United Nations balance sheet reveals that at the end of last month assessed contributions outstanding amounted to about $220 million. For the regular budget alone, unpaid assessments were in excess of $87 million. The Controller has informed the Fifth Committee that by the end of this year about $65.2 million in unpaid budget assessments will remain on the books with no assurance that more than $13.4 million will eventually be paid. He has stated that by December 31, 1972, it is estimated that arrears will have reached about $70 million with no more than $14 million likely to be collected. The magnitude of these amounts should dispel any lingering thoughts about the seriousness of United Nations' financial plight.

What are the causes of this untenable situation? One of the contributing causes is the failure of many governments to pay their annual assessments in the year in which they fall due. In my opinion, this cause should not be too difficult to remove, and all governments should make a serious effort to pay their contributions as early as possible.

The primary cause of the critical financial situation is the refusal of some governments to pay certain assessments which have been levied on them by the General Assembly. Several countries, principally members of the Soviet Bloc and France, have refused to pay assessments relating to peacekeeping operations levied against them for the Congo and UNEF operations. They have refused also to pay their share of certain other items included annually in the regular budget, such as the amortization of UN bonds. These longstanding nonpayments amount to more than $140 million, or about two-thirds of the total of unpaid assessments.

Obviously, if all of the sums owed were paid, the liquidity of the United Nations would be stabilized and the mounting deficit problem would be eliminated. The heart of the deficit problem, past and future, lies in its causes. My Delegation believes that ways must be found to deal effectively with these root causes.

Some Member States have already made sizeable voluntary contributions in an effort to maintain the solvency of the Organization. However, it has long been clear that, if we are to be successful in keeping the United Nations from bankruptcy, other Member States must pitch in and help. A particularly heavy responsibility falls upon those who have caused the deficit problem to arise.

Turning now to the relationship of the deficit to the 1972 budget level, it is, of course, true that a reduction in the budget level will not directly solve the deficit problem. However, we fail to understand how, when the Organization is faced with a situation in which it forecasts the impossibility of meeting its payroll next year, governments can take a business-as-usual attitude with respect to the 1972 budget estimates just as if no financial problem existed. We have found it frustrating to sit through this year's session of the Fifth Committee and listen to long debates on matters such as proposed budgetary increases for Public Information activities when absolutely nothing was being done to provide the Organization with the necessary cash to carry on its activities next year. It is true that Ambassador Hambro made a gallant effort to enlist the support of all Member States in an endeavor to find a complete solution to the deficit problem. However, although there were some meetings of the major contributors in an attempt to find a formula for solution, there was no indication until the last week or so on the part of most Member States that they intended to come to grips with the problem.

Late last week the UN Controller came before the Fifth Committee and spelled out once more the desperate nature of the financial situation. He proposed that, in an attempt to meet in 1972 the shortfall of $3.9 million expected to result from the withholdings of contributions by certain governments, (a) the Assembly should decide to credit to the Working Capital Fund the amount of $1.8 million available in surplus account for the financial year 1970, and (b) the Secretary General should make savings of $2.1 million in administering the appropriation for 1972. We considered this to be a first step by the Secretary General to deal with the matter, but in all honesty we viewed it as merely a gesture which could not possibly achieve its objective. Further, the proposal for the use of the 1970 surplus meant transferring to all Member States the burden resulting from the failure of a few governments to pay what they owe, and we were not surprised that it received no support in the Fifth Committee. In our view, unless and until this deficit problem is solved with the necessary cooperation by States which have not paid their assessments, the only proper method of dealing with the matter is to limit expenditures by the Organization to the level of contributions actually received.

Mr. President, we support your proposal based on the suggestion of Ambasador Hambro to establish a working group to meet during the coming year in an effort to find the solution to this problem. We will, of course, participate and cooperate fully in that effort.

Mr. President, for the foregoing reasons the United States Delegation cannot support the expenditure budget proposed for 1972 and will abstain in the vote on Parts A and C of Resolution XI dealing with the appropriation for 1972 and its financing.

OMB AND INDUSTRY ADVISORY COMMITTEE TO DISCUSS POLLUTION REPORTS WEDNESDAY—PUBLIC INVITED

Mr. METCALF. Mr. President, I would like to invite anyone concerned with environmental protection to a meeting next Wednesday, 10 a.m., in room 10104 of the New Executive Office Building.

I ask unanimous consent to include the notice of meeting, which provides details, at this point in the RECORD.

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

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., Jan. 14, 1972.

NOTICE OF MEETING

You are invited to participate in a meeting of a panel of the Business Advisory Council on Federal Reports to comment and give advice to the Office of Management and Budget on statistical, reporting and other technical aspects of an Environmental Protection Agency proposal for an "Air Pollutant Emissions Survey." The meeting will be at 10:00 A.M., Wednesday, February 2, 1972, in Room 10104, New Executive Office Building, on 17th Street between Pennsylvania Avenue and H Street, N.W., Washington, D.C.

THE VALUE-ADDED TAX

Mr. KENNEDY. Mr. President, in an address earlier this month in Massachusetts, I spoke in opposition to the value added tax. In light of continuing indications that the administration is contemplating such a new tax for the American economy, I ask unanimous consent that my remarks dealing with the issue be printed in the RECORD.

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

EXCERPT FROM ADDRESS TO JOINT SERVICE CLUBS OF PEABODY, BEVERLY AND SALEM

A major economic issue that deserves to be emphasized is the so-called value-added tax, or national sales tax.

I can see no reasonable justification for imposing such a tax on the American economy at this time. I share the Administration's concern to alleviate the crushing burden of state and local property taxes, but the substitution of a new national sales tax is not the way.

European parallels are hardly apt, because European nations have little of America's successful experience with the income tax, the fairest and most effective revenue raiser ever developed. In addition, current headlines from London tell us the serious administrative problems the British are having in adjusting to the value added tax as Britain prepares to enter the Common Market. Surely this is not the time to impose new and burdensome requirements on the manufacturers of Massachusetts or anywhere else in the nation.

We know that, typically, the value added tax is passed along to the consumer in the form of higher prices. The sales tax is now at 7% in New York City. It's 6% in Pennsylvania and other states. Can we seriously be considering a national sales tax of 3–5% on top of these state and local taxes?

What an unfair and incredible new burden such tax would be, especially on the poor. What an unwarranted new encroachment this would be on sources of state and local revenues.

In addition, there is a fundamental inconsistency in the suggestion of a value added tax at this time. Last August, the Administration finally admitted that inflation had become so serious that wage and price controls were needed. Surely, it would be inconsistent for the Administration now to introduce one of the most regressive and price-raising taxes in the world, a value added tax that would tell the housewives and workingmen of America that there is about to be a price increase of 3 or 4 or 5% across the board on every product they buy. I can think of no quicker way for the Administration to destroy the credibility of Phase II than by proposing such a tax.

One of the least persuasive arguments for the value added tax is the incentive it would supposedly confer on American exports. To be sure, rebates of value added taxes have been used by other nations to stimulate their exports, but the rebate technique was developed long after the value added tax had been established and long after the competitive position of the foreign goods under the tax had come to equilibrium. In these circumstances, a rebate of the value added tax was a clear incentive for exports, and I agree that such rebates have often been used to place American goods at an unfair disadvantage in world markets.

But it makes no sense to suggest that the debate method would improve the position of American exports in the foreseeable future, for the simple reason that the tax itself would raise the price of goods, and the rebate would merely put them back in the position they were in before.

In sum, the value added tax would be the wrong tax in the wrong country at the wrong time, and I urge the Administration to withdraw the frequent trial balloons it has floated in recent weeks in this effort to lull the American people into accepting an unwanted, unneeded, and unnecessary tax increase in 1972.

Once before, an Administration proposed this sort of tax. The year was 1932, and President Hoover had recommended a national sales tax. The regressive tax was beaten in the House and Senate, and I suspect that history will repeat itself if this ghost from the Hoover Administration walks again in 1972.

A KENTUCKY TAXPAYER DEMANDS INFORMATION ABOUT WELFARE

Mr. COOK. Mr. President, congressional efforts need to be directed toward a better approach to public relief. Such action for welfare reform demands basic facts about the present welfare system and its recipients.

This search for sound welfare policies and the effort to promote wider public

understanding of welfare issues has gained the attention of several concerned organizations throughout the country. One such organization is the Kentucky League of Women Voters, which has compiled a pamphlet entitled, "A Kentucky Taxpayer Demands Information About Welfare." Although it is primarily directed toward the Kentucky taxpayer, this pamphlet contains information about welfare of which all taxpayers should be aware.

I highly commend the Kentucky League of Women Voters for taking the interest and time to compile this very informative pamphlet. I certainly hope that the public will take advantage of these efforts and read this pamphlet.

I ask unanimous consent to have printed in the RECORD the text of the pamphlet, "A Kentucky Taxpayer Demands Information About Welfare."

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

A KENTUCKY TAXPAYER DEMANDS INFORMATION ABOUT WELFARE

". . . the people who are forced to pay for these handouts have some questions we want answered. We want an accounting of how many of these children are legitimate, how many illegitimate, how many were born so the parent could get a welfare bonus of more tax money.

How many of these parents spend most of their time and money in some beer joint; how many are disabled and receive little or no help because of the criminals, deadbeats and social misfits who are on welfare." [1]

HOW MANY OF THESE CHILDREN ARE LEGITIMATE?

Accurate statistics on the sexual behavior of any group of people are difficult to obtain, but recent studies indicate that the percentage of children conceived out of wedlock is much the same in the population at large as it is among recipients of Aid to Families of Dependent Children. The national figures on AFDC children show that about one third are illegitimate. Kentucky estimates that 25,500 [2] of the 100,919 [3] AFDC children in the state are illegitimate, or about one in four.

But a year ago the Boston Sunday Globe reported that "one third of all first-born American children, born between 1964 and 1966, were conceived out of wedlock." [4] At higher social levels such situations are more frequently concealed by shotgun marriages, abortions, and adoptions, leaving us with the impression that the poor have many more illegitimate children than those who are well-off.

In any case children born out of wedlock cannot in justice be held responsible for the behavior of their parents. If as a society we wish to penalize such parents for illegitimate behavior we must find some means that does not starve or degrade their children.

HOW MANY OF THESE CHILDREN WERE BORN SO THE PARENT COULD GET A WELFARE BONUS OF MORE TAX MONEY?

Families on welfare in Kentucky have an average of 2.5 children.[5] The average payment to an AFDC family is $30.36 per person monthly [6] (the maximum amount for a four-person family is $187 [7]), or seventy-three percent of the amount our state calculates is needed for minimum health standards. No one can feed, clothe, and house a growing child on less than seven dollars per week and get a "bonus" out of it. Welfare recipients know this.

Kentucky denies aid to families with two able-bodied parents in residence unless the father is in a work training program. If he is unable to find work after his training is finished he can get support for his children only by deserting them. It is not likely that deserted mothers *plan* to have more children, especially since the amount of money allotted per person generally decreases as the size of the family increases.

Persons on welfare, including the blind, aged, and disabled, comprise four percent of the population of Kentucky,[8] and receive about seven percent of the state's General Fund.[9] Surely this is not a disproportionate amount for the government to spend on Kentuckians who need the basic necessities of life, especially when the great majority of them are over sixty-five or under eighteen. (In the state of Massachusetts, twenty-five percent of the budget goes into public assistance, in contrast, less than two percent of the Federal budget is accounted for by welfare payments.)

Children who are not adequately fed or cared for often are impaired mentally, physically, or emotionally. If we do not see to their well-being at an early age it is likely that we will be maintaining them at great expense in one of our state institutions.

HOW MANY OF THESE WELFARE PARENTS SPEND THEIR TIME AND MONEY IN SOME BEER JOINT?

In May 1971, 40,996 adults in Kentucky were members of AFDC families. The Department of Economic Security considers about eighty percent of these persons unable to work, usually because they are ill, disabled, or parents of small children.[10] Research on Kentucky's AFDC parents in 1967 showed that of the persons studied only 2.3 percent of the mothers and 3 percent of the fathers were known to "use alcoholic beverages excessively." [11]

Seven and a half percent of AFDC parents are already doing some kind of work. Anywhere from three to five thousand more might be hired if jobs they can handle were available.[12]

But jobs are not available. In February 1971, 6.4% of Kentucky's work force (75,300) was unemployed. The number of high school dropouts looking for work comes to about twice the number of AFDC recipients who could be employed. In addition we have 114,000 workers who are below the poverty line although they have full-time jobs.[13] Under these circumstances the six thousand "potentially employable" adults receiving assistance face stiff competition.

HOW MANY ARE DISABLED AND RECEIVE LITTLE OR NO HELP BECAUSE OF THE CRIMINALS, DEADBEATS AND SOCIAL MISFITS WHO ARE ON WELFARE?

Kentucky spends nine million dollars more on the aged, blind and disabled than on AFDC. The totally and permanently disabled receive 100% of their estimated need; the average monthly payment is $78.82.[14] However, a man who loses his leg in a mining accident is not eligible because he can be trained to do some other job with his hands if he can find an employer willing to train and hire a handicapped man. If he is a veteran, he can get a pension even though his disability has no connection whatsoever with his military service. Otherwise he must depend on relatives or charitable organizations.

A criminal racket of almost any description pays better than a welfare check. HEW studies on the subject suggest that welfare recipients seldom give false information about their circumstances to the government:

In 1969, about .3% (3 cases in 1000) of *all* individual and families in Aid to Aged, Blind, Disabled and Dependent Children programs were considered by state agencies to be suspected of fraud.

This extremely low incidence of suspected fraud may be contrasted with Internal Revenue frauds which have been estimated to run between three and thirty-four percent.[15]

It is possible to consider that all welfare recipients are misfits but the obvious fact that they have not been successful in our economic structure may often be as much a failure of our society as of their ability to cope with it. The most optimistic thinkers do not seriously expect that the human race will ever be without members who are seriously flawed by low intelligence, criminal tendencies, inadequate training, or other disabilities. No doubt Hitler would solve the problem by liquidating them. Kentuckians would be horrified if social workers decided that a small number of welfare recipients were simply deadbeats or social misfits and should be executed. Is it better to insist that they beg, steal, or die of exposure and hunger?

REFERENCES

[1] "Letters to the Editor," *Courier-Journal*, May 1971.

[2] Merrit S. Deitz, Jr., Commissioner, in a letter to Miss Julia Allen on June 30, 1971.

[3] Roy Butler, Public Assistance Research and Statistics, in a letter to Mrs. Richard Martin on July 30, 1971.

[4] National Welfare Rights Organization, *Six Myths About Welfare*, 1971, p. 7.

[5] Based on Deitz-Allen letter and Butler-Martin letter listed above.

[6] Fact sheet developed by the Kentucky Alliance for Social Progress for their conference on May 15, 1971.

[7] U.S. Department of HEW, Social and Rehabilitation Service, NCSS Report D–2 (July 1970), table 4.

[8] KASP, fact sheet.

[9] Deitz-Allen letter.

[10] Deitz-Allen letter.

[11] Sample Data from the 1967 AFDC Study (FS–2019.1), Dec. 1967, pp. 10, 14.

[12] Deitz-Allen letter.

[13] KASP, fact sheet.

[14] KASP, fact sheet.

[15] Interfaith Task Force, "Public Assistance Myths and Facts," drawn from Philip M. Stern, *Great Treasury Raid*, New York, 1962, and U.S. Department of HEW, "New Methods of Dealing with Questions of Recipient Fraud in Public Assistance," 1970.

THE FARM SITUATION

Mr. MONDALE. Mr. President, Oren Lee Staley, president of the National Farmers Organization, in an address at the annual NFO convention last month, stated that there is no greater injustice in this Nation than that being dealt to agriculture.

Mr. Staley points to his organization's devotion to people and its fight against corporate power. He calls for cooperation with other farm and nonfarm groups aimed at saving the family farm system which has proven itself so efficient in this Nation.

Because I firmly believe that rural problems are concerns needing the attention of our entire Nation, I think all Senators will benefit from Mr. Staley's remarks.

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

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

ADDRESS TO ANNUAL CONVENTION OF THE NATIONAL FARMERS ORGANIZATION BY PRESIDENT OREN LEE STALEY IN KANSAS CITY, MO., DECEMBER 16, 1971

Officers, members of the board of directors, staff, and delegates.

There is never a time when the President has greater responsibility to the organization, to the members and the delegates than his

report on the state of affairs of the organization.

It is easy to voice words; it's easy to speak high sounding phrases, but it comes down to whether those high sounding phrases mean anything, and they mean nothing unless there's action behind those phrases and meanings.

This auditorium was constructed with a blueprint drawn by someone that knew where every brick had to be laid, every inch of cement had to be poured. All of this was put together in a blueprint, and if that blueprint had never been used this auditorium would never have been built. The NFO, early in its existence, developed a membership agreement and that NFO agreement was the blueprint for collective bargaining in agriculture in America.

We had a problem greater than the building of this building. There were experienced carpenters, bricklayers and interior workmen for this job. But there was not a single person in America that had real experience in collective bargaining for agriculture. Not a single one. Oh, yes, some thought they had, some had tried, but every time that we tried to employ a buyer that used to buy for a company, or a broker, or someone from the old marketing system, you know what happened. They had already learned so many bad tricks. So many ways to steal off of farmers that they were of no use to us whatsoever. So it meant that we had to develop our own carpenters, we had to develop our own bricklayers, and we had to get the experience to do it. That we have done.

So where do we go, and what do we have to do next, and what are the dangers?

Ralph Nader last night made a statement here that the NFO offered more opportunity than any other organization in America to bring about change.

That means we have developed and become the trustees of a movement that is important beyond agriculture; it means we are custodians of an organization that can help turn our nation into a better course.

NFO is the only hope. There is no other. And with that goes the responsibility, when you get back home, to carry out your responsibilities of leadership. Let me tell you this: that every day that a closing out sale is posted after the next 30 days, because of the fact that farm prices are too low, we have to share responsibility because we didn't give the leadership and get out there and work and fight for what we believe is right. It is our responsibility.

Never again in this organization do I want to hear a member or a leader say that a certain person didn't join three years ago and I'm not going to ask him to join now. Never again do I want to hear said in this organization that certain farmers are too dumb to be organized. Never again do I want to hear it said in this organization that somebody else ought to do the job. Never again do I want to hear said in this organization that somebody else should do the job that you are assigned to do. If you do that, I want you to look at every sale bill that you see posted, and decide whether you want to end the NFO, or whether you really meant that you wanted to help the farmers of this nation and yourself when you joined.

There is no greater injustice in this nation than what's happening in American agriculture. The most vital industry in America, the industry that feeds and clothes this nation, the industry that put the breakfast on every household table this morning, and the noon meal, and the evening meal, and the meal in the morning, is not getting a square deal. For commercial family type farmers to be threatened by financial and economic disaster because they have been receiving low farm prices is the greatest injustice in America.

I couldn't pass this subject without talking just a little bit about the recent fight in which we were involved over the appointment of Dean Butz of Purdue University as Secretary of Agriculture. We made the decision to oppose for two principal reasons.

A president of the United States should appoint the cabinet officers who carry out his policies. In this case, not because of partisanship, not because of political considerations, but because of deep philosophical differences and conflicts of interest, we opposed Earl Butz's confirmation. Those are the only reasons.

We lost the battle, but we did not lose the war. I hope and believe the fight will make Dr. Butz a better Secretary. We are not going to pick and peck away at him as Secretary of Agriculture. I called him and congratulated him. When you're in a fight, you fight to win. But if you don't quite make it, you must be statesman enough to recognize that the country has to operate and I told Secretary Butz that we will support anything he does that will improve the welfare of farmers and the people of rural America and we will do just as we did with Orville Freeman and Cliff Hardin—we will oppose anything that hurts the farmers of this nation.

One United States Senator said that our efforts and our fight meant an extra one billion dollars for farmers in this nation in the next few months, because it had forced the issue of farm prices and with an election ahead it is bound to have to result in action to raise prices.

I think there's one thing certain. Mr. Butz will be a better Secretary than he otherwise would have been.

Now, on to the issues and the dangers—the dangers that we always have to face.

The greatest danger that always concerns me is the danger that we lose our courage to fight, or our courage to risk a fight.

That always worries me. We haven't shown any signs of that yet. I am talking about the dangers of the future.

Ralph Nader last night indicated that several groups have become interested in NFO because of our devotion to people and fight against corporate power. This is fine. This is great. And I want to say here that we must broaden our concept of the NFO and cooperate in every legal way possible with any other farm or non-farm group that has a real interest in waging a fight on central issues, and against conglomerate corporate structures that intend to take over American agriculture and make hired hands out of the American farmers. We have to broaden our concept on this, but we cannot get involved in many other issues.

There is another great danger, and I want to clarify this about our willingness to fight. One of the greatest compliments to NFO is when they call us a militant farm organization. Any time that we're not referred to as militant, then we're not doing anything because we're not stepping on somebody's toes and everybody is starting to think we're nice guys.

Let me get on to another issue that is very dear as far as the NFO is concerned. That is non-partisanship. We have to recognize that there was nobody that hit harder than NFO in the last years of the Freeman era. That was a Democratic administration.

It was the NFO, non-partisan, fighting for people. There are always those who would like to force us into a political stand and tie us to one political party or another.

Tonight it will be a pleasure and privilege to introduce Senator Bob Dole to this convention. He had a job to do as Chairman of the Republican National Committee recently and he came to the Senate Agriculture Committee to defend the Butz nomination. I respected him for it. Bob Dole and I haven't always agreed, by any means, but I enjoy going up against a worthy adversary.

I made one pledge to the members of this organization when I first became president; I said I would never be associated or active in either political party and I have kept that pledge.

There are many issues facing this country. For one example, we are in favor of trade with Russia or any other country that is okayed by the United States government. But we are not in favor of trade if our products are being exported at prices below the cost of production. When they are, then every time they export products they are also exporting people from the farms to the cities. They are sending out products that cost him $1 to produce and returning only 75¢; we are not in favor of that type of exporting.

We should have international agreements that establish price floors which reflect a decent price for farm commodities moving in world trade, and another program through which we help and feed and cloth the hungry people throughout the world in cooperation with other countries.

What do you expect of your organization? What do you expect your organization to do? What do you expect your organization to accomplish? What do you want to accomplish? How sincere are you in really wanting to help all farmers as well as yourself? What is the most important thing you need in your farming operation? What is the one most important item that you need that will give your sons and your daughters and the young farmers around you the opportunity to start farming or stay in farming? Right! It takes a price, a fair price for your products.

You have three patterns of agriculture now. One is the corporate conglomerate buying land. Management and labor they employ. Secondly, there is acquisition through vertical integration. Thirdly, there is the commercial family type farmers of this nation, which includes you and me.

When I hear it said that inefficient farmers still have to be pushed off the land, I resent it. Let me tell you that any farmer is very efficient if he has weathered the storm until now and he and his family are living on farm income alone. They are the most efficient business people in America, and if they are pushed off it's not because of inefficiency. It's because of low farm prices and the injustices at the market place.

When collective bargaining works, there is equal strength on the side of the producer and on the side of the buyer. Then and only then is it likely that you are going to make the buyers recognize you. Any time that this organization does not have the courage and the willingness to say, o.k., this is our price—and we either have a holding action or we get our price, we are done.

What does that map really represent? That represents a Nationwide Collection, Dispatch and Delivery system—when you deliver your hogs to a local collection point, they aren't necessarily earmarked for a local plant but they go into a nationwide system.

When you deliver your milk to a milk reload station, it's not the local NFO milk reload—it's a reload that puts it into a nationwide collection, dispatch and delivery system.

When you deliver your grain to a barge loading point, it's not the NFO operation in that area—it's part of a nationwide dispatch and delivery system.

There's one other danger to an organization that I want to discuss. Any time that an organization does not use and strive with all of its energy to get new members, then that organization is deteriorating.

The biggest job that you have to do is to get new members, and the second biggest job is to get the production moving through the Nationwide Collection, Dispatch and Delivery System. The third job is to be sure that the members are given the best possible service that they can be given through the organization at the local level, and at the national level.

You are the leaders in American agriculture who have the ability to save it. No staff can be in every county to do it. And I'm not being critical of the staff. It's the greatest possible staff we could ever have. They will do their part. But the job is so big we have to depend on the county leaders to know that this battle is just as important as putting in a crop and harvesting it and that the staff will help but can't do it all.

I say to you very frankly, NFO's success now depends on what is in your minds and your hearts and what you decide is your highest priority. You are the ones.

Let me ask you that as you look around every county and every state for the producers and the leaders that are willing to fight, that you look beyond the NFO. You find weak people, good people and fine people. They are no better than the NFO people and no worse. They just lack one ingredient; they have not yet shown the courage to stand up and be counted for justice and right. That's the difference.

The real challenge and the real decision that has to be made by the delegates to this convention is whether you are going out to get fellow farmers and fellow ranchers to become members of the NFO, and if you are going to get all the members to block all of their production together to go through the Nationwide Collection, Dispatch and Delivery System. Are they going to work at it as hard as though their house was on fire?

The real challenge is to put NFO over. And all I can say is that when farmers put enough production through the Nationwide Collection, Dispatch and Delivery System so the large companies of this country can't fulfill their needs from other sources, I can guarantee you a price at the cost of production plus a reasonable profit. But if you don't get out and put your whole heart and your whole soul in that job, I can't guarantee you one thing.

COME TO THE PARTY AT THE FPC

Mr. METCALF. Mr. President, last June the Federal Power Commission proposed to obtain additional information on diversified business activities of regulated utilities. The FPC notice of rulemaking states that the information now available to the Commission in this area is inadequate and that an increasing number of electric and gas utilities "have diversified their operations outside the sphere of regulatory jurisdiction," a point which numerous small businesses would underscore.

Utilities are becoming especially active in the real estate business and are anxious to construct tax-loss housing and lock out competitors from its subdivisions.

Numerous utilities have objected to the FPC's efforts to obtain more information about their nonutility operations. They have asked for a conference with the FPC staff. This meeting is scheduled for 10 a.m., Thursday, February 3, in room 2043 of the FPC building at 441 G Street NW.

I hope that all parties of interest attend and participate in this meeting. To provide background information on this issue, I ask unanimous consent to have printed in the RECORD the notice of proposed rulemaking, issued by the FPC, and my August 2 testimony before the Senate Commerce Committee in opposition to S. 1991, the utility housing subsidy bill.

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

NOTICE OF PROPOSED RULEMAKING

Pursuant to 5 U.S.C. 553, the Commission gives notice it proposes to amend, effective for the reporting year 1971:

A. Schedule pages 102 and 103 of FPC Form No. 1, Annual Report for Class A and Class B Electric Utilities, Licensees and Others, prescribed by section 141.1, Chapter I, Title 18, CFR.

B. Schedule pages 102 and 103 of FPC Form No. 2, Annual Report for Class A and Class B Natural Gas Companies, prescribed by section 260.1, Chapter I, Title 18, CFR.

The amendments as proposed herein are for the purposes of acquiring additional information where regulated utilities are engaged in other diversified business activities. The information which is presently available to the Commission through the annual report forms medium is considered inadequate for present day surveillance and informational purposes.

The Commission now finds itself regulating an increasing number of electric and gas utilities which have diversified their operations outside the sphere of regulatory jurisdiction. In amending the referenced schedules, the Commission is seeking to obtain more valid and comprehensive information about these diversifications so as to perform adequate financial analysis and to evaluate the actual and potential impact that such diversifications might have on the regulated activities. This information should also be available to other interested persons for similar evaluations and investment purposes.

The proposed amendments to schedule pages 102 and 103 of the Commission's Annual Report Form No. 1 would be issued under authority granted the Federal Power Commission by the Federal Power Act, particularly Sections 301, 304 and 309 (49 Stat. 854, 855, 858; 16 U.S.C. 825, 825c, 825h).

The proposed amendments to schedule pages 102 and 103 of the Commission's Annual Report Form No. 2 would be issued under authority granted the Federal Power Commission by the Natural Gas Act, particularly Sections 8, 10 and 16 (52 Stat. 825, 826, 830; 15 U.S.C. 717g, 717l, 717o).

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than July 29, 1971, data, views, comments or suggestions in writing concerning all or part of the amendments proposed herein. Written submittals will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Washington, D.C., 20426, during regular business hours. The Commission will consider all such written submittals before acting on the matters herein proposed. An original and 14 conformed copies should be filed with the Secretary of the Commission. In addition, interested persons wishing to have their comments considered in the clearance of the proposed revisions in the report forms pursuant to 44 U.S.C. 3501-3511 may, at the same time, submit a conformed copy of their comments directly to the Clearance Officer, Office of Statistical Policy, Office of Management and Budget, Washington, D.C., 20503. Submittals to the Commission should indicate the name, title, mailing address and telephone number of the person to whom communications concerning the proposal should be addressed, and whether the person filing them requests a conference with the staff of the Federal Power Commission to discuss the proposed amendments. The staff, in its discretion, may grant or deny requests for conference.

(A) Effective for the reporting year 1971, it is proposed to amend schedule pages 102 and 103 of FPC Form No. 1, Annual Report for Electric Utilities, Licensees and Others, (Class A and Class B) prescribed by § 141.1, Chapter I, Title 18 of the Code of Federal Regulations, all as set forth in Attachment A hereto.

(B) Effective for the reporting year 1971, it is proposed to revise schedule pages 102 and 103 of FPC Form No. 2, Annual Report for Natural Gas Companies (Class A and Class B) prescribed by § 260.1, Chapter I, Title 18 of the Code of Federal Regulations, all as set out in Attachment B hereto.

The Acting Secretary shall cause prompt publication of this notice to be made in the Federal Register.

By direction of the Commission.

KENNETH F. PLUMB,
Acting Secretary.

CONTROL OVER RESPONDENT

1. If any corporation, business trust, or similar organization or combination of such organizations jointly held control over the respondent at end of year, in column (a) state:

a. Name of controlling corporation or organization.

b. Manner in which control was held and extent of control.

c. If control was held by a trustee(s), state name of trustee(s), name of beneficiary or beneficiaries for whom trust was maintained, and purpose of the trust.

d. If control was in a holding company organization, show the chain of ownership or control to the main parent company or organization.

e. If other companies are controlled by the organization which holds control over the respondent, list the names of such companies and provide the data requested in columns b. through h.

2. See the Uniform Systems of Accounts for a definition of control.

a. Direct control is that which is exercised without interposition of an intermediary.

b. Indirect control is that which is exercised by the interposition of an intermediary which exercises direct control.

c. Joint control is that in which neither interest can effectively control or direct action without the consent of the other, as where the voting control is equally divided between two holders, or each party holds a veto power over the other. Joint control may exist by mutual agreement or understanding between two or more parties who together have control within the meaning of the definition of control in the Uniform System of Accounts, regardless of the relative voting rights of each party.

3. Report in column (e) the average of the beginning and year-end balances in proprietary accounts plus all debt except trade accounts payable.

4. Report in column (f) the average of the beginning and year-end balances in common stock equity accounts.

5. Report in column (g) net income for the year less preferred dividends declared during year.

6. Report in column (h) the percentage relationship of column (g) to column (f).

7. State in footnotes the type of consideration given in acquiring control over respondent.

CORPORATIONS CONTROLLED BY RESPONDENT

1. Report below the names of all corporations, business trusts, and similar organizations, controlled directly or indirectly by respondent at any time during the year.

2. If control ceases prior to end of year, give particulars in a footnote.

3. If control was by other means than a direct holding of voting rights, state in a footnote the manner in which control was held, naming any intermediaries involved.

4. If control was held jointly with one or more other interests, state the fact in a footnote and name the other interests.

5. See the Uniform System of Accounts for a definition of control.

a. Direct control is that which is exercised without interposition of an intermediary.

b. Indirect control is that which is exercised by the interposition of an intermediary which exercises direct control.

c. Joint control is that in which neither interest can effectively control or direct action without the consent of the other, as where the voting control is equally divided between two holders, or each party holds a veto power over the other. Joint control may exist by mutual agreement or understanding between two or more parties who together have control within the meaning of the definition of control in the Uniform System of Accounts regardless of the relative voting rights of each party.

6. Report in column (e) the average of the beginning and year-end balances in proprietary accounts plus all debt except trade accounts payable.

7. Report in column (f) the average of the beginning and year-end balances in common stock equity accounts.

8. Report in column (g) net income for the year less preferred dividends declared during year.

9. Report in column (h) the percentage relationship of column (g) to column (f).

10. State in footnotes the type of consideration given in acquiring control over the companies listed.

STATEMENT BY SENATOR LEE METCALF (D., MONT.), RE S. 1991, UTILITY HOUSING SUBSIDY, SENATE COMMERCE COMMITTEE

Mr. Chairman, the fact that you are conducting this hearing on S. 1991, reduces the number of my arguments against it. I objected to the identical bill last year on procedural grounds. It was slipped onto the housing bill last year so quietly that four members of the Banking and Currency Committee who were at the mark-up session told me they were unaware it was in the bill.

There had been no hearings whatsoever on it. It was passed by the Senate the day after it was reported. The Senate was uninformed on implications of its actions.

My amendment to delete this section lost on a narrow division vote. The House wisely decided not to accept a far-reaching proposal on which neither it nor this body was informed.

I would like to submit for the hearing record pertinent portions of my remarks of 22 September last year and the debate on my amendment the following day. In the event that this Committee does report a bill I trust that printed hearings will be available, so that members can become aware of the departure from the philosophy of the Wheeler-Rayburn Act.

Senator Wheeler, when he floor-managed the bill which became the Public Utility Holding Company Act, emphasized "the principle that utility holding companies shall confine themselves to gas and electric service and not continue to mix into all manners of other businesses." Among those other businesses in which utilities engage is that of government, and the example most pertinent to this hearing is the Department of Housing and Urban Development.

I invite your attention to the memorandum of Hugh C. Daly, executive vice president of Michigan Consolidated Gas Company, which appeared CONGRESSIONAL RECORD, volume 116, part 25, page 33479. Then read the HUD memorandum in the CONGRESSIONAL RECORD, volume 117, part 14, page 17746. Over winter, the position of Michigan Consolidated became the position of the United States Government, virtually word for word. I offer copies of this unimaginative plagiarism for the hearing record, complete with identical grammatical errors:

Michigan Consolidated—and now HUD—start off their duet with the statement that "construction and operation of housing projects under HUD regulation is (sic) remarkably similar to utility regulation." That may be so, but I am somewhat surprised that HUD so readily admits the parallel with a type of regulation in which a few large corporations dominate the system and its regulation.

Secondly, Michigan Consolidated Gas and HUD say that the utilities are ideally suited for the housing job because they are already in place—"a utility cannot simply move its plant and work force to an outlying area." That argument is as fallacious as Con Edison's argument for construction of a new plant in mid-Manhattan because it has some land there.

Earlier this month several House members and I introduced legislation to establish a national power grid. That bill, I suggest, needs more attention by this committee than does the bill before us today. At our joint press conference Congressman Badillo of the Bronx said that by every siting standard the Con Ed plant should not be built where the utility has the land. By the utility's reasoning, he said, New York should plow up Central Park and grow its food there because the land is readily available.

I invite members of this committee to ask builders and housing officials of their acquaintance if they believe that the best way to build housing for poor people is to turn the job over to huge corporations in their territory which have special privileges similar to those of the government, including the right of eminent domain, without being burdened by the troublesome trappings of democracy.

The concluding point made by Michigan Consolidated Gas last year is that "utilities generally have the managerial and financial resources necessary to ensure efficient construction and operation of low and moderate income housing projects." HUD's companion paragraph is identical except that it adds three words at the beginning—"HUD has found" utilities generally have the managerial and financial resources necessary, etc. I believe the committee should inquire of HUD as to what independent studies, or GAO analysis, produced this HUD finding between September, 1970 and June, 1971.

This committee well knows that utilities have not distinguished themselves recently in management of their principal business. Why should Congress reduce job opportunities for experienced builders and related services, and contribute to the growth of conglomerates that are beyond the reach of public officials and stockholders, by permitting expansion of utilities into the housing field?

I urge you to check with builders, who may find it difficult to state their objection publicly. After all, they get their money at the banks which interlock so closely with the utilities. Check too, with your friends in the oil heat business, who are being frozen out of housing subdivisions sponsored by electric and gas companies. Or check with housing consultants whose business is being invaded by utilities. As the president of one such consulting firm wrote me:

"In one case, a public utility company explained that they would not have need of the services (our company) provides because they themselves are providing such services. It was explained that their company had qualified as an FHA consultant and was not only developing its own housing, but apparently was providing consultancy services in the field of housing for other sponsors of such housing projects."

Mr. Chairman, the main reason why the utilities want this housing subsidy is that it is a bonanza for them. They are doing very well financially, despite their gloomy pronouncements, because they dominate Federal and State regulatory commissions.

Later in the week I shall put in the Congressional Record figures showing that the net profit, after taxes, of the top one hundred electric utilities increased a quarter of a billion dollars last year. The net profit of major companies increased eight point three per cent over the previous year, as compared with gains of three point four per cent and two point eight per cent the two previous years. In seven cases the utility netted more than twenty cents out of each revenue dollar.

I can't give you comparable figures on the gas companies. Neither can the Federal Power Commission, because it doesn't even have the basic authority to gather such information. I sometimes criticize the FPC but in this instance I shall defend it. For the past fourteen years, under the administration of four FPC chairmen from Kuykendall to Nassikas, the Commission has requested the Congress to pass the Natural Gas Information Act. The legislation is again before this Committee—S. 401 and S. 701—and I think it is time to put them on the agenda.

S. 1991 is a bonanza for utilities, and a burden on taxpayers. The senior vice president of Niagara Mohawk Power Corporation explained why this is so. He wrote, in Public Utilities Fortnightly, how the program available to his company, which this bill would extend to holding companies, really works.

First the company organizes a subsidiary for each project. Each gets a forty-year, ninety per cent FHA guaranteed mortgage. There would be a limitation on earnings, as HUD and its utility colleagues loudly proclaim. The gimmick is in the use of depreciation law, and here let me use Niagara Mohawk's own glowing words:

". . . The property could be depreciated in its entirety (sum-of-the-years digits) over a ten-year period, producing in each year a tax loss for consolidation with Niagara Mohawk's own tax return. At the end of the depreciation period, the property could be sold at its cost or even given away to an eleemosynary institution. All this would produce an annual average return on equity over the ten-year period in excess of 20 per cent. While the dollars involved might be small in relation to utility operations, the financial integrity of the housing program would be assured.

"I am sure," he concluded, "I need not belabor the benefits of these programs in terms of added utility revenues for the utility developer, which enhance substantially the financial feasibility and overall desirability of these programs."

Mr. Chairman, I have served on the House Ways and Means Committee and the Senate Finance Committee. I have not yet learned, however, how increasing utility revenue through construction of tax-loss housing is a reasonable method of meeting our national housing needs. Having abandoned economics many years ago in order to study law I may have missed some of the more recent theories which might explain this marvelous phenomenon. So I have asked Dr. Clay Cochran, executive director of the Rural Housing Alliance, who formerly taught economics at the University of Oklahoma, if he could inform both you and me on this matter.

Dr. Cochran has added to his academic background great experience on the front lines of the battle to decently house poor people. So with your permission, Mr. Chairman, I shall insert for the record articles which describe utility and conglomerate activities in the housing and real estate field—from the Wall Street Journal, Electrical World, and the Washington Post—and ask that Dr. Cochran give us the benefit of his observations. The Post article, by Nicholas von Hoffman, deals with International Telephone and Telegraph, a conglomerate which got its start in communications. Such companies are not covered by this bill. I don't know whether American Telephone and Telegraph wants to build tax-loss housing too, but the Committee will pave the way for Bell housing and more concentration in the Nation's largest industry, if it approves the Michigan Consolidated-HUD bill before you today.

DEATH OF JUDGE HENRY L. BROOKS, OF THE SIXTH CIRCUIT COURT OF APPEALS

Mr. COOK. Mr. President, in December, the legal profession lost a most valued member, Judge Henry L. Brooks, of the U.S. Circuit Court of Appeals. His friends in Kentucky, as well as those lawyers who practiced in the sixth circuit, will miss him and his sound knowledge of the law, judicial temperament, and balanced judgment.

I ask unanimous consent that an editorial appearing in the Louisville Courier-Journal be printed in the RECORD.

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

JUDGE BROOKS: EMINENT SYMBOL OF THE JUDICIARY

Henry L. Brooks had a rare combination of qualities which fitted him to an unusual degree for service on the bench. His sound knowledge of law won the respect of his professional colleagues. He had the "judicial temperament," the balanced judgment and the air of personal dignity that is proper to the courtroom. As various appointments came to him on his way up the judicial ladder, this newspaper praised him editorially as "able," "conscientious" and "exceedingly well qualified."

Judge Brooks had other qualities, however, that made people like him as well as respect him. There was something almost boyish in the geniality of his manner, right up to his sudden death soon after his 66th birthday. Though unfailingly correct in his courtroom manner, he could also display a sense of humor and a warm understanding of human nature.

The courage with which he accepted a physical handicap, the removal of his larynx and the necessity to use a speaking aid, illustrated in the past five years the quiet strength of his character. His 15 years on the U.S. District Court for Western Kentucky were distinguished. It is sad that he had only two years to make his lasting mark on the U.S. Circuit Court of Appeals.

FINANCIAL STATEMENT OF SENATOR MONDALE

Mr. MONDALE. Mr. President, I ask unanimous consent that a statement of my estimated net worth as of December 31, 1971, be printed in the RECORD.

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

Financial Statement of Senator Walter F. Mondale, December 31, 1971

ASSETS

Residence in Washington	$63,000
Automobiles:	
Chevrolet	2,275
Oldsmobile	2,675
Total	4,950
Cash in deposits	2,319
Household and personal goods	5,000
Cash value of life insurance	3,213
Personal contributions to Federal employees retirement system	18,827
Total assets	97,309

LIABILITIES

Mortgage on residence in Washington	37,562
Miscellaneous personal bills	900
Total liabilities	38,462
Estimated net worth	58,847

UKRAINIAN INDEPENDENCE DAY

Mr. BURDICK. Mr. President, I want to take this opportunity to join my colleagues in commemoration of Ukrainian independence. January 22 was the 54th anniversary of this event, which took place in Kiev on January 22, 1918.

The independence of the Ukraine was short lived, but the spirit of freedom inspired at that time has lived on in the hearts of Ukrainian people everywhere. Their spirit is strong. They have remained attached to their native land and to the traditions which have made the Ukrainian culture one of the richest in history.

Although we honor the fight the Ukrainian people have made during Captive Nations Week, it is important that we also celebrate, with them, the independence of their nation. As the country that has stood for democracy and liberty for nearly 200 years, we recognize their goals of freedom and self-determination.

My home State of North Dakota is lucky enough to have a number of citizens of Ukrainian descent living within its borders. They settled in our State, I am sure, because its broad, open fields reminded them of the rich farmlands from which they were forced to flee. We are honored to have them in our presence and share with them at this time the celebration of the independence of their motherland.

TRIBUTE TO THE FRONTIER NURSING SERVICE

Mr. COOK. Mr. President, poverty, the environment, and the much talked about population explosion are all interrelated. I would like to share with my colleagues a newsstory appearing in the Washington Post concerning the excellent work of the Frontier Nursing Service in operating one of the best rural health organizations in the country.

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

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

HIGHLY PRAISED NURSING SERVICE CUTS RURAL KENTUCKY BIRTH RATE

(By Kenneth Reich)

WENDOVER, KY.—In the first half of the 1960s, 1,944 babies were born in Leslie County in mountainous Eastern Kentucky. In the second half of the decade, the number of births declined to 1,278.

The birth rate in the county slipped from 37.9 in 1962 to 23.4 in 1969. For the first time in memory here, school enrollment is actually going down year by year.

"It's the Frontier Nursing Service," explained Hayes Lewis, the superintendent of the county's public schools. "They've introduced birth control services. Families that were having 12 children now are having only one or two."

Birth control campaigns are having considerable effect throughout the Appalachian region, but here in Leslie County it is a new orientation of the Frontier Nursing Service—one of the nation's most successful rural health organization—that accounts for the change.

"If families are smaller," explained its director, Helene Browne, "the economy in this area will rise. The education will be better."

Miss Browne said the service is offering a full range of intra-uterine contraceptive devices (IUDs) and finds that men are becoming interested in having vasectomies, a simple sterilization procedure.

The nursing service, which has had its rustic headquarters on a wooded hill in this hamlet for more than four decades, provides health services over an area of 1,000 square miles populated by about 18,000 mountaineers.

The service was founded in 1925 by Mary Breckinridge, a native of the region who decided, upon the death of her own two children, to devote the rest of her life to the medical and nursing care of children in remote areas. She served as director of the service until her death in 1963 at age 84.

"In 1925, the territory in the Kentucky mountains was a vast forested area inhabited by some 10,000 people," Mrs. Breckinridge once wrote. "There was no motor road within 60 miles in any direction. Horseback and mule team were the only modes of travel. Supplies came from distant railroad points and took from two to five days to haul in. . . . There was not in this whole area a single state-licensed physician—not one."

Within a few years, the Frontier Nursing Service grew to encompass a health program for the entire population of an area that even today remains relatively isolated, although it is now crisscrossed by narrow, tortuous roads.

Through 1968, service personnel delivered 15,490 babies, 9,079 of them in private homes. During this period, the service recorded only 11 maternal deaths, 2 less than a third of the national rate for white women.

The service, which has a 1971 budget of $1,025,343, is engaged in activities that range from operating a 16-bed hospital in nearby Hyden to running the Frontier Graduate School of Midwifery. Ten nurses staff five scattered outposts, and others are at the headquarters in Wendover, where a new hospital is planned.

Many residents of the county talk of the nursing services in tones of veneration. Miss Browne says happily, "We've become so well accepted by the community. They trust us."

In this nominally Protestant area, there has been little resistance to birth control campaigns, and the recent trends are warmly welcomed by public officials.

In addition to disseminating intra-uterine devices, the service makes birth control pills available to those who ask for them and is carrying on an experiment with more than 60 women for Dr. John Rock, a birth control specialist.

"The decline in the birth rate is one of the most significant recent developments in the mountains," Miss Browne said in an interview. "It holds out as good a promise as any for reducing poverty."

CLEARCUTTING OF TIMBER

Mr. HUGHES. Mr. President, citizens waging an ever uphill battle to protect our Nation's precious timber resources from wanton commercial despoliation suffered a tragic defeat recently. It is a story that needs to be repeated to the Congress and to the Nation. I refer to the successful campaign by the timber industry's lobby to pressure the administration into killing a proposed and urgently needed Executive order to limit clearcutting—the practice of stripping the forest lands of all trees, regardless of their maturity or suitability for commercial use in order to cut down costs in harvesting timber.

This is one more example of the tragic failure of our Government in its responsibility to protect the survival of our national forest resources. It strongly points up the need for reform of the U.S. For-

est Service and its national forest timber management policies.

Mr. President, over the past year, a reporter of the Des Moines Register, James Risser, has done an outstanding newspaper series on the threat to our national forests by unrestricted harvest practices. The Register has admirably covered the most recent crisis to which I have alluded in newsstories on January 11, 12, 13, and 14, and with an editorial dated January 15, 1972. I ask unanimous consent that these articles be published in the RECORD.

The chronology of events that these newspaper stories cover goes like this:

First. The Council on Environmental Quality prepared a draft of a Presidential Executive order designed to sharply restrict, but not ban, the practice of clearcutting timber on Federal lands.

Second. CEQ showed copies to the Forest Service and to the Interior Department's Bureau of Land Management for their comments.

Third. The Forest Service apparently promptly altered the National Forest Products Association—the timber lobby's Washington office—as to what was about to happen to them.

Fourth. The timber lobby mobilized, swamped the White House and CEQ with protests, and persuaded the Forest Service and Secretary of Agriculture Earl Butz to fight the proposal.

Fifth. The Agriculture Department announced that, with Butz leading the way, the order had been shelved.

Mr. President, considering the damage that unrestricted clearcutting can do in terms of destroying wildlife cover, transforming natural beauty into ugliness, exposing land to erosion, and polluting our waterways, one wonders if this Nation really is committed to the preservation of our God-given natural resources for the benefit of oncoming generations.

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

NIXON URGED TO CURB LOGGING: AN EXECUTIVE ORDER ASKED ON TIMBER—EYE CRACKDOWN ON CLEAR CUTTING

(By James Risser)

WASHINGTON, D.C.—President Nixon is being strongly urged to issue an executive order which would sharply curtail the clear-cutting of timber on national forests and other federal lands, it was learned Monday.

The order is being prepared by the President's Council on Environmental Quality (CEQ), whose chairman, Russell Train, is asking Mr. Nixon to sign it as a means of clamping down on the logging practices of the U.S. Forest Service and the Bureau of Land Management.

Timber industry representatives in Washington have mobilized their forces in an effort to head off the action, saying they fear it would diminish the flow of commercial timber from the federal woodlands.

Conservation and environmental groups have been calling for tough restrictions or a ban on clear-cutting (in which all trees are stripped from a given area whether they are mature and commercially usable or not) on grounds that it wreaks ecological and esthetic havoc.

Investigations during the past year by The Register and other news media, as well as reports from within the Forest Service and from other organizations, have documented serious abuses of clear-cutting in national forests in Montana, Wyoming, West Virginia and elsewhere.

ORDER'S PROVISIONS

The proposed executive order would limit the size and frequency of clear-cuts and would restrict the use of clear-cutting to places where there would be no environmental damage, it was understood.

Train hopes Mr. Nixon will issue the order in conjunction with his environmental message to Congress, now tentatively planned for early February, sources said. But strong pressures from those opposed to such an order still could stall or kill it, they warned.

The Register learned there have been a number of private meetings in recent days, involving officials of CEQ, the timber industry, the U.S. Agriculture Department (in which the Forest Service is located), and the Interior Department (parent agency of the Bureau of Land Management), to discuss the proposed order.

The latest was Monday morning in the office of Agriculture Secretary Earl Butz, where CEQ Chairman Train outlined the proposed order. Train, who was described by one participant as "thoroughly dedicated to an executive order," said it would formalize proper timber management practices now espoused by the Forest Service but not always carried out.

James R. Turnbull, executive vice-president of the National Forest Products Association, said in an interview that the timber industry opposes any such order because it could reduce the amount of timber available from public lands, in the face of rising housing and other needs.

"HUNTING LICENSE"

Also, said Turnbull, it would give environmentalists and others "a hunting license" to go into court or take other action to block planned federal timber sales.

The timber industry spokesman said that he first learned early last week that an executive order on clear-cutting "was set to go and that the President's advisers thought it would be good tactics to get it out along with the President's environmental message."

Industry protests resulted in a meeting Saturday afternoon with Secretary Butz, Forest Service Chief Edward P. Cliff, and others, at which the proposed order was "outlined in broad brush strokes," said Turnbull.

Butz explained that the order would set forth about a dozen criteria to be met before clearcutting could be used, including one which would bar the logging technique if it would "affect natural beauty," said Turnbull.

Such an order would be too "subjective" and could result in "the whole timber-sale program becoming unstuck," said Turnbull. He added that the industry is concerned because the fiscal year is half over and the Forest Service has put up for sale only 25 per cent of the timber planned to be sold during the year.

INDUSTRY "CRUNCH"

After industry officials objected strongly that the clear-cutting restrictions might aggravate an expected "lumber-plywood crunch" this spring and would cause economic hardship in mill towns, the Monday meeting was scheduled at which Train and White House environmental adviser John Whittaker appeared.

The two officials reportedly stood firm, in their opinion that the order is needed to insure that federal agencies use environmentally sound timber harvesting methods.

Another CEQ official said later that the commission's own study shows "there have been instances of overuse of clear-cutting, and not taking sufficient measures to protect the environment. The Forest Service has thought it could clear up the problem 'in-house' and put in better controls, but that may not be enough."

Meanwhile, Senator Mark Hatfield (Rep., Ore.) said Monday he was "alarmed" at reports of the pending executive order, which he said he first understood might be a complete ban on clear-cutting.

Such action should come from Congress, rather than from the President, said Hatfield, who is sponsor of a timber management bill now pending in a Senate committee. His bill stresses federal monetary incentives to encourage the reforestation of both public and private timberlands.

COMPETING BILL

A competing bill by Senator Lee Metcalf (Dem., Mont.) puts more emphasis on controlling timber harvesting methods on public and private lands, including clamps on clear-cutting.

Also, Senator Gale McGee (Dem., Wyo.) is pushing legislation which would place a two-year moratorium on clear-cutting, while a special blue-ribbon commission studies national forest timber management practices.

The controversy stems from the fact that the Forest Service has more than doubled logging on the national forests since 1950, and has made extensive use of clearcutting. Five million acres of national forest lands need reforestation, but at the same time the Forest Service has endorsed a 60 per cent increase in national forest logging over the next decade.

Studies by Forest Service task forces, forestry schools, state legislative groups, and others have sharply criticized clear-cutting as practiced on the Bitterroot National Forest in Montana, the Monongahela National Forest in West Virginia, and on four national forests in Wyoming.

The Forest Service has permitted commercial timber companies to clear-cut to such an extent that it has caused esthetic damage, soil erosion and other problems, and has interfered with other legally required "multiple uses" of the national forests, such as recreation, watershed development, and wildlife protection, the studies showed.

President Nixon several months ago appointed a five-man advisory panel on timber and the environment, headed by farmer Interior Secretary Fred Seaton, but the panel has held only one meeting, and CEQ Chairman Train reportedly feels that the President should move quickly and sign the proposed executive order without waiting for any action by his advisory panel.

AIDE CONFIRMS PRESIDENT CONSIDERING TIMBER ORDER

(By James Risser)

WASHINGTON, D.C.—The White House confirmed Tuesday that it has under consideration a presidential executive order limiting the clear-cutting of timber in national forests.

Meanwhile, environmental organizations began mapping strategy to head off the timber industry's effort to kill or water down the proposed order.

Gerald Warren, assistant presidential press secretary, said of the proposed clear cutting restrictions: "We have a number of matters under consideration for the President's environmental message, and this is one of them. No decision has been reached yet."

"HOT ISSUE"

The message is expected in late January or early February.

Officials of the U.S. Forest Service huddled Tuesday with members of the President's Council on Environmental Quality (CEQ), which is urging President Nixon to sign the order.

"This is a very hot issue at the moment," said a Forest Service spokesman.

CEQ members would not comment on the proposed order, but one official there said, "The timber industry has really landed in town to oppose it."

The proposal, which has been outlined in

vague form to the timber industry representatives and to some environmental organization officials, is believed to set forth guidelines which would prevent clear-cutting on federal timberlands unless a long list of criteria are met.

The criteria are aimed at reducing the size and frequency of clear-cuts, clamping down on the location of clear-cuts to avoid scenic damage, and preventing clear-cutting altogether where it would damage watersheds and cause soil erosion or do other ecological harm.

Clear-cutting is the logging of all trees from a given area, whether they are mature or not, often with heavy machinery which seriously scars the land. Its use has increased dramatically since the mid-1960s, as the Forest Service responded to timber industry appeals for more timber from the national forests.

Stewart Brandborg, executive director of the Wilderness Society, said Tuesday that "we are very interested in learning more about this proposal and giving it active encouragement, provided that it brings about full public involvement, including hearings, on the critical problems of our national forests—clear-cutting, over-cutting on an extensive scale, and a dangerous intrusion on wild areas."

He said the order will have little value if it permits the Forest Service to interpret its provisions in such a way as to "continue the present devastating cutting practices."

National forest logging has impaired other forest uses, including wildlife, watershed protection, scenic and wilderness values, Brandborg added.

Michael McCloskey, director of the Sierra Club, said the executive order would be "a very important recognition by the President of the fact that the abuses of clear-cutting need to be curbed."

But he said that the provisions of the order, as he understands them, do not go far enough in limiting clear-cuts to definite small sizes and to a few specified types of trees.

"We hope for a much stronger order than apparently is being proposed," he said.

Industry officials are disturbed that a presidential order, even if stated in broad terms, would curtail their supplies of national forest timber and would give environmental groups and others more legal standing to challenge Forest Service timber sales and cutting methods.

Clear Cutting Ban Is Pushed

(By James Risser)

WASHINGTON, D.C.—Senator Gale McGee (Dem., Wyo.) vowed Wednesday to continue pushing for legislation banning the clear-cutting of timber in natioanl forests for two years, despite reports that President Nixon might personally take steps to curtail the controversial logging practice.

McGee expressed doubt that a proposed presidential order will go far enough to curb clear-cutting, which the Wyoming Democrat says has caused "appalling devastation" in his home state and elsewhere.

"I don't know how this proposed order will square with the presidential directive of June, 1970, which aimed at substantially increasing timber-cutting in the 1970s," McGee added.

The 1970 directive endorsed the concept of a 60 per cent increase in national forest logging.

McGee is author of a bill which would slap a two-year moratorium on clear-cutting, while a specially appointed national commission makes a study of clear-cutting and other timber harvest methods.

The executive order, being urged upon the President by his Council on Environmental Quality (CEQ), reportedly would limit the use of clear-cut logging by applying about 10 criteria which would have to be met before clear-cutting was used. The aim would be to reduce the size and frequency of clear-cuts and insure that they would not do environmental or esthetic harm.

McGee said he was "flattered" by a timber industry lobbyist's complaint that "my bill is at least partially responsible for the proposed executive order." The reference was to statements by James Turnbull, executive vice-president of the National Forest Products Association, who said pressure for presidential action came about as a result of critical stories by The Des Moines Register, the New York Times and others, and because of McGee's bill.

"But," said McGee, "my position all along has been there is a need for a thorough interdisciplinary study of the practice of clear-cutting, and there is nothing in the reports of the proposed executive order which would change my mind."

Curb on Forest Logging Killed: Fight Against Proposal Is Led by Butz—See "Surrender" to Timber Industry

(By James Risser)

WASHINGTON, D.C.—A proposed presidential executive order limiting clear-cutting of timber in national forests was killed Thursday, primarily because of objections from the U.S. Forest Service and Agriculture Secretary Earl L. Butz.

A leading conservationist promptly charged that "the administration has responded to the call of the lumber industry."

ECOLOGICAL DEVASTATION

The proposed order, drafted by the White House Council on Environmental Quality (CEQ), would have barred clear-cut logging on federal lands unless a list of criteria, designed to prevent scenic and ecological devastation, was met.

The existence of the order—copies of which were supposed to be only in the hands of CEQ, the Forest Service, and the Bureau of Land Management—was leaked last week to the timber industry, which promptly organized a campaign to block it.

A Forest Service spokesman announced Thursday afternoon that Butz, Interior Secretary Rogers Morton and CEQ Chairman Russell Train, had jointly decided about noon to shelve the proposal and not to present it to President Nixon.

The Forest Service—an Agriculture Department agency—refused to make any additional comment, but E. F. (Fritz) Behrens, executive assistant to Secretary Butz, confirmed that Butz led the field to kill the order.

"The secretary's feeling was that we should not have an executive order, and that some other things are in progress," said Behrens. He listed a study being made by a presidential advisory panel on timber and the environment, some forthcoming new guidelines from the Forest Service on timber management, and further studies to be made by CEQ.

Butz was in Topeka, Kan., Thursday to deliver a speech. Behrens said he reached Butz there to inform him that he had obtained the "concurrence" of Morton and Train that the order be dropped.

Stewart Brandborg, executive director of the Wilderness Society, sharply attacked the decision, commenting that "it is a critical situation when the timber industry can spend three or four days in town and knock out the order."

"Conservationists had the gravest reservations about the appointment of Mr. Butz, and this action shows that the lumber industry still calls the tune at the Forest Service," said Brandborg.

Brandborg said he has learned that it was the Forest Service which told the timber industry of the impending order.

William Lake, a CEQ lawyer who worked with Train in drafting the order, admitted that "there has been a lot of opposition from the timber industry" but said the decision to drop the proposal was made jointly by the three officials mentioned by the Forest Service.

CEQ's purpose in drafting an order for Mr. Nixon to sign was "to make sure that clear-cutting would be used only under carefully controlled conditions," Lake said.

The reason for dropping the order was that "it was felt that agriculture and interior can adequately control the practice," said Lake, acknowledging, however, that his reasoning was in conflict with CEQ's reasons for drafting the order in the first place.

NUMBER OF CALLS

Clark MacGregor, President Nixon's adviser on congressional matters, told newsmen at a breakfast meeting Thursday that he also had received a number of calls from timber industry officials expressing their opposition to the proposed order.

James R. Turnbull, executive vice-president of the National Forest Products Association, hailed Thursday's decision. He said presidential restrictions on clear-cutting would have reduced the flow of commercial timber from the national forests.

The industry supports clear-cutting because it is a more economical way to log. Heavy machinery is used to strip all trees from a given area, as opposed to the method of "selective logging" in which only mature trees are sawed down.

Critics say that clear-cutting has been widely abused by commercial loggers, with the approval of the Forest Service. The practice has caused esthetic damage, resulted in serious soil erosion and denuded millions of acres of federal lands, some of which cannot be successfully reforested, they say.

Turnbull, top official of the timber lobby here, said the killing of the proposed executive order "is probably a wise decision but it does not mean the issue is dead. What is needed is more education of the public, along with better management of the forests."

Secretary Butz's aide, Behrens, said the Forest Service made mistakes in the way it permitted clear-cutting in the Monogahela National Forest in West Virginia, and in some other places, "but that doesn't mean clear-cutting is not beneficial if used correctly."

Behrens said any needed reforms can be carried out by the Forest Service, perhaps with the help of the recommendation to be made in mid-1972 by the presidential advisory panel on timber and the environment, headed by former Interior Secretary Fred Seaton, who served in the Eisenhower administration.

(Behrens is a former top official of the National Forest Products Association.)

MIXED FEELINGS

The Wilderness Society, the Sierra Club, Friends of the Earth, and other similar organizations, had mixed feelings about the proposed order.

They felt that the terms, as they understood them to be, were not tough enough and yet might permit the administration to say that it had solved all the problems affecting national forest timber management.

At the same time, some of the conservation groups reasoned, a presidential order on clear-cutting could be the first step in solving other national forest problems. Also, it would put the full force of the President behind the idea that clear-cutting should not be so widely practiced.

Industry officials were candid in saying that they feared the order would reduce their timber supplies from federal lands and would give environmental groups more legal standing to challenge timber sales and cutting practices.

When the industry learned of the draft order, it demanded a meeting with administration officials. Industry officials met with Butz and interior officials last Saturday, and with Butz, Train, White House aid John Whitaker and others on Monday.

A draft of the executive order, obtained by The Register, said that in order to protect environmental and resource values of federal lands, clear-cutting would not be permitted unless these criteria were met:

Clear-cutting of a particular species of tree and in a specific area would have to have "a silvicultural justification;" there would be no clear-cutting in "areas of outstanding scenic beauty," or in places where it would adversely affect important recreational uses or wildlife; it would not be used on sites where severe erosion may result, and it would not be used unless there were assurances that the area could be promptly reforested.

Also, the order said clear-cut areas would have to be kept to minimum sizes.

Butz and Morton would have had to adopt regulations implementing the order, and also would have been required to issue new regulations clamping tighter controls on timber sale contracts and logging methods.

TIMBER INTERESTS GET THEIR WAY

The timber industry won another battle this week with the scuttling of a proposed executive order to limit clear-cutting. The order, suggested by Russell Train, chairman of President Nixon's Council on Environmental Quality, would have prohibited the practice in "areas of outstanding scenic beauty," or where it would damage wildlife or recreational use, or cause severe erosion.

After the U.S. Forest Service "leaked" the word to the timber industry that such a proposal was in the works, the lumbermen launched a successful counterattack. On Thursday, Train, Agriculture Secretary Earl Butz and Interior Secretary Rogers Morton agreed to kill the idea. A Butz aide said his boss led the fight against the proposal.

Clear-cutting is the stripping of forest lands of all trees, regardless of their maturity or suitability for commercial use. The timber industry argues that the time and expense required for selective cutting would reduce lumber production in the face of a strong demand for new housing.

Conservationists argue that exposing the land to erosion, the polluting of waterways and loss of wildlife cover—not to mention the conversion of scenic beauty to ugliness—is too big a price to pay to match the current demand for housing, especially since other building materials can be substituted for lumber.

Conservationists have been losing the battle steadily. Since 1950, the U.S. Forest Service has more than doubled the logging allowed on federal land, and has failed to meet its replanting schedule. The Multiple Use-Sustained Yield Act of 1960 requires that logging not exceed reforestation, but there are now 5 million acres of national forest in need of replanting.

Senator Gale McGee (Dem., Wyo.) is pushing legislation which would ban all clear-cutting until a blue-ribbon commission can study forest management practices. Conservationists might have better luck in Congress than they have had with the Administration. We hope so. The need for lumber is not so urgent that we must plunder our forests without regard to the needs of future generations.

ARCHIVES OF AMERICAN ART

Mr. PERCY. Mr. President, the Archives of American Art was founded in 1954 to gather and to make available the primary documentation needed for the study of American art and artists. Since 1970, the Archives has been a bureau of the Smithsonian Institution. Located in the National Collection of Fine Arts, the Archives has steadily increased its collection of the correspondence, papers, diaries, and other memorabilia of American artists, collectors, and dealers, as well as the formal records of museums, galleries, and art organizations. These documents are microfilmed and circulated to scholars through the Archives regional branch offices and through interlibrary loans. The Archives also has a program of oral history, recording the recollections and thoughts of living artists and experts on American art.

It should be noted that the Archives were originally created by the efforts of private individuals, notably art historian E. P. Richardson and Lawrence A. Fleischman, a Detroit art collector. While the Archives now receives a modest Federal appropriation for its operations, it is still substantially supported by private donations of funds and gifts of materials for its collection. A wise combination of private philanthropy and Government assistance has enabled this scholarly endeavor to continue and to grow.

Recently the Christian Science Monitor's arts editor Roderick Norell wrote a most interesting article describing the work of the Archives of American Art, and I ask unanimous consent that this article, "The Artist in America," be printed in the RECORD at the conclusion of my remarks. The Archives is an important scholarly adjunct to the American art now displayed in the Smithsonian's National Collection of Fine Arts and the National Portrait Gallery and to be seen in the Hirshhorn Museum when it opens in 1973. The Archives, with these three fine museums, will make the Smithsonian a national center for the study of America's artistic heritage.

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

THE ARTIST IN AMERICA

(By Roderick Nordell)

WASHINGTON.—Consider the fortunes of the artist in America. In 1954 Franz Kline had to pawn a pair of binoculars for $15. Within five years his characteristic paintings, those explosions of black and white, were bringing in enough to make him a two-car man (Thunderbird and Ferrari).

Now the Kline canvases are honored in museums. The pawn ticket is in the Archives of American Art—recalling the man behind the easel through one of the five million items that will be increased and made more easily accessible under the past year's branching out by this largest collection of its kind.

Recently archivist Garnett McCoy, wearing chinos and a striped shirt, led a visitor past shopping bags of documents waiting to be filed in the archives' balcony area overlooking the library of the National Collection of Fine Arts (NCFA) here. To sample the materials on hand was to feel the living presences involved in the rocky, spectacular course of American art since the days when John Smibert, whom Mr. McCoy called America's first professional artist, expressed a tentative hope:

"If the arts are about to leave Great Britain I wish they may take their flight into our New World."

This was written to Smibert's London agent in 1743, when the artist was particularly concerned about simply getting sufficient supplies to carry on his work in the colonies.

By 1948 the great John Marin expressed other concerns, as in a letter on the archives' wall in script as delightfully crankly as its contents—to do with seeing the sea he so often painted:

"Its breaking over a Sunken ledge out there—ordinarily one is not aware of—what does one see—one gets glimpses a repetition of glimpses—and that—I would say is a multiple that we—Critters—call Seeing—which has—I will say—nothing to do with—*Mr. Camera*—The nerve of them with their Mr. Cameras Well—maybe—the nerve of me with my paint pots. . . ."

Mr. Cameras causes no failure of nerve on the part of the Archives of American Art. The archives not only collects photographs of artists, studios, etc., but makes extensive use of microfilm so that, if the inquirer cannot come to the mountain of research materials, the mountain can go to him. Everything from sculptor David Smith's cosmic thoughts in his notebook to a much-autographed menu for the Armory Show of 1913 to Picasso's handwritten list of suggested artists for that show.

The past year's developments are in line with the archives' original goal to collect "not for the sake of collecting but to use the information and put it to work." These are the words of art historian E. P. Richardson who, with Detroit collector Lawrence A. Fleishman, founded the archives in Detroit in 1954.

In 1971 the archives opened a Boston branch for collecting new materials and making its resources available on microfilm. It looked forward to a similar branch in San Francisco. And it began a new use for its resources—displaying an artist's documents and memorabilia in conjunction with exhibitions of his works.

The first such show was in the National Collection of Fine Arts itself. It was interesting to look at the paintings by Lee Gatch, their style changing with time, and then to examine the archives display—photos of the artist in early and later years, his account book, views of his house and studio. Now a similar archives display accompanies a John Steuart Curry exhibition at the NCFA.

The archives has been under this roof since 1970, said Mr. McCoy, when it became affiliated with the Smithsonian Institution. The original materials are here, with microfilm available in Detroit, at executive headquarters in New York, and now Boston.

The tape recording of interviews with artists proceeds together with such projects as keeping a filmed record of art-auction catalogs. Along with Smithsonian support, private fund-raising continues, notably by means of "airlift" art tours abroad. William E. Woolfendon, director of the archives, is in Turkey with a group at the moment, said Mr. McCoy.

The whole operation has come a long way since founder Richardson ran into the difficulty of getting to the necessary sources for his book, "Painting in America: The Story of 450 Years." The archives was set up to gather microfilms as a step toward a centralized research facility.

Soon original materials themselves began to be offered, said Mr. McCoy. Now the archives, through its branches, through the mails, and through interlibrary arrangements, serves an international spectrum of scholars. Its shelves are beginning to grow with books drawn by authors from its own resources.

Mr. McCoy had previously written, in the Journal of the Archives of American Art, that the past neglect of the history of art in America could be blamed both on the scarcity of documentary sources and "a sculpture as inferior to European art."

The archives—and other institutions cited by Mr. McCoy—are remedying the scarcity. The artists themselves have dispelled the inferiority complex.

Yet one of the strands running through the archives is the often precarious role of the artist in the New World to which colonial John Smibert hoped the arts would gravitate.

"I felt in complete harmony with the times," Ben Shahn recalled, looking back to New Deal days in a 1964 interview taped for the archives. But then he added: "I don't think I've ever felt that way before or since." How would he feel now that a new wave of government support for artists has arrived?

Other artists, of course, have had different attitudes, some of which are quoted from archives sources elsewhere on this page.

THE GENOCIDE CONVENTION AND THE CONNALLY RESERVATION

Mr. PROXMIRE. Mr. President, article IX of the Genocide Convention says that the International Court of Justice will have jurisdiction over disputes between contracting parties relating to the "interpretation, application or fulfillment" of the convention. Opponents of the convention say this article will nullify the Connally Reservation which says that the United States will decide which matters are within the internal jurisdiction of the United States and outside the jurisdiction of the International Court. These opponents fear that the International Court will be given the authority to meddle in our internal affairs.

By May 1970 the United States had ratified 27 treaties and conventions which contained provisions similar to article IX of the Genocide Convention. These included, among others, treaties dealing with sanitary regulations, copyrights, and slavery; matters which might be considered as strictly internal affairs. But in negotiating and ratifying these treaties the Executive and the Senate felt that it was in our own best interests to have international cooperation in dealing with these subjects. The International Court has not meddled in our internal affairs on the basis of these treaties. One important reason is that these treaties give the Court the jurisdiction to issue an opinion in a dispute over the interpretation of a treaty, but no authority to act on that opinion or compel any nation to take any action.

Certainly it is in the best interests of the United States to prevent genocide. Any action which helps to prevent the recurrence of this horrible crime will also help to preserve world peace. Because previous treaties which are very similar to the Genocide Convention on this point have not given the International Court the authority to intervene in our domestic affairs, it is reasonable to assume that the Genocide Convention will not do so either. Previous experience informs us that we have no reason to fear article IX.

Mr. President, the time has come for the Senate to act. It is time to ratify the Genocide Convention.

HUMAN RADIATION PROJECT

Mr. KENNEDY. Mr. President, since October 8, 1971, the Health Subcommittee of the Committee on Labor and Public Welfare has been reviewing the human radiation project being carried out at the University of Cincinnati's Medical Center with partial support from the Department of Defense. On January 19, 1972, a report on that project by the American College of Radiology was entered into the RECORD by the distinguished Senator from Ohio (Mr. TAFT). Today's Washington Post contains an article on a new report on the project which has been issued by the Junior Faculty Association of the University of Cincinnati. This report contains significant information relative to the subcommittee's review, and I ask unanimous consent that the news article and the full text of the report be printed in the RECORD.

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

[From the Washington Post, Jan. 26, 1972]

FACULTY STUDY HITS WHOLE-BODY RADIATION PLAN

(By Stuart Auerbach)

A faculty group at the University of Cincinnati yesterday condemned a Pentagon-sponsored project to test the effects of radiation on humans and said the treatment hastened the deaths of some cancer patients used in the study.

In a detailed analysis of the Cincinnati Medical School project, the university's Junior Faculty Association found that 21 out of 87 patients who received total body radiation—24 per cent—died within 38 days of the treatment.

No members of the study committee are doctors.

Although the patients were suffering from terminal cases of cancer, the committee said "they were not in the final stages of disease or close to death." They were described in reports by the project team as being "in relatively good health" when the radiation treatments began.

"Many died of radiation injury rather than simply from their disease," the committee concluded.

As a result of its findings during the four-month study, the Junior Faculty Association urged University of Cincinnati President Warren Bennis to stop the project and to order the medical school faculty to "cooperate fully" with an investigation started by Sen. Edward M. Kennedy's health subcommittee.

University officials refused to comment on the report of the Junior Faculty Association, composed of 50 members of the untenured faculty. But Dr. Edward A. Gall, university vice president and director of the medical center, called the group "a responsible organization."

"Many patients in this project paid severely for their participation . . . often without even knowing they were part of an experiment," said the special study committee.

The report said the committee received "extensive help from members of the medical community."

In compiling the seven-page, single-spaced report, the committee said it had studied all the documents submitted to the Pentagon's Defense Nuclear Agency by the project director, Dr. Eugene Saenger, during the past 11 years as well as other reports by the project team.

The faculty committee concluded that the cancer patients were given doses of whole body radiation designed primarily to benefit the Pentagon-sponsored study, not to treat their disease.

Moreover, the committee said, patients were selected for whole body radiation to fulfill the needs of the Pentagon-sponsored study. For example, the committee quoted a report in which the project team said it would not use radiation on women still having regular menstrual periods. The menstrual cycle, the report continued, effects the amount of amino acids in the urine samples that were under study for the Pentagon.

REACTION OF SOLDIERS

The faculty committee found that Dr. Saenger's team had designed careful studies to fulfill the Pentagon's aim of finding out how soldiers would react in battle to the radiation of an atomic attack.

But, the committee report said, there was no "planned, systematic study" designed to prove that the use of whole body radiation was more effective in treating cancer patients than the treatments used by most doctors.

In another section of the report, the committee said Dr. Saenger's team failed to fully inform the patients most of whom had low IQs and little schooling—about the risks of whole body radiation.

For the first five years of the project, the report said, "no consent form seems to have been used at all . . . Patients seem to have been told nothing except that radiation was part of their treatment."

Even the consent forms that were used later, the committee said, fail to "properly state the real risk to the patients—that is the risk of death within 40 days."

The Junior Faculty Association report criticized a study released earlier this month by the American College of Radiology that said the project was conducted properly and could contribute useful information on cancer treatment. The College of Radiology report, the faculty committee said, "omits . . . the more damaging statistics on patient survival."

The faculty committee also said that the university's own committee investigating the project had made a mistake by keeping its deliberations secret. Its report is due next week.

The Junior Faculty Association committee was headed by Dr. Martha Stephens, an assistant professor of English, and Dr. Henry Anna, an assistant professor of political science.

A REPORT TO THE CAMPUS COMMUNITY

Since last October a committee of the Junior Faculty Association of the University of Cincinnati has been investigating the radiation experiments at the University Medical Center. We have interviewed doctors involved, and we have studied with care the reports of the research team to the Defense Department, as well as the team's publications on radiation in medical journals, and many other pertinent documents. Our committee has had extensive help from members of the medical community.

For reasons that we will present below, we have come to the conclusion that many patients in this project paid severely for their participation and often without even knowing that they were part of an experiment. We feel that the evidence clearly calls into question the manner in which these human experiments were designed and carried out. We therefore urge the president of the University to terminate this project and to instruct the Medical Center to cooperate fully with the congressional hearings to be held next month.

We are addressing ourselves in this report to what we believe to be the three most crucial questions to be asked about this project:

(1) Was cancer study the main object of the experiments?

(2) What were the real risks to the patients?

(3) Did the patients give their informed consent to being used as experimental subjects?

To begin with, we have been unable to find any evidence of a planned, systematic cancer study. It seems unlikely that the team would not have mentioned, somewhere in the

900 pages of the Department of Defense (DOD) reports, the fact that they were conducting the DOD project in conjunction with a specific cancer research study, had this indeed been the case. Nor has the team made public, even during the recent months, a design for cancer study in any way comparable to the detailed proposals for DOD radiation studies, proposals which have been repeatedly and painstakingly modified and amplified over the eleven years of the project.

We also point out that there is no evidence in the DOD reports that any patients were irradiated before the beginning of the DOD project in February 1960; the two projects research on cancer and research on radiation injury (if needed there were "two"), seem to have been coterminous.

Consistently throughout the reports to the DOD the doctors make statements that indicate that the selection of patients and the radiation dose given them was at least partly tailored to the needs of the DOD project. For instance, we find that in the first description of their project the team states that they will generally not irradiate women with active menstrual cycles. The menstrual cycle, they say, affects the appearance of amino acids in the urine and at this time the team is studying amino acids in the urine of irradiated subjects in hopes of finding an indicator for radiation injury. Such a statement as the following, which appears in the 1970 report, points clearly to the fact that the main reason for increasing the dose over the years was to improve the data—not on cancer treatment—but on radiation injury:

"Clearly much more *in vivo* data are required [for indicator studies] with good dosimetry [where the radiation exposure can be controlled]. We are pursuing this goal at whole-body radiation doses up to 250 rads with even higher doses planned with the support of marrow auto-transfusion and laminar-flow "sterile" rooms. Large-volume partial-body irradiation is also being performed to learn more about the efficacy of chromosome aberrations as a radiation dosimeter. . . ." [1970, page 22]

Also, consider the wording in this initial sentence of a 1964 publication on dosimeters by the Saenger team in *Radiation Research:* "In an effort to evaluate the metabolic effects of single doses of whole body radiation in the human being, patients able to maintain their nutrition with disseminated neoplasms were given therapeutic doses of whole body radiation with Cobalt-60 teletherapy." And in the 1971 DOD report we find these particularly chilling lines:

"This [report] brings to 43 the total number of patients who have undergone assessment for the effects of total or partial body irradiation on their cognitive-intellectual functioning and emotional reactions. In terms of the characteristics of the overall sample, the addition of the new patients will serve to improve the ratio of whites to Negroes, to increase slightly the average educational attainment, and to decrease the average age. The trend noted in the 1969–70 report toward *recruiting patients in comparatively better physical condition* has continued." [1971, page 72]

Finally, we repeat the now rather well-known fact that there has been no publication by this team specifically on total or partial body radiation as cancer treatment. One of the doctors, Dr. Edward Silberstein, wrote to the chairman of the JFA committee last November 14 as follows:

"I hope I made it clear to you on Monday that we have not yet published the results of therapy because of the variable duration of patients' clinical course with cancer following treatment and the need to have an adequate sample of patients before one makes any statements about the efficacy of one's therapy. Since I am limited to treating 7 or 8 patients a year, I cannot, as a responsible scientist, issue claims about what we can do therapeutically for patients over a short period of time."

Is it conceivable that, in an authentic cancer research study, no results would be reported after eleven years and the radiation of 87 patients? If no pattern had emerged after the irradiation of 87 patients—indeed after 10 or 20—would this in itself not have been worth communicating to other cancer specialists? We also question why, if this were a serious study of the effects of radiation on cancer, so few autopsies were performed.

We can only conclude that the purpose of irradiating cancer patients at General Hospital was primarily to study radiation injury for the DOD and that incurable cancer patients were used because (a) they were going to die anyway and (b) they "might" benefit from the radiation in terms of reducing pain or slowing the spread of cancer.

We move now to the question of the real risks to the patients and the effects on them of the radiation. We begin with this crucial statistic: *of the 87 irradiated subjects whose histories are given in the DOD reports, 21 died within 38 days—or 24%.*

What is even more serious is that of the first 40 patients given total-body radiation before the advent of bone marrow transplants, 7 of the 18 receiving the higher doses (150 or 200 rads) died within 38 days—or 39%. That the higher doses were much more lethal than the lower doses is clearly borne out by the fact that of the 22 patients receiving 100 rads or under, only 10% succumbed within the 38-day period. The full statistics on this early period of the project, as we have abstracted them from the reports, are as following:

First 40 total-body subjects (1960–66):

Of those receiving 200 rads, 2 of 6 died within 38 days.

Of those receiving 150 rads, 5 of 12 died within 38 days.

Of those receiving 100 rads, 1 of 14 died within 38 days.

Of those receiving under 100 rads, 1 of 8 died within 38 days.

150 rads or over: 7 of 18.

Under 150 rads: 2 of 22.

Of the total 87 patients, it may be added that 4 died within 10 days, 7 within 20 days.

These statistics are all the more alarming when one juxtaposes them with the doctors' descriptions of the patients at the time of radiation. Throughout the DOD documents the doctors report that though all their subjects are patients with incurable cancer they are not in the final stages of disease or close to death. Patients as a group are described over and over again as having "relatively good nutritional status," "normal renal function," and "stable hemograms." We offer this sentence from the DOD report of 1969: "The patients who are irradiated, all of whom have inoperable, metastatic carcinoma but are *in relatively good health,* provide us with an opportunity to study multiple facets of the effects of radiation in man rather than in experimental animals," (page 1). In the 1970 report the doctors write:

"Several of the subjects were tumour-free and essentially normal (following radiation-induced tumour regression) receiving prophylactic whole-body radiation. The rest had metastatic carcinomas which were inoperable and not amenable to conventional chemotherapy. Nevertheless, these patients were all clinically stable, *many of them working daily.*" [1970, page 2]

Even of the group described above, 2 died within a month—one on day 31 and one on day 22.

In regard to possible benefits, we assume that any benefits that would balance out these enormous risks would have to be very plain and dramatic. Yet this is not at all the case. The American College of Radiology (ACR) team stated that about a third of the patients reported a decrease of pain (the medical histories show, by the way, that some patients had an *increase* of pain following radiation) and a greater "sense of well-being" and that a third had decrease in primary tumor size. Dr. Saenger has said that he feels the statistics for long-term survivors—a small number of patients lived several years after radiation—will show that total and partial body radiation is "promising" as cancer treatment. But even that much is clouded by (a) the fact that many subjects received other kinds of therapy before or after radiation and (b) the fact that the Saenger team used no control group. The doctors state in the later DOD reports that they are carrying out their experiments in conformity with the Helsinki Code (which dates from 1964); yet the code clearly states that the health of the patient must always be the first consideration in trying out new kinds of therapy:

"I.4. Every clinical research project should be preceded by careful assessment of inherent risks in comparison to foreseeable benefits to the subject or to others."

But let us assume for the moment that those we address are not convinced, even by the number of short survivors plus the patients' conditions at time of radiation, that many died of radiation injury rather than simply from their disease. There is yet another kind of evidence that radiation injury was a major cause of death. It has been known for some time that a major injurious effect of radiation is bone marrow failure. The bone marrow's ability to make white and red blood cells can begin to fail as early as 6 days post radiation; the critical period for marrow failure then comes from 25 to 40 days post radiation. In summarizing in 1966 the marrow problems for their first fifty patients, the doctors themselves make the following statement: "The total white count falls to a low point 25 to 40 days after irradiation. There was a persistent lymphopenia which persisted for 40 to 60 days" (page 31). Can it be merely a coincidence that the short survivors are bunched in exactly that critical 25–40-day period?—that, for instance, no less than 9 subjects died from 31–38 days? In this same 1966 report, in fact, the doctors state outright that "severe hematologic depression was found in most patients who expired," and they note that because of this, they are beginning work on bone marrow transplants—far too late, in our opinion. In the 1963 report, they write that "Delineation of disease score [a rating for blood problems], radiation score [the rating adjusted after radiation] and total continued to be of value in ascribing *the importance of radiation in precipitating demise*" (page 9).

A distressing aspect of the doctors' public disclosures about this project has been their misleading statements concerning the protection given the patients by bone marrow transplants. It has not been made clear that of the first 50 patients only 2 received transplants and that neither of these transplants was a clear success (the first subject died, in spite of the infusion, 28 days post radiation).

The team from the American College of Radiology reported that it felt the research team could not be censured for not giving bone marrow transplants during the early years for the simple reason that the technique had not then been perfected. But since the doctors could not protect the patients from bone marrow failure, were they justified in giving the higher doses of radiation? Among those first 50 patients, we point out again, 7 of the 18 high-dose subjects did not live beyond 38 days.

Why did the doctors not discontinue high dose radiaion as soon as they began to lose patients from bone marrow failure? It is perfectly clear that in the first six years of the project, the less radiation given the better the patient was likely to do. It has, in fact, only been within the last year or so that the

doctors have had much success with the transplants; it is still not completely clear that bone marrow transplants offer a certain way of protecting all patients.

We move now to the third question: Did the patients give their informed consent to being used as experimental subjects? We note to begin with that during the first five years of the project no consent form seems to have been used at all; none is mentioned in the DOD reports for these years, and the absence of written consent is corroborated by the ACR. In fact, it is clear from the DOD reports that during these years the doctors were not attempting to justify the radiation as experimental cancer treatment but simply as "therapy" or "palliation treatment," as it is in these words that the radiation is constantly described. Patients seem to have been told nothing except that the radiation was part of their treatment. Over and over again in the reports we find such lines as these:

"The patient is told that he is to receive treatment to help his sickness." [1961, page 3]

"The patient is told that he is to receive treatment to help his disease." [1963, page 4]

In 1965 a short consent form was initiated, but it made no mention of specific risks from radiation injury, merely asking the patient to state that "the risks involved" and "the possibility of complications" had been explained and that "the special study and research nature of this treatment has been discussed with me and is understood by me." For what the patients were told we have only the doctors' word. Another form, used as late as December 1970, states the risks as follows: "The chance of infection or mild bleeding to be treated with marrow transplants, drugs, or transfusion as needed," and the first line of that form reads as follows:

"I (the subject) being of the age of majority and of sound mind and body, voluntarily and without force or duress, consent to participate in a scientific investigation *which is not directed specifically to my own benefit*, but in consideration for the expected advancement of medical knowledge, which may result for the benefit of mankind."

The latest consent form, a revision of the above made last spring and signed by only a handful of patients, includes under "Risks" a long paragraph regarding bone marrow problems and alters the lead sentence to read "*not only* directed specifically to my own benefit, *but also* in consideration for the expected advancement of medical knowledge. . . ." It is a very unhappy fact that it was this last form, only in use for a few months, that Dr. Edward Gall, director of the Medical Center, chose to release to the newspapers. This form was printed entire in the *Cincinnati Post*, with a statement saying it was signed by "every adult patient" of the project.

In our view none of the consent forms properly states that real risk to the patients—that is, the risk of death from bone marrow failure within 40 days. We feel, in fact, that no conceivable consent form, particularly in view of the subjects' low level of education, would have justified the doctors in subjecting the patients to the higher doses of radiation.

In conclusion, we want to comment on the recent report by the American College of Radiology, which finds nothing whatever to criticize in these experiments and urges that they be continued. We are confident that this report will not be taken seriously by anyone properly informed about this project. The ACR omits from their report the more damaging statistics on patient survival. The only statistics they give is as follows: "A group of 10 per cent or eight patients died from 20 to 60 days after the whole body exposure." We find 14 total-body subjects who died within this period (not to mention 5 partial-body)—or 23%, and of course this figure takes no account of the 7 subjects who died within the first 20 days. The ACR doctors contribute, in other words, to the deceptive impression that the main side effects from radiation were nausea and vomiting within the first few days.

As for the special committee appointed by the president, we regret very much that the existence of such a committee was kept secret for so long and that even today the names of the committee members have not been revealed. It has been impossible for us, or any other party interested in the project or having special information about it, to communicate with the committee. We hope that even in this unpromising context, however, the committee will seriously address itself to the real questions surrounding this project and will make a recommendation that we all can support.

The Junior Faculty Association committee has not been secret, and we have asked in the campus newspaper for the assistance of all interested parties. We also succeeded finally in having a full set of the DOD reports made available in the reference room of the UC library for all to inspect, and all are invited to check our facts and figures in these public documents.

We are confident that those who examine the evidence for themselves will join us in urging the president to terminate this project and to assure the public that the Medical Center will make a full disclosure of all the facts at the congressional hearings.

THE LIFE AND DEATH OF A GOOD LAW

Mr. MONTOYA. Mr. President, over the years a rising chorus of anger has been heard from the public at large over nonperformance on the part of the Federal Government. Charges have been leveled at the "bureaucracy," charging that in some way or another it is not protecting the people by enforcing a given law.

More often than not Federal-level people are done an injustice by such accusations. However, there are instances when these charges are more than justified. This is indeed the case insofar as the Food and Drug Administration and enforcement of the Poison Prevention Packaging Act are concerned.

In earlier presentations on this floor, I have delineated the tragedy of this excellent piece of legislation. Annually, hundreds of thousands of American youngsters under age 5 are poisoned, because they ingest hazardous substances sold commercially. Recognizing this situation, the Congress passed a measure requiring safety closures to be placed on containers such substances are sold in. Jurisdiction for enforcing the measure was placed with FDA's Bureau of Product Safety. President Nixon signed the bill making it a law December 30, 1970.

Today it is possible for any person in the Nation to walk into a dozen kinds of commercial establishments and purchase substances which would kill or maim a young child if swallowed. This includes prescription drugs, aspirin, liquid lye bowl cleaner, pesticides, oil of wintergreen, oil-based furniture polishes, and a host of other substances. One company places a form of safety closure on children's aspirin. A few other closures have appeared in stores around the Nation, none proven overwhelmingly effective against the efforts of children to open them. These are facts no amount of apology or evasion or obfuscation can disprove or gloss over.

Here is the classic failure of a Government agency to protect the public under a plainly written law. An agency of timid civil servants, has become so beholden or enamored of industry that the safety of the American public has been adjourned in their minds.

It is enmeshed in politics and redtape to a point where years are allowed to elapse before even elementary steps are taken to enforce necessary, vital, and simple laws, such as the one question here. The Food and Drug Administration is condescending, patronizing, and secretive, operating under a supposition that the consumer is ignorant, should not be confided in and does not know what is good for him and his family. The FDA is operating under false pretenses when it labels itself a servant of the public. Its outlook is obsolete and its maneuvering clumsy. Only the American people suffer as a result. Mr. President, I intend to go into this malfeasance and nonperformance on the part of FDA in depth. In future, I shall deal with its nonenforcement of the Safe Toy Act, Hazardous Substances Act, and a series of other measures. Attention will be given the lead tinsel at Christmas caper as well as to other aspects of product safety and adulteration of products offered an unsuspecting public in our marketplace. The tale is utterly horrifying.

I originally delved into the Poison Prevention Packaging Act alone. Yet one piece of research leads to another, until an investigator realizes with growing dismay that more than an isolated incident is involved; that in fact an entire Government agency is committed to a calculated policy of nonperformance leading to death, permanent injury, and illness for millions of Americans.

When most Government agencies make mistakes, one or another element of our population is harmed in some way. When the Food and Drug Administration comes a cropper, every American citizen is jeopardized directly and to an ultimate degree.

For an in-depth look at a classic example of this, the Poison Prevention Act is our best guide. Certain facts are known about what has transpired regarding enforcement of this measure since its enactment. To begin with, a technical advisory committee was supposed to be appointed, which would convene to decide which products required childproof safety closures, and how effective they would have to be in order to satisfy requirements of the law. It took HEW almost 5 months just to appoint such a group.

Finding out from FDA when they were to meet here was a detective assignment worthy of the better efforts of Sherlock Holmes. Attending such a meeting was as difficult as getting a straight answer out of FDA's Bureau of Product Safety, which has proven itself a model of bureaucratic evasion. My office heard more promises from them than a drunkard's wife receives. It was, for much of last year, their contention that somehow allowing observers from the Congress into

their meetings with the technical advisory committee was an obstacle to enforcement of the law. Obviously, with no consumer advocates present, enlightenment rages.

The object of such meetings, of course, would be to set as many standards as high as possible on as many products in the shortest possible time. After 1 year and 1 month, standards have been published in the Federal Register on just four categories of products. Aspirin, oil-based furniture polishes, oil of wintergreen solutions exceeding 5 percent and prescription drugs have had standards set.

Nothing, however, has been done by any manufacturers of these products to live up to the letter of this law, because the testing protocol has not been finalized and still has not been finally set. As a result, FDA has still another excuse for not holding the feet of manufacturers of such products to the fire of compliance.

Yet these tests have been carried out for years at Madigan Hospital in Tacoma, Wash. Has FDA taken advantage of their experience and testing of closures? Hardly. Secure in the feeling that few people were aware of such events, they confidently went ahead, catering to industry requests for delay at public expense. It was as if the Madigan tests were nonexistent.

Meanwhile, bear in mind that at least one child daily is dying and another is crippled because of lack of enforcement of this law. Gradually, the scandal spread to concerned members of the media. One such was a young lady at WCBS-TV in New York City. Her name is Sue Cott, and to her credit, she retains a capacity for indignation.

In cooperation with my office, she produced an editorial, aired on WCBS-TV on December 9, 1971. I ask unanimous consent to insert its text in my remarks.

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

POISON PREVENTION

There is a law, passed by Congress over eleven months ago, that could prevent the death of almost 400 children a year. But so far it has not been enforced.

The law we're referring to is the Poison Prevention Packaging Act that requires those who manufacture and process drugs or other potentially harmful substances to package these products in child-proof containers, something like this one, for instance (spokesman demonstrates use of safety top). This is a safety top that can be used on products ranging from furniture polish to aspirin. To open the bottle, you have to line up the arrow on this bottom ring with the one on the cap, push down the ring and snap off the cap. It's not hard for a grown-up to do; but tests have shown that it is too complicated for a five-year-old child.

Who could dispute the need for such safety tops when statistics show that one child dies every day and another is permanently maimed as a result of accidentally swallowing poison? But the fact is that almost a year after the law was passed, containers that are really child-proof are still not in the stores, because the Federal Food and Drug Administration and the drug industry have dragged their feet.

But these life-saving standards shouldn't be postponed any longer. A variety of safety tops have been available for years—tops like this one and others—therefore, we strongly urge the government and the drug industry to resolve their difficulties as quickly as possible. Every day counts. Until the new standards are adopted, one man's medicine may be some child's poison.

Mr. MONTOYA. It is the policy of this media outlet to allow the opposing side in an editorial matter to respond. The Food and Drug Administration did just that. Bearing in mind facts that have been outlined, my colleagues might be interested in perusing the contents of this counterattack. Our friends at FDA substitute gall for performance, which is of interest to connoisseurs of the grotesque, but horrifying to parents of small children. I ask unanimous consent to insert the text of FDA's response at this point in my remarks.

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

POISON PREVENTION

A recent WCBS–TV editorial charges that almost 400 children a year are dying because the year-old Poison Prevention Packaging Act is not being enforced. The editorial is both factually and implicitly misrepresentative.

The fact is that the act is being vigorously implemented, and if WCBS–TV management had taken even a cursory look at the record, they would have been able to perform a public service—not a disservice.

Let's look at the record. What about 400 children dying? The fact is, it isn't happening. During the last fully recorded year, 284 deaths of children did occur from accidental ingestions, a decrease from the prior year. In fact, child poisonings have been steadily decreasing over the past years. Our 580 poison control centers throughout the country continue to provide round-the-clock instant information on poisoning treatment.

But the avoidable death of even one child is a national tragedy. So we are actively administering the Poison Prevention Packaging Act, and in the terms that that act was written by Congress.

The law ordered that an 18-member advisory committee be appointed. This has been done. The committee has taken action numerous times in the past year. The basic package testing method had to be developed. This has been done. Aspirin was identified as needing a proposal for special packaging. This has been done. Certain furniture polishes, liniments and several thousand prescription drugs falling under the control act were all identified as needing proposed special packaging. These have all been done, and more are on the way.

The Bureau of Product Safety believes that its administration of the law has been just as vigorous as the law itself allows.

Along with our appreciation to WCBS–TV for this opportunity to reply, we quote Disraeli, who said many years ago, "it is easier to be critical than correct."

Mr. MONTOYA. Examination of some FDA claims in this editorial is in order. Let us commence with the following quote:

Our 580 poison control centers throughout the country continue to provide round-the-clock instant information on poisoning treatment.

Has anyone in America received such information from the eager beavers in charge of these centers? Is it offered to Capitol Hill? Are poison prevention control centers doing anything to justify their Federal expenditures? I asked the General Accounting Office to ascertain just that, among other things.

Compared to a privately funded poison control center in Los Angeles, federally funded ones are objects of ridicule among informed people.

Yes, an 18-member advisory board was appointed after almost 5 months, letters from Ralph Nader, plus repeated inquiries and letters from a number of our colleagues in both House and Senate.

Yes, a basic package testing method has been developed, after more than 1 year of prodding from the same sources, secret meetings, and delays. And it still is not binding upon industry in any way we can see.

Yes, certain product categories have been identified as requiring safety closures, but how many of them are being sold with closures in any neighborhood stores? Go home or visit a store with your wife and see for yourself how much truth there is in this outrageous collection of nonsense FDA called a response. Stretching truth like chewing gum is more their line.

Miss Cott and WCBS–TV were as outraged as I when this editorial was aired. Their excellent response deserves publication, and I ask unanimous consent to have it printed at this point in the RECORD for the edification of my colleagues.

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

POISON PREVENTION, PART II

Tuesday, a spokesman for the Food and Drug Administration, Larry Chisholm, responded to an editorial in which we urged the FDA to move faster on implementing the Poison Prevention Packaging Act. The Act called for the establishment of child-proof safety standards which would be required for the packaging of all potentially poisonous household substances. In his reply, Mr. Chisholm made a couple of assertions we think we should answer.

First, he disputed our estimate that almost 400 children die a year from accidental poisoning. He claims that only 284 children died. Only! But in Senate testimony in December 1970, Senator James Pearson stated that one child dies each day due to accidental poisoning, and Senator Joseph Montoya only last month confirmed this saying that "at least one child dies daily from such poisoning." So much for this grim numbers game.

But the major point that we feel must be challenged was Mr. Chisholm's declaration that the FDA was "actively administering the Poison Prevention Packaging Act," and that it was vigorously implementing the law. The facts are that months passed before a technical advisory committee was appointed to set safety standards and then during the next several months the committee met only twice. Finally, it has come up with standards for a few categories of products—but none of them have yet been enforced. A visit to the supermarket tells the story.

Yesterday we went to a local market and bought these common household products: (shows products and demonstrates the ease of opening each) drain cleaner; a liquid cleaner; household ammonia; laundry detergent; floor wax; silver polish; and oven cleaner. All are poisons if swallowed, and all are easily opened by children.

The Poison Prevention Packaging Act was passed in December 1970. It is now January 1972. But there are still virtually no child-safe packages on the market. How much

longer, Mr. Chisholm, are children going to die?

Mr. MONTOYA. Meanwhile, pressure is being mounted from another direction upon this embattled bureaucracy. A class action suit has been filed in several cities against FDA on behalf of a 2-year-old child, seeking enforcement of the act.

This agency is nudging the $100 million annual mark in appropriations and rarely is rebuffed when seeking adequate funding. Yet this is one of the main sad little tunes they hum when pressured. It is a classic bureaucratic evasion, when nothing else is available to use as an excuse.

FDA constantly cuddles closely to its real masters. Those few major companies making products they are supposed to insure quality and safety of for public benefit. Industry seems to have slight trouble in obtaining access to, comments from, and presence at functions of the very officials in charge of enforcing this law.

One such, Henry Verhulst, is supposedly in charge of Federal poison control centers, those eager collectors of facts on child poisonings. He granted an extensive interview to Modern Packaging magazine, which formed part of their feature story of the January 1972, issue.

When one is not offered information, one must glean it where one can. Here is part of his answer to a question on forthcoming product regulations. He offers free advice on testing of safety closures by affected companies.

If you're lucky, you can get the full-protocol test done gratis. Several closures have been so tested at Madigan General Hospital (and other institutions).

Now if FDA's poison prevention control director is aware of such doings, how come that same agency's Product Safety Division has taken more than 1 entire calendar year to finalize the testing protocol as a definitive guide for industry? It is just because this protocol was delayed that industry was able to justify lack of conformity with the Poison Prevention Packaging Act of 1970. By their own words they stand condemned.

Another portion of this same article is quite enlightening. Here is a paragraph from the first page. If you have children or grandchildren, study it with apprehension:

FDA's Bureau of Product Safety (responsible for administering PPPA) advises Modern Packaging that final regulations for these products will be issued "as quickly as possible." If you're worried about working off noncomplying inventory, relax. The law specifies between 180 days and a year for compliance with final product-by-product PPPA regulations. So it will be at least midsummer before any child-proof package will be a marketing must.

Of course, if Secretary of HEW Richardson saw fit to do so, the culprits would have to comply. The Secretary of Health, Education, and Welfare can, by his own order, circumvent the 180-day grace period and order immediate compliance. However, that is to be expected, in light of previous actions by this administration, on the Tuesday following judgment day.

A word is also in order about constant close circulation between industry lobbyists and FDA officials involved in administering the law. Meetings are held constantly between them, to which Capitol Hill, Ralph Nader's people, and press representatives are not invited. Even when they do discover such scheduled comings together, they are excluded or impeded whenever possible.

A recent meeting of this type here was opened for a short while to such observers. When some of them sought to ask questions of members on the Advisory Committee, they were shut off. After approximately 45 minutes, they were told the meeting was about to be closed to them once again. Upon asking why, they were told that—

Business of this sort couldn't be conducted in an open meeting.

The darkness of secrecy better suits these people. The American public is not fit to send representatives to observe what is being done in its name on an issue that means life and death to so many people. Can anyone wonder further why FDA's credibility gap makes previous ones seem like hairline fractures?

I have always had significant tolerance for fairy tales. One looks with amusement at the legend of Santa Claus, the tooth fairy, and President Nixon's consumer protection policies. Yet FDA's feeble gropings and incomprehensible mumblings deal a death blow to any surviving credulity. Mr. President, this is the same Federal agency which made a secret agreement with manufacturers of poisonous lead tinsel before Christmas. The essence of this agreement was that FDA would not ban the product or warn the public of its danger.

This is the same agency Consumer's Union has accused of making only a "half-hearted attempt" at meeting problems of product safety. It is the same agency that issued a warning on hexachlorophene, warning against daily bathing of babies and adults with 3-percent solutions of this chemical. FDA revealed that when applied to the skin it can enter the bloodstream in amounts that may reach levels that have caused brain damage in monkeys. Hexachlorophene is commonly used in hundreds of widely used products. A possibility exists that millions of Americans have been exposed to this danger.

According to the magazine Science, more than 10 years ago doctors reported a new disease, chloasma, or a blackening of the face, associated with hexachlorophene use. In 1967, scientists discovered it can enter the body through intact skin. By mid-1969, FDA scientists found basic evidence of brain damage to rats fed very minute amounts of this substance. Yet not until 2½ years later did this agency issue a public warning, knowing full well that every day scores of millions of people were utilizing innumerable products in part composed of this substance.

This is the same agency which deliberately publishes plans under which orange juice canners are encouraged to dilute their products to the consuming public, of which more at a later date.

And Dr. Charles Edwards, FDA Commissioner, has the incredible nerve to viciously assail Ralph Nader and Morton Mintz of the Washington Post for revealing various outrages perpetrated upon the public by this band of frightened civil servants. Here is a gruesome trespass upon veracity, to put it mildly.

This is the same revered and truthful Dr. Edwards who appeared before the Senate Commerce Committee in July of 1971; the third week of that month, to be exact.

During that appearance, he was asked about standards for certain groups of products under the Poison Prevention Packaging Act. It seems some members of the committee, especially my distinguished colleague from Utah, Senator Moss, sought assurances from the good doctor that the law would be enforced.

This was the same Dr. Edwards who assured the committee that FDA would proceed to publish in the Federal Register a series of standards for efficacy of childproof safety closures at a rate of one a week for a period of 10 weeks. Truth again lies wounded.

Were the standards published? Has the circle been squared? I yearn for enlightenment and evidence of performance. None has been forthcoming.

This is the same Federal agency that watched inactively while liquid lye bowl cleaners were placed on the market containing lye solutions exceeding 10 percent. This was the same agency which did nothing about the resulting slaughter of children until public outcry moved them to forbid such products to come complete with lye in excess of 10 percent.

Affected companies lowered the lye content to just below 10 percent, and such products are available today in every corner store and supermarket across the United States; without childproof safety closures, although some are being tested by one company.

And this is the agency head who takes Ralph Nader and Morton Mintz to task for criticism of his nonfunctioning agency. When was the last time Jesse James lectured the public on bank security? FDA has raised callousness to a Government principle.

Mr. President, today another child is this country under the age of 5 will gain access to a container of something deadly. That child will somehow open said container and ingest all or part of its contents. Those contents will poison and kill that child.

Sometime during the day another child will repeat the process and be crippled for life. Many a physician across the Nation can testify to the fact that existence without an esophagus is a fact of life in many homes.

A simple check with the emergency rooms of any hospital in America will verify the ugly facts of child poisonings. Yet the law is plain and immediately at hand. Appropriations for enforcement are at hand. It has been 13 months since the law was entered upon our statute books.

Who is the criminal among us? Is it the

mugger? A murderer who awaits his victim, gun in hand? Or is it the high-ranking civil servant, secure behind his privileged civil service status, who does not dare rock the boat? Is it an embezzler who doctors the books of a company, defrauding investors? Or is it a heartless, encapsulated civil servant who has gotten too friendly with people he is supposed to regulate?

Our answer is simple and the public good requires it. All consumer protection functions of FDA should be forthwith stripped from this agency. Such functions can and should be transferred to a separate consumer protection agency with real power. I shall support such a measure to the fullest.

I wish to close by indicating that strong evidence exists that the FDA has tried to muffle some public criticism emanating from the media, particularly in the case of WCBS–TV. I shall go into this in a future presentation on the floor of the Senate.

UNITED STATES-CANADA RELATIONS

Mr. SPONG. Mr. President, I have for some time been concerned about our Nation's relations with our neighbor to the north, Canada. We have, it seems to me, treated Canada somewhat as an unwanted relative: We assume that she will always be around and be loyal but we do not pay much attention to her.

This attitude is tragic. It is tragic because our geographic proximity dictates that we share certain common defensive interests and concerns. It is tragic because we have had a long history of cooperation and friendship. And, it is tragic because of our bonds of trade and commerce, which have and can continue to be of benefit to both our countries.

I do not, of course, believe that the United States is solely responsible for the problems which have beset our relationship. As I have said before, a number of Canadian diplomatic moves of the past have seemed designed to thwart the best interests of our own Nation and our foreign policies. At the same time, however, I believe that our Nation could have taken actions to facilitate dealings with Canada, especially over the surtax and the Amchitka tests. I believe that we have pursued unwisely another policy of Government "benign neglect."

In November of 1971 I expressed my concern in a statement on the Senate floor and in a letter to Secretary of State William P. Rogers. In December, I received a letter from the Department of State under the signature of Mr. David Abshire. I ask unanimous consent that that letter be printed in the RECORD.

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

DECEMBER 1, 1971.

Hon. WILLIAM B. SPONG, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SPONG: The Secretary has asked me to thank you for your thoughtful letter of November 5. We fully agree with your premise for improving United States-Canadian relations, particularly during this rather difficult period confronting us. Canada continues to be of great and increasing importance to us, especially with regard to our economic and strategic interests. We believe that the Department does give Canadian affairs the full and fair treatment they deserve. As you noted in your remarks prepared for delivery in the Senate on November 9, a separate office of Canadian affairs was established in 1966 to facilitate action on matters of bilateral interest, not only in the Department but with a wide range of agencies throughout the Government.

It is true, as you state in your letter, that this office is organizationally within the Bureau of European Affairs, but Assistant Secretary Hillenbrand and Deputy Assistant Secretary Springsteen are seized directly with a widening variety of Canadian matters. Deputy Assistant Secretary Springsteen is presently serving, for example, as chairman of a Government-wide committee charged with negotiating an agreement with Canada for the improvement of water quality in the Great Lakes.

After full consideration, we do not believe it practicable at this time to establish a separate Bureau for Canadian Affairs, though we will continue to keep the situation under review. We are ever mindful of the feeling of some Canadians that they are "neighbors taken for granted" and will do our level best, by our action and attention to demonstrate that any such view is unwarranted, certainly regarding our own attitude.

Please continue to call on us whenever you believe this Department might be helpful.

Sincerely,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

Mr. SPONG. Mr. President, while I appreciate the concern and interest expressed in the State Department's letter, I am somewhat appalled by the lack of substance in it. The Department's letter was written in the wake of controversy over the President's new economic policy and continuing reports on the deterioration in United States-Canadian relations. Yet, the most substantive matter to which reference was made in the letter was a committee charged with negotiating an agreement for the improvement of water quality in the Great Lakes. As a former member of the Air and Water Pollution Subcommittee of the Senate Public Works Committee, I am deeply aware of the necessity for improvement of water quality. As important as this matter is, however, I hope that in our foreign relations we are also concerned with broader, and at the moment, perhaps more imminent, issues such as strategic and economic policy.

I continue to believe that it would be wise for us to establish a post of Assistant Secretary for Canadian Affairs in the Department of State to give additional emphasis to the importance of our relations with Canada. The Office of Canadian Affairs is currently under the Bureau of European Affairs, and I believe that is an anachronism. When the North Atlantic community was more united, there was perhaps justification for this organizational arrangement. But Canada, as well as other nations in the community, has increasingly pursued a more independent course. No one is to be faulted over the fact that Canada has loosened ties with Europe or that Canada does not lie across the ocean from us. But, the realities of the situation do require a reconsideration of the organizational structure, and, I believe, a modification that will acknowledge a distinct Canadian identity. Creation of an Assistant Secretary of State for Canadian Affairs would, I feel, accomplish this objective.

I was, consequently, quite interested in an article in the January 15, 1972, issue of Canadian Magazine, which implies that the Canadians would not be adverse to the idea of receiving additional recognition in the State Department. 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:

BELIEVE IT OR NOT, THE UNITED STATES DOES HAVE AN EXPERT ON CANADA

(By Paul Grescoe)

The visitor to the U.S. State Department in Washington (2200 C Street N.W.) must be cleared by a hefty woman receptionist who phones the office he is supposed to be visiting. Only then is he given a visitor's pass, which he must instantly surrender to an armed guard stationed behind a low barrier.

An elevator delivers the visitor to the fourth floor, where messengers on motorized carts ride down the catacombs of marbeled halls. Room 4234 is the State Department's "Canadian Desk"—the Office of Canadian Affairs.

There's a sign on the wall that says "Bureau of European Affairs" and, below that, the name and title of the Director of Canadian Affairs. The door displays a small Canadian flag—and it's the only office door in the building that bears a foreign country's flag.

The visitor walks in without knocking. The first thing he sees is a small *American* flag which somebody has hung defiantly over the window of a bookcase. The rest of the office is relentlessly Canadian. The carpet is grey, and on the washed-out green walls hang four posters of Canadian scenes—three of them showing skiers, the fourth a rolling river. The visitors' table holds The New York Times and The Globe and Mail, five copies of a Canadian government handbook called Facts On Canada, a copy of *The Canadian Magazine's* issue on Quebec and an old picture book titled Nova Scotia Camera Tour. Above the table is a black and white photograph of Prime Minister Trudeau and President Nixon standing solemnly at attention while a band plays somebody's national anthem.

Down a short hall adorned with provincial coats of arms lies the director's office. These walls wear a Centennial map of Canada and reproductions of old buildings in Britain and France ("both your mother countries," the director points out diplomatically to the Canadian visitor).

Here, literally, is the Canadian Desk: a massive dark-walnut thing with molding and, atop it, a tin of Hayward pipe tobacco (which the director diplomatically smokes because it has no aroma) and a rack of six pipes which doubles as a stand for another miniature Canadian flag.

The director is William McKinley Johnson Jr.—Mac Johnson—and he has the clean good looks of New York Mayor John Lindsay. And the neat silvering hair, striped maroon tie on blue shirt and the grey suit of a high-placed civil servant. Which he is. After 21 years in the U.S. foreign service, five of them as a political counsellor in Ottawa, he earns $36,000 a year.

And Dale Thomson, director of the Centre of Canadian Studies at Johns Hopkins University in Baltimore, describes Mac Johnson as "a first-rate civil servant"—and that's all he'll say about the man.

Thomson considers the Canadian office in some ways "a glorified post office" that funnels information on Canadian affairs to the proper government agency. Any important decisions about Canada are made at a higher level, he says, such as the National Security

Council or the President's desk. And at that higher level, Thomson says, knowledge of Canada is slight.

So the decision-makers in the Nixon administration sometimes—not always—depend on Mac Johnson to interpret Canada for them and, admittedly, Johnson knows Canada from his tour of duty in Ottawa which ended two years ago. But it's not as obvious that he understands the reasons behind what's happening in this country right now, or the depth of the anti-American feeling.

Consider any issue important to Canada in the last couple of years. The Amchitka nuclear explosion, for instance. Johnson says that his office received about 7,000 pieces of protesting mail every week for about six weeks, including one telegram from Toronto with 180,000 signatures. He routinely reported the protest to the National Security Council, noting a resolution against the Amchitka blast supported by all but one Canadian member of Parliament.

"Certainly the reaction was more than before," Johnson says calmly, "although there had been a similar response to a previous test at Amchitka. I think this is a mark of the growing interest in the environment, don't you?"

Consider Nixon's new policy imposing a ten per cent surcharge on all imports to the U.S., Canadian imports included. "We had such a quickly deteriorating balance-of-payments situation," Johnson explains. "We had to put on the brakes and put them on everywhere equally. It would be very hard to grant an exemption to anybody."

Later, he confesses that he senses a rise in Canadian nationalism, especially economic nationalism, because of the size of American investment in Canada. "But," he sums up, "as far as our (Canadian-American) relations are concerned, I don't see where they're not as good, maybe even better. I'm optimistic that these problems can be solved."

About President Nixon's plan to offer a permanent tax break to U.S. companies that manufacture export goods in the U.S. instead of in foreign countries, Johnson says that his economists tell him it would be less of a hardship on Canada than on countries further away. "It wouldn't mean that Canada wouldn't remain competitive," he says, but adds: "I just don't know whether anybody has tried to sit down and work it out in dollars and cents."

Mac Johnson specializes in Canadian political affairs (and he has a working knowledge of French, which helps). For defence, immigration and protocol matters, he has a 32-year-old assistant named Mike Schneider, whose first foreign service post was in Quebec City, where he spent two years and practised his university French. For the office's environmental work, which has increased by nearly a third in the last two years, Johnson has Ed Nef, 38, who lived in Canada on and off for 15 years but learned his French in Switzerland. And for economic affairs, Johnson uses his senior man (senior though he's been there only a year), a tall, blond 55-year-old, David Thomson, whose French was picked up in his previous posting, Haiti.

They all deal with major trade and political matters between Canada and the United States—usually to coordinate government agencies or pass information along—but most of their work is pretty routine.

Mac Johnson doesn't fret about most squabbles between Canada and the U.S. "This is a very stimulating time to be in this office," he tells his Canadian visitor. "The fact that our business has increased 30 per cent, the number of problems we have is no surprise to anyone in the field. The real surprise is that there aren't more problems."

With that American optimism ringing in his ears, the visitor says goodbye and heads for the elevator. He waits there, looking a bit worn. A middle-aged State Department employee—not from the Canadian Desk—mistakes him for a fellow worker and says: "It looks like you've had enough for today, too."

"Yes," the visitor says, "and I can't even take the day off tomorrow and celebrate American Thanksgiving with you. I'm Canadian."

"Well," the State Department man says, getting on the elevator, "that's something to be thankful for right there."

LEGAL AID IN ILLINOIS

Mr. PERCY. Mr. President, the sixth amendment to the Constitution provides that legal counsel is a right of every citizen. For a long time, however, those too poor to afford counsel were denied this right. This condition was remedied by the Supreme Court decision in the celebrated case of *Gideon* v. *Wainright*, 372 U.S. 35 (1963). Because of this case, the right to counsel of all citizens, regardless of their financial condition, was clearly established. It thus became incumbent upon society to provide counsel for those who could not afford it themselves.

Salutary as this has been, there are instances where indigents have not had the benefit of counsel dedicated to their cases. This has been the result of the appointment of attorneys who have private practices of their own and little time to spend with their indigent clients. On the other extreme have been attorneys who rely solely on these court appointments for their livelihood. Neither of these methods has been completely satisfactory to either the attorney or to the indigent client.

This same, troublesome problem has existed in Illinois up to now. A new statewide program, however, is being launched to provide full-time legal counsel to handle indigent cases. The Illinois Bar Association has authorized a new system, which will provide 266 full-time attorneys to serve some 300,000 indigent clients annually.

I congratulate the Illinois Bar for taking this responsible and much needed step and I ask unanimous consent that an article from the December 9, 1971, Chicago Tribune be printed in the RECORD to further explain the program.

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

STATE BAR PLANS LEGAL AID DRIVE

SPRINGFIELD, Ill., December 8.—A statewide program of legal assistance for about 2 million indigent Illinoisans will be launched next spring by the Illinois State Bar Association.

The plan, expected to serve about 300,000 Illinois residents annually at a cost of about $6.6 million, was approved by the association's board of governors in a meeting here recently.

The first phase of the program is to establish a private, nonprofit corporation empowered to obtain grants from both public and private sources.

CENTRAL AGENCY PLANNED

Morton J. Barnard, association president, said that a central agency for funding new programs and coordinating existing ones will give Illinois lawyers a chance to expand the legal aid system here.

The main focus of the plan is toward small communities where legal aid is not now easily available to the poor, according to John P. Davis an Edwardsville attorney. Davis is chairman of the association's public services committee, which drafted the plan and was directed by the board to draw up incorporation papers for the new statewide legal aid unit.

When completed, the new system will employ 266 attorneys who will draw salaries of about $25,000 a year. They will be expected to handle about 500 cases each annually.

FUNDS TO BE SOUGHT

The new legal aid corporation will seek about $3.6 million in federal, state, and private foundation funds to expand the present system. Now, legal aid programs in Cook County and other metropolitan areas get about $3 million a year, mostly thru the Office of Economic Opportunity.

At least 150,000 indigent Illinoisans, mostly in rural areas, cannot obtain legal aid services, Davis said.

Barnard said the new state legal aid unit will be self-controlled, but will not interfere with existing assistance programs.

"While professional guidance for the program will come from lawyers, members of the public who are conversant with the problems of the poor will have a voice in the organization and development of the system," Barnard said. "Laymen as well as lawyers will serve on the legal aid corporation's governing board."

THE HANDLING OF STOCK CERTIFICATES

Mr. SPARKMAN. Mr. President, as the Senate knows, the Senate Committee on Banking, Housing, and Urban Affairs has legislative responsibility for matters concerning the various aspects of the securities industry. In our exercise of this responsibility, we are constantly striving to help the industry improve its efficiency, safety, and stability—either through the passage of needed legislation or through encouraging one or more segments of the industry to take steps on their own to foster these objectives.

At this time, our Securities Subcommittee, chaired by my able colleague from New Jersey (Mr. WILLIAMS) is engaged in a comprehensive study of the entire industry in the hope that we will be able to improve our understanding of that industry and perhaps ultimately make proposals or recommendations to further improve it.

Thus, we in Congress are doing everything in our power to assure the American investor that he will continue to have a good, safe, equitable marketplace in which to invest his earnings and savings.

I am also happy to report that the industry is likewise doing everything it can to examine its own shortcomings and strengths, with the view to updating the system and thereby make it more efficient and healthy. I believe an outstanding example of this industry attitude is the work which is currently being done by the Banking and Securities Industry Committee.

As Senators probably remember, several years ago the industry experienced an unprecedented backlog of paperwork occasioned by an unforeseeable high volume of trading over a protracted period of time. At one point, some expressed the fear that this paperwork backlog alone endangered the very existence of the industry. While this was probably overstating the problem, it was still one of serious concern and we have

been fortunate that there have been no recurrences.

The Banking and Securities Industry Committee has been working steadily to assure that the problem is never again allowed to occur in such serious magnitude as it did previously. During its relatively short existence, BASIC has done an outstanding job of pulling the various affected segments of the industry together in their common effort. Through the efforts of BASIC, a number of substantial, positive steps have been taken to reduce the paperwork load on the industry, thereby allowing it to handle increased volume on the market with ever-increasing efficiency.

We have recently received a quarterly progress report submitted by BASIC through its chairman, Mr. John M. Meyer, Jr. This report lists the impressive achievements of BASIC and advises us of steps that are being or will be taken in the near future.

I am sure my colleagues will join me in applauding the outstanding work that has been done and is being done by BASIC. Mr. President, I ask unanimous consent that a copy of the Quarterly Progress Report of the Banking and Securities Industry Committee be printed in the RECORD immediately following my remarks.

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

BANKING AND SECURITIES INDUSTRY COMMITTEE,
New York, N.Y., January 17, 1972.

Hon. JOHN SPARKMAN,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: October 1st last Mr. Herman Bevis, Executive Director, and I as Chairman of BASIC, appeared before Chairman Williams and the Subcommittee on Securities in connection with its "Hearings on Problems Associated with the Handling of Stock Certificates."

During this hearing Chairman Williams requested BASIC to make periodic reports on a quarterly basis. This we gladly agreed to do and the first of such reports was submitted to Senator Williams and each member of the Subcommittee under date of December 30, 1971.

Knowing of your own interest in these problems, I am taking the liberty of enclosing herewith a copy of the report so submitted.

With best wishes, I beg to remain,
Respectfully yours,
JOHN M. MEYER, Jr., *Chairman.*

BANKING AND SECURITIES INDUSTRY COMMITTEE,
New York, N.Y., December 30, 1971.

Re BASIC Progress Report—Fourth Quarter 1971.

Hon. HARRISON A. WILLIAMS, Jr.,
Chairman, Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Since October 1, 1971:

First. The Central Certificate Service (CCS) has increased the number of listed and unlisted issues eligible for deposit. Rule changes have been proposed by the Stock Clearing Corporation for CCS to the SEC to expand its eligible depositors to non-member organizations in and outside of New York. Thus it is moving further toward a Comprehensive Securities Depository System (CSDS).

2. Inter-industry groups concerned with comprehensive securities depositories have been formed in California and in Chicago. A coordinating committee of representatives of these groups and of BASIC has been formed—National Coordinating Group for Comprehensive Depositories.

3a. Requests have been made by BASIC to the securities commissioners of all states, except New York and Delaware, requesting them to sponsor a proposed technical amendment to the Uniform Commercial Code (UCC) which is necessary to permit broader ownership of depositories.

b. The amendment to the Code has been introduced to the New York State Legislature for its 1972 session.

c. In Delaware the amendment to the Code is before the state bar association with expectation of approval and introduction to the state legislature in its 1972 session.

4a. Arrangements have been made for introduction and support of an amendment to the New York State Estates, Powers and Trusts Law with respect to the holding of securities by fiduciaries and by custodians for fiduciaries. Introduction to the 1972 session of the New York State Legislature is planned.

b. A copy of the proposed amendment to the New York State Estates, Powers and Trusts Law has been sent also to the securities commissioners of all other states requesting them to consider amending their fiduciary law so that their fiduciaries may have direct access to depositories.

5. The New York State Banking Board has modified its regulations so as to permit it to receive applications from "CCS" and others who wish to incorporate a New York depository as a trust company under its jurisdiction and subject to its examination; an application and other pertinent papers are now being drafted.

6. Discussions with the New York State Tax Commissioner have been held as to a potential uncertainty created by the possible application of the New York State Transfer Tax upon deposit of securities from out-of-state with a New York depository or transfer of securities on the books of the New York depository. These discussions have produced no objections to the proposed amendment or clarification of the law.

7. A committee of communications experts has been formed and is at work on the question of the feasibility of connecting existing and planned wire networks in the two industries with a depository system.

8. An eight-man implementation group has been formed and is at work to effect the transition from CCS to the ultimate New York CSDS.

9. BASIC has agreed upon a solution for the so-called COD DK problem, and has recommended its adoption.

10. BASIC has recommended the adoption of four uniform forms that are the most widely used in processing securities transactions (other than brokers' confirmations).

On Friday, October 1, 1971, Mr. Herman Bevis, the Executive Director, and I as Chairman of the Banking and Securities Industry Committee (BASIC) appeared before your Committee in connection with "Hearings on Problems Associated with the Handling of Stock Certificates. During this hearing you requested BASIC to make periodic reports to you on a quarterly basis (page 170 of transcript). We gladly agreed to so do. This letter is the first of such reports.

I believe you will agree that it is unnecessary to review our written and oral statements at the October 1 hearing, all of which are a part of the record. This report, then, will be an outline of progress made and projects undertaken since that date.

1. EXPANSION OF CCS

As you may recall, a major objective of CCS and of BASIC is the expansion of the present Central Certificate Service, and its incorporation to the end that it become a CSDS. Another major objective of BASIC is the further development of the user-owned depository concept on interindustry regional lines so that securities transactions among banks, brokers and other major financial institutions can be settled by book entry through the two existing depositories (one in California one in New York) and other interconnected regional depositories as formed, all without physical movement of certificates.

From October 1 to date CCS has added, on a gross basis, 180 additional issues of securities to those previously eligible for deposit, thereby increasing the number of transactions which may be settled by book entry rather than by physical delivery of securities. Of these 180 additions:

7 were securities listed on the NYSE
44 were securities listed on the AMEX
129 were securities traded over-the-counter

Ten issues of over-the-counter securities are being added each week and additional listed securities will be added as conditions warrant.

As of December 28, 1971, the shares of 2,572 different issues were eligible for deposit and over 1 billion shares were on deposit.

CCS is handling between 500,000 and 600,000 security transactions each month by book entry, all without the movement of physical certificates.

In regard to the expansion of CCS beyond state lines, the New York Stock Exchange has submitted to the SEC proposed rule changes to permit NASD, regional stock exchange clearing corporations, regional stock exchanges, non-member broker dealers and out-of-state banks to join CCS. Actual applications received to date, exclusive of those in the discussion stage, have been six in number: Boston, Midwest Pacific Coast, Philadelphia, Baltimore and Washington, and the National Stock Exchanges and one out-of-state bank. Nine out-of-state banks are participating in the CCS collateral loan program as pledgee banks.

2. NATIONAL SYSTEM OF REGIONAL DEPOSITORIES

BASIC has continued its eighteen-month old policy of holding monthly meetings with representatives from Boston, California, Chicago, and, more recently, Philadelphia, consulting with them and keeping them fully informed of steps considered, planned, discarded and taken.

In Chicago an inter-industry group has been formed to focus promptly on the desirability and feasibility of creating a depository based on the needs and desires of its area and which could interconnect with other depositories.

The Pacific Coast Stock Exchange Clearing Corporation has established a securities depository in California. There, too, an inter-industry group has been formed to focus on the expansion of its depository's services in its area to provide substantially the same services now offered by CCS and to interconnect with other depositories.

All inter-industry groups, namely, those in California, Chicago and New York, are planning to make available the depository facilities of each to each other. Here, it should be emphasized that depositors in any depository may include NASD and securities exchanges (or their clearing corporations), broker/dealers, banks, mutual funds, insurance companies, any other responsible regulated financial organization and any other responsible and properly organized depository.

BASIC has participated in the formation of a nationwide coordinating group—National Coordinating Group for Comprehensive Depositories—for these projects. The group is composed of two inter-industry members each from California, Chicago, New York and one from the NASD whose membership is countrywide. Any other region or regional areas that desire to create a deposi-

tory can be included in this group and those who wish to explore the question may consult freely with its members.

The membership of the National Coordinating Group is as follows:

Chairman: John H. Perkins, Vice Chairman, Continental Illinois National Bank, Chicago.

George R. Becker, Chairman, Midwest Stock Exchange.

Herman W. Bevis, Executive Director, BASIC.

Gordon S. Macklin, Jr., President, NASD.

John M. Meyer, Jr., Chairman BASIC.

Thomas P. Phelan, President, Pacific Coast Stock Exchange.

Samuel B. Stewart, Senior Vice Chairman, Bank of America.

While I understand a letter from Mr. John H. Perkins, Chairman of the National Coordinating Group, and a copy of the announcement of its formation has been sent to you, another copy is attached hereto as Exhibit A.

The formation of these groups evidences that there is almost no inter-industry difference with the proposition that a nationwide system of user-owned, regional, interconnected depositories is needed to speed the accurate completion of securities transactions.

3. CHANGES IN STATE UCC LAWS

Present provisions of the UCC require that all the capital stock of a securities depository be held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934. The Memorandum of Understanding (Exhibit B) executed between the eleven Clearing House banks of New York City, the NYSE, the AMEX and NASD contemplates that NYSE will sell a portion of its present 100 percent ownership of CCS to a newly incorporated depository partially owned by user banks and other regulated financial institutions.

To accomplish this important step, a section of the UCC must be amended to permit capital stock of a securities depository to be held, in addition to present eligible owners, by "persons (other than individuals) each of whom (i) is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws, or (ii) is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 . . ."

This proposed technical amendment to the UCC has been discussed with the Permanent Editorial Board for the UCC sponsored by the American Law Institute, with the Conference of Commissioners on Uniform State Laws and with Counsel for the Board, as well as with representative counsel in other states. Sympathetic interest has been expressed and no objections have been raised to the proposed amendment as now drafted.

Securities commissioners, or persons in equivalent capacities with other titles, in all fifty states have been asked by letter to arrange the introduction of the amendment in their respective states in 1972; and all such persons have been contacted by telephone one or more times.

The responses to date have been encouraging as evidenced by the following report:

REPORT: STATUS OF UNIFORM CODE REVISIONS

Securities administrators of all fifty states have been contacted. Preliminary reaction is favorable; no preliminary reactions unfavorable to a user-owned comprehensive depository system to date.

The present score of the reactions of securities administrators of the fifty states breaks down into the following categories:

1. One state has introduced the legislation, i.e., New York.

2. Eighteen favor and presently expect to arrange introduction of the legislation. This group includes Indiana, Maine, New Jersey, Ohio and Texas. I have previously commented on Delaware in paragraph 3c of the Summary.

3. Five favor but feel they cannot introduce the legislation and have referred us to others who may do so.

4. Six favor but feel they cannot introduce legislation and suggest we find someone to so do. This group includes Connecticut and Missouri.

5. Three states are revising their own securities laws and will include this in their bills, i.e., Hawaii, Minnesota and Pennsylvania.

6. Seventeen, including eight key states, have the legislation under consideration. These seventeen break down as follows:

(a) Five seem to be favorable and are checking with others.

(b) One commissioner has received the material and forwarded it to a legislator without comment.

(c) One commissioner has not been available and so can't make any comment.

(d) Ten are taking the matter under consideration and made no comment.

The total of the above is fifty states. Of the total, forty presumably can take action in 1972; ten have no meetings of their legislature in 1972. These latter ten states include Minnesota and Nevada.

In New York, and certain other key states, BASIC members or legal counsel are arranging for introduction of and follow-up on the amendment.

4A. CHANGES IN STATE FIDUCIARY LAWS

Amendments will be necessary to the estates, powers or trusts laws of most states to enable fiduciaries to deposit securities in a depository.

The necessary amendments have been discussed with the Secretary of the New York State Surrogates' Association and with members of the trust committee of the New York State Bankers Association, who in turn have discussed the question with their respective Surrogates. The changes to the law were well received; there was no opposition and no proposed changes.

Amending legislation will be introduced in the New York State Legislature January next.

In contrast to the UCC, which is applicable in all states (except Louisiana, but where certain relevant provisions of the Code have been adopted), the fiduciary laws vary from state to state. Such legislation, while desirable at an early date in several key states, is not essential to the prompt passage of the proposed amendment to the Code. Nevertheless, as an example or even as a possible guide, we have sent to the American Bankers Association and to the appropriate people in all states a copy of the material that is being used in New York to amend the fiduciary law as well as material on the Code as shown in Exhibit C.

Exhibit C attached includes:

1. Copy of a letter sent to the securities commissioners in each of the fifty states (other than New York and Delaware, for which separate communications were prepared) as to the proposed amendment to the Uniform Code and as to the New York State Estates, Powers and Trust Law with:

(a) An accompanying memorandum in support of the proposal to amend the Uniform Code which memorandum includes the text of a bill to be submitted to the legislatures of all fifty states. (Forty states in 1972, ten states in 1973.)

(b) The text of a bill to be submitted to the New York State Legislature (1972) to amend the Estates, Powers and Trusts Law.

5. DEPOSITORY AS A TRUST COMPANY

As stated on October 1 before your Committee, it has been and is the intent to incorporate CCS and then CSDS under the Banking Law of the State of New York. By action of the New York State Banking Board on November 3, 1971, a New York depository is now eligible to apply for a New York State charter as a trust company, bringing it under the regulatory supervision and examination of the New York State Superintendent of Banks. The New York depository, CCS, expects to apply for such a charter; the form of charter, articles of incorporation, by-laws and application to the New York State Banking Department are being drafted.

Studies and estimates made by BASIC indicate that approximately 60 percent of the securities deposited for custody in the New York depository by banks, brokers and dealers would be in behalf of banks. As to book entries caused by securities transactions, the proportions of such entries by brokers/dealers would be greater than by banks. We do not have figures presently available as to the amount of securities that might be deposited by insurance companies or mutual funds.

Banks' holdings of securities are primarily for account of others: banks hold as a fiduciary; as a custodian for fiduciaries; and as a custodian. Banks, as is well known, are subject to regulation and examination by one or more authorities, i.e. state banking authorities, Federal Reserve, Comptroller of the Currency, FDIC. Those who appoint banks as custodians and as fiduciaries are aware of a bank's responsibilities in this area and of the regulation and examinations to which they are subject. So when banks contemplate the transfer of the physical custody of securities, presently held by them, from their own vaults (where safekeeping procedures are subject to examinations by bank regulatory authorities, by the bank's internal auditors and by the bank's outside independent accountants) to those of another entity, they understandably feel they should assume a share in the management, audit and operations of that entity and indeed that it is highly desirable that several functions of the depository should be subject to that regulatory oversight now provided by present bank regulatory procedures. Thus, as may be noted above and from Exhibit B, the eleven New York Clearing House banks, the NYSE, AMEX and NASD have indicated in the Memorandum of Understanding their intention to incorporate CCS and CSDS under the Banking Law of the State of New York. It is felt that insurance companies and mutual funds would view the matter in a similar light.

6. NEW YORK STATE TRANSFER TAX QUESTIONS

You are aware of a potential uncertainty created by the possible application of the New York State Transfer Tax upon deposit of securities from out-of-state with a New York depository, or transfer of securities on the books of a New York depository even though the purchase and sale took place outside of New York State. Discussions on this point have been held with the New York State Tax Commissioner by representatives of BASIC and CCS and at a later date by representatives of CCS and of a Boston bank acting as custodian for several mutual funds. (On December 14, 1971, mutual funds were enabled to deposit securities in a depository.) These discussions with the New York State Tax Commissioner have produced no objections to proposed amendments or clarifications of the law to exempt from transfer tax transactions not now taxable, even if they involve deposits or transactions recorded in a New York depository. An amendment will be submitted to the New York State legislature January next; this amendment would produce no known reduction in transfer taxes to New York State.

7. COMMUNICATIONS TECHNOLOGY

At the present time, instructions and other communications to CCS are, with one exception, by the printed or written word. In the early stages, this will probably be true

of all comprehensive securities depositories. However, there is no doubt that communications between depositories, and between each depository and its depositors, should be based upon modern, fast communication technology.

A communications study group has been appointed by BASIC, consisting of one communications expert each from AMEX, NASD, NYSE, and three New York banks. The charge to this group is to explore the concept and feasibility of connecting depositories with existing and planned wire networks in the banking and securities industries.

8. NYCSDS IMPLEMENTATION GROUP

Many steps will have to be taken, and problems solved, to effect the transition from CCS, at present an integral part of NYSE's operations, to CSDS as an independent depository corporation, owned and managed by a number and variety of users.

To study and recommend solutions to these transitional problems, an implementation group of eight has been appointed. These people have been detached from NYE (three), AMEX (one), three New York banks (one each), and BASIC's Task Force (one). They started full time work on October 15.

9. COD DK'S

BASIC's Task Force has been working on the very complex problem of DK's of COD securities deliveries for well more than a year. A discussion paper containing elements of a possible solution was distributed under date of December 1, 1970 (Exhibit D).

In March, 1971, BASIC recommended the adoption of that portion of the solution in the December paper which had to do with speeding up communications in the broker-COD customer-agent bank chain. At the same time, BASIC requested its Task Force to undertake an extensive fact-gathering program to attempt to pinpoint more definitively the contributors to, and reasons for, DK's. The Task Force completed this research in December.

At its December 22, 1971, meeting, BASIC reviewed the research report of the Task Force and adopted the recommended solution therein to the COD DK problem (Exhibit E). Some elements of the solution will require regulatory action by the FRB, the SEC, or both. These agencies have been apprised of the problem, and BASIC's recommendations are being forwarded to them for appropriate action.

10. UNIFORM FORMS

Also for more than a year, four widely used forms (forms for Transfer Instructions, Delivery Ticket, Comparisons and Reclamations) used in processing securities transactions have been under study from the standpoint of making them uniform. This fact finding effort culminated in the issuance of a paper dated September 1, 1971, containing proposed uniform forms and a request for comments thereon (Exhibit F).

The proposed forms were revised to incorporate as many as possible of the suggestions contained in some 150 letters of comment that were received. A report, with the recommendation that universal use of the revised uniform forms be made mandatory by specified dates, was reviewed by BASIC on December 22 (Exhibit G). The recommendation was adopted and will be forwarded to the NASD, NYSE, AMEX and the New York Clearing House Association for implementation by them as to their respective members.

In closing, I would urge your Committee to encourage prompt implementation of interconnected regional depositories, user-owned and operated. Your support for this program could accelerate it.

If you have no objection, I should be glad to have this letter and its attachments made a part of the record. I enclose two copies thereof and to save your staff the trouble, I have sent two copies to each member of your Committee.

Should you wish to discuss any part of this report, Mr. Bevis and I would welcome the opportunity to do so at your convenience.

I beg to remain,

Respectfully yours,

JOHN M. MYERS, Jr.

NEW ERA FOR THE HANDICAPPED

Mr. PERCY. Mr. President, in November of 1971, I cosponsored Senator COOK's resolution calling for a declaration of rights for the mentally and physically handicapped. At that time, I deplored the injustices which many of the handicapped in this Nation face, the unequal job opportunities, the lack of adequate job training or education to become self-sufficient, and exclusion from community participation. While that resolution did not purport to solve the problems which plague our handicapped, it was an attempt to draw attention to their plight and to encourage the solution of their problems.

At this time, I would like to draw the attention of my colleagues to Illinois' fine efforts to insure equitable treatment of the handicapped. In December 1970, Illinois voters approved a new constitution for their State. In large part due to the efforts of Governor Ogilvie and his Committee on Employment of the Handicapped, this constitution contained a new section in the bill of rights specifically prohibiting discrimination against the mentally and physically handicapped. This new section 19 guarantees the physically and mentally handicapped throughout the State the right to active participation in the social and economic life of the State, the right to engage in rewarding employment, and the right to obtain housing accommodations of their choice. Illinois is the first State to specifically include mention of the handicapped in its bill of rights.

To implement this new section of the constitution, which became effective in July 1971, four State bills were promptly drafted. These bills stated that an individual's mental or physical disability could not disqualify him from seeking employment or housing. On August 23, 1971, these bills were signed into law and Illinois now leads the Nation in providing equal employment and housing opportunities for the handicapped.

I am extremely proud of Illinois' fine leadership in guaranteeing equal opportunities for the mentally and physically handicapped. It is my hope that other States will follow this fine example and that all the handicapped will be assured the basic rights which more fortunate Americans enjoy.

I ask unanimous consent that an article describing Illinois' constitutional provisions for the handicapped and the text of Governor Ogilvie's speech upon signing Illinois' landmark legislation be printed in the RECORD.

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

NEW CONSTITUTION OPENS OPPORTUNITIES FOR DISABLED

When the new Illinois State Constitution goes into effect on July 1, 1971, physically and mentally disabled persons throughout Illinois will have greater opportunity for employment by virtue of Section 19 of the Bill of Rights Article.

Although the laws in most states forbid discrimination on the basis of race, creed, ancestry and sex, this is the first time that any state has specifically included physically and mentally disabled citizens in its constitution.

Article I, the Bill of Rights; Section 19, states: "No discrimination against the handicapped. All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer."

Credit for inclusion of Section 19 in the constitution must be given to the untiring efforts of a large coalition of public and private organizations, and many disabled persons, devoted to achieving full equality and due process of law for all disabled citizens in Illinois. The Illinois Governor's Committee on Employment of the Handicapped had an important role in this effort; that of providing leadership throughout this long endeavor.

Opponents of Section 19 were numerous, arguing that the mentally handicapped should not be included in this section; that the point was too controversial. The Governor's Committee replied that mentally retarded and restored persons had proven their worth, that the point was past consideration and should be included on moral and economic grounds.

Another argument against Section 19 was that special interest groups should not be enumerated in the Bill of Rights Article; that the constitution should be less cluttered to reduce confusion.

Then opponents suggested that Section 19, being new and controversial, should be submitted for voter approval as a separate section, rather than as a part of the main body of the document.

The Governor's Committee vigorously opposed this suggestion, pointing out that this would degrade one million disabled residents in Illinois by insisting that only their "able-bodied" fellow-citizens and taxpayers should have the right to determine their constitutional future.

At the first reading of the new constitution by the entire delegate body in June, 1970, the section on the handicapped was defeated by a 90–6 vote of the delegation, after having been supported for inclusion by the Bill of Rights Committee. This defeat was received with a renewed determination by proponents of Section 19.

A second reading took place in July, 1970. This time the delegates voted to include Section 19 in the Bill of Rights but, by a vote of 50–48, placed the section into a special category to be voted upon by the general citizenry as a separate section.

This separate status, being more difficult to pass and reflecting old prejudices, was unacceptable to the Governor's Committee and the other coalition members. A vigorous campaign of letters, telephone calls, telegrams and personal visits to delegates was pursued. Newspapers, radio and TV were pushed hard to support Section 19.

The third reading of the new constitution was held on August 24, 1970. During the day's proceedings, the Old State Capitol gallery was crowded with disabled persons, relatives, friends and workers in rehabilitation and placement. Moreover, at the request of the Governor's Committee, the Convention delegates suspended the rules to permit 15 persons in wheelchairs to view the day's events from the floor. It was the first time in the history of Constitutional Conventions in Illinois that persons other than delegates were permitted on the Convention floor.

At 6 p.m., after 10 hours of parliamentary maneuvering, Section 19 was reinstated in

the main body of the Bill of Rights Article of the Constitution by the astounding vote of 105–0, the most dramatic reversal in the history of constitutional deliberations in Illinois.

Then followed three months of concentrated promotion by Governor Ogilvie, the members and staff of the Governor's Committee, and the coalition, to build voter support for the new Constitution.

The Illinois Governor's Committee is proud of the part it was privileged to play in the Constitutional Convention and is confident that enactment of Section 19 will open many more doors to employment for handicapped persons in the State of Illinois.

OGILVIE: "NEW ERA FOR HANDICAPPED"

This is a memorable day for the tens of thousands of handicapped citizens who have never shared fully in the opportunities of life in Illinois.

In signing these bills, we are culminating years of dedication and effort by hundreds of people—many of whom are with us here today. We are putting the capstone on a campaign filled with frustrations—but never without hope.

It is entirely appropriate that so many who helped make this day possible are able to join us on this occasion.

In the first instance, of course, there are the members of the General Assembly who responded to an urgent need. And in passing this far-reaching legislation, they established a precedent for the entire nation.

In this context, I would have to single out Representative Bob Juckett, who sponsored these bills and fought for them in the House, and Senator Thomas Hynes, who guided them successfully through the Senate.

To put it bluntly, we would not be here today if it weren't for these men and their colleagues—from both parties—who united in a common commitment to the future of our handicapped citizens.

Nor should we forget the delegates to the Constitutional Convention, who gave to the rights of the handicapped the same sanction of constitutional protection given to all our civil rights, and the voters who ratified that wise decision.

With these bills, we are saying to them: The day of ignorance is past. We are ready to guarantee you the same opportunity for a decent life given to every other citizen of this state.

In housing, in jobs, in education and other pursuits, the handicapped of Illinois will no longer classify as the forgotten citizen.

There are the dozens of organizations and agencies—both public and private—which have made the handicapped their special concern, and who united in an impressive coalition, known as PAR, which worked with single-minded determination to make this day a reality.

Finally, and most important, there are the handicapped themselves—thousands of mentally and physically disabled persons who have proven by their example, day in and day out, that they can lead full and productive lives in a society which has for too long ignored their plight.

You have suffered injustice and inequity, and against incredible odds, you have won the fight for strong measures of historic significance.

Yet, a sense of perspective is in order on this happy occasion.

However important these bills may be, we must recognize that the fight for equal opportunities is far from over.

To be sure, we have completed one vital phase of the battle. But the longer, and more difficult, fight lies ahead—the battle which must take place in the hearts and minds of men.

Discrimination—for whatever reason—works in subtle and pernicious ways, often beyond the reach of the firm hand and plain language of the law.

Only a continuing effort by each of you who have made this day possible will bring about that most awaited day of all—the day when men no longer judge their fellows on the irrational basis of race, or national origin, or condition of birth, or physical or mental handicap.

I, for one, don't doubt that we will achieve that goal. Remember, it was not so long ago that the bills we are signing today were considered a pipe dream.

The same determination and persistence which made these bills—and this noble concept—a reality in our Illinois law books, can also make it a reality in the minds of our fellow citizens.

I endorse this act, and congratulate all of you who worked so hard for its passage.

And now, I would like to invite the sponsors of the bills to join me while I make them the law of Illinois, and we enter a new era of promise for the mentally and physically handicapped citizens of our state.

REPRESENTATIVE W. R. "BILL" HULL RETIRES

Mr. EAGLETON. Mr. President, on January 17, 1972, Congressman W. R. "BILL" HULL announced that he would not seek reelection in the Sixth District of Missouri.

For 18 years Congressman HULL has served his constituents and all the citizens of Missouri with distinction, both on the House Appropriations Committee and in his many other endeavors as their Representative. As a long-respected Member of the House with many friends in the Senate, his absence will be felt strongly here in Washington. As his good friend and colleague I join with the many others who wish him all the best health and happiness when he returns to his home in Weston, Mo.

I ask unanimous consent that the following editorial from the St. Joseph News-Press of January 18, 1972, be printed in the RECORD.

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

HULL STEPS ASIDE

Undefeated and still champion!

That is how Congressman William R. Hull is retiring from Congress at the end of this year. Elected for nine consecutive two-year terms, Congressman Hull has served longer in Congress than any other person from the Northwest Missouri district.

Being a congressman, particularly for a district of such diverse interests as the 6th, is an extremely difficult task. A good congressman must be not only a hard worker and a knowledgeable man, but also one with an acute sense of public relations and the ability to listen and smile pleasantly in the face of undeserved criticism, often abuse.

The tasks to which Congressman Hull has set his intellect and action in the past 17 years mount into the thousands. Many of them have been major. They have been projects and issues vitally affecting many, if not all, sectors of the sprawling district. He has given them his full attention.

True, he has met obstacles, some of them highly formidable. True, he also has achieved results, notably in the field of flood control projects. Some of the projects for which he has labored have been long range ones, projects that possibly will not come into completion for years to come. But the groundwork has been laid. Patience is needed. The congressman must have it; his constituents should.

Many people expect a congressman to accomplish things with rapidity. But government doesn't work that way. Particularly it doesn't work that way in Washington at the legislative level. A House member is important, but not to be forgotten is that there are 435 of them, plus 100 senators, and they all cannot secure exactly what they want. Defeats of goals are part of the political game.

Affable by nature and with a politician's knack of remembering faces, names, and momentuous events, Congressman Hull has been a courteous representative of the people of his district in the nation's capital. His constituents have found him to be a man who answers his mail, a man who tries to get things done for him if at all reasonable and possible.

In the autumn of life at 65, Congressman Hull should have many fine years ahead. All of us will hope he enjoys them, that his retirement gives him as much pleasure as he hopes. He deserves credit for what he has accomplished, and the rest and leisure to which those who have worked in behalf of their people are entitled.

MILWAUKEE MAYOR MAIER CRITICIZES BUDGET PRIORITIES—CITIES SHORTCHANGED AGAIN

Mr. PROXMIRE. Mr. President, one of the ablest mayor's in the country today is Mayor Henry Maier of Milwaukee. He has distinguished himself not only as the mayor of Milwaukee but as president of the U.S. Conference of Mayors.

Mayor Maier is also one of the ablest analysts of the Federal budget. In spite of appearances he has found that the President's new budget reduces major urban programs by three-quarters of a billion dollars in the new fiscal year.

While defense, space shuttles, and military research are going up, funds for public housing, rent subsistence, water and sewer grants, and aid to the urban poor are going down.

The President has reordered priorities. But has reordered them by shoveling more to the militarv and less to the cities. It is a program which benefits the haves and starves the have-nots.

Mr. President, I ask unanimous consent that an article from the New York Times of Wednesday, January 26 in which Mayor Maier's superb analysis is reported, be printed in full at this point in the RECORD.

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

MAYORS SAY NIXON'S BUDGET WILL CUT URBAN AID BY $765 MILLION

(By John Herbers)

WASHINGTON.—The nation's big-city Mayors asserted today that President Nixon's budget would reduce major urban programs by $765-million in the fiscal year beginning July 1.

The reduction, the Mayors said in a statement, would almost wipe out additional aid promised to the cities in President Nixon's proposed revenue-sharing plan for the states and local governments.

The Mayor's analysis of the new Federal budget was made at a meeting of the 40-member executive committee of the United States Conference of Mayors. Mayor Henry W. Maier of Milwaukee, the new president of the conference, which speaks for Mayors of the major cities, summarized the conclusions at a news conference.

The charge that the cities are being shortchanged by the Federal Government is an old one. But this year there seemed to be a kind of finality about the complaint as the Mayors saw Federal funds once channeled in to the war in Vietnam going for new

defense outlays, space exploration and research with virtually no new promises to the central cities.

Mayor Maier, who for a decade has been a leader in the effort to obtain more Federal money for cities, began by saying that the budget presented to Congress yesterday "presents a picture of both hope and despair." The hope, he said, is in the prospect of obtaining revenue sharing, but most of his statement centered on what he called the despair.

DOWNGRADING ALLEGED

"We are dismayed by the proposed cut of $765-million in several major programs of the Department of Housing and Urban Development," he said. "These cuts affect cities in areas dealing with their efforts to [rehabilitate] their slums and older neighborhoods. This is a Federal downgrading of a high city priority."

Much of the reduction referred to was not apparent in the budget, which showed the bulk of the programs continuing at about the same level as that for this year. But Mr. Maier said that, in a number of categories, the Nixon Administration was not spending all appropriated for this year but carrying the amounts forward for spending next year.

"While the Administration sets forth full, 12-month budgets for each of these vital programs, the funding levels proposed constitute a marked drop from the levels approved by Congress for the current fiscal year," Mr. Maier said.

"The actual appropriation available in fiscal 1972 for urban renewal, water and sewer, open space, public housing and rental assistance for apartments is $2.4-billion, while the Administration's proposed level for fiscal 1973 is only $1.655-billion—a $765-million reduction in effort."

The main item involved is urban renewal, for which Congress appropriated $1.46-billion this year. But the Administration is reserving $500-million of this to pay for relocating families under a new law that requires the Federal Government to pay the full cost of moving families whose homes were taken by renewal projects begun before Jan. 2, 1971.

Although urban renewal has been paying relocation costs since 1956, the Mayors said they did not believe the costs would run that high and they objected to the amount being carried forward into next year, constituting half of the budgeted amount of $1-billion.

The Administration is promising to add $490-million to the urban programs if Congress enacts the President's proposal of lumping them together under a bloc grant. But the Mayors said there was no assurance that this would be done. In any event, they said, the amount would still not offset what they see as a loss of $765-million.

Under his general revenue-sharing plan, the President has budgeted $5.3-billion for next year, which would be shared among the states, counties and cities of all sizes.

"If we separate out the dollars budgeted for revenue sharing," Mayor Maier said, "we find that the budget leaves urban areas with very few dollars more in direct aid to cities than they are receiving in this fiscal year."

He acknowledged "minimal gains" in some city-oriented programs, such as transportation and law enforcement assistance, but he said that, over all, the budget this year reflected more than ever a lack of commitment to renewing the cities.

"We're gearing up for a space shuttle by adding $250-million to the earth orbital program, while we are cutting back substantially on funds for low-income housing," he said. "The total allocation for research and development in space and the military in fiscal 1973 is $12.4-billion. The total research and development effort for civilian programs is $5.4-billion. Of this, only $60-million is for the Department of Housing and Urban Development."

IF IT IS IN THE PUBLIC INTEREST, WHY NOT TRY IT?

Mr. MOSS. Mr. President, we frequently hear of the "easy out" for an administrator. They do not bother to fire an employee because they feel the person will eventually quit. They reject a proposal on a technicality rather than coming to grips with the issues at hand. They say "no" because it is always easier to do nothing than to work constructively to develop new initiatives.

Similarly, the issues of constitutionality and authority face the Congress. Do we or do we not pass legislation which might be unconstitutional? Occasionally, a well-thought proposal will be passed by the Congress; it may be in the public interest, and the courts will invalidate the legislation. So be it. We created a system of checks and balances for this very reason.

Recently, I have begun an examination of several authorities granted to the Food and Drug Administration, in an attempt to ascertain why the FDA has not moved on each of these important issues. For one, I contend that theirs is adequate authority under the Federal Hazardous Substances Act to regulate cigarettes. FDA says "no"; but instead of considering the issue and perhaps being challenged in the courts, they sit around doing nothing while the Surgeon General denounces cigarettes. Well, this matter will be considered in greater detail at hearings before the Consumer Subcommittee on February 10, 1972.

But another particularly disturbing matter is the label petition. After opening up the issue to comments, the FDA concluded, as it had implied previously, that it did not have adequate authority to require the labeling of ingredients of standardized foods. I disagree with that, and I further state that any administrator worth his salt would, if he really operated in the public interest, issue rules and regulations requiring labeling and be taken to court. Let the court decide. Instead, here we stand today, with several bills having been introduced by concerned Senators to accomplish such a measure, and the FDA has neither filed comments on these bills nor sent up an Administration alternative. This is a worthwhile undertaking, so let us have some comments or let us have an alternative proposal. But no. FDA seems content to twiddle its thumbs and cry out that they have no authority. Interestingly enough, Supermarket News, in the January 3, 1972, issue, reported the following comments of an official of the Federal Trade Commission who called the FDA assertion "nonsense" and suggested that the close ties between FDA and the food industry kept FDA from moving forward on this proposal. That just may be the case.

Mr. President, I ask unanimous consent that the Supermarket News article referred to above be printed in the RECORD.

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

INDUSTRY TIES: FTC AIDE HITS FDA

(By Tobi Nyberg)

WASHINGTON.—A Federal Trade Commission official claims that close ties between the food industry and the Food and Drug Administration are keeping FDA from requiring manufacturers to list all ingredients on all food labels.

The official, who insisted on anonymity, called "nonsense" FDA's claim that it has no authority to demand stricter labeling. He said FDA is using this as an excuse to avoid stepping on food industry toes.

"If that is the case," he said, "let them prove it in court. Let FDA pass labeling laws, and then let General Foods take them to court."

He made the statements to Supermarket News after a news conference where Rep. Benjamin Rosenthal (D., N.Y.) and Label—Law Students Association for Buyers' Education and Labeling—both condemned FDA as "pro-industry and anti-consumer."

Rosenthal argued that FDA has several bases for legal authority to demand disclosure of all ingredients. Not only has FDA had the power since the passage of the Food, Drug and Cosmetic act of 1938, he said, but the Fair Packaging and Labeling Act of 1966 gave FDA authority to "require the disclosure on labels of relevant ingredient information."

Instead of acting, the Congressman charged, FDA has sought only partial ingredient listings, allowing additives to hide behind generic names.

FDA said it was "not prepared to comment." The agency recently rejected a Label proposal to require more informative labeling of food products, claiming it had no jurisdiction. FHA said it was preparing its own labeling regulations.

Rosenthal has submitted a bill—H.R. 8670—disclosure of all ingredients in food products.

"Consumers have the right to know what they are eating," Rosenthal said. "Right now, the consumer has no input at FDA."

REPORT ON EDUCATION OF MEXICAN-AMERICAN CHILDREN IN THE SOUTHWEST

Mr. CRANSTON. Mr. President, in December the U.S. Civil Rights Commission issued a report on the education of Mexican-American children in the Southwest.

It confirms what many of us already know: the more than 6 million Mexican-American children in Arizona, California, Colorado, New Mexico, and Texas are getting a second-rate education.

We are failing our Mexican-American children. On every count they are falling far behind their Anglo counterparts.

The record of failure in the Southwestern States is documented fully by the Commission. One can assume that conditions for Spanish-speaking children in other States are not better.

We have encountered similar reports in the past. Again and again they tell us that our schools are not meeting the special problems of the Mexican-American child. At the heart of the problem is the language barrier the Mexican-American child meets first in kindergarten or first grade and is the companion to frequent failure throughout his school years.

We have begun bilingual, bicultural programs in many school districts. Where those programs have been properly organized and staffed we have seen solid progress. The Mexican-American child can learn as well and as fast as any other child. But they cannot progress in classrooms where their native language is viewed as a handicap—or worse, as something the child should feel ashamed of.

The Congress has committed itself repeatedly to the principle of bilingual edu-

cation. But we continue to skirt that commitment with inadequate appropriations and insufficient programs.

In the months ahead, we must move forward rapidly in fulfilling our promises to the Spanish-speaking children of this Nation. The need for immediate progress is well documented by the Commission's report. I urge every Member of Congress to read it, to think about it, and to be guided by it.

The futures of more than 6 million children await our action.

Mr. President, I ask unanimous consent that a summary of the U.S. Civil Rights Commission report, entitled "The Unfinished Education," be printed in the RECORD.

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

SUMMARY

The basic finding of this report is that minority students in the Southwest—Mexican Americans, blacks, American Indians—do not obtain the benefits of public education at a rate equal to that of their Anglo classmates. This is true regardless of the measure of school achievement used.

The Commission has sought to evaluate school achievement by reference to five standard measures: school holding power, reading achievement, grade repetitions, overageness, and participation in extracurricular activities.

Without exception, minority students achieve at a lower rate than Anglos: their school holding power is lower; their reading achievement is poorer; their repetition of grades is more frequent; their overageness is more prevalent; and they participate in extracurricular activities to a lesser degree than their Anglo counterparts.

SCHOOL HOLDING POWER

The proportion of minority students who remain in school through the 12th grade is significantly lower than that of Anglo students, with Mexican Americans demonstrating the most severe rate of attrition. The Commission estimates that out of every 100 Mexican American youngsters who enter first grade in the survey area, only 60 graduate from high school; only 67 of every 100 black first graders graduate from high school. In contrast, 86 of every 100 Anglos remain in school and receive high school diplomas.

For Mexican Americans, there are sharp differences in school holding power among the five States. Of the two States with the largest Mexican American school enrollment—California and Texas—holding power is significantly greater in California where an estimated 64 percent of the Mexican American youngsters in the districts surveyed graduate. Texas, by contrast, demonstrates the poorest overall record of any of the States in its ability to hold Mexican American students. By the end of the eighth grade, Chicanos in the survey area have already lost 14 percent of their peers—almost as many as Anglos will lose by the 12th grade. Before the end of the 12th grade, nearly half, or 47 percent, of the Mexican American pupils will have left school. In 1968, there were approximately 290,000 Mexican Americans enrolled in grades 1 through 6 in Texas public schools. If present holding power rates estimated by the Commission continue, 140,000 of these young people will never receive a high school diploma.

College entrance rates reveal an even greater gap between Anglos and minority group students. Nearly half the Anglo students who begin school continue on to college, but only about one of every four Chicano and black students do so.

Among the five Southwestern States, minority high school graduates have the greatest likelihood of entering college in California. There, 51 percent of black graduates in the districts surveyed go on to college as do 44 percent of Chicanos. In Colorado, New Mexico, and Texas, however, fewer than one out of every three Chicano high school graduates undertakes higher education.

READING ACHIEVEMENT

Throughout the survey area, a disproportionately large number of Chicanos and other minority youngsters lack reading skills commensurate with age and grade level expectations. At the fourth, eighth, and 12th grades the proportion of Mexican American and black students reading below grade level is generally twice as large as the proportion of Anglos reading below grade level. For the total Southwest survey area the percentage of minority students deficient in reading reaches as high as 63 and 70 percent in the 12th grade for Chicanos and blacks respectively. In the eighth grade the Chicano youngster is 2.3 times as likely as the Anglo to be reading below grade level while the black student is 2.1 times as likely.

Reading achievement becomes significantly lower for children of all ethnic groups as they advance in age and in grade level. For minority children, however, the drop is more severe than for Anglos. At the fourth grade, 51 percent of the Mexican Americans and 56 percent of the blacks, compared with 25 percent of the Anglos in the survey area, are reading below grade level. By the eighth grade, corresponding figures are 64 percent for Mexican Americans and 58 percent for blacks. Further deterioration occurs by the 12th grade despite the fact that many of the poorest achievers have already left school. At this stage, 63 percent of the Mexican Americans are reading below grade level as are 70 percent of the blacks and 34 percent of the Anglos.

The severity of reading retardation also increases the longer the Chicano and black youngsters remain in school. In the fourth grade, only 17 percent of the Mexican American and 21 percent of the black students are reading two or more years below grade level. By the 12th grade, however, two of every five Mexican American children and more than half the black students are at this low level of reading achievement.

Interstate comparisons reveal low achievement levels in reading for minority students in all States. In the California survey area 63 percent of the Chicanos at the 12th grade level are reading below grade level, while 59 percent of the black students at the same level are experiencing reading deficiencies. In Texas, two-thirds of all Mexican Americans and more than 70 percent of all black 12th graders fail to achieve grade level expectations in reading. By contrast, in none of the five States does the percentage of Anglos reading below grade level reach such high proportions. In fact, in only one State, Arizona, does the Anglo proportion approach the high percentages of minorities reading below grade level.

GRADE REPETITION

In the survey area, the Commission found that grade repetition rates for Mexican Americans are significantly higher than for Anglos. Some 16 percent of Mexican American students repeat the first grade as compared to 6 percent of the Anglos. Although the disparity between Mexican Americans and Anglos at the fourth grade is not as wide as in the first grade, Mexican American pupils are still twice as likely as Anglos to repeat this grade. The two States with the highest Mexican American pupil population, Texas and California, reveal significant differences in repetition rates. In the Texas schools surveyed, 22 percent of Chicano pupils are retained in first grade as compared to 10 percent in California.

The purpose of grade repetition is to increase the level of achievement for the retained student. In fact, the students' ultimate achievement level does not generally improve and, in addition, grade repetition predisposes the student to drop out before completion of high school.

OVERAGENESS

Another measure of achievement directly related to grade repetition is overageness for grade assignment. The Commission found that Mexican Americans in the survey area are as much as seven times as likely to be overage as their Anglo peers. The most significant difference appears in the eighth grade where more than 9 percent of the Mexican American pupils are overage as compared to a little more than 1 percent for the Anglo students. In the Southwest as a whole the degree of overageness increases for Anglos and blacks throughout the schooling process, but actually decreases for Chicanos between the eighth and 12th grades. The probable explanation for this phenomenon is that a very large percentage of overage Mexican American pupils leave school before graduation. The Commission estimated that at least 42 percent of overage Mexican American students in the eighth grade do not continue in school through the 12th grade.

Again, comparing the two largest States, the difference is impressive. More than 16 percent of Chicano eighth graders are overage in Texas. In California only about 2 percent are overage.

PARTICIPATION IN EXTRACURRICULAR ACTIVITIES

Involvement in extracurricular activities makes the school experience more meaningful and tends to enhance school holding power. The Commission found, however, that Mexican American students are underrepresented in extracurricular activities. This is true whether Mexican Americans constitute a majority or a minority of the student enrollment in a school.

Thus, under all five measures of school achievement minority children are performing at significantly lower levels than Anglos. This report has sought only to present objective facts concerning the differences in school achievement between minority and majority group students, not to account for them. Nevertheless, the Commission believes these wide differences are matters of crucial concern to the Nation. The ultimate test of a school system's effectiveness is the performance of its students. Under that test, our schools are failing.

ADMINISTRATION'S UNEMPLOYMENT POLICIES ADDED $84.6 BILLION TO NATIONAL DEBT

Mr. MOSS. Mr. President, the 1973 budget proposals bore dramatic testament to the cost our Nation will continue to pay for this administration's poor economic policymaking.

For many months the country has experienced the great human and economic waste which results from unemployment. It now becomes clear that joblessness—which stands at a 10-year high of 6.1 percent—will have a truly massive impact on the Nation's long-term financial situation.

Comparing the Federal deficits for 1971 and 1972, as well as the one now envisaged for 1973, with those figures which would have resulted from a "full employment" situation, one finds that joblessness, in and of itself, will add a full $84.6 billion to the national debt.

The data appearing in the budget message of the President speaks for itself. If joblessness had been held to the 4-percent level, instead of being allowed to climb to 6 percent, the Nation would

have sustained a relatively mild $2.5 billion deficit during the 3-year period instead of a colossal figure which few believe will stay below $90 billion. This is quite a record for an administration which came to power during "full employment" and promised to reduce the national debt. It is a truly astounding performance by a President who for years villified his political opponents on the grounds that they were "big spenders." Nobody has spent the taxpayer's money like Richard Nixon. Nobody.

It is now estimated that fiscal year 1972 will produce the greatest peacetime Federal deficit in history. If I can surmize anything from previous administration forecasts, however, 1973 will see an even greater deficit. For 1971, President Nixon proposed a $1.5 billion surplus and delivered a $23 billion deficit. For 1972, he predicted a $11.6 billion deficit and delivered a $38.8 billion deficit. Now he predicts a $25.5 billion deficit. Who can say how much more will be added to the Nation's debt before the year is out?

NO-FAULT AUTOMOBILE LIABILITY INSURANCE

Mr. MOSS. Mr. President, much has been said both for and against establishing a nationwide system of no-fault automobile liability insurance. During May and November 1971, the Senate Commerce Committee held 12 days of hearings on this subject. I have found the arguments for no-fault most persuasive, and the current committee print of S. 945, the National No-Fault Motor Vehicle Insurance Act is clearly one of the most worthwhile pieces of consumer legislation which the Senate Commerce Committee will ever consider.

Due to an unprecedented demand for copies of the committee print, I believe that it would be worthwhile if the bill and the staff analysis were printed in the RECORD. During the next month or two, the Senate Commerce Committee will consider the legislation in executive session, and the text of this legislation should be readily accessible. I for one am most enthusiastic about the bill and will give it my complete support.

Mr. President, I ask unanimous consent that the staff analysis and Committee Print 1 of S. 945, the National No-Fault Motor Vehicle Insurance Act, be printed in the RECORD.

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

STAFF ANALYSIS OF COMMITTEE PRINT NO. 1 OF S. 945, THE NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT

DESCRIPTION

Committee Print 1 would create an essentially restructured automobile insurance reparations system. Tort liability arising out of automobile accidents would be eliminated, and insurance benefits to pay for losses arising out of automobile accidents would be paid without regard to fault. A person injured in an auto accident would seek reparations from his own insurance company (first-party insurance) or the insurance company of the owner of the vehicle in which he was a passenger. An injured pedestrian would seek compensation from an insurance company covering any vehicle which caused injury to him.

The bill would require every owner who operates a motor vehicle on the public roadways of any State to take out a basic insurance policy to cover his own losses when operating his vehicle, losses of any other driver or passenger of his vehicle, and losses of any pedestrian that is injured in an accident involving his vehicle. In addition, such basic insurance policy would cover losses incurred if a vehicle caused damage to any property other than a motor vehicle in use. For example, if a vehicle struck a legally parked car, the policy covering the vehicle would pay for damage to the parked car.

To assure the availability of such mandatory insurance policies, the bill would require every insurance company doing business in a particular jurisdiction and writing auto insurance to accept every insurance applicant who has a valid driver's license and who pays a premium based upon an applicant's proper classification. Cancellation of the basic policy would be prohibited unless the policyholder had failed to pay the premium or had had his license revoked.

The phrase "qualifying no-fault policy" is used in Committee Print 1 to describe the mandatory insurance policy which every owner of a motor vehicle must have as a precondition to operating his vehicle. The qualifying no-fault policy would provide certain benefits to the policyholder, members of his family, and people injured in an automobile accident in which his vehicle was involved (who were not occupants of another vehicle.)

Broad benefits would be paid to auto accident victims by insurers writing qualifying no-fault policies. All medical and rehabilitation costs would be paid by the insurer issuing the qualifying no-fault policy. In addition, all wage loss after income taxes would be paid until such time as the injured person could resume available and appropriate gainful activity. There is, however, a thousand dollar per month limitation on the wage replacement provisions of the qualifying no-fault policy. For those people who earn more than a thousand dollars per month, a provision in the bill would permit them to purchase greater income replacement protection. Benefits under a qualifying no-fault policy would also be paid for loss of future anticipated earnings or for impairment of earning capacity resulting from injuries sustained in an automobile accident.

A qualifying no-fault policy would also provide benefits to pay for any services that an injured person would have performed for his or her own benefit, or the benefit of the family, but for the injury. For example, a housewife suffering from a back injury which prevented her from doing normal housework would receive benefits to pay someone to clean her house on a regular basis until she recovered from her injury.

A qualifying no-fault policy would also pay benefits to any owner of property (other than a motor vehicle in use) which is damaged as a result of an auto accident involving the policyholder's vehicle. For example, if a vehicle struck a picket fence after swerving off the road because of a blow-out, the insurance company covering the vehicle would pay the owner of the picket fence for its repair. Likewise, if that vehicle swerved off the road and struck a parked car, the insurance company would pay for the damage to the parked car. But if vehicles in use were involved in an accident, the owners of such vehicles would have to look to their own insurance companies for recovery of benefits if they had elected to buy such coverage.

Finally, a qualifying no-fault policy would pay for any loss (tangible or intangible) exceeding those described above suffered by an occupant of the insured's motor vehicle, or pedestrian struck by such a vehicle, if such injured person did not own a motor vehicle or was not a spouse or dependent of a motor vehicle owner. In other words, this coverage would provide excess economic loss and pain and suffering protection for those people not given the opportunity to purchase the coverage described below.

In addition to the benefits provided under a mandatory qualifying no-fault policy, there are other benefits which the insurers of such policies would have to offer but which the policyholder could choose to take or not as he wished. Committee Print 1 would require insurers of qualifying no-fault policies to offer collision insurance to pay for property damage to the policyholder's automobile. The policyholder could buy such insurance and select whatever deductible level he wished.

Insurers of qualifying no-fault policies would have to offer policyholders two other types of coverage: 1) coverage to pay for tangible loss in excess of that provided by the qualifying no-fault policy, and 2) coverage to pay for intangible loss (pain and suffering, inconvenience, loss of enjoyment of life) measured by the State tort law that would have been applicable to the accident had that law not been preempted by the bill. A qualifying no-fault policyholder could elect to buy either or both coverages to protect himself, his spouse, and any dependents from such loss.

Committee Print No. 1, in effect, makes available to all the motoring public all the benefits that the present automobile reparations system now provides to the accident victim who *is not* found negligent or contributorily negligent and who is injured by someone who *is* found negligent *and* is fully insured up to the extent of the loss suffered by the accident victim. However, because insurance against loss in excess of that provided under the qualifying no-fault policy is not necessary for the economic well-being of an automobile accident victim or the family of such victim, the insurance buyer is given the option to buy such additional coverage if he so chooses. The controversy over whether the public wants to recover for intangible losses would be resolved by free market forces rather than legislative determination.

Benefits which an insurer is required to pay under a qualifying no-fault policy would be primary—the amount paid would not be reduced by any benefits from other sources paid to cover the same loss—unless collateral benefits were provided by public health insurance or by some private insurance or plan which specifically provided that its benefits were to be primary to the qualifying no-fault policy benefits. If a person had collateral benefits which were primary, the insurer of the qualifying no-fault policy would be required to give that person a standardized rate reduction reflecting the amount of his primary collateral benefits. This arrangement would accomplish two purposes: 1) it would assure compatibility of auto insurance reform legislation with health insurance reform legislation; and 2) it would allow a person to choose his source of insurance benefits and avoid duplicative payments of premiums.

Any disputes between an insurer and a policyholder which could not be resolved by negotiation could be resolved in a formal court proceeding in which the attorney fees of the policyholder are paid by the insurer and thus the insurance mechanism generally. For example, if the insurer refused to pay a wage replacement claim arguing that the policyholder was able to return to work, the policyholder could retain an attorney to pursue his claim for continued periodic benefits. The policyholder's attorney would be compensated by the insurer whether the court supported the policyholder's claim or not unless the court determined that such compensation was inappropriate or that the claim was fraudulent, frivolous, or excessive. No benefits for economic loss paid under a qualifying no-fault policy could be used to

compensate an attorney. However, in disputes concerning policy provisions governing other than economic loss where reasonable attorney's fees are not provided, an attorney would be permitted to enter into a contractual or contingent fee arrangement with a policyholder. Any contingent fee arrangement would be limited to 25% of the gross recovery of the policyholder, or a lesser amount at the discretion of the court.

Litigation arising under the qualifying no-fault policy would be conducted in state courts of competent jurisdiction. Federal court jurisdiction would be limited to cases or controversies meeting the jurisdictional requirements of section 1332 of title 28 of the United States Code, namely diversity of parties and an amount in controversy exceeding $10,000.

In the event that a person is injured or killed in an automobile accident in a vehicle or by a vehicle which is uninsured (and that person is not responsible for the fact that the vehicle is uninsured) then the victim may seek recovery from an assigned claims plan which would be required to be established in each State. The assigned claims plan would work very much like the present post-insolvency assessment plans. In the event a person with a legitimate claim had no insurance company to turn to (because the vehicle was uninsured or because the insurance company was insolvent) he could file his claim with the assigned claims plan which would be financed by assessing insurance companies doing business in a State on the basis of their premium volume in that State.

In order to facilitate the setting of rates under this new auto insurance reparation system, Committee Print No. 1 provides that the Secretary in consultation with state uniform classification system. This new classification system would delineate the various risk exposures relevant to setting rates for qualifying no-fault policies and related provisions. Thus, rates set by state regulatory authorities would have national uniformity as to classification which reflected factors relevant to a first party no-fault insurance system. In addition, the Federal government, in consultation with the states, would promulgate a uniform statistical plan whereby insurance companies would report their claims and loss experience data and acutal rates or premiums of each class of risk in each rating category within each coverage provided under the bill. The Federal government would then analyze this information and make it available to state insurance authorities and to the general public. This information would permit a comparison of the insurers "indicated rate" based solely upon claims and loss experience data with the actual rate or premium being charged by the insurer. The intent of this provision is to make available to state regulatory authorities information relevant to the rate making activity and to provide the insurance public information regarding the price and quality of the product which they are required to purchase.

SUMMARY

Committee Print No. 1 of a National No-Fault Motor Insurance Act would create a mandatory auto accident reparations system which would insure all passengers and pedestrians against basic economic loss resulting from automobile accidents. The dependency of the auto insurance system on the tort liability system would be eliminated; benefits would be paid to auto accident victims without regard to fault. Licensing standards and law enforcement efforts would serve as the main force for controlling irresponsible driver behavior; illusory reliance on the insurance mechanism to create a safe-driver environment would cease. If policyholders wanted to receive payment for damages (including pain and suffering) in excess of their basic economic loss resulting from injury or death, of it they wanted to protect their vehicles from physical damage, then they could at their option elect such coverages. Reasonable attorneys fees would be paid to the attorney of any policyholder who could not reach agreement with an insurance company concerning the level of economic loss benefits due him. An auto accident victim not covered by a policy of insurance could recover from an assigned claims fund unless he was responsible for the failure of coverage. Finally, the bill would provide for the rationalization of insurance classification systems and provide for the dissemination of price and quality information that would stimulate a competitive price environment in the auto insurance market.

S. 945

A bill to require no-fault motor vehicle insurance as a condition precedent to using the public streets, roads, and highways in order to promote and regulate interstate commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National No-Fault Motor Vehicle Insurance Act."

DEFINITIONS

SEC. 2. As used in this Act—

(1) the term "motor vehicle" means any vehicle driven or drawn by electrical or mechanical power which is manufactured primarily for use on the public street, roads, or highways, except any vehicle operated exclusively on a rail or rails.

(2) The term "insured motor vehicle" means a motor vehicle (A) which is insured under a qualifying no-fault policy, or (B) the owner of which is a self-insurer with respect to such vehicle.

(3) The term "uninsured motor vehicle" means a motor vehicle which is not an insured motor vehicle.

(4) The term "qualifying no-fault policy" means an insurance policy which meets the requirements of section 5 (a) and (b) (but such term does not refer to any provision of such a policy which relates solely to a coverage described in section 5(c) or an additional coverage or benefit referred to in section 5(d)).

(5) The term "owner" means a person who holds the legal title to a motor vehicle; except that in the case of a motor vehicle which is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, such term means the debtor or lessee.

(6) The term "insurer" means any person or governmental entity engaged in the business of issuing or delivering motor vehicle insurance policies.

(7) The term "self-insurer" with respect to any motor vehicle means a person who has satisfied the requirements of section 4(a) in the manner provided by section 4(a)(2).

(8) The term "operation, maintenance, or use" when used with respect to a motor vehicle includes loading or unloading the vehicle, but does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining vehicles unless the conduct occurs outside the premises of such business.

(9) The term "motor vehicle accident" means an accident arising out of the operation, maintenance, or use of a motor vehicle.

(10) The term "accidental harm" means bodily injury, death, sickness, or disease caused by a motor vehicle accident while in or upon or entering into or alighting from, or through being struck by a motor vehicle or object drawn or propelled by a motor vehicle.

(11) The term "death" (except as used in this paragraph and paragraphs (10) and (12)) means accidental harm resulting at any time in death.

(12) The term "injury" means accidental harm not resulting in death.

(13) The term "economic loss" with respect to any injury or death means—

(A) all appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional nursing, dental, ambulance, prosthetic services, and any Federally recognized religious remedial care and treatment;

(B) all appropriate and reasonable expenses necessarily incurred for phychiatric, physical, and occupational therapy and rehabilitation;

(C) an amount equal to the lesser of—

(i) $1,000 per month, or

(ii) the monthly earnings for the period during which the injury or death results in the inability to engage in available and appropriate gainful activity, or

(D) a monthly amount equal to the amount (if any) by which (i) a person's monthly earnings (as defined in paragraph (14)) or 1,000, whichever is less, exceeds (ii) any lesser monthly earnings of such person at such time as he resumes gainful activity.

(E) all appropriate and reasonable expenses necessarily incurred as a result of such injury or death, including, but not limited to, (i) expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed for the benefit of himself or his family, (ii) funeral expenses, and (iii) attorneys' fees and costs to the extent provided in section 8.

(14) The term "monthly earnings" means—

(A) in the case of a regularly employed person, one-twelfth of the average annual compensation after income taxes at the time of injury or death;

(B) in the case of a person regularly self-employed, one-twelfth of the average annual earnings after income taxes at the time of injury or death;

(C) in the case of an unemployed person or a person not regularly employed or self-employed, one-twelfth of the anticipated annual compensation after income taxes of such person paid from the time such person would reasonably have been expected to be regularly employed:

Provided, however, That such sums are to be periodically increased in a manner corresponding to annual compensation increases that would predictably result but for the injury or death. The Secretary is authorized to promulgate rules consistent with this paragraph defining further the term "monthly earnings".

(15) The term "net economic loss" means, in the case of injury or death, economic loss reduced (but not below zero) by the amount of any benefit or payment received (or legally entitled to be received and actually available to the claimant) for losses resulting from such injury or death from any of the following sources—

(A) any public health insurance or plan;

(B) any private insurance or plan containing explicit provisions making its benefits primary to any benefits under a qualifying no-fault policy.

(16) The term "loss resulting from damage to the insured's motor vehicle" means—

(A) an amount equal to the direct damage or loss to an insured motor vehicle as a result of collision or upset, fire, theft, flood, or other hazard incident to the operation, maintenance, or use of an insured motor vehicle; and

(B) all appropriate and reasonable expenses necessarily incurred as a result of such damage to or loss of an insured motor vehicle, including expenses incurred in renting a vehicle in substitution for the insured motor vehicle for an agreed upon period.

(17) The term "damage other than economic loss" means in the case of injury or death—

(A) tangible damage in excess of economic loss (as defined in section 3(13)); and

(B) intangible damage, characterized also as pain and suffering or general damage,

measured by applicable State tort law which would have been applicable but for section 3.

(18) The term "motor vehicle in use" means a motor vehicle being operated on any public street or roadway or in any other public place; it does not mean a motor vehicle legally parked to the side of any public street or roadway or in any public place.

(19) The term "without regard to fault" means irrespective of fault as a cause of injury or death, and without application of the principle of liability based on negligence.

(20) The term "criminal conduct" means the commission of an offense punishable by imprisonment for one year or more, or operation or use of a motor vehicle with the specific intent of causing injury or damage, or operation or use of a motor vehicle as a converter without a good faith belief that the operator or user is legally entitled to operate or use such vehicle.

(21) The term "Secretary" means the Secretary of ———.

(22) The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Canal Zone.

TORT EXEMPTION

SEC. 3. No person who is—

(a) the owner, operator, or user of an insured motor vehicle, or

(b) the operator or user of an uninsured motor vehicle who operates or uses such vehicle without any reason to believe that such vehicle is an uninsured motor vehicle,

shall be liable for tort damages of any nature arising out of the ownership, maintenance, operation, or use of such vehicle unless that person is engaging in criminal conduct (as defined in section 2(20)) which causes such damage in which case he shall be liable to the extent provided by State law for all damages other than economic loss.

CONDITIONS OF OPERATION AND REGISTRATION

SEC. 4. (a) (1) No person may register any motor vehicle in a State or operate or use a motor vehicle upon any public street, road, or highway of any State at any time unless such motor vehicle is insured under a qualifying no-fault policy (as defined in section 2(4)), pursuant to such regulations (including those determining the manner and term of proof of such insurance) as the Secretary shall prescribe.

(2) The requirements of this subsection may be satisfied by any owner of a motor vehicle if—

(A) such owner provides a surety bond, proof of qualifications as a self-insurer, or other securities affording security substantially equivalent to that afforded under a qualifying no-fault policy, as determined and approved by the Secretary under regulations, and

(B) the Secretary is satisfied that in case of injury or death or property damage, any claimant would have the same rights against such owner under applicable State law as the claimant would have had under such law had a qualifying no-fault policy been applicable to such vehicle.

(b) No State may require the purchase or acquisition of insurance or other security as a condition to the ownership, registration, operation, or use of any motor vehicle upon the public streets, roads, or highways of such State that is inconsistent with a qualifying no-fault policy.

(c) Any person who knowingly violates the provisions of subsection (a) of this section shall be punished by a fine not to exceed $1,000 or imprisonment for a period of not to exceed six months, or both. Attorneys General of the several States are given concurrent authority to bring actions in their respective State courts of competent jurisdiction seeking a fine not to exceed $1,000 or imprisonment for a period not to exceed six months for any knowing violations of the provisions of subsection (a) of this section.

INSURANCE REQUIREMENTS

SEC. 5. (a) In order to be a qualifying no-fault policy, an insurance policy covering a motor vehicle shall provide benefits for injury or death (as defined in section 2 paragraphs (11) and (12) as follows:

(1) Except as otherwise provided in paragraph (2)—

(A) in the case of injury to any person (including the owner, operator, or user of the insured motor vehicle), the insurer shall pay, without regard to fault, to such person an amount equal to the net economic loss (as defined in section 2(15)) sustained by such person as a result of such injury; or

(B) in the case of death of any person (including the owner, operator, or user of the insured motor vehicle), the insurer shall pay, without regard to fault, to the legal representative of such person, for the benefit of the surviving spouse and any dependent as defined in section 152 of the Internal Revenue Code of 1954) of such person, an amount equal to the net economic loss sustained by such spouse and dependent as a result of the death of such person.

(2) No payment may be made for net economic loss sustained by—

(A) the occupants of a motor vehicle other than the insured motor vehicle; or

(B) the operator or user of a motor vehicle engaging in criminal conduct (as defined in section 2(20)) which causes any such loss.

(3) Payments for net economic loss shall be made as such loss is incurred except that in the case of death, payment for such loss may, at the option of the beneficiary, be made immediately in a lump sum payment appropriately discounted in accordance with regulations of the Secretary. Amounts of net economic loss unpaid thirty days after the insurer has received reasonable proof of the fact and amount of loss realized, and demand for payment thereof shall (after the expiration of such thirty days) bear interest at the rate of 2 per centum per month.

(4) A claim for net economic loss based upon injury to or death of a person who is not an occupant of any motor vehicle involved in an accident may be made against the insurer of any involved vehicle. The insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible, but such insurer shall thereafter be entitled to recover from the insurers of all other involved vehicles proportionate contribution for the benefits paid and the costs of processing the claim.

(5) No part of loss benefits paid under a qualifying no-fault policy (except those paid by provisions required in section 5(b)(1) shall be applied in any manner as attorney's fees in the case of injury or death for which such benefits are paid. Any contract in violation of this provision shall be illegal and unenforceable, and it shall constitute an unlawful and unethical act for any attorney to solicit, enter into, or knowingly accept benefits under any such contract.

(b) In order to be a qualifying no-fault policy, an insurance policy covering a motor vehicle shall provide the following benefits in addition to those enumerated in subsection (a) of this section:

(1) in the case of injury or death to any person not an owner of a motor vehicle or a spouse or dependent of an owner, the insurer shall pay, without regard to fault, to such person compensation for damage other than economic loss sustained by such person as a result of such injury;

(2) in the case of damage to any property other than a motor vehicle in use arising out of a motor vehicle accident, insurers of any motor vehicles involved in the motor vehicle accident shall pay on a proportionate basis to the owner of such property an amount equal to the loss occasioned by the damage.

(c) In addition to the coverages described in subsections (a) and (b), the insurer issuing a qualifying no-fault policy shall make available to the insured the following optional insurance under the following conditions:

(1) At the option of the insured, the insurer shall offer provisions covering loss resulting from damage to the insured's motor vehicle with such deductibles as the insured elects.

(2) At the option of the insured, the insurer shall offer to compensate for damage other than economic loss either or both of the following provisions whereby the insurer in the case of injury or death to the insured, his spouse, or any dependents agrees to pay (without regard to fault) to such person compensation for:

(A) tangible damage in excess of economic loss (as defined in section 2(13));

(B) intangible damage sustained by such person as a result of such injury or death.

(3) (A) A person may not submit a claim to his insurer for the recovery of damage other than economic loss sustained as a result of an injury until the last periodic payment for net economic loss has been made or until a period of three years from the time of the injury has elapsed, whichever occurs first.

(B) Contingent fee arrangements for the prosecution of claims under a policy for compensation for damages other than economic loss shall be made in accordance with section 8(b) of this Act.

(4) Notwithstanding any provision of State law to the contrary, the statute of limitation for bringing suit under provisions providing compensation for damages other than economic loss shall be:

(A) four years from the date of the motor vehicle accident upon which the claim is based, or

(B) one year after the last payment for economic loss recoverable under paragraph (1) of this subsection is paid

whichever be the lesser length of time.

(d) (1) Any policy of insurance described in this section may contain—

(A) additional coverages and benefits with respect to any injury, death, or any other loss from motor vehicle accidents or loss from operation of a motor vehicle; and

(B) terms, conditions, exclusions, and deductible clauses; consistent with the required provisions of such policy and approved by the Secretary, who shall only approve terms, conditions, exclusions, deductible clauses, coverages, and benefits which are fair and equitable, and which limit the variety of coverage available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various insurers.

(2) Any policy of insurance described in this section shall contain a provision, in accordance with regulations of the Secretary, specifying the periods within which claims may be filed and actions against the insurer may be brought.

(e) Any policy of insurance described in this section must offer different standardized categories of premium reductions reflecting benefits available to the policyholder and members of his family as a result of public or private insurance or plans or other benefit sources described in section 2(15) of this Act, as being primary to benefits under a qualified no-fault policy.

(f) (1) No insurer may issue or offer to issue any policy which he represents is a qualifying no-fault policy unless such policy meets the requirements of subsections (a) and (b) (and of subsection (c) if the insured elects the optional coverage under such subsection), is consistent with the requirements of subsection (d), and includes all applicable

standard uniform policy provisions under section 5(c) and 6(d).

(2)(A) Any insurer who violates paragraph (1) shall be assessed a civil penalty of not to exceed $5,000 for each policy which the insurer issues or offers to issue in violation of such paragraph.

(B) Any insurer who willfully violates paragraph (1) shall be fined not more than $5,000, or imprisoned not more than one year, or both.

(g)(1) Subject to paragraph (2)—

(A) An application for a qualifying no-fault policy covering a motor vehicle in a State may not be rejected by an insurer authorized to issue such a policy in such State unless—

(i) the principal operator of such vehicle does not have a license which permits him to operate such vehicle, or

(ii) the application is not accompanied by a reasonable portion of the premium (as determined under regulations of the Secretary).

(B) A qualifying no-fault policy once issued may not be canceled or refused renewal by an insurer except for—

(i) suspension or revocation of the license of the principal operator to operate a motor vehicle, or

(ii) failure to pay the premium for such policy after reasonable demand therefor.

In any case of cancellation or refusal to renew under clause (ii), written notice shall be given to the insured.

(2) An insurer may reject or refuse to accept additional applications for, or refuse to renew qualifying no-fault policies (A) if the domiciliary State insurance supervisory authority of such insurer deems in writing that the financial soundness of such insurer would be impaired by the writing of additional policies of such insurance, or (B) such insurer ceases to write any new policies of insurance of any kind in the jurisdiction of the rejected applicant.

(3) Whoever knowingly violates, or conspires to violate, the provisions of paragraph (1) or (2) of this subsection shall be assessed a civil penalty of not to exceed $1,000 for each separate violation. Each violation of paragraph (A) of this subsection with respect to any policyholder or applicant for insurance shall constitute a separate violation.

UNIFORM STATISTICAL PLAN AND PRICE INFORMATION

SEC. 6. (a) The Secretary shall, after consultation with insurers and State insurance supervisory authorities, promulgate a common, uniform statistical plan for the allocation and compilation of claims and loss experience data for each coverage under section 5 of this Act, and upon promulgation, such plan shall be followed by every insurer writing qualifying no-fault policies, and by every rating or advisory organization or statistical agent used by any such insurer to gather, compile, or report claims and loss experience data.

(b) Such statistical plan shall contain data pertaining to the claims and loss experience for the classes of risk in each rating territory within each coverage under section 5 of this Act. Such statistical plan shall not contain data pertaining to expenses for adjusting losses, underwriting expenses, general administration expenses, or any other expense experience for any class of risk in each rating territory within the coverages under section 5 of this Act. In carrying out the provisions of this section, no insurer, rating, or advisory organization, or statistical agent, or other association of insurers, may pool, or in any manner combine, any such expenses or expense experience, or otherwise act in concert with respect thereto.

(c) Every insurer writing policies of insurance which meet the requirements of section 5 of this Act, and every rating or advisory organization or statistical agent used by such insurer to gather or compile claims and loss experience data, shall report such data in accordance with the provisions of the statistical plan required by this section at such times and in such manner as the Secretary shall by regulations prescribe.

(d) The Secretary shall prescribe regulations which shall require a minimal number of standard uniform—

(1) policy provisions for each coverage under section 5 of this Act; and

(2) classes of risk and rating territories for each coverage under section 5 of this Act;

in order to accomplish the purposes of the statistical plan required by this section.

(e) Every insurer writing qualifying no-fault policies shall provide the Secretary with the actual rate or premium being charged for each class of risk in each rating territory within each coverage under section 5 of this Act at such times and in such manner as the Secretary shall by rules and regulations prescribe.

(f) The Secretary may, after consultation with the insurers and State insurance supervisory authorities, appoint a statistical agent or agents, to receive, gather, compile, report, and analyze the claims and loss experience data, and actual rates or premiums, specified in subsections (c) and (e) of this section.

(g) From time to time, but not less often than semi-annually, the Secretary shall analyze and freely and fully make available to the State insurance supervisory authorities and to the general public, with respect to every insurer writing qualifying no-fault policies, a comparison of such insurer's indicated rate based solely upon the claims and loss experience data for each class of risk in each rating territory within each coverage under section 5 with the actual rate or premiums being charged by the insurer for such class of risk in each rating territory within such coverage. The claims and loss experience data, and actual rates or premiums specified in subsections (c) and (e) of this section shall be made available to the general public at such times and in such manner as the Secretary shall by regulation prescribe.

(h) Any insurer writing qualifying no-fault policies, or any rating or advisory organization or statistical agent used by any such insurer to gather, compile, or report claims and loss experience data with respect to policies meeting the requirements of section 5, who fails to:

(1) follow the statistical plan promulgated in accordance with subsections (a) and (b) of this section, or

(2) observe the prohibition in subsection (b) of this section against pooling, or in any manner combining expense experience, or

(3) report to the Secretary, or his statistical agent or agents, the claims and loss experience data as required in subsections (c) and (f) of this section, or

(4) follow the standard uniform classes of risk and rating territories prescribed by the Secretary as required in subsection (d) of this section, or

(5) provide the Secretary, or his statistical agent or agents, with the actual rate or premium being charged for each class of risk in each rating territory within such coverage as required in subsections (e) and (f) of this section,

shall be assessed a civil penalty of not to exceed $5,000 for each violation.

ASSIGNED CLAIMS PLAN

SEC. 7. (a)(1) The Secretary shall, after consultation with insurers and State insurance supervisory authorities, organize an assigned claims bureau and assigned claims plan in each State. Upon organization, each such bureau and plan shall be maintained, subject to regulation by the applicable State insurance supervisory authority, by the insurers writing qualifying no-fault policies in such State if (and for so long as) the Secretary is satisfied that all such insurers are required under State law to participate and that no such insurer may withdraw without the consent of the State.

(2) In any case in which an assigned claims bureau and assigned claims plan in any State is not maintained in a manner considered by the Secretary to be consistent with the provisions of this Act, the Secretary shall maintain such bureau and plan.

(3) The Secretary shall prescribe regulations which shall set forth the extent to which, for purposes of this section—

(A) a self-insurer shall be treated as an insurer, and

(B) benefits which a self-insurer is obligated to pay shall be treated as insurance benefits under a qualifying no-fault policy.

(b) The costs incurred in the operation of each assigned claims bureau and assigned claims plan shall be assessed against insurers in each State by the applicable State insurance supervisory authority (or by the Secretary during any period during which such bureau and plan are maintained by him under subsection (a)(2)) according to regulations of such State authority (or of the Secretary if the bureau and plan are maintained by him) that assure fair allocations among such insurers writing qualifying policies in the State, on a basis reasonably related to the volume of insurance written under qualifying no-fault policies.

(c)(1) No insurer may write any qualifying no-fault policy unless the insurer participates in the assigned claims bureau and assigned claims plan in each State in which such insurer writes such policies.

(2) An insurer who violates paragraph (1) of this subsection shall be assessed a civil penalty of $5,000 for each policy he issues in violation of such paragraph.

(d) Except as provided in subsection (e) of this section, each person sustaining injury or death (or his legal representative) may obtain the insurance benefits described in sections 5 (a) and (b) of this Act through the assigned claims bureau and assigned claims plan in the State in which such person resides if—

(1) no insurance benefits under qualifying no-fault policies are applicable to the injury or death; or

(2) no such insurance benefits applicable to the injury or death can be identified; or

(3) the only identifiable insurance benefits under qualifying no-fault policies applicable to the injury or death will not be paid in full because of financial inability of one or more insurers to fulfill their obligations.

(e) A person shall be disqualified from receiving benefits through any assigned claims bureau and assigned claims plan established pursuant to this section if—

(1) such person is disqualified under section 5(a)(2)(B) of this Act from receiving the insurance benefits under section 5(a) of this Act,

(2) such person was—

(A) the owner or registrant of an uninsured motor vehicle at the time of its involvement in the accident out of which such person's injury arose, or

(B) the operator of such a vehicle at such time with reason to believe that such vehicle was an uninsured motor vehicle.

(f) A claim or claims arising from injury or death to one person sustained in one accident and brought through the applicable assigned claims plan shall be assigned to one insurer, or to the applicable assigned claims bureau, which after such assignment shall have the same rights and obligations as it would have had had it issued a qualifying no-fault policy (or such form as the Secretary by regulation prescribes) applicable to such injury or death.

(g) The assignment of claims shall be made according to regulations of the State supervisory authority (or the Secretary if the bu-

reau and plan are maintained by him under subsection (a)(2)) that assure fair allocation of the burden of assigned claims among insurers doing business in the particular State on a basis reasonably related to the volume of insurance written under sections 5 (a) and (b) of this Act.

(h) A person or his legal representative claiming through an assigned claims plan shall notify the applicable bureau of his claim within the period prescribed under section 5(d)(2) for filing a claim for insurance benefits under section 5 (a) or (b). The bureau shall promptly assign the claim and notify the claimant of the identity and address of the insurer to which the claim is assigned, or of the bureau if the claim is assigned to it. No action by the claimant against the insurer to which his claim is assigned, or against the bureau if the claim is assigned to it, shall be commenced later than sixty days after receipt of notice of the assignment or after the expiration of the period prescribed in section 5(d)(2) for commencing an action against an insurer, whichever is later.

(i) All reasonable and necessary costs incurred in the handling and disposition of assigned claims, including amount paid pursuant to assessments under subsection (b) of this section, may be considered in making or regulating rates for the insurance under sections 5 (a) and (b) of this Act, but if such costs are considered in the rates or premiums for such insurance, the pure loss portion of such costs shall be reported separately under the uniform statistical plan provided for by section 6 of this Act, and that portion of the actual rate or premium being charged for such insurance attributable to the entire amount of such costs incurred in the handling and disposition of assigned claims shall be reported separately under subsection (e) of section 6 of this Act.

(j) An insurer who makes an assigned claims payment shall be subrogated to any rights the person to whom the payment was made may have had against the owner or operator of any uninsured motor vehicle involved in the accident out of which the claim arose.

CLAIMANT'S ATTORNEY'S FEES

SEC. 8. (a) A person making a claim under a qualifying no-fault policy may be allowed an award of a reasonable sum for attorney's fee (based upon actual time expended) and all reasonable costs of suit in any case in which the insurer denies all or part of a claim for benefits under such policy unless the court determines that the claim was fraudulent, excessive, or frivolous.

(b) A person making claim under policy provisions meeting the requirements of section 5(b)(1) or 5(c) may enter into a contingent fee arrangement with an attorney but in no event may the fee exceed 25 per centum of any award the claimant receives, and may be further limited at the discretion of the court.

FRAUDULENT CLAIMS

SEC. 9. Within the discretion of the court, an insurer or self-insurer may be allowed an award of a reasonable sum as attorney's fee (based upon actual time expended) and all reasonable costs of suit for its defense against a person making claim against such insurer or self-insurer where such claim was fraudulent, and such attorney's fee and all such reasonable costs of suit so awarded may be treated as an offset against any benefits due or to become due to such person.

ADMINISTRATION

SEC. 10. In order to carry out the provisions and fulfill the purpose of this Act the Secretary shall—

(1) consult with representatives of State agencies charged with the regulation of the business of insurance, representatives of the private insurance business, and such other persons, organizations, and agencies of the Federal, State, or local governments as he deems necessary and

(2) make, promulgate, amend, and repeal such regulations as he deems necessary.

JURISDICTION

SEC. 11. (a) No district court of the United States may entertain an action for breach of any contractual or other obligation assumed by an insurer or self-insurer under a policy of insurance containing mandatory or optional provisions in accordance with section 5 of this Act unless a person bringing such action meets the jurisdictional requirements of section 1332 of title 28 of the United States Code.

(b) Any person may bring suit for breach of any contractual obligation assumed by an insurer under a policy of insurance containing such mandatory or optional provisions in any State court of competent jurisdiction.

EFFECTIVE DATE

SEC. 12. (a) Except as provided in subsection (b), this Act shall take effect one year after its enactment.

(b) Sections 4, 5(f), and 7(d) shall take effect on the first day of the eighteenth calendar month which begins after the date of enactment of this Act. Section 3 shall apply with respect to accidents occurring on or after the first day of such eighteenth calendar month.

STATE-FEDERAL COOPERATION IN THE ENFORCEMENT OF NURSING HOME REGULATIONS

Mr. MOSS. Mr. President, the recent conference in Washington sponsored by Duke University Center for the Study of Aging, the American Association of Retired Persons, and the National Retired Teachers Association surveyed the topic "Nursing Homes: Critical Issues in a National Policy." The conference brought together the foremost experts in long-term care from all parts of the Nation.

One of the speeches delivered at this conference was most enlightening to me. Mr. Arthur Jarvis, director of the Hospital and Medical Care for the State of Connecticut, spoke eloquently about the weaknesses in the present system which essentially he describes as the breakdown of the necessary cooperation between the single State agency and the appropriate Federal, HEW units given the responsibility of enforcing Federal medicare standards.

I ask unanimous consent that this speech titled "Whatever Happened to Creative Federalism in Long-Term Care" be printed in the RECORD.

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

WHATEVER HAPPENED TO CREATIVE FEDERALISM IN LONG TERM CARE?

(By Arthur J. Jarvis)

The program for this conference lists my official title with the State of Connecticut. My remarks today however, will be within the context of my position as an officer of an organization with the rather longwinded name, The National Association of Directors of Health Facility Licensure and Certification Programs. Our name is long, but our history is relatively short, having been formed but two years ago in Denver, Colorado as an affiliate of the Association of State and Territorial Health Officers, which is the national organization for State Health Commissioners and under the auspices and support of the Health Facilities Surveyor Improvement Program of the Community Health Service. To address a national conference of this kind on just my experience as the State Agency Director in Connecticut would be too parochial to say the least. In fact, many of the problems that I am discussing in this paper concerning health programs implementation at the state level are not a major problem in Connecticut. Rather my remarks are a distillation of problems common to some or all of the State Agencies responsible for health facilities surveillance in the United States.

Just one last bit of housekeeping, and that is although the panel for this afternoon is addressing itself to the whole problem area of standard setting, standard setting for Federal programs is primarily a Federal responsibility, but actual implementation of those standards is the unique job of the State Agency. The problems inherent in that responsibility are what we shall examine today.

When President Johnson first coined the phrase "creative federalism," he did so in order to describe what he hoped would be a new epoch of cooperation between the Federal Government establishment and the states that, hopefully, would insure that the full intent of Congress would be effectively delivered at the local level. Originally, the word federalism described the political philosophy of the Federalist Party founded by Alexander Hamilton. While this is not the place to discuss in any detail the essential differences between Hamiltonian and Jeffersonian democracy, suffice it to say, the semantic etiology of the word connotes bigness and centrality of Federal power and its concomitant ability to collect enormous revenue and thereby re-distribute power. More recently, the word federalism has been used to describe that particular set of conditions under which the Federal Government and the government of any given state work cooperatively to implement a program of law passed by the Congress. While the first 32 years of this century saw our country make the transition from one of concentrated enterprise capitalism to the beginning of governmental cooperation, the roots of federalism as we know it today are found in the implementation of the social and humane programs of the 1930's. Indeed, by the mid-1930's, the phrase "cooperative federalism" was already in use. The agonies and pitfalls between "cooperative" federalism and "creative" federalism are many. Be that as it may, there was the hope in the mid-1960's that the citizens of this country would, in fact, receive the services of a given program in the form and the intent that they started out with in Washington.

The next question is: How does federalism suddenly become "creative"? "To create" is defined as to cause to come into existence as an original product or idea of human intelligence or imagination. Therefore, we must pause to assess just how creative we have been since the phrase was first introduced and what are the problems on the state's side of federalism in assuring quality in long term care facilities.

There is another phrase in common usage which describes that bureaucracy in Federal and state government that is responsible for translating the statutory language of Congress into tangible delivery at the local level. This machinery has been described as "the silent government."

More specifically, it describes those decision makers within government who by administrative regulation either implement or even change what the voter thought he was getting in an original piece of legislation, into what is actually delivered. Whether or not we agree with John Gardner's description of this bureaucracy as it operates in Washington, as, "the grimy machinery by which the public business gets done," is really beside the point. The fact remains this

"silent government" does exist and its strengths and weaknesses are at the very root of the problem of trying to establish and maintain high standards of health care for the elderly.

Perhaps we should concentrate on Gardner's further observation that, "high-minded citizens may feel noble just fighting good causes, but high-mindedness is no substitution for professional skill in doing battle."

This latter point as it relates to State Agencies is the thesis of this paper. I know of no component of the so-called silent government of the United States that is less well-known or less understood as that of the designated State Agency for the implementation of Medicare and Medicaid and state standards in our respective states.

Let us examine the configuration of Medicare implementation. Following the successful passage of the 1965 amendments to the Social Security Act, Title XVIII and Title XIX were legislative realities for the American people.

The big news, of course, was Title XVIII. At long last, the elderly of this country felt that they had finally won that package of benefits that would allow them to receive needed health services in an atmosphere of dignity and respect. To insure that the care delivered to beneficiaries was of satisfactory, if not high quality, the Congress wisely built safeguards into the legislation, such that any hospital, nursing home, or agency potentially eligible to participate in the program, first meet federally established standards of quality care. These regulations were euphemistically entitled "The Conditions of Participation."

The wheels of federalism began to grind and in all states, the Governor was asked by the Department of Health, Education and Welfare to designate a State Agency which would be charged with the responsibility of applying those conditions of participation to potential providers and make recommendations as to whether or not they should be certified to participate in the program. In some states, this resulted in setting up a separate unit for this purpose within the Health Department. In others, such as in Connecticut, it was combined with the already existent licensing authority for health facilities. A contract was then signed between the state and Department of Health, Education and Welfare whereby the Federal Government agreed to certain conditions of reimbursement, in return for which the designated State Agency agreed to survey potential providers of service. We were told at the time that the contract was consummated that the Federal Government was agreeing to 100 percent reimbursement to insure that they were getting the best bang for their part of the buck.

The designated Federal Agency for Title XVIII within HEW is the Social Security Administration and its Bureau of Health Insurance. It, in turn, has Regional Representatives in each of the ten Regional Offices of HEW who are charged with the responsibility for on-going supervision and support of the State Agencies in their Region as well as acting as a liaison between the State Agency and the Central Office.

As you can see from this description of the federalist configuration for Medicare, when all is said and done, the actual job, on a day-to-day basis, of seeing to it that quality health care is being delivered to the citizens of this country is in the hands of the State Agency and that agency alone.

Prior to Medicare, the various state health facility licensure agencies were entities unto themselves. With the arrival of Medicare, these licensure agencies were coalesced into a national network of standard enforcement agencies in the health care field. Prior to 1965, state and local surveillance of health facility operations was a patchwork at best, ranging from some states that had no licensure laws whatsoever to those with very sophisticated systems for standard setting and surveillance. Medicare promised to be a new and exciting vehicle by which the State Agency could cross the bridge from the days of sheer inspection to that of surveying a facility and being able to provide it with the necessary consultation for corrective action as well as to be able to exercise some meaningful authority in the overall coordination of the health delivery system.

In 1966, State Agencies were asked by the Federal Government to implement the 3 C's of Medicare:

The first "C" was Certification which was the enforcement of the Conditions of Participation for the various providers.

The second "C" was Consultation. This component was particularly exciting to me as a graduate Hospital Administrator and a product and a creature of the voluntary sector. Now! Whenever a deficiency was noted in our certification activity we were required by regulation to render consultation by qualified people. This had the salutary effect of dividing the inspecting of surveying side of surveillance on the one hand and the consultant expertise needed for corrective action on the other.

Finally, the third "C" was dubbed Coordination. While clear definitions of what Coordination meant were vague at best even in the very earliest days of Medicare, none the less, to some of us it meant an opportunity to look at levels of care and to dovetail the various components of the full spectrum of the health delivery system thus insuring a more efficient and economic delivery of health care such that a meaningful continuum of care for patients might at least start to become a reality. Unfortunately, we learned that due to the subsequent limitation of benefits coordination of the delivery system was never tried and we were ultimately told to forget it.

A fourth charge to the State Agency should also be examined. Namely our original specific surveillance and consultation responsibilities for Utilization Review Committees. For the first time in the history of institutional care in this country—a nationwide standard was established for reviewing the adequacy of physician peer group review of medical care actually delivered at the bedside of our health institutions. The review of utilization, after all, was supposed to be, in the first instance, a sort of actuarial review in terms of the volume of services rendered. However, it was also supposed to review for the justification and necessity of those services (including drugs and biologicals). How could a physician reviewer on the Utilization Review Committee answer the question of justification and necessity without first asking himself—What is good care for a patient of this age, sex and diagnosis?

Thus, for the first time, peer group review and medical quality care audit was at last accountable to a public agency. A recognition that in the second half of the Twentieth Century the practice of medicine in community hospitals treating the diagnoses common to the great bulk of our patients had long ago evolved into a predictable science with clearly definable criteria and not a totally subjective Art unique to each licensed physician.

This was the setting for the State Agencies as the brave new world of Medicare surveillance began. It contained, I believe, all of those elements of enforcement and clinical safeguards for the patient that the American people thought they would get with Medicare. The truth of the matter is that the integrity of this monitoring system was short lived, indeed. When the voluntary and private sector (to say nothing of the third party payers) realized just how effective this system could be and what that implied for the status quo, it took only the better part of a year to arrange things such that—not only the system was weakened, but the State Agency was placed in the category of an unwelcome relation who had to be tolerated but ignored.

Since those early days that have evolved since Medicare began, we State Agencies have been the package of the 3 C's and URC responsibility erode such that effective enforcement (which has become the theme of this conference) is still a primary concern in Health Care in 1971. The reason is that the national monitoring system that could have been generated from the original charge to the State Agency was never allowed to really get off the ground and we still have "warehouses for the dying." Small wonder that states have been reluctant to ask for higher standards above the Medicare base when even the base increasingly appeared to be unenforceable when taken in context with the original State Agency charge.

Let me emphasize as strongly as I possibly can that I hope that the lessons, both beneficial and discouraging, learned from the Medicare experience will be applied as we implement Title XI and attempt to fulfill the intent of Congress when they passed it. Then, indeed, we can get to the business of making the nursing homes of America what President Nixon has described as "shining symbols of comfort and concern."

To help you visualize the peculiar position the State Agency finds itself in implementing Federal health care programs at the state level; picture the state as located in the neck of an hourglass between the upper and lower chambers of the vessel. The upper chamber can then be designated as the Federal level from whence as we all know, "all good things flow." The bottom chamber can be described as the anticipated recipient of the fruits of that program. In between the two is the state. If it is cooperative, the sand will flow freely but if it is obstructive the flow will be less than it should be or even worse, block that process so effectively that the recipients of the program receive the benefits of that program in a manner and form not originally intended. I would ask that you notice very carefully please that in my somewhat tortured analogy of the hourglass, I suggested that the State could be the balance between effective local delivery of a given Federal program versus a kind of delivery that cheats the American taxpayer. For, more often than not, the rub in effective implementation is not the designated State Agency per se but the harsh and real fact that it is a component of the overall mosaic of state government. Accordingly, its organic effectiveness is directly proportional to the philosophical, political and fiscal anxieties that beset every other part of state government. Having said the foregoing and trying to be gentle in my description of State Agency problems, the real facts of the matter, ladies and gentlemen are:

1. Federalism versus states' rights.
2. Political horseplay with the lives and safety of the elderly on the part of both sides of the federalism configuration.
3. Administrative corseting of programs by the states.
4. And ultimately, and finally, a matter of money.

I should now like to list four major problem areas which I feel are significantly detrimental and injurious to effective implementation of health care surveillance programs at both the Federal and state levels.

The first are those administrative corsets imposed by the various states on funds allocated by the Federal Government for the single purpose of creating and maintaining an effective surveillance and consultation mechanism for health facilities in the long-term-care health field.

A second problem is Federal regulations which are often too lengthy, sometimes irrelevant and worst of all unenforceable, and

which certainly don't always direct themselves to the real purpose of the program with the result that the delivery of quality health care in a humane and compassionate atmosphere, if not frustrated, is weakened substantially.

Third, is that the powerful health deliverers appear to have an inordinate effect upon not only the formation of Federal regulations, but the way in which they are enforced. The Federal establishment appears to listen more to organizations concerned with health delivery and payment rather than to the very people with whom they have a contract to implement their standards, and worst of all, the users of health care—the consumers! They deny themselves the State Agency expertise in the area of standard setting, standard implementation, and enforceability necessary to have an effective program nationwide; and they further deny themselves and the states the crucial input from the users.

There is little evidence to suggest that these influences have had a significant impact on Medicare. It is yet to be seen whether or not these influences will trigger a sensitive and compassionate response from the Federal decision makers for Medicaid or any other Federally-supported health care program for that matter. This is particularly discouraging when you contemplate that Title XIX will affect hundreds of thousands more of our elderly citizens in health care facilities than Medicare ever dreamed of and yet—the process goes on!

Finally, the health consumer has a right to have a voice in standard setting at both the Federal and state level and certainly expects that he will be cared for in safe health facilities that deliver him a service of high quality care. There appears to us to be only modest attempts by the Federal Government to establish such a consumer representation and despite his many advocates around the country, when all is said and done, the consumer must and should look to the State Agency to function as a consumer advocate. It is a challenge we accept willingly. Indeed, it is at the very core of our operation. We should remember the very reason that the State Agency came into existence originally, long before any Federal regulations, was the decision that the public health should be protected. It was the will of the governed through their elected state representatives that surveillance of health care facilities under licensure statutes be implemented to insure safe and humane care. The same sense of mission to protect the patient did not suddenly disappear from State Agency personnel at the moment that Federal programs suddenly appeared as a State Agency responsibility. I am happy to report to you that this sense of mission is still very much alive in state agencies and quite well, thank you.

Having listed these four problem areas, let us now examine them in some detail so that I might share with you what corrective action we might take. The first problem is administrative control imposed by states on allocated Federal funds. Our experience here is almost totally based on the Medicare experience. When the Bureau of Health Insurance first signed its contract with the State Agency for health care surveillance it promised 100 per cent reimbursement for all costs to the state. The Bureau has stood by that contract and, as both sides in the Federal-State partnership have grown in expertise with regards to personnel need to adequately implement the program, the Medicare budgets for the various State Agencies have been executed by the Social Security Administration in a businesslike fashion with workable and appropriate methods of control and accountability. However, it is one thing to get a budget approved by a designated Federal Agency to implement a program but it is quite another for the State Agency Director to implement that program within the confines of administrative controls of state government. These state controls can restrict the numbers and types of required health professionals. Indeed, these controls can actually impede the successful recruitment of those individuals that are needed as a minimum to effectively carry out the program of health care facilities surveillance called for in the Federal establishment.

These controls affect such things as salary levels, recruitment of the proper numbers and types of professional personnel and usually occur at just that point in time when it is most appropriate for the State Agency to enhance and strengthen the thrust of their surveillance program. We are thus denied the opportunity to train and utilize these personnel to make the most effective use of them in implementing standards and assuring the delivery of quality care to the elderly.

Time and time again, State Agencies are charged with a mandate to maintain effective and meaningful surveillance over health care services given appropriate financial support from the proper Federal Agency only to find that the effectiveness of such surveillance is thwarted by a pervading state philosophy that once Federal funds are received by the state it becomes state money and not Federal money. This is despite the fact that each and every dollar bill is stamped with the name of that specific program which the Federal Government has allocated the money. All too often such allocations are seen by the states as a debit to their general fund and little else.

Although the Federal Government supports the State Agency logistically with sufficient money by virtue of a line item budget, the states can still exercise such restrictive controls over those allocations such that personnel and other logistical support needed to carry on an effective surveillance program are not procured either at the time they are needed or in the numbers and quality necessary.

The second problem it seems to me that is frustrating the intent of the American public in matters of health care is the significant impact of lobbying pressures brought by the voluntary and proprietary sectors in the whole area of the establishment of Federal standards and even worse their subsequent promulgation. Regrettably, these pressures are not only in the area of the standards themselves, but in the surveillance mechanism as well. Prior to 1966, any sort of national standard of surveillance of quality care in health facilities was devoted almost exclusively to general hospitals. Even though this was voluntary in concept, it carried with it compulsions of: third party payment; approval of medical, nursing and other training programs; and professional and public prestige—rather significant compulsions to say the least.

Medicare was that revolution that established a national standard for most of the major components of the health delivery system. Now it is 1971 and it seems to me that the pre-1965 days of the consumer accepting a standard of care decided quietly in the panelled executive offices of national voluntary organizations in Chicago and the medical staff meeting rooms of our hospitals should be over. What a tragedy that with the advent of Medicare the American public had an opportunity to receive the benefits of an objective review of their health care system by virtue of an outside government survey only to have this opportunity subsequently weakened or sometimes thwarted by the lobbying pressures of the provider and fiscal intermediary establishment.

Therefore, what of the future? Obviously, several options are open to us. One would be that the Federal Government take over the surveillance of health facilities. The problem here, of course, is that such a move would require a catastrophic number of Federal employees to do the job adequately and would, in most instances, duplicate existing personnel already employed by the state for licensure purposes. Therefore, it is clear that the federalism configuration of the designated State Agency is still the only workable way currently evident with which to maintain effective health facilities surveillance. But the State Agency cannot go it alone. It must have, as it has had in the past, the continued support of the Federal Government for funding the necessary expenses in developing a successful and effective program. However, in those instances when the bureaucracy of any state operates in such a manner so as to weaken or even cripple surveillance programs in health care facilities, then I suggest that Federal agencies charged by the Congress with responsibility for the program should and must go to those decision makers of state government to unclog any barriers placed in the way of fulfilling the intent of the American taxpayer and the safety of their health facilities.

A single letter from the Secretary of Health, Education, and Welfare to the governors is a good start, but it is not enough. Many times, over the last two years, the National Association of Directors of Health Facility Licensure and Certification Programs as well as ASTHO have raised this very question with Federal officials on occasions too numerous to count. It is my opinion that their authority or responsibility to confront an obstructive state official is not as apparently clear to them as we would like. Whether this is a failure in statutory language of the Congressional Act or in its subsequent interpretation in administrative regulation, the fact remains that Federal officials are hesitant in this regard for reasons that appear to be as much legislative as politically timid over states' rights intrusion; even though the intent of the Federal and national will for patient safety and quality care is being frustrated.

I suggest that the time has past for executive branch politics to get in the way of the right of every American to have safe health care of high quality. If the word "federalism" indeed "creative federalism" means anything at all, it should mean first of all a partnership between the Federal Government and that of the state. Like any partnership, each half must carry its own load to insure that the job gets done. Therefore, if it appears that a given state bureaucracy is, by administrative fiat, thwarting the intent and letter of the national will, then it is the responsibility of Federal officials to confront those decision makers of that state bureaucracy. They must have authority to threaten cutoff of Federal funds to the state if interference with the implementation of the program continues. Whatever has to be done on the part of the executive and legislative branches of the Federal Government to clarify this responsibility for Federal officials should and must be done, and done quickly. Otherwise, the Title XIX program for Skilled Nursing Homes will suffer many of the same reversals that Medicare went through and we will never have an effective national monitoring system for health facilities.

The major portion of this paper has concerned itself with the survey surveillance responsibility of the State Agency. Let us turn our attention now to the question of standard setting.

Through the State Agency contract, State Agency surveyors become Federal representatives, if you will, to insure the effective implementation of a given program. Standard settings for Federal programs remains a primary Federal responsibility. Federal standards are written and amended in the first instance in response to legislative mandate. They are then amended either in reaction to a crisis or, thirdly, because of the successful

lobbying of some component of the voluntary or private sector.

As I look at these three methods of Federal setting, I am reminded of what the Coach of the University of Texas once said about the forward pass. He said that when you throw a football into the air three things can happen and two of them are bad. I suggest that any of these three methods of regulation promulgation can be detrimental in securing and realizing workable and enforceable standards. There must be a meaningful dialogue between those who set standards at the Federal level and the State Agency personnel mandated under the law to enforce them. All three methods of Federal standard promulgation always run the risk of being an unenforceable or unrealistic standard when actually tested in the field. The number of instances of this kind that have occurred during the Medicare history are simply too numerous to mention, with the result that standard setters at the state level find themselves at times in serious disagreement with their Federal colleagues. I would plead that the "High Noon" type "shoot-out" between State Agencies and Rockville, Baltimore, and HEW, South, come to a halt before regulations are written in a form that is irreversible. I further strongly urge that State Agency personnel be called in on an advisory capacity to consult with Federal decision makers at a time the standards are actually being developed. This would have the advantage of counseling Federal decision makers not only as to enforceability of a given standard, but as to its actual effectiveness in really assuring the delivery of quality care to the elderly. All of this regardless of whether or not the nursing home is in Podunk, U.S.A. or downtown Manhattan. Hence, the Health resources of any given community must be matched in a meaningful way with the long term care needs of the elderly no matter where they live. We cannot forget that there is no geographical uniqueness to the physiological, clinical and social needs of the aging process.

In those communities where local resources are not adequate for the job, then Federal money should be channeled thru local consumer corporations to create those resources needed to deliver care not only to the elderly but to all age groups in that community.

I have, in this paper, attempted to summarize the problems facing the State Agency in implementing and assuring quality health care in the long term care field. I categorized our role in the overall governmental machinery as the most silent of the silent government. With the formation of our association, I and my Colleagues hoped to disturb that silence. I hope today that that stillness has been even more disturbed so that the true role of the State Agency and the problems it is facing today are made clear to all who presume to speak for the elderly sick of our country. Collectively, the State Health Departments of this nation have the largest single pool of knowledge and expertise for understanding the problems and health needs of the long term patients based upon the actual situations in which they exist. I hope I have made it clear that we State Agencies see ourselves not only as code enforcement officers, not only as professional consultants with the expertise necessary to assist nursing homes in corrective action, but above all the primary and sometimes the only advocate of the sick elderly charged under the law to assure that that consumer has the protection he or she deserves; and in fact, is receiving a quality of health care which is their American Right.

Do we really want nursing homes in America that are "shining symbols of comfort and concern?" If we do, then the important role and contribution of the State Agency must be:

"Understood—Supported—and Strengthened."

We have our weaknesses and we have our problems, but when all is said and done, we are the ones you have asked to do the job! We can do it as well as you let us.

Thank you.

HIGHWAYS AND THE ENVIRONMENT

Mr. MOSS. Mr. President, a head-on clash seems to be in the making between the environmentalists and those who plan and build the Nation's highways.

Some of the conservation organizations, and individual conservationists, have said frankly that they intend to make the highway industry their next target—that they will zero in on highway building in the next few months, questioning both the need for more roads and highways and freeways in the country, and the environmentally damaging way in which many of those now underway are being constructed.

The highway industry counters that with America a nation on wheels, we are going to need more rather than fewer highways of all types in the future, but that with good planning we can have both the roads we need and an improved, rather than a shattered, environment surrounding them.

I hope that instead of fighting one another these two groups will sit down and work and plan together. There is no question but that highways can be engineered and built in such ways as to preserve the natural physical features of an area, enhance the scenic beauty of the countryside, protect historical buildings and monuments, and make magnificent areas and views more accessible without destroying the ecology of the region generally. It will take time and effort and money, but we can do it. Social and environmental costs and benefits are often intangible, but we have no choice but to find some way to measure them and build our highways with these considerations in the forefront.

In my part of the world—the West—the question is not whether we shall build more roads—but how soon we can do it.

Douglas C. Smith, AIA, an architect with the Highway Users Federation for Safety and Mobility, has written a most informative article in the fall 1971, issue of Petroleum Today entitled "Highways and the Environment," in which he points out that with planning, good things can happen to highways and the areas through which they are built. I ask unanimous consent that Mr. Smith's article be printed in the CONGRESSIONAL RECORD.

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

HIGHWAYS AND THE ENVIRONMENT

(By Douglas C. Smith, AIA)

Highways and the environment. Inimical? Some say so, citing only-too-well known horror stories as substantiation.

Not necessarily so, say others who point out examples of excellence and compatibility.

Both views are right, or at least partly so. There is good and bad in the highway milieu, just as in any other field. And highways, like the income tax, will be with us, mixed blessings and all, for a long time.

The President's Council on Recreation and Natural Beauty and the Commerce Department have documented the fact that driving for pleasure is far and away the number one recreational activity. It accounts for 42 per cent of all outdoor recreation.

Consultant Arnold Vollmer, a leading New York landscape architect, has said . . . "an enjoyment of the outdoors was, until the invention of the motor car, essentially the prerogative of the rich, and as urbanism increased it became more so. The city kid found his recreation either on a busy street, a dusty vacant lot, or at best a crowded beach at the terminus of a rapid transit line. Mass enjoyment of the outdoors started with the motor car. In spite of some ills which have accompanied it, the auto has been one of the most democratizing influences in our society." Vollmer's statement appears quite true. Americans love their cars. And the love affair shows no sign of abating.

What is true of recreational driving is true of other driving. It is *by choice* that we have so many cars on the road so many hours of the day. Consistently and predictably, most people who respond to questionnaires on public transit say they favor public transit, but will not ride it. In a typical poll taken by John B. Lansing at the University of Michigan, as many as 28 per cent of the respondents favored mass transportation systems. But, only five per cent used mass transit facilities as often as one day a week.

Where, then, will these cars—increasing in numbers every day—be used? The consumption of gasoline by vehicles idling in traffic jams is not a proper use of our nation's energy resources. For, the sake of the economic health of our nation as a whole, and of our urban areas in particular, Americans *must* have access to well-planned, well-integrated intercity and Interstate highways.

THE URBAN ENVIRONMENT

Cities and their major roads often are lumped together for joint vilification. Sometimes they deserve it, but not always.

A good functional urban highway system might be described as follows:

It fits the city according to the city's grain, the warp and woof. It does not disrupt the natural pattern, nor divide neighborhoods, nor ruin parks. It makes a genuine contribution to the overall aesthetics of the city.

It is built with an eye to its audio-visual impact upon the non-user. It should never distract, nor prove to be an audio-visual handicap to the user and non-user.

It is planned to avoid hardships to people who may be displaced, and is built only after intangible social and environmental costs and benefits have been valued, right along with dollars. This is one of the most important considerations to be undertaken by the highway planner.

It is safe and convenient for the user, built according to appropriate design standard. Nothing is left to chance; every phase of the project at hand must be worked out to the utmost detail.

The Interstate highway system, now three-fourths completed, is already saving time, operating costs—and lives. The Federal Government estimates that one life is saved each year for every *five miles* of Interstate highway constructed. This could mean that the nation's Interstate freeway system, when completed, could possibly save a breathtaking 8,500 lives a year! When completed, in our nation's bicentennial year, 1976, the system will carry more than 20 percent of all traffic in the United States.

There are many examples of environmentally compatible roads in cities across the nation (in addition to the parkways and boulevards). This is not an entirely new trend. The compatibility planning for many of these roads was done years ago—some dating as far back as the 1940's.

Sacramento, California. Cooperation between city, state and Federal agencies in the

early 1960's resulted in modifications in the design of Interstate 5 through the city. This permitted the preservation and restoration of historic "Old Sacramento."

San Mateo County, California. The Junipero Sierra freeway (I–280), running south of San Francisco, is described locally as "the world's most beautiful freeway." It may be just that. Several studies and counterstudies fixed its route and design features to protect both the ecology and natural physical features of the region by utilizing "aesthetic engineering" standards. The plan of the road received an award of merit from the American Institute of Planners, and two of its bridges received awards in the 1969 National Highway Beauty Awards, and in other competitions.

Denver, Colorado. This city provides two examples of highway environmental compatibility: U.S. 6, Barnum Park, and Interstate 70—Berkeley and Rocky Mountain Parks. State highway and city officials collaborated in the reconstruction of U.S. 6, in the mid-1950's. They removed fill material from a dusty arroyo adjacent to the then-small Barnum Park. Serendipity went to work and the fill was used to build ramps and other embankments, one of which became a dam across the arroyo. The result was the creation of a lake wihch greatly expanded and enhanced the beauty and use of the park: a perfect example of environmental improvement brought about by a road.

Louisville, Kentucky. In an area where horses are both raced and prized, a 200-foot equestrian overpass across an Interstate highway should surprise no one. This feature and a host of others have made this road, opened late last year through two of Louisville's oldest and largest parks, almost and Interstate park in an of itself. The road and its structures were specially designed; a public golf course was reconstructed; and twin tunnels were built to avoid destruction of a grove of oaks.

Pittsburgh, Pennsylvania. Pittsburgh's "Golden Triangle" redevelopment, begun in the mid-1940's, was responsible not only for a remarkably compatible park-road combination, but for an eventual wholesale "renaissance" of the entire central portion of the city. An amalgam of city, state and private forces and institutions led to the symbolic restoration of Fort Pitt and the creation of Point State Park, a 36-acre oasis at the origin of the mighty Ohio, only steps away from the heart of the Central Business District. New golden-colored bridges bring Interstate highways 76 and 79 to the park on a sculptured, elevated structure. A pedestrian "portal" beneath the highway connects the two parts of the park. Last year more than one million people visited Point Park through the "portal."

The question is not whether these roads shall be built, but *how*—what amounts of planning, consideration for the environment, and regard for aesthetics will be integrated into their construction, and at what price. The staggering yearly increase in the number of vehicles on the highway dictates expansion; improvement, and innovation in the services these roads offer. With these growing numbers of family cars in mind, it is not surprising that every completion of a major link in the Interstate system meets with excitement and eager interest.

THE RURAL ENVIRONMENT

We are beginning to view our non-urban roads as more than simply answers to a transportation need. Why can't these roads, winding through some of the most beautiful and varied countryside in the entire world, be as pleasurable in and of themselves as the journey's goal?

The few wholly *new* non-urban roads we'll build by the year 2000 can be the equivalent of rural parkways. They can have the range of amenities which make such existing roads attractive to us—generous rights of way, campgrounds, scenic vistas, picnic areas, wooded valleys and desert panoramas, tended roadsides, and respect for the natural topography and plant growth.

But it is the many *existing* rural recreation routes which form the bulk of such highways. Most of them will have to be upgraded in the post-Interstate era. Some of them (with considerably more difficulty) can be upgraded to at least a semi-parkway. Two things will be required: money and the means to control or phase out unsightly roadside development.

Examples of smaller-scale projects with highway environment compatibility range across the U.S.

Arkansas. During the construction of I–40 Management Areas was improved. Nine small lakes and rest areas were provided at the White River through construction of this impressive road.

Florida. On the Manatee River south of Tampa, a 300-foot "jog" was built into I–75 to avoid a tree. The tree contains the nest of two Bald Eagles which arrive every fall. Their arrival proves that highways and the environment *can* work together. Planning, concern, and a little creativity are the keys for success.

Iowa-Illinois. Near the Quad-City Metropolitan area of Moline and East Moline, Illinois, and Davenport and Bettendorf, Iowa, three lakes and a 600-acre recreation area were created by constructing I–280 as an impoundment dam across Black Hawk Creek. The lakes and recreational area are located in Scott County, Iowa, and are the first major regional recreational facilities in that metropolitan area. A local bond issue supplemented highway funds to finance the improvement.

South Dakota. The Rosebud Sioux Indian Reservation now has Eagle Feather Lake, a 60-acre body of water. The lake was formed by designing the roadbed of State Highway 63 to serve a dual purpose as both road and dam. This is a fine example of a utilitarian project adapting itself to environmental improvement.

Highways can work well with their surroundings—indeed, even complement them—if properly designed. We have learned to take advantage of optical illusion in designing overpass and interchange columns, to tailor roadways to take full advantage of the beauty of surrounding vegetation and topography, to plan landscaping rather than simply to rely on greenery to cover up the scars of construction. Even special noise level standards are being developed to minimize the din of heavy traffic on highways that pass through residential areas. Other, less obvious factors in highway planning are the necessities to forestall soil erosion and to prevent pollution of nearby waterways during and after highway construction.

Highways are paid for almost entirely by the people who use them; the Highway Revenue Act of 1956 imposed or increased certain Federal excise taxes on motor fuel and automotive products, with the proceeds going into a Highway Trust Fund which finances the Interstate and other highway programs. In the case of the Interstate system, the Highway Trust Fund meets 90 per cent of highway costs, with individual states contributing the remaining 10 per cent from their own highway user tax receipts.

Seventy-five per cent of the Interstate system is now complete, meaning that 32,000 miles of the proposed 42,500-mile network are finished and opened to traffic. Economically, America's motorists are already reaping savings in time and operating costs by using the Interstate. When completed, knowledgeable estimates place the savings enjoyed by the Interstate motoring public as high as $90 billion during the course of only a few years—enough to pay the capital costs of the system itself!

Many things which seemed impossible a century ago we now take for granted as our right and our heritage—electric light at the flick of a switch, international communications, the medical miracles which have freed us from the spectre of so many once devastating diseases and promise to abolish many more. Among these new and needed blessings we now enjoy is the freedom of mobility brought about by the automobile and the highways we are creating for those who use it. Roads and aqueducts were the proudest accomplishments of the ancient Romans. We, too, may well boast of our highways: the safest and most comfortable of any the world has known.

PRISONER READING HABILITATION

Mr. BAYH. Mr. President, statistics indicate that 70 to 80 percent of the juvenile and adult offenders in institutions will reappear in the criminal justice system at some time after release. One of the significant reasons for this tragic cycle is the fact that most of these men and women are totally or functionally illiterate.

The Federal Bureau of Prisons defines a "functional illiterate" as one who cannot read above the fifth-grade level. However, recent studies indicate that a 10th-grade education is necessary to enable a person to read such necessary writings as newspapers and job applications. Yet, even using the fifth-grade reading level as the dividing line between literacy and functional illiteracy, we find that 60 percent of American prison inmates cannot read.

Clearly, the inability to read such materials is a severe problem facing anyone seeking employment—and a job assurance is all important to the released offender's successful reabsorption into the community. Without the basic skills of reading and writing, the offender finds employment extremely difficult to obtain, and a return to crime is probable if not inevitable.

Mr. Kenneth Wooden, executive director of the Institute of Applied Politics, is deeply committed to helping prison inmates and others who are unable to cope with our complex society because of reading deficiencies. In the January 22 issue of the New York Times, Mr. Wooden scored the lack of inmate reading skills and prison reading programs in the State of New Jersey. My research has indicated that the situation in New Jersey is typical of that in other States.

The time has come to face the fact that practically all inmates return at some time to society. They must compete for jobs with those who have not been deprived of many of the educational and vocational opportunities and much of the motivation for self-improvement. When a society denies these fundamental needs, it has a moral obligation to afford that person the basic educational skills required to function successfully as a responsible member of the community.

Mr. President, I ask unanimous consent that Mr. Wooden's excellent article, "Jersey and the Prisoners of Ignorance," be printed in the RECORD.

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

JERSEY AND THE PRISONERS OF IGNORANCE

(By Kenneth Wooden)

PRINCETON, N. J.—For most inmates in New Jersey prisons, there is another prison—its walls more formidable, its confinement more restrictive, its sentence harsh and un-

just. The walls are the printed word, the confinement is the inability to read, and the sentence has been imposed by a discriminating judge—American education.

Serious reading deficiencies exist in every correctional institution in New Jersey. Our penal system is not unique, however, and like every other state, is reaping the tragic and costly harvest of colossal failure of our national educational system in its entirety. Although the Department of Institutions and Agencies did not create the problem, it does exist, it is real and must be dealt with or we face the consequence of continuing high recidivism. In New Jersey the recidivism rate is 70 to 80 per cent.

The common definition of a "functional illiterate" is a person who cannot read above the fifth-grade level, but who can function adequately in society. However, Dr. David Harman, former director of adult education in Israel and currently doing research at Harvard, challenges the old definition when he insists that the functional illiterate requires "at least a tenth-grade education." This means that millions of Americans are unable to read newspapers, driver's manuals, traffic signs, job applications, merchandise labels and prices, bank credit forms and even applications for marriage licenses. It also clearly denotes the severity of the problem facing most released New Jersey inmates when they seek employment.

For a man or woman leaving the penal institution, a job assurance plays tremendous importance toward his stable reabsorption into the community. And yet, by 1975, the United States Department of Labor is predicting, the unskilled labor market will utilize less than 5 per cent of the entire work force (as compared to 17 per cent in 1963). Without the basic skills of reading and writing, the possibility of employment grows more improbable and the return to crime more presumable. Therein lies the dilemma.

What is currently being done in New Jersey toward positive and realistic rehabilitation of the incarcerated? Here are some findings and reflections based on visits to a number of prisons as a member of the Governor's Commission on Vocational Education in New Jersey correctional institutions:

It has been established through testing that the average inmate, male or female, cannot read. For example, at Skillman the reading level is 2.9 (second grade) at the Training School for Girls in Trenton 4.2 (fourth grade); Jamesburg has a norm of 4.7; and Bordentown shows a 4.8 average.

No high state official within the prison complex is willing to permit ex-convicts or inmates to assist in the creation of a reading program.

Although more than 70 per cent of the inmates are black and Puerto Rican, key administrators and educators are all white. Therefore, they cannot begin to understand the emotional and/or educational needs of the people under their jurisdiction.

Prison libraries, although improving, have old and outdated reading material. Rahway Prison actually refused a truckload of free paperbacks because spot decisions like this are impossible for wardens without checking Trenton for approval.

Educational funding in New Jersey prisons is so inadequate that the state legislature violates its own laws dealing with the incarceration and rehabilitation of inmates. The Bordentown Correction Center spends more money per man on candy and tobacco than on education.

Classrooms are dreary, hot and dull. Grown men are insulted daily by juvenile word charts with ducks, queens and fairies. None of this oppressiveness and/or irrelevancy seems to have much impact on the educators as they plow through their day. One wonders who is really serving time.

There is little or no hope. The prevailing attitude among prison officials is to deal out punishment and deprivation to the inmates. Surely, those without hope cannot themselves be the merchants of hope to develop and carry out programs of rehabilitation.

To date, 53 per cent of the total prison population in New Jersey is under 21 years of age. Young boys and girls, whose faces are already lined with despair and anger, will continue in increasing numbers to fill our detention centers, crippled in the most basic educational skill—the ability to read. Unless we take drastic and bold steps to improve the quality of education in our state colleges and schools, we will simply insure a permanent job for whoever will coordinate the recommendations of this report within our prison system.

We must end the rhetoric of the past and get to the basic root cause. To teach all children to read is by no means a cure-all for our social ills, but it will open a new world of opportunity, totally alien to them in the past—a new world of hope with a spirit of human dignity. We owe it to them.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. BURDICK). Is there further morning business? If not, morning business is concluded.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The PRESIDING OFFICER (Mr. BURDICK). Under the previous order, the Chair now lays before the Senate the unfinished business, which is S. 2515, with the pending question agreeing to amendments No. 611 of the Senator from Colorado (Mr. DOMINICK). Time between now and 10:45 a.m. will be equally divided between the Senator from Colorado (Mr. DOMINICK) and the Senator from New Jersey (Mr. WILLIAMS), with the vote occurring at 10:45 a.m. today. No amendments to the Dominick amendment are in order.

The clerk will state the unfinished business.

The assistant legislative clerk read as follows:

S. 2515, a bill to further promote equal employment opportunities for American workers.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I yield myself 30 seconds.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 30 seconds.

Mr. DOMINICK. Mr. President, in view of the fact that, with the exception of the Presiding Officer, there is not a single Member of the majority party now in the Chamber, I suggest the absence of a quorum, with the time to be charged equally to both sides.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, how much time remains and how is the time divided?

The PRESIDING OFFICER. Twenty-eight minutes remain, 14 minutes to the side. Who yields time?

Mr. WILLIAMS. Mr. President, I yield such time to the Senator from New York as he requires.

Mr. JAVITS. Mr. President, will the Chair notify me when I have used 5 minutes?

Mr. President, the absence of Members from the Chamber is obviously attributable to the fact that Members are pretty well determined how they are going to vote. We have had enough practice in the last few days in view of this amendment and the various stages of it, I believe, to know our own minds. So, in the time allotted to me, I shall do only two things. One is to note the changes which have been made in the Dominick amendment in terms of what will be finally voted on, as no further amendment is permitted. Second, I shall summarize the arguments and the side of the opponents to the Dominick amendment as I see it.

Mr. President, first, as to the changes, we have given authority to the commission to send its own lawyers into the courts in terms of litigation, should the Dominick amendment carry, up through the Court of Appeals, leaving only the Supreme Court to the Attorney General, and leaving also pattern and practice suits to the Attorney General as well as suits involving government employees at the State and local levels. Those are three items that relate to the Attorney General.

Second, we have assured a government employee who is a complainant of the same treatment in respect of counsel and counsel fees as we do nongovernmental employees.

Third, we have given the respondent who is denied the right to sue, because the commission sues, the right to agree or disagree to a conciliation agreement or a settlement of his particular case which the commission might make. If he is going to be cut off, he has to agree to the settlement.

Also, we have limited backpay recovery to 2 years, which was in the original bill and somehow or other it was left out of the pending amendment inadvertently, as the Senator from Colorado explained.

Now, Mr. President, those are all desirable changes. Obviously these are important changes in the amendment. I believe they improve the amendment, but I believe the amendment should be defeated notwithstanding the precautions that the Senator from New Jersey (Mr. WILLIAMS) and I, and others, have taken to "clean it up," which we had the opportunity to do in the last day and a half.

The reasons I believe the amendment should be rejected are six. I shall list them, and I do not list them necessarily in order of importance because I think they all rank equally in importance.

The first reason is that this is a usual power for Government agencies which we intend to have power. Most analogous, of course, to this situation is the National Labor Relations Act. I have submitted a long list of agencies, led off by the National Labor Relations Board, so both commissions and Government departments have cease-and-desist powers.

The second point is that 32 of the 50 States which give authority in respect of fair employment practice activities, led by my own State of New York, which passed the Ives-Quinn bill bearing the name of Irving Ives who served with distinction in this Chamber, have enforcement powers in the State agency or commission, or the local attorney general, to wit, a cease-and-desist order. So there is nothing unusual in granting the authority.

All the fears expressed by the Senator from Colorado (Mr. DOMINICK) and those who support him that the authority would be used in an inquisitorial way, or in an arrogant or arbitrary way, were voiced 26 years ago in New York. Those fears have all come to naught. It has been an entirely satisfactory statute where the cases going to court have been few and the conciliations have been many. It has kept the workload within reasonable bounds and that has been possible also in other States.

The third point is that the cease-and-desist power is important because it gives agencies some teeth—even a little teeth because any respondent can take a case into court. But it gives the agency some teeth because the agency can proceed with finality. It gives the agency a greater likelihood of getting a conciliation than would otherwise be possible.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS. I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. I thank the Senator.

The fourth point is that the backlog in the courts is extremely heavy. In the district courts, where under the Dominick amendment suits would have to be filed, it is the heaviest, being around a 20-month period in the major industrial States where most of these cases would be carried on. Again, to relieve that congestion, a minimization of cases flowing to the courts would go to the Circuit Courts of Appeal, which is of great importance in terms of the cease-and-desist power.

Fifth, we want the law enforced. We passed the law in terms of the Civil Rights Act of 1964 so we should want it enforced and it is not being adequately enforced as evidenced by the thousands of cases in the backlog.

The sixth point is that the best way to cut the workload is to give the cease-and-desist power: one, to encourage conciliation agreements, and that is the experience of Federal and State agencies; and second, and critically important because so few cases, and that is the experience, go from these cease-and-desist-powered commissions or other agencies to the courts.

Mr. President, for those six reasons I hope very much that the amendment will be rejected. I thank the Senator for yielding to me.

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

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. DOMINICK. Mr. President, we have been over and over most of these arguments, but there are some Members in the Chamber today who have not been able to hear all of the arguments. I particularly refer to my good friend and very distinguished colleague from Ohio (Mr. TAFT), who was the original author of the independent counsel amendment, which was unanimously agreed to and supported by me and everyone else last Thursday.

It is important to note in considering this matter that although the independent counsel is a good idea, it was unanimously agreed to not because it solved all the problems presented by the bill but because everyone here recognized the enormous amount of problems the bill created. But the adopted amendment fails to accomplish the separation of adjudicatory functions from investigatory and prosecutorial functions.

In answer to my distinguished friend from New York (Mr. JAVITS), it is worthwhile pointing out that the Commission has a backlog of some 32,000 cases; that they anticipate 32,000 cases to be filed this fiscal year, and that they expect it to expand to 47,000 new cases next year. Also, the backlog problem is exacerbated by the 21 million additional people who were put under the Commission's jurisdiction.

As pointed out by the Senator from New York, we have some 34 States with some kind of fair labor employment commissions to take care of discrimination cases. Out of that, 32 of those have cease and desist power, including my State and the State of New York.

If the cease-and-desist powers are so effective, why is it that over and over again those States with those commissions are the ones creating the backlog in the Federal Commission? Quite obviously, the State cease-and-desist enforcement procedures are not working.

Let me just point out what the New York Times said in its editorial of January 25. I might add this is quite exceptional because very seldom do I quote from the New York Times, but this is an interesting position they have taken. I will ask to have the entire editorial printed in the RECORD later but for the moment I would like to bring to your attention language which states:

> In the past, The Times has favored giving the Commission this power to enforce its own findings.

That is cease-and-desist power.

> We are still convinced that such an arrangement would represent a vast improvement over the present ineffectual method.

It probably would. It would be better than not having anything. The editorial continues:

> But a strong case can be made for the idea that effective, nonpartisan enforcement of the law may in the long run be more certain through reliance upon the courts than upon a politically appointed Commission whose members change with each administration.

Because the backlog issue is so important, for the sake of emphasis, I will repeat figures which indicate that overloading of forums will more likely occur under cease-and-desist enforcement. It is my understanding that the 93 Federal district courts, with 398 judges, have an average backlog of about 12 months. The EEOC now has a backlog of 20 months, not counting the additional backlog. They will receive at such time as they get jurisdiction over 21 million additional employees.

So it seems to me perfectly apparent that it is going to be far quicker to go through the Federal court system in order to get enforcement of the orders which the commission feels are legitimate—

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOMINICK. I yield myself 3 minutes.

It is going to be far more expeditious to go through the court system than it is to have cease-and-desist orders, where in addition to the backlog problems, enforcement of cease-and-desist orders will actually entail a lengthy trip through the U.S. Court of Appeals. This is a point most people overlook. If the orders are to be enforced—effectively, under the bill language as it is now written, without my amendment, requires a procedure through the investigatory process, through the hearing process, through a cease-and-desist order, and then through the U.S. Court of Appeals.

Under our proposal, once the commission decides there is reasonable cause to support a claim of discrimination, one can go immediately to the Federal district court. The order is then immediately enforceable by the judge who issued the order through the court's contempt powers.

We have modified our amendment, I may say to the Senator from Ohio (Mr. TAFT), to make sure that it does not conflict in any way with the independent counsel provision. We have taken great care to make sure we fit the two together, so that they will work together as an integral part of the machinery.

As the Senator from New York has pointed out, we have also accepted, with delight—in fact, I cosponsored it—an amendment putting in the provision for the back-pay limitation of 2 years. We have also accepted most of the amendments which were suggested to my amendment by the Senator from New Jersey and the Senator from New York.

I really believe that what we are doing here is of enormous significance. We are going to be setting the precedent, perhaps for the first time in many, many years, as to whether or not we are going to accept the principles established by Justice Jackson and Mr. Landis and most of the persons who have examined agencies, which recommend repeatedly that the functions of these agencies must be separated so that there will no longer be a star chamber type of proceeding similar to that we had in the past.

Many persons think that the idea of cease-and-desist is a new idea in the executive agencies. It came about in the 1930's. It is not a new idea. What we need now is to try to get procedures

which will give those who have claims that they have been discriminated against, and those who maintain that discrimination has not taken place, due process. The system must see that each side is protected, and to do that in an impartial tribunal like the Federal court system seems to me to be far and away the best way of accomplishing it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOMINICK. I yield myself 2 minutes.

Let me say only one thing more. We have been fighting this issue for a considerable period of time. We will have a vote very shortly now. It is my hope that this debate will lay the basis for a similar type of discussion and debate when we consider other agencies and their procedures. I think it is a principle of overwhelming importance deserving our closest scrutiny.

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

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, I yield 4 minutes to the Senator from Illinois (Mr. PERCY).

Mr. PERCY. Mr. President, the issue we have been debating, that of equal employment opportunity enforcement, is one in which I have had a deep personal interest and concern for many years. In 1963, as a fairly large employer in Illinois, I was both credited and blamed with the final testimony before the State legislature that broke the back of resistance and enabled us to pass the first State FEPC law in Illinois. I think that law has worked extremely well.

I was a cosponsor of the Equal Employment Opportunities Enforcement Act of 1970 which was approved by the Senate, but failed to receive favorable passage in the House prior to the adjournment of the 91st Congress. When Senator WILLIAMS decided last year to reintroduce the bill as S. 2515, I was, of course eager to lend my support again.

There have been numerous occasions during my first term in the Senate in which we have debated and voted on measures aimed at insuring the civil rights and equal opportunities of all Americans. These measures, important as they are, have not fulfilled the one important responsibility we have of protecting the employment rights of the individual. The Civil Rights Act of 1964, through title VII, was aimed at the elimination of discrimination in employment practices. For the most part, employers have tried to comply. Yet, some employers, both in the private and public sectors, continue to violate the Civil Rights Act through blatant as well as frequently concealed methods. We recognize now that the primary failing in 1964 was in not authorizing an effective enforcement power at the Federal level. The Equal Employment Opportunity Commission has received more than 81,000 complaints since its beginning in 1965, and has been able to present satisfactory conciliation in less than half of those cases. It simply does not have the power to enforce affirmative action by employers who have been found to practice discriminatory employment. Furthermore, other Federal offices having responsibilities in this area have made significant strides in protecting the rights of the employee, yet there is no unified, coordinated approach to this all important aspect of civil rights enforcement.

In the last 8 years since enactment of the Civil Rights Act, we have been able to amass some enlightening, though disturbing, statistics on employment trends in the United States. Though certain progress has been made, employment surveys and census records show continuing discrimination in employment for minority groups. For a variety of reasons, including discussion in origin, minority group members, particularly black and Spanish-speaking workers, are clearly relegated to lower paying, less prestigious positions. Advancement is slow, and in too many cases does not exist at all. The median family income for black families is only slightly over $6,000, while white workers have a median income of over $10,000. Unemployment among black workers was over 9 percent in 1970.

Spanish-speaking Americans are in a similar situation. As with black workers, unemployment rates among the Spanish-speaking are significantly higher than among the rest of the Nation. There are more than 7.5 million Spanish-speaking Americans in this country—over 686,000 are in Illinois—and more than 17 percent of them have incomes below $3,000. Again, we see that Spanish-speaking citizens are found in the lower paid jobs—58 percent in blue-collar occupations—and with little opportunity for advancement. With unemployment high and wages low, it is little wonder that many Spanish-speaking people find themselves depending on welfare assistance and swept up in the poverty cycle of an urban ghetto.

Discrimination on the basis of race is an undeniable fact in 1972. Minorities have seen little reason for optimism when the Federal Government has refused to formulate and fund adequate job training programs for improving their skills and to eliminate employment biases where they exist. The poor, inarticulate blue-collar worker, of whatever race, who has been discriminated against will have little hope for bringing his case to the attention of his employer or the courts for affirmative action. He does not have a true advocate.

I must hasten to add that many businesses in the private sector have learned from experience that it is not only the right thing to do, but good economics to hire on a nondiscriminatory basis. My own experience as chief executive officer of a company in the Midwest points this out. We established an early policy of fair employment practices and at one time we had virtually 50 percent of one large and important assembly department who were from minority groups.

Finally, though I should not be making this point last, are the glaring inequities of employment patterns among women. Female workers, who constitute almost 40 percent of our workforce, continue to earn lower salaries than men for comparable positions, and are frequently discriminated against in terms of advancement. I believe that it is inconsistent and unrealistic for us to talk about reducing welfare rolls by encouraging mothers to work but not to provide them with the job training, equitable wages, or day-care centers so that they can earn for themselves and their families. Many women, who have been out of the workforce, are eager to find employment but are discriminated against if there are other male candidates vying for the same position.

These illustrations undoubtedly come as no surprise to anyone. We experience them every day, and they are a sad commentary on the effectiveness of our Federal civil rights effort.

The bill, S. 2515, which is before us now will not be the final, all inclusive solution to the problems of discrimination in employment. But I firmly believe that it is part of a correct approach to the situation. By giving the EEOC the authority, through cease-and-desist powers, to enforce the objectives of title VII, we can begin to realize the promises set forth in the Civil Rights Act of 1964.

Mr. WILLIAMS. Mr. President, I yield myself 1 minute.

The Senator from Colorado quoted the editorial which appeared in the New York Times of yesterday. So that that great newspaper will not be wholly condemned by those of us who feel that the cease-and-desist procedure is the best method of enforcement of these human rights, I would like to read from the New York Times of Sunday.

Mr. Wicker says:

> The cease-and-desist procedure obviously is preferable. It would offer relatively rapid relief against discrimination, while court actions are time-consuming at best and subject to an infinite variety of appeals and other delays, during which the discriminatory practice could continue. Where an individual is bringing the complaint, moreover, he or she is likely to be less than affluent, and the cost of action before the E.E.O.C. ought to be considerably less than that of bringing a suit in Federal court.

The editorial was written by lawyers for lawyers. Mr. Wicker writes about human values, human rights for human beings.

Mr. JAVITS. Mr. President, I shall be very brief.

I think it is important to answer two arguments of the Senator from Colorado. First, as to star chamber proceedings. This is just not true, and it is ancient history that "star chamber" means secret. The Administrative Procedure Act applies to this commission as it would apply to any other commission, and that act guarantees due process. If we did not have it, if we had a star chamber, the courts would not let a cease and desist order stand for 30 seconds. So that is completely irrelevant, and indeed somewhat misleading. There is no star chamber involved.

Second, as to the backlog: History shows that if you want to correct such a backlog, you can only do it if you give the agency some power. If you do not, everyone bedevils them, and the cases last forever. This agency is now completely inundated for that precise reason.

As to the point of the time of the courts being involved, the Senator from Colo-

rado does not note that in the districts where many of these cases will be brought, to wit, in Massachusetts, the southern district of New York, the northern district of Illinois, and the northern district of California, the delays are now 20 to 28 months, and in New York 35 months. It is the rural and agricultural areas, where we are not going to have too many of these cases, that bring down the averages. We are talking now about already clogged courts that cannot try cases, and it is proposed to load them here with thousands of cases that it is unnecessary to load them with, because the number of cases that go to the court of appeals from the commissions with cease-and-desist authority is so small.

For all those reasons, I hope the amendment will be defeated.

Mr. DOMINICK. Mr. President, I yield 2 minutes to the Senator from Connecticut.

Mr. WEICKER. Mr. President, I rise in support of the amendment of the Senator from Colorado. There is something that I think should be made very clear before we vote.

This is not an anticivil rights amendment. There is not an anticivil rights group and a procivil rights group. The Senator from Colorado and those who support his amendment are just as procivil rights in their desire to see enforcement go to the EEOC as the Senator from New York and the Senator from New Jersey. It is a question of method.

I think it should be made clear that both sides of this argument are for civil rights and for giving enforcement powers to the EEOC. What the Senator from Colorado speaks for and what I support is that this should be a two-step process.

Those of us who believe in civil rights feel that a two-step process guarantees those rights far more than a one-step process. To my good friend the Senator from New York I can only say this: That just as I am against one-step processes in deciding whether we are going to make military commitments, so I am against one-step processes as to civil rights decisions. Let us make no mistake about it, the due process of law concept is better served through the proposition of the Senator from Colorado than through what is being proposed in the bill.

Mr. DOMINICK. Mr. President, I yield myself the final 2 minutes; is that what I have left?

The PRESIDING OFFICER. Yes.

Mr. DOMINICK. Mr. President, I was extremely interested in the very keen analysis that the Senator from Connecticut just made. He was telling me that when he was coming to work today, he heard some radio station saying that the anti-civil-rights forces were massing efforts to try to do something about this bill and knock off the cease and desist authority. If nothing else, I had hoped that my floor arguments had dispelled such simplistic reasoning.

My amendment provides access to those forums where we have gotten civil rights enforced in this country in the Federal district courts and in the Supreme Court. To the extent that we can avail these people of an opportunity to present their cases in the courts, we have an opportunity at that point to be able to establish precedents which can be not only the law in that case, but to provide precedents for subsequent employers and employees throughout the country.

It seems to me that where you have, as we do in this bill, the processes of investigation, of adjudication, and of enforcement all in one agency, whether you call it a star chamber or whether you do not, the result is that one bureaucratic agency, responsible to no one but themselves, possess all the powers that we used to refer to as the star chamber.

I think that we desperately need a change into a two-process system, utilizing not only the expertise of the EEOC in investigating and conciliating cases but also the expertise of the Federal district courts in impartially adjudicating cases so that the constitutional rights of everyone are protected.

The PRESIDING OFFICER (Mr. BURDICK). All time having expired, the question is on agreeing to the amendment of the Senator from Colorado (Mr. DOMINICK).

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

The question is on agreeing to the amendment of the Senator from Colorado (Mr. DOMINICK) as amended. 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 Nevada (Mr. CANNON), the Senator from Washington (Mr. JACKSON), the Senator from Washington (Mr. MAGNUSON), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

On this vote, the Senator from Nevada (Mr. CANNON) is paired with the Senator from Washington (Mr. MAGNUSON).

If present and voting, the Senator from Nevada would vote "yea" and the Senator from Washington would vote "nay."

On this vote, the Senator from Washington (Mr. JACKSON) is paired with the Senator from New York (Mr. BUCKLEY).

If present and voting, the Senator from Washington would vote "nay" and the Senator from New York would vote "yea."

I further announce that, if present and voting, the Senator from Illinois (Mr. STEVENSON) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

On this vote, the Senator from New York (Mr. BUCKLEY) is paired with the Senator from Washington (Mr. JACKSON). If present and voting, the Senator from New York would vote "yea" and the Senator from Washington would vote "nay."

The result was announced—yeas 46, nays 48, as follows:

[No. 10 Leg.]

YEAS—46

Allen	Dole	Long
Allott	Dominick	McClellan
Anderson	Eastland	Miller
Baker	Ellender	Roth
Bellmon	Ervin	Saxbe
Bennett	Fannin	Smith
Bentsen	Fulbright	Sparkman
Bible	Gambrell	Spong
Brock	Goldwater	Stennis
Byrd, Va.	Griffin	Talmadge
Byrd, W. Va.	Gurney	Thurmond
Chiles	Hansen	Tower
Cook	Hollings	Weicker
Cooper	Hruska	Young
Cotton	Jordan, N.C.	
Curtis	Jordan, Idaho	

NAYS—48

Aiken	Hughes	Packwood
Bayh	Humphrey	Pastore
Beall	Inouye	Pearson
Boggs	Javits	Pell
Brooke	Kennedy	Percy
Burdick	Mansfield	Proxmire
Case	Mathias	Randolph
Church	McGee	Ribicoff
Cranston	McGovern	Schweiker
Eagleton	McIntyre	Scott
Fong	Metcalf	Stafford
Gravel	Mondale	Stevens
Harris	Montoya	Symington
Hart	Moss	Taft
Hartke	Muskie	Tunney
Hatfield	Nelson	Williams

NOT VOTING—6

Buckley	Jackson	Mundt
Cannon	Magnuson	Stevenson

So Mr. DOMINICK's amendment was rejected.

Mr. JAVITS. Mr. President, I move that the vote by which the amendment was rejected be reconsidered.

Mr. WILLIAMS. Mr. President, I move to lay that motion on the table.

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

The yeas and nays were ordered.

The VICE PRESIDENT. The question is on agreeing to the motion to table the motion to reconsider.

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 Nevada (Mr. CANNON), the Senator from Washington (Mr. JACKSON), the Senator from Washington (Mr. MAGNUSON), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

On this vote, the Senator from Washington (Mr. JACKSON) is paired with the Senator from New York (Mr. BUCKLEY).

If present and voting, the Senator from Washington would vote "yea" and the Senator from New York would vote "nay."

On this vote, the Senator from Washington (Mr. MAGNUSON) is paired with the Senator from Nevada (Mr. CANNON).

If present and voting, the Senator from Washington would vote "yea" and the Senator from Nevada would vote "nay."

I further announce that, if present and voting, the Senator from Illinois (Mr. STEVENSON) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Arizona (Mr. GOLDWATER) is absent by leave of the Senate, and if present and voting, would vote "nay."

On this vote, the Senator from New York (Mr. BUCKLEY) is paired with the Senator from Washington (Mr. JACKSON). If present and voting, the Senator from New York would vote "nay" and the Senator from Washington would vote "yea."

The result was announced—yeas 54, nays 39, as follows:

[No. 11 Leg.]

YEAS—54

Aiken	Hart	Nelson
Anderson	Hartke	Packwood
Bayh	Hatfield	Pastore
Beall	Hughes	Pearson
Bellmon	Humphrey	Pell
Boggs	Inouye	Percy
Brooke	Javits	Proxmire
Burdick	Kennedy	Randolph
Byrd, W. Va.	Mansfield	Ribicoff
Case	Mathias	Schweiker
Church	McGee	Scott
Cook	McGovern	Stafford
Cranston	McIntyre	Stevens
Eagleton	Metcalf	Symington
Fong	Mondale	Taft
Gravel	Montoya	Tunney
Griffin	Moss	Weicker
Harris	Muskie	Williams

NAYS—39

Allen	Dominick	Long
Allott	Eastland	McClellan
Baker	Ellender	Miller
Bennett	Ervin	Roth
Bentsen	Fannin	Saxbe
Bible	Fulbright	Smith
Brock	Gambrell	Sparkman
Byrd, Va.	Gurney	Spong
Chiles	Hansen	Stennis
Cooper	Hollings	Talmadge
Cotton	Hruska	Thurmond
Curtis	Jordan, N.C.	Tower
Dole	Jordan, Idaho	Young

NOT VOTING—7

Buckley	Jackson	Stevenson
Cannon	Magnuson	
Goldwater	Mundt	

So the motion to table the motion to reconsider was agreed to.

AMENDMENT NO. 822

Mr. SAXBE. Mr. President, I call up amendment No. 822.

The PRESIDING OFFICER (Mr. HOLLINGS). The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Ohio (Mr. SAXBE) proposes the following amendment:

Section 10, of page 61, line 24 through page 62, line 17, is struck and sections 11 and 12 are redesignated as sections 10 and 11, respectively.

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

The yeas and nays were ordered.

Mr. SAXBE. Mr. President, I am willing to agree on a time limitation on this amendment if the manager of the bill is. If the Senator from New Jersey wants to set a time certain on voting on this amendment at 12 o'clock, it would be agreeable to me.

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.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I am authorized by the mover of the amendment, the distinguished Senator from Ohio (Mr. SAXBE), and the manager of the bill, the distinguished Senator from New Jersey (Mr. WILLIAMS)—having consulted also with the distinguished Senator from New York (Mr. JAVITS)—to ask unanimous consent that the vote on the pending amendment occur at 3 p.m., today; provided further, that time for the debate on the amendment begin at 2 p.m., today, the time to be equally divided between and controlled by the distinguished Senator from Ohio (Mr. SAXBE) and the distinguished manager of the bill (Mr. WILLIAMS); provided further, that time on any amendment in the second degree be limited to 20 minutes and time on any motion, appeal, point of order, or nondebatable motion be limited to 20 minutes, such time to be divided equally and controlled by the mover of such and the manager of the bill, except that, in instances in which the mover is in favor of such, the time in opposition shall then be under the control of the minority leader or his designee.

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

Mr. BYRD of West Virginia. I yield.

Mr. JAVITS. I should merely like to explain the reason for this proposal, because it comes suddenly in the middle of an important part of the bill. The Senator from New Jersey (Mr. WILLIAMS) and I are urgently needed at the hearing on the west coast dock strike bill, which I have introduced for myself and the Senator from Oregon (Mr. PACKWOOD).

I thank the Senator for yielding.

Mr. BYRD of West Virginia. I thank the Senator from New York.

In further explanation, it is the intention of the leadership—and I make this statement with the approval of the majority leader, I am sure—to take a recess shortly until 2 p.m., today.

Mr. ERVIN. Mr. President, will the Senator from West Virginia yield?

Mr. BYRD of West Virginia. I yield.

Mr. ERVIN. I should like to propound an interrogatory to my friend, the distinguished Senator from West Virginia. As I understand the unanimous-consent request, it applies only to the amendment offered by the able and distinguished Senator from Ohio.

Mr. BYRD of West Virginia. And to any amendment thereto.

Mr. ERVIN. It does not apply to any amendment that I may desire to offer?

Mr. BYRD of West Virginia. The Senator from North Carolina is preeminently correct.

Mr. ERVIN. I have no objection.

The PRESIDING OFFICER. Is there objection. The Chair hears none, and it is so ordered.

Mr. SAXBE. Mr. President, the amendment I offer concerns a most difficult legislative decision involving the area of equal employment opportunity, specifically the Executive order program of the Department of Labor, insuring equal employment by Federal contractors and subcontractors.

We shall soon be asked to vote upon S. 2515, which would provide, among other things, for the wholesale removal of the Department's Executive order program, which is now competently administered by the Office of Federal Contract Compliance, to the already overburdened EEOC. The amendment would strike section 10, which is the transfer section of the bill we are considering.

I believe that the significance of our decision in this matter warrants a brief explanation of the nature of the Executive order program administered by the Department's OFCC and how well the Department of Labor's OFCC has executed the President's mandate.

As Senators undoubtedly know, the "affirmative action" concept is the mainstay of the Executive order program, having had its importance first recognized by then Vice President Richard M. Nixon, who observed that "overt discrimination" was not the principal obstacle to achieving equal employment opportunity for today's generation of citizens. The affirmative action concept was thereafter adopted by President John F. Kennedy in 1961 by Executive Order 10925. It has since been reaffirmed by President Johnson in Executive Order 11246 and by President Nixon through several Executive orders, the numbers of which I shall supply.

The OFCC's affirmative action programs have tremendous impact and require that 260,000 Government contractors in all industries adopt positive programs to seek out minorities and women for new employment opportunities. To accomplish this objective, the OFCC has utilized the proven business technique of establishing "goals and timetables" to insure the success of the Executive order program. It has been the "goals and timetables" approach, which is unique to the OFCC's efforts in equal employment, coupled with extensive reporting and monitoring procedures that has given the promise of equal employment opportunity a new credibility.

The Executive order program should not be confused with the judicial remedies for proven discrimination which unfold on a limited and expensive case-by-case basis. Rather, affirmative action means that all Government contractors must develop programs to insure that all share equally in the jobs generated by the Federal Government's spending. Proof of overt discrimination is not required.

The success of the OFCC's affirmative action program is clearly evident among the Nation's leading industries. As a result of OFCC programs for the construction industry, 46 voluntary and imposed plans have been created to bring more than 30,000 minority workers into the skilled construction trades. Special efforts in the textile industry resulted in an increase of minority employment rate from 12.8 percent in 1968 to 18.4 percent of the total 1971.

In education, 101 monitored universities had established a goal of 10,784 new hires for minorities and women and actually hired 17,889, and in the banking

industry, the 2,400 largest banks covered by the Executive order increased minority employment from 8 percent in 1966 to 14 percent in 1970.

The critical OFCC mission to insure equal employment opportunity can continue to register such successes only if performed within the executive branch, and within that branch, the Department of Labor is clearly the most appropriate agency to further that mission. This is so because, to be effective, the contract compliance program must be an integral part of the procurement process. The process of procuring goods and services, as I am sure you recognize, is peculiarly a function of the executive branch.

Equal employment opportunity, is of course, a workplace standard much like the many other employee protections which are now offered employees, as minimum wage and safety standard. The Department of Labor is the Government's expert administrator of workplace standards.

Moreover, occupational training programs are the keys to successful employment and the Department's Manpower Administration plays a critical role in the implementation of the Executive order program. Further and of particular moment, the Department has been a leader in developing programs designed to assist women in the workforce; namely, the Department's vigorous enforcement of the Equal Pay Act and the functioning of the Women's Bureau within the Department are examples of its total commitment to EEO for women. Cooperation between OFCC and the Women's Bureau was an essential aspect of OFCC's recent issuance of revised order No. 4 requiring Government contractors to develop goals for new hire and upgrading opportunities for women. Further, the presence of Cabinet-level direction has achieved the vital program coordination necessary to program success and funding and staffing of the OFCC through the Department of Labor enables the OFCC to draw upon the full range of staff and resources of a Cabinet agency.

The proposed transfer of functions under Executive Order 11246 from the OFCC to the EEOC would jeopardize the contract compliance program. The EEOC is ill-equipped to assume the responsibilities for the implementation of the Executive order program. Chairman Brown of the EEOC has stated that the assumption of Executive order responsibilities by the EEOC is administratively impracticable and has given four reasons: First, there is an ever increasing number of cases pending before the EEOC which has already resulted in a 2-year backlog; second, the incompatibility of agency functions: EEOC is a regulatory agency under title VII—OFCC is a procurement program manager under the Executive order; third, new and different responsibilities would disrupt coordination in title VII and its administration would suffer, and perhaps most importantly there might be serious problems of conflict in both the area of remedies and the area of investigation.

There is a great potential conflict in the assumption by EEOC of the Executive order program responsibility. For example, Chairman Brown described a situation where no violation of title VII might be found but where a violation of the contract compliance standards would be evident.

The affirmative action concept as innovatively and successfully employed by the OFCC has been challenged as a violation of title VII—the courts have responded by stating that the Executive order program is independent of title VII and not subject to some of its more restrictive provisions.

Section 10 of the proposed bill would place the entire Executive order program under title VII and might well result in renewed challenges to the many important programs established thereunder—for instance, the Philadelphia plan. Further, the proposed bill would endanger the survival of the contract compliance program by making its resources dependent upon the EEOC—an independent, hybid agency with limited manpower and economic resources.

For these reasons, I ask that you vote for the amendment to S. 2515 striking that provision of the bill—section 10—which would transfer the Office of Federal Contract Compliance to the EEOC.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, would the Senator suggest the absence of a quorum?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BYRD of West Virginia. Mr. President, having discussed the matter with the distinguished manager of the bill and the distinguished author of the pending amendment, I ask unanimous consent that the vote on the pending amendment occur at 3 p.m. today unless an amendment to the amendment is pending at that time, in which case the 20-minute provision with respect to amendments in the second degree would apply.

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

RECESS UNTIL 2 P.M.

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess until 2 p.m. today.

The motion was agreed to; and (at 11:43 a.m.) the Senate took a recess until 2 p.m.; whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. BROCK).

ORDER OF BUSINESS

Mr. SAXBE. Mr. President, I yield 3 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 3 minutes.

THE PRESIDENT'S STATEMENT ON THE WAR

Mr. SYMINGTON. Mr. President, last night, President Nixon explained to the people why his plans for getting the United States out of war in Indochina have failed.

Since the President took office, there has been a heavy reduction in the "search and destroy" missions, therefore in the number of ground force personnel. But the U.S. air attacks continue.

In addition, the President has expanded the war into a fourth country, Cambodia; and we continue to maintain both tactical and strategic air bases in Thailand.

My visits this month to Vietnam and Cambodia only serve to reinforce my belief, expressed originally in the fall of 1967, that so long as the United States continues, in effect, to underwrite the present government in Saigon, there is little chance for reaching a settlement which will truly end this war and thereby obtain the return of the American prisoners.

In the meantime, as my trip this month to such countries as India and Japan as well as to Europe verified, because of our current foreign policies we have lost more friends in the community of nations and are in danger of losing others.

These policies have contributed to a Federal deficit here at home which is over three times larger than the deficit predicted by this administration 1 year ago.

For such reasons I again urge modifications in our policy of attempting to defend and finan[illegible], "babysit," the entire so-called Free World, especially as we have received so little support from its other members.

The days of U.S. military supremacy through sole possession of nuclear weapons and economic superiority through possession of most of the world's gold, are over.

If we are to remain the world's No. 1 nation, we must reorganize our priorities, and establish a more normal "more trade, less aid" policy with all countries, including the nations behind the Iron Curtain.

SOME DISTURBING NEW STATISTICS

Mr. SYMINGTON. Mr. President, overshadowed by reports of President Nixon's address to the Nation last night were two articles in the press this morning which deserve equal attention.

The first of these articles reports last year the U.S. trade balance ran into the red on an annual basis for the first time since 1888. In other words, after 82 years of merchandise exports exceeding imports, 1971 figures show imports topping exports by over $2 billion.

The second news item reports that U.S. international reserve assets fell again last year from $14 to $12 billion. The U.S. gold stock dropped almost a billion dollars from the 1970 level or $11.04 billion; convertible foreign currency holdings were cut almost in half; and our

"automatic ability to draw foreign currencies from the International Monetary Fund fell sharply from $1.7 billion at the start of 1971 to $585 million at year end."

The picture these unfortunate statistics present is disturbing indeed. Let us all hope that steps are already being taken to reverse what appears to be a significant worsening international economic trend for the United States.

I ask unanimous consent to have printed in the RECORD the two press items in question from the Wall Street Journal of this morning.

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

TRADE DEFICIT IN 1971 FIRST SUCH IN UNITED STATES SINCE 1888

WASHINGTON.—U.S. foreign trade ran deeper in the red in December, and 1971 imports topped exports by $2.05 billion, giving the Nation its first full-year trade deficit since 1888.

Last year's deficit contrasts with a $2.71 billion surplus of merchandise exports over imports in 1970. Exports totaled nearly $43.56 billion in 1971, up about 2% from the previous year's $42.66 billion, while imports surged 14% to around $45.6 billion from $39.95 billion, the Commerce Department reported.

The red-ink showing for the year was right in line with the $2 billion deficit Nixon administration officials had been predicting.

"The U.S. trade picture should improve in 1972," asserted Harold C. Passer, Assistant Commerce Secretary for Economic Affairs. He said he based his optimism on the recent currency realignment that makes U.S. goods more competitive abroad and the expected trade concessions the U.S. is negotiating with other nations. But several U.S. officials have predicted that this year will produce another trade deficit, though a much smaller one.

In December, imports outstripped exports by a seasonally adjusted $273.7 million, a deeper deficit than November's $227.2 million. Both imports and exports rose sharply last month as some ports reopened after longshoremen's strikes. Imports surged 22% to an adjusted $4.13 billion from November's $3.39 billion, while exports rose 22.1% to $3.86 billion from $3.16 billion.

The narrowness of last year's rise in exports reflected sluggish economic activity in Europe and Japan, which damped demand for U.S. steel, scrap iron, coal, and machinery, a Commerce Department official said. At the same time, U.S. demand for foreign goods, particularly consumer goods, rose sharply. Both imports and exports were affected by U.S. dock strikes in the second half, the agency added.

Mr. Passer said the 1971 trade deficit "contributed to the international monetary crisis that last August led President Nixon to impose a 10% import surcharge and halt the convertibility of dollars held by foreign central banks into gold. International exchange rates were realigned last month, after the U.S. agreed to devalue the dollar by increasing the price of gold to $38 an ounce from $35 and the U.S. removed its import surcharge.

The 1971 deficit was the first since 1888 when imports topped exports by $33 million, a Commerce official said. For several months, the Treasury and Commerce departments had said this year's shortfall would be the first since 1893, but that deficit was calculated on the basis of the fiscal year running from July 1892 through June 1893. On the calendar-year basis, the 1971 deficit is the first since 1888.

U.S. RESERVE ASSETS PLUMMETED IN 1971 TO $12 BILLION LEVEL

WASHINGTON.—U.S. reserve assets fell sharply again last year, reflecting in part gold outflows prior to Aug. 15 when President Nixon closed the U.S. gold window.

The Treasury reported that the country's total international reserve assets fell $2.32 billion to $12.17 billion at the end of last year from $14.49 billion at the end of 1970, when such assets had dropped $2.47 billion.

In December, however, total assets edged up to the $12.17 billion level from November's $12.13 billion. The rise included a $28 million increase in the dollar value of foreign currencies held by the U.S. following the U.S. agreement to devalue the dollar by lifting the price of gold to $38 an ounce from $35.

The devaluation decision was part of a monetary agreement hammered out by the U.S. and nine other major industrial nations after President Nixon suspended the redemption of dollars for gold and imposed a temporary 10% import surcharge.

Because the U.S. wasn't exchanging gold for dollars held by foreign central banks, U.S. gold holdings in December stayed at November's level of $10.21 billion. At the end of 1970, however, the U.S. gold stock was $11.04 billion.

During the year, holdings of special drawing rights, or paper gold, fell from $1.47 billion to $1.1 billion, the level for the last three months of the year.

Holdings of convertible foreign currencies held by the U.S. fell to $276 million by year-end from $491 million at the start of 1971. In December the value of convertible foreign currencies held rose $33 million, largely because of the $28 million gain from revaluations.

The country's automatic ability to draw foreign currencies from the International Monetary Fund fell sharply from $1.7 billion at the start of 1971 to $585 million at year-end, but this total represented a $3 million gain from Nov. 30.

Mr. SYMINGTON. Mr. President, I thank the able Senator from Ohio (Mr. SAXBE) very much for his courtesy in yielding to me at this time.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT 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. WILLIAMS. 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. 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 oppose the amendment offered by the Senator from Ohio (Mr. SAXBE). I have supported every measure to expand the ability to cope with problems of discrimination. I supported continuation of the U.S. Commission on Civil Rights. I am behind the efforts of the Equal Employment Opportunity Commission to do its best. I have continually urged increased appropriations for every department of Government to help meet the need for ending discrimination in this country.

In particular, I am a longtime advocate of the Federal Government's contract compliance program. I believe that the Government, above all people, must be pure and above reproach in its relationship with the minority community.

Consequently, I have supported in the past, the Office of Federal Contract Compliance to implement the so-called Philadelphia plan. I felt strongly that it was entitled to a full and fair opportunity and that it would have been unwise for congressional action to thwart this effort toward assisting the minority community.

Most regrettably, I have concluded after long consideration that the Office of Federal Contract Compliance is a severe disappointment. It does not provide adequate assistance to minorities under the existing Executive order. I am not alone in my judgment.

As early as the fall of last year, the Civil Rights Commission in its monumental assessment of the Federal civil rights efforts condemned the Office of Federal Contract Compliance as one of the worst civil rights operations in the Federal establishment, and recommended that it be transferred to the Equal Employment Opportunity Commission. Again in April of 1971, in a 6-month review, the Civil Rights Commission could find very little of redeeming effort by that office and again recommended its consolidation with EEOC.

In testimony before the subcommittee, the Reverend Theodore Hesburgh, Chairman of the Civil Rights Commission, reiterated the need for consolidating these civil rights efforts, and finally, just a few weeks ago, the Commission on Civil Rights issued a 1-year report on the Federal civil rights effort. While stating that the Office of Federal Contract Compliance had accomplishd some things during the past year, it nonetheless continued to receive low marks for its work.

As a result of this latest report of the Civil Rights Commission, I asked the chairman for his views on the consolidation matter. His response to me which I would offer for the record was that the need for consolidation is greater than ever and that he would reaffirm without qualification or hesitation his statements before the committee.

I ask unanimous consent that the excerpts from the Civil Rights Commission reports, the testimony of Father Hesburgh, and the exchange of correspondence be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. WILLIAMS. But, Mr. President, it is not just the view of the Commission on Civil Rights that has persuaded me personally that the program of the Office of Federal Contract Compliance should be implemented by the Equal Employment Opportunity Commission. The testimony before the committee of representatives from the Leadership Conference on Civil Rights which encompasses almost all of the civil rights organizations, agreed with the views of the Civil Rights Commission and the committee bill calling for this consolidation.

There are at least two major problems which I believe necessitate this consolidation. The first is that the legal obliga-

tions of title VII of the Civil Rights Act and the legal obligations under the executive order requiring equal employment opportunity to government contracts are so closely related that the enforcement by separate agencies of these requirements leads to confusion among the business community and uncertainty with respect to the operation of collective bargaining agreements, seniority systems, and other business-related matters dealing with personnel.

At one time, it was thought that the arsenal of weapons approach—utilizing a broad range of tools to secure equal employment opportunity—was the most effective procedure. I believe that there is room for, and a need for, a wide range of tools, and it is for this reason that I would not abolish the executive order program itself. Nonetheless, the use of these remedies and weapons requires very careful coordination and a close relationship. The failure of the government agencies to engage in this necessary coordination is described by Father Hesburgh in his letter to me. I read from his letter:

In the section of the report dealing with the Equal Employment Opportunity Commission (EEOC), we included a separate evaluation of the efforts at 'Intra-Governmental Coordination.' We concluded that all of the major attempts at improved coordination between OFCC, EEOC, and the Department of Justice appeared to have failed. The OFCC-EEOC complaint referral system appears to have broken down and was to be revised or improved. Furthermore, the Interagency Staff Coordinating Committee, consisting of representatives of OFCC, EEOC, and the Department of Justice, has met rarely and then only to discuss ad hoc problems. Thus, we found no overall coordinated Federal effort to combat employment discrimination. In summation, we stated:

The lack of coordination among OFCC, EEOC and the Department of Justice was one reason this Commission recommended in its report of October, 1970, the transfer of OFCC to EEOC and the transfer of Section 707 suit power from the Department of Justice to EEOC. It appears that this reason is even more pressing today since existing mechanisms of coordination appear to have atrophied.

The 7 years' experience of title VII of the Civil Rights Act and the Executive order program reflects numerous situations where the three agencies now charged with the employment effort on civil rights have not adequately coordinated their activities and have neither provided adequate remedy to the aggrieved minorities nor an understandable solution to the confused businessman.

The second problem causes me severe distress. A careful staff inquiry not only supports the feeling of the Civil Rights groups and the Commission on Civil Rights that the OFCC is inadequate, but also established that the OFCC is performing a disservice to the minority community. The simple truth is that the overblown rhetoric and unsupported claims of success of the Office of Federal Contract Compliance has misled the public and the Congress. The kind of misstatement, overstatement and spurious claims made by the Department were aptly described at our hearing on October 6, where Clarence Mitchell, speaking for the Leadership Conference on Civil Rights, described the Department's efforts:

I would like to take this opportunity to express my personal objection to the misleading and divisive testimony presented by the U.S. Department of Labor here before this subcommittee on Monday, October 4. That testimony reminds me of the professional rainmaker who could produce plenty of wind, a great deal of thunder and impressive displays of lightning, but no rain. The Department of Labor attempts to create the impression that it is only organized labor that is pushing for the transfer of the Office of Contract Compliance to the EEOC. That is simply not the truth—indeed, I go further and say that it is a conscious effort to conceal the truth. I would like to point out that I have already given to one of the staff members a reproduction of a portion of the first report of the Fair Employment Practices Committee from July 1943 to December 1944. Page 7 of that report clearly points out the jurisdiction of the original FEPC, and that original FEPC had jurisdiction over Government agencies and defense contractors.

So from the begining it was the concept of this whole program that these operations be carried on together. Indeed, it is ridiculous to try to carry them on in any other kind of way.

I do not make these statements lightly. I was disturbed by the implications of the Civil Rights Commission report. I was even more disturbed by the claims of the Department of Labor of success that appeared to fly in the face of my own understanding of that compliance operation.

In questioning before the committee, the departmental spokesman claimed a number of successes in the equal employment area for which they were asked to provide backup data and materials.

I shall use but one example, and that is the Philadelphia plan. The Department of Labor has been in confrontation with the U.S. Congress, and the Comptroller General, as well as the private sector over the establishment of the so-called Philadelphia plan which provided goals and timetables for the employment of minorities on Federal construction jobs in the Philadelphia area.

The Department of Labor was asked to furnish some very simple and specific data about the results of that plan. They were asked to tell me how many minority employees and minorities who were now employed, had not been employed when the Philadelphia plan started. That is, how many new jobs resulted.

I regret to say that the Department, despite months of requests, was not able to answer my questions. We learned about the number of minorities who were working on Federal construction jobs at any given time in Philadelphia, and the increased number of those working on Federal construction jobs. We learned something of the number of minorities that have left non-Federal construction jobs to go on Federal construction jobs, and we found out about situations where contractors transferred minority workers from job to job, one step ahead of the compliance officers—a device known as motorcycle compliance, because that was the means used to transfer the workers. But we have not been able to learn the number of new jobs made available to minorities.

Even the local civil rights groups have acknowledged the Department's failure in Philadelphia. I ask unanimous consent to have printed at this point of my statement a newspaper interview of the executive director of the Philadelphia Urban League reflecting this view.

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

PHILADELPHIA PLAN IS JUDGED A FAILURE

PHILADELPHIA.—The "Philadelphia plan," a federal program designed to get more Negroes into skilled construction jobs, appears to have failed so far.

It has won all its legal battles—the latest in the Supreme Court Tuesday—but it has lost most tests where it really counts—on the building sites.

The high court turned down an appeal by a group of contractors contesting the plan's legality. Some observers believe the decision was a shot in the arm for the program.

IN AREAS OF BIAS

The plan originated here three years ago and was aimed at finding jobs in construction trades that had discriminated against Negroes. It requires contractors in U.S.-assisted projects exceeding $500,000 to hire a specified percentage of Negroes and other minorities.

Last year, the plan spread into other big minority markets such as Chicago, Pittsburgh, Cleveland and Detroit. But it has not had much of an impact.

The plan in Philadelphia—where a third of the population is Negro—was designed to bring the ranks of six trade unions to 20 per cent minority membership by 1974. With official figures unavailable, estimates put the number of Negroes at less than 5 per cent of the total employed as iron workers, plumbers and pipefitters, steamfitters, sheetmetal workers, electrical workers and elevator builders.

"It has been a failure," said Andrew Freeman, executive director of the Philadelphia Urban League. A year ago, he reported "only a handful of men have gotten jobs."

Robert Robinson, director of training for the Negro Trade Union Leadership Council, said he did not know anyone "who has been put to work directly because of the Philadelphia plan."

A U.S. Department of Labor spokesman disagreed.

He said in Washington that the administration was "quite pleased by the court's action" and promised figures on hiring soon, hopefully by the end of the week.

"We have just completed a survey of employment activity under the plan that indicates minority goals are being met," the spokesman said.

To date, 71 contracts totaling $249 million have been let under the plan in the five-county Philadelphia area. The total probably is more than $1 billion across the nation.

"STILL A FLOP"

"The plan is still a flop," said Andrew Antonucci, executive secretary of the Construction Association of Eastern Pennsylvania, "because there just aren't that many minority people available who are trained, so we can't fill the slots the government says we should."

It was Mr. Antonucci's group that filed the Supreme Court suit.

Government and minority leaders anticipate gains on the strength of the Supreme Court decision.

Charles Bowser, executive director of the Philadelphia Urban Coalition, and Mr. Freeman said there were indications that the

government now would deal more harshly with recalcitrant contractors and unions.

Mr. Freeman said he hoped more community groups in Negro neighborhoods especially will "recruit and refer to unions and contractors more and more minority workers."

"The few black people who have been hired do not represent the full potential of the black community," Mr. Freeman said. "It has been little more than tokenism. It must be complete acceptance by the industry."

Mr. WILLIAMS. Mr. President, Senators may ask, why carp on one failure out of a major program; why concentrate on this one area and say because you failed in this, you really should be transferred? Well, it is really quite simple. The Department of Labor, the Equal Employment Opportunity Commission, and the Department of Justice all agree that the basic requirement of nondiscrimination in government contracting, the so-called antidiscrimination provisions, are the same under Executive Order 11246 and title VII of the Civil Rights Act. The key to the Office of Federal Contract Compliance's approach is affirmative action. It is not a situation, although it could well be called one, of correcting persisting discrimination in its most well understood form. It involves an effort regardless of the past history of the employer to upgrade and improve its minority work force. In the affirmative action program, the concept of improving the quality of minority employment is commendable. It is necessary, and it is urgent. In the Department of Labor it has not worked well and should be transferred. The contract compliance program is necessary and important.

I conclude by quoting from the committee report at pages 30 and 31:

The question raised last year was whether the program has had substantive results. Unfortunately, the paucity of credible achievement cited last year is still the rule. The successes described in the testimony suffer from an inability of the program managers to furnish reliable data to support their claim. The program looks good on paper, but despite many opportunities very minimal information was furnished to the Committee that would support the contention that significant results have been achieved. To the contrary, in the history of the Contract Compliance Program, until two days after introduction of this bill, no sanction had ever been imposed for violation of the Executive Order. Since then, only one small contractor, having 10 employees, has been subjected to sanctions.

In 1969, then Secretary of Labor Shultz, testifying before this Committee, asked for time for the new administration to get its House in order. The Department's testimony this year suggested that real success is just around the corner.

The rights of minorities and women are too important to continue this important function in an agency that has not really been able to achieve the promised results. The contract compliance program is an important and viable tool in the government's efforts to achieve equal employment opportunity. It should have a chance to operate in a fresh atmosphere with an agency that has Equal Employment Opportunites as its sole priority.

Mr. President, if the occasion arises later, I will submit a list of the various agencies under the Department of Labor's umbrella and also other departments of Government so as to spell out and indicate the hopeless diffusion, and why we need consolidation, coordination, and more effectiveness.

I yield the floor.

EXHIBIT 1

U.S. COMMISSION OF CIVIL RIGHTS,
Washington, D.C., January 10, 1972.

Hon. HARRISON A. WILLIAMS, Jr.,
Chairman, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to thank you for indicating in your December 10 letter to me that your Committee valued my testimony in support of S. 2515, the "Equal Employment Opportunities Enforcement Act of 1971." Further, I would like to take this opportunity to reaffirm the Commission's position with regard to the consolidation of the Federal Government's equal employment activities.

You were correct in stating that our report "The Federal Civil Rights Enforcement Effort—One Year Later," found that the mechanisms utilized by the Office of Federal Contract Compliance (OFCC) to direct the enforcement of Executive Order 11246 had improved. Our evaluation of the actions taken directly by OFCC and the actions taken by the compliance agencies at the urging of OFCC indicate that in the last year some progress has been made in developing the type of structures and processes necessary to mount an effective attack on the problem of employment discrimination. It is important to note, however, that our report on OFCC did not deal with substantive progress, nor was it an all encompassing study. Rather, it evaluated only structure and mechanism.

This is not to say, however, that the Commission was satisfied with the steps taken by OFCC. Quite the contrary; we ranked the performance of OFCC as "Marginal." Further, the degree of progress depicted is not substantial, and if that rate of progress is not increased, OFCC's operation probably will not be deemed "Adequate" for some time. Yet, in the statement of the Commission introducing the report, we stressed that time is of the essence when the rights of people are being denied to them.

There is one additional factor which I would like to point out to you. In the section of the report dealing with the Equal Employment Opportunity Commission (EEOC) we included a separate evaluation of the efforts at "Intra-Governmental Coordination." We concluded that all of the major attempts at improved coordination between OFCC, EEOC, and the Department of Justice appeared to have failed. The OFCC–EEOC complaint referral system appears to have broken down and was to be revised or improved. Furthermore, the Interagency Staff Coordinating Committee, consisting of representatives of OFCC, EEOC, and the Department of Justice, has met rarely and then only to discuss ad hoc problems. Thus, we found no overall coordinated Federal effort to combat employment discrimination. In summation, we stated:

"The lack of coordination among OFCC, EEOC and the Department of Justice was one reason this Commission recommended in its report of October, 1970 the transfer of OFCC to EEOC and the transfer of Section 707 suit power from the Department of Justice to EEOC. It appears that this reason is even more pressing today since existing mechanisms of coordination appear to have atrophied."

Nothing we discovered in the investigations on which we based our report has led us to change our earlier conclusion that the pattern and practice functions of the Department of Justice and the contract compliance functions of the Department of Labor be transferred to EEOC. We are pleased that your Committee in reporting S. 2515 provided for such consolidation.

I hope that I have clarified any ambiguity which may have been created as a result of our "One Year Later" report. If you have any further questions, I would be pleased to have them answered for you.

Sincerely,

THEODORE M. HESBURGH,
Chairman.

DECEMBER 10, 1971.

Rev. THEODORE HESBURGH,
Chairman, Commission on Civil Rights, Washington, D.C.

DEAR FATHER HESBURGH: I am sure that you are aware of the great respect that the Committee had for your testimony in support of S. 2515, the "Equal Employment Opportunities Enforcement Act of 1971." The message that you presented to the Committee was indeed an eloquent presentation of the urgent need for this bill.

One of the elements of this bill concerns the consolidation of Federal Government equal employment activities. The Civil Rights Commission recommended that the pattern and practice functions of the Department of Justice and the Contract Compliance functions of the Department of Labor be transferred to the Equal Employment Opportunity Commission. The Committee in unanimously reporting S. 2515 provided for just such a consolidation. The views of the Committee on making such a judgment were set forth in the report on the bill, a copy of which is enclosed for your information.

Since the bill was reported on October 28, 1971, the Commission on Civil Rights issued a supplementary report entitled, "The Federal Civil Rights Enforcement One Year Later." In its discussion of the Federal Civil Rights Enforcement Effort, the Commission in evaluating the Contract compliance functions of the Department of Labor, suggested that the Office of Federal Contract Compliance, while still a marginal operation, had improved from the original evaluation. To be precise, in evaluating the Office, the Commission made the following judgment:

"Evaluation

"OFCC has made progress in the areas of:

"1. initiating sanction actions;

"2. launching a new attempt at monitoring the implementation of the compliance review process;

"3. issuing minority employment 'bid conditions' for certain construction contractors;

"4. increasing significantly the number of compliance reviews.

"There is also reason to hope that improved monitoring tools, an automated management information system, and new programs such as the 'national construction plan,' when operational, will result in a more comprehensive compliance enforcement effort.

"At the present time, however, the uncertainty of OFCC staffing, and the unknown consequences of the new organization of contract compliance responsibilities in DOL are of paramount concern. Moreover, the inability of OFCC to move beyond experimental monitoring steps, the meager results of construction compliance efforts, and the continued lack of final sanction action also represent significant inadequacies in OFCC's program."

I would appreciate if you would clarify the meaning of this supplementary report and the extent to which the judgments made in that report would have any effect on the overall recommendation for consolidation of these activities.

With every good wish,

Sincerely,

HARRISON A. WILLIAMS, Jr

[From Equal Employment Opportunities Enforcement Act of 1971 Hearings]

STATEMENT OF HON. REV. THEODORE HESBURGH, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS

The Commission has issued two reports that recommended transfer of the Office of Federal Contract Compliance from the Department of Labor to EEOC. We believe that this transfer would improve both contract compliance and the enforcement of title VII. Unnecessary duplication and overlap would be eliminated, and the two programs would complement each other under the direction of a single agency.

The danger of placing direction of the contract compliance program in an agency primarily responsible for noncivil rights programs has been dramatically underscored by the reorganization now underway at the Department of Labor. Under the reorganization, OFCC field staff will report directly to the regional director of employment standards rather than to the OFCC Director in Washington.

True, regional directors will have access to OFCC technical information and policy guidance from the Washington office. However, our experience is that civil rights enforcement suffers when those who carry out a policy do not report to the official responsible for making the policy. Further, we fear that OFCC is being downgraded. The solution lies in transferring OFCC to EEOC.

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT 7 MONTHS LATER

(A report of the U.S. Commission on Civil Rights, May 1971)

OFFICE OF FEDERAL CONTRACT COMPLIANCE (OFCC)

Commission findings

1. OFCC has failed to provide adequate guidance to compliance agencies and Federal contractors concerning the rate of progress expected in eliminating employment discrimination and in remedying the effects of past discrimination.

2. OFCC, hampered by a lack of adequate staffing, has confined its monitoring of compliance agency enforcement activity to a series of *ad hoc* efforts that have not had lasting effects.

3. OFCC has failed to assure that compliance agencies maintain enforcement machinery capable of monitoring compliance.

4. OFCC and the compliance agencies have failed to impose the sanctions of contract termination or debarment on noncomplying Government contractors, which has lessened the credibility of the Government's compliance program.

5. Contract compliance in the construction industry, which has been implemented primarily by federally imposed plans in Washington and Philadelphia and locally developed "hometown" agreements, has been ineffective and limited.

Commission recommendations

1. OFCC, with the assistance of 15 compliance agencies, should establish on an industry-by-industry basis numerical and percentage employment goals, with specific timetables for meeting them.

2. OFCC should strengthen its capacity to monitor performance by compliance agencies through increased staff, systematic racial and ethnic data collection, and compliance agency reporting.

3. Uniform compliance review systems should be developed for use by all 15 compliance agencies.

4. OFCC should promptly impose these sanctions where noncompliance is found and not remedied within a reasonable period of time.

5. Goals and timetables for minority employment should be applied throughout the industry and systematic enforcement mechanisms should be created.

Response

Action Completed

1. None.

2. The compliance operations of seven agencies have been reviewed for purposes of discovering basic deficiencies in agency compliance activity.

3. a. The number of onsite compliance reviews projected to be completed by compliance agencies during FY 71 will be nearly double the number conducted during 1970.

b. Through OFCC intervention, organizational changes have been made in the compliance programs of General Services Administration (GSA) and the Department of the Interior.

4. In 250 cases, procedures have been instituted, in the form of "show-cause" notices, which can lead ultimately to debarment or contract cancellation. In six cases, notices of proposed debarment or contract cancellation have been issued. But no contractor yet has been actually debarred nor has any contract been cancelled.

5. Minority employment plans with hiring goals and timetables covering all employment of Federal or federally assisted construction contractors were imposed in three major cities in early May.

Action Planned

1. OFCC, which has established "opportunity estimates", comprising nearly 600,000 new hires and promotions of minority employees under the contract compliance program, expects that these estimates will reflect goals and timetables by the end of FY 72.

2. The President's budget request for FY 72 calls for a substantial increase in OFCC and compliance agency staff resources. OFCC is currently developing a system for the collection of racial data and plans to develop report and evaluation forms for contractors and compliance officers for purposes of monitoring compliance reviews.

3. a. OFCC is preparing a compliance manual which will set forth uniform compliance review procedures. An improved management information system is also being developed.

b. A joint OFCC–CSC training course is planned for compliance agency personnel.

c. With OFCC's support, substantial increases for compliance agency staffs have been proposed for FY 72.

4. None.

5. The goals and timetables approach will be applied to the practices of all contractors utilizing construction trade unions which are not parties to a "hometown" agreement.

Action Under Study

1–4. None.

5. A national construction compliance plan with goals and timetables related to minority concentrations is being considered.

Evaluation

The contract compliance program continues to suffer from the failure of OFCC to provide adequate guidance concerning the setting of specific goals and timetables for achieving increased minority employment and establishing criteria for compliance. In the absence of such guidance, neither compliance agencies nor contractors are in a position to know what is expected in terms of the rate of progress required in eliminating discrimination and remedying the effects of past discrimination. While the Philadelphia Plan concept of federally imposed minority hiring goals and timetables has been extended to three more cities, a national industrywide construction compliance plan with goals and timetables has yet to be developed. Minority unemployment and underemployment are continuing at a substantially higher rate than for majority workers.

A variety of improvements in reporting procedures are planned, but their full implementation lies in the future. OFCC has conducted a number of needed reviews of compliance agencies' performance, but their impact is unknown and systematic reporting procedures still have not been established. The contract compliance program has suffered from a lack of sufficient staff resources. The President's FY 1972 budget calls for a substantial increase in resources for OFCC and the compliance agencies, which should enable them to carry out their responsibilities with increased effectiveness.

Finally, although OFCC has implemented a large number of procedures that can lead ultimately to the sanction of contract termination or debarment, the fact that these sanctions have never been imposed continues to weaken the contract compliance effort.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Commission findings

1. EEOC's effectiveness has been impaired by weak enforcement powers, limited by statute to enforcement through "conference, conciliation, and persuasion".

2. EEOC has lacked sufficient staff to carry out its responsibilities with maximum effectiveness.

3. EEOC has further restricted its effectiveness by placing heavy emphasis on the processing of individual discrimination complaints, making relatively little use of its initiatory capabilities such as public hearings and Commissioner-initiated charges, to broaden its attack against job bias.

4. EEOC has failed to establish the mechanisms necessary to process complaints with dispatch.

5. EEOC has not developed a system of priorities for complaint processing by which cases of greater importance are handled on an expeditious basis.

Commission recommendations

1. Congress should amend Title VII of the Civil Rights Act of 1964 to authorize EEOC to issue cease and desist orders to eliminate discriminatory practices through administrative action.

2. EEOC staff should be increased to a level commensurate with the scope of its civil rights responsibilities.

3. EEOC should emphasize initiatory activities, such as public hearings and Commissioner charges, to facilitate elimination of industrywide or regional patterns of employment discrimination.

4. EEOC should amend its procedures to make more effective use of the complaint processing system.

5. EEOC should assign priority to complaints of particular importance and emphasis should be placed on processing complaints involving classes of complaints rather than individuals.

FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT

(A report of the U.S. Commission on Civil Rights 1970)

CONTRACT COMPLIANCE

There is a 29-year history of ineffective efforts to require Federal contractors to be nondiscrimiatory in their employment practices. Lack of success of Executive Order 11246, the most recent of operative Executive Orders on the subject, is directly related to inadequate executive leadership provided by the Office of Federal Contract Compliance (OFCC), which is charged with responsibility for coordinating and overseeing the entire Federal contract compliance program.

OFCC, until recently, had failed to adopt and implement policies and procedures that would produce vigorous compliance programs in the Federal agencies immediately responsible for contract compliance. Recent actions taken in effectuating OFCC's three current priorities—defining the affirmative action requirement of the Order, monitoring compliance programs of the agencies, and structuring a Government-wide construction compliance program—give promise of leading to a more effective effort. Their implementation, however, lies in the future.

The importance of explaining in detail the meaning of affirmative action to contractors and compliance agencies has been clearly recognized and OFCC, earlier this year, took the significant step of expanding its regulations to deal specifically with the nature of the affirmative action requirement. The extent to which these expanded regulations will be implemented by compliance agencies depends upon OFCC capabilities and determination. Until recently, OFCC's activities did not offer encouragement. For example, OFCC was unable to successfully require adequate enforcement of similar affirmative action requirements in the past.

Monitoring of agency Executive Order enforcement is a key ingredient in an effective Federal contract compliance program. Establishment of uniform policies and the assurance that those policies are carried out are the chief responsibilities of OFCC. In the past OFCC monitoring has been haphazard—a series of *ad hoc* efforts that did not appear to have lasting effect. A recent OFCC reorganization, the new development of an industry target selection system and the redistribution of compliance agency contractor responsibilities, appears to have improved OFCC's monitoring capability, but no procedures for monitoring have been developed. The value of these structural changes is totally dependent upon actions yet to be taken.

After several false starts, OFCC has finally established the firm basis for a Government-wide construction compliance program and has adopted a strategy for its application. The Philadelphia Plan approach of requiring minority group percentage employment goals for specific construction trades provides the basic standard of construction compliance. OFCC has indicated that it is prepared to impose Philadelphia-type plans in 91 additional cities unless those cities devise plans of their own to increase minority utilization in the construction trades. These community-developed plans, or "hometown solutions," however, have been forthcoming in only a few cities and their viability has not yet been etsablished, nor has provision been made for their enforcement.

Of the 15 departments and agencies assigned compliance responsibility, the Department of Defense (DOD), which, in terms of dollar amount, is responsible for more than half of Federal contracting, is the most important. The Department's performance has been disappointing. For example, in two recent contract compliance matters involving southern textile mills and a large aircraft manufacturer in St. Louis, DOD initially failed to follow its own procedures. Though some changes have been made to prevent recurrence of these failures, the compliance program of the Department still has serious structural defects. In addition, its staff is too small and its compliance review efforts have not proved adequate.

The 14 other agencies, responsible for contract compliance in some important industries, have failed to assign sufficiently high priority to this responsibility. These agencies have limped along with inadequate staffs and cumbersome organizations which have produced a variety of inadequate compliance efforts.

The use of sanctions and the collection of significant racial and ethnic data by OFCC and the compliance agencies are two essentials of a successful contract compliance program that have been missing to date. The use of sanctions is necessary to make the enforcement program credible. Yet, no contract has ever been terminated nor any company debarred for Executive Order violation. Rarely have any hearings been held concerning noncompliance.

The collection of data would permit compliance agencies and OFCC to adequately evaluate their efforts and the total effect of the entire program. Currently, however, few data are collected and they are inadequate to inform the agencies of the extent of progress in minority employment, or indeed, whether any progress is being made. Though future plans contemplate extensive data collection and analysis these efforts are only in their initial stages.

* * * * *

D. Coordination

The President should issue a reorganization plan transferring the contract compliance responsibilities of OFCC and the litigation responsibilities of the Department of Justice to EEOC, so that all responsibilities for equal employment opportunity will be lodged in a single independent agency.

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT: 1 YEAR LATER

(The U.S. Commission on Civil Rights, November 1971)

EVALUATION

OFCC has made progress in the areas of:

1. initiating sanction actions;
2. launching a new attempt at monitoring the implementation of the compliance review process;
3. issuing minority employment "bid conditions" for certain construction contractors;
4. increasing significantly the number of compliance reviews.

There is also reason to hope that improved monitoring tools, an automated management information system, and new programs such as the "national construction plan," when operational, will result in a more comprehensive compliance enforcement effort.

At the present time, however, the uncertainty of OFCC staffing, and the unknown consequences of the new organization of contract compliance responsibilities in DOL are of paramount concern. Moreover, the inability of OFCC to move beyond experimental monitoring steps, the meager results of construction compliance efforts, and the continued lack of final sanction action also represent significant inadequacies in OFCC's program.

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

I have listened with interest to the statement concerning the effectiveness of the present setup. I think the thrust of most of the statements is that the agencies cannot get adequate evaluation. I do not think that because successful figures cannot be obtained is a reason to transfer. I believe the program has been a success. Most of all, I like the affirmative approach. In other words, it is the Department of Labor whose area it is to supervise Government contracts; and having within their grasp some 240,000 contractors, they can make them agree to certain goals before they begin those contracts. The Department of Labor is an agency that has an affirmative approach, one which says to the person, "When you take this contract, you have to make certain agreements."

This arrangement should not be changed to make it an embryonic enforcement agency, where the plan is not so fully enforced, which will go to the contractor and say, "We will go after you if you have not done what you should."

I think the pressure still has to be affirmative action. But I think, most important, is the question of how the EEOC would handle the program if the provision at present in the bill were adopted.

I think we can best determine that by what the chairman had to say, and I think his testimony before the committee last October should be considered, when he testified that EEOC is not prepared to assume these new duties under Executive Order 11246, especially at a time when it will be assuming new cease-and-desist order enforcement powers.

William A. Brown, the Chairman of the EEOC, who should have a pretty good idea of how well equipped his agency would be to exercise the Secretary of Labor's responsibilities, opposed the transfer of the Secretary of Labor's responsibilities under Executive Order 11246, and he did this actively before the Senate Labor Subcommittee last October 4. He gave the following four reasons why, in his expert judgment, it would be administratively impracticable to transfer these functions to his Agency:

First. EEOC has an ever-increasing number of cases pending before it which have already resulted in a 2-year backlog.

Second. The functions of EEOC and those of the Secretary of Labor under the Executive order would be incompatible. EEOC is a regulatory agency under title VII, and OFCC, the agency within the Labor Department which the Secretary of Labor has established to administer the Executive order, is a procurement program manager under the Executive order.

Third. The new and different responsibilities would disrupt coordination in title VII and its administration would suffer, and perhaps most importantly, there might be serious problems of conflict in both the area of remedies and the area of investigation.

Fourth. There is a great potential conflict in the assumption by EEOC of the Executive order program responsibility. Chairman Brown described a situation where no violation of title VII might be found but where a violation of the Executive order would be evident.

At this time I would like to submit, and ask unanimous consent to have printed in the RECORD, the full testimony in regard to the transfer that was made before the committee at that time.

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

TESTIMONY OF WILLIAM H. BROWN III

Mr. Chairman and distinguished members of the subcommittee: It is indeed a pleasure to appear before you again and to present my views, as Chairman of the Equal Employment Opportunity Commission, on S. 2515, a bill designed to strengthen the prohibitions against employment discrimination of Title VII, and to grant enforcement procedures to the Equal Employment Opportunity Commission.

I am greatly encouraged by the fact that one House of the Congress has already acted on this matter, and I am very hopeful that the Senate too will act on this important matter as soon as is reasonably possible. It will be a great personal joy to me, and I am sure to many of you, if the Congress can finally act this year to grant the EEOC its much-needed enforcement powers.

I believe that the major provisions of this bill were contained either in S. 2453, which this Committee and the Senate acted upon during the 91st Congress, or in the original version of H.R. 1746, the Hawkins-Reid bill, which was reported earlier this year by the House Education and Labor Committee. Many of the proposed changes would have a significant effect on the Commission and

its operations, and I will be glad to reiterate my views on them for the Committee.

However, before doing so, I feel that I should briefly address myself to the central question today, as it has been since Title VII went into effect in 1965. I am, of course, referring to the need for granting the EEOC the strongest possible enforcement powers. In this the seventh year since historic enactment of the Civil Rights Act of 1964, and the sixth year since the establishment of the EEOC, it is no longer possible to deny effective enforcement of one of the major provisions of the Act, the right for all people in this Nation, regardless of race, color, religion, sex, or national origin to have equal rights to jobs for which they are qualified. And it is clear, as I have stated before this Committee in prior testimony, that employment discrimination continues widespread throughout the country. One need only look to the position of minority groups in this country to confirm the insidious presence of this basic injustice.

In a special report released this year by the Bureau of the Census, *The Social and Economic Status of Negroes in the United States*, it is clear from the statistics presented that while Negroes have made strides toward bettering their position, the goal of social and economic equality is not yet to be seen. For example, the report shows that the median family income for Negroes in 1970 was $6,279 while the median income for whites for the same period was $10,236. This earnings gap between the races is obviously largely attributable to disparate employment policies. This conclusion is supported by statistics which show that Negroes are concentrated in the lower-paying, less prestigious positions in industry, and are largely precluded from the higher-paid more prestigious positions.

For example, as cited by the Bureau's report, while Negroes constitute about 10% of the labor force, they account for only 3% of all jobs in the high-paying professional, technical and managerial positions. In the nine industries with the highest earning capabilities (printing and publishing, chemicals, primary metals, fabricated metals, nonelectrical machinery, transportation equipment, air transportation, and instruments manufacture), Negroes account for only 1% of these higher-paying positions. On the other hand, in the lowest paying laborer and service worker categories, Negroes account for 24% of the total positions.

This disparity is further reinforced by the fact that the rate of unemployment for Negroes is considerably higher than the rate for whites. The figures for 1970 show that while 4.0% of white males were unemployed, the unemployment rate for whites was 5.4% while for Negroes it was 9.3%. Even in managerial and professional positions, the area with the lowest unemployment rate, Negro unemployment was 2.1% while white unemployment was 1.7%.

While the statistics on Spanish-speaking Americans are not nearly as current or as complete, available data indicates that this, the second-largest ethnic minority group in the Nation with approximately 7.5 million members, faces a similar plight. In 1969, the median family income for Spanish-speaking American families was $5,641. About 17% of these families had incomes of less than $3,000. Both male and female Spanish-speaking American workers are concentrated in the lower-paying occupations. Only 25% of employed males are in white-collar jobs compared to 41% for men of all other origins. On the other hand 58.8% of Spanish-speaking American males are concentrated in blue-collar occupations. The statistics for Spanish-speaking women workers indicate a similar distribution. Also, as with Negroes, the unemployment rate for Spanish-speaking workers is very high. In 1969, 5.0% of Spanish-speaking Americans were unemployed, compared to 3.5% for the rest of the Nation.

The other major group which is subject to blatant discrimination in employment are the approximately 30 million employed women in the Nation. While these women constitute approximately 38% of the total work force they encounter most of the same discriminatory practices as are applied to employees because of race, color, religion, or national origin. This close relationship, for example, between sex and race discrimination has been the subject of increasing study in recent years. The results of these studies have shown that the similarities between sex and race discrimination are striking. Both classifications create large, natural classes in which membership is determined by circumstances beyond the individual's control, and both are highly visible characteristics on which it has been extremely easy to draw gross, stereotyped distinctions. As a matter of fact, the historical legal position of black slaves was justified by analogy to the status of women at that time, and the arguments justifying the "happy homemaker" were applied equally to the "happy slave". The present day legacy of this kind of analogy is the persistence of an inherent belief by many that both groups are, by definition, less equal than the rest of the Nation.

While it is true that the extreme aspects of sex-discrimination as it existed in the early part of the twentieth century have been dispelled, and women have now been granted the right to vote and may serve on juries, in the area of employment their status is still far from equal. Despite a common misconception, women in the labor market do not work to enjoy some extra consumer luxuries or to provide themselves with something with which to pass the time. Statistics compiled by the Department of Labor's Women's Bureau show that 60% of all employed women work in order to provide primary support for themselves or to supplement the incomes of their husbands which may be inadequate for household needs. However, within established occupational categories, women are paid less for doing the same jobs as done by men. For example, in 1968, the latest year for which extensive data is presently available, the median salary for all scientists was $13,200; for women scientists the median salary was $10,000. Similarly, the median wage for a full-time male factory worker was $6,738 while his female counterpart could only expect to earn $3,991. This disparity becomes glaring when we see that 60% of women but only 20% of men earned less than $5,000 per year, while only 3% of women but 28% of men earned $10,000 per year or more. Working women also remain heavily concentrated in a small number of well-defined sex-stereotyped occupations and their mobility to other, better paying positions is severely limited by either overt sex restrictions or by established company promotion policies which make it exceedingly difficult to move to other, better-paying positions.

This kind of disparate treatment is particularly objectionable in light of the specific prohibition in Title VII against discrimination on the basis of sex. In recent years, the courts have, however, handed down a series of decisions which have negated many of the practices used to perpetuate sex-discrimination and have made the use of sex-based job classifications legally suspect. It is, however, the primary responsibility of the EEOC to enforce *all* the provisions of Title VII, and with the enactment of effective enforcement procedures, the Commission will be able to effectively move against all these different areas of employment discrimination.

The pervasiveness of employment discrimination becomes all too obvious, not only from the statistics which I have mentioned above, but from the increasing caseload received by the EEOC. Since its inception in 1965, the Commission has received 81,004 charges. This number, though large when considered by itself, becames even more significant when we consider the fact that each year the number of charges filed with the Commission continues to increase. For example, in FY 1970, 14,129 charges were filed with the Commission; in FY 1971, 22,920 charges were filed; and our current estimate is that during the current fiscal year more than 32,000 charges will be filed. These figures indicate that the need for effective enforcement powers for the Commission is in no way diminished with the passage of time. If anything, the exact opposite is the case.

This need for effective enforcement powers is also reinforced when we look to the disposition of these charges. As the Committee well knows, the EEOC is at this time limited to seeking settlement of claims only through the voluntary conciliation and persuasion route. This has not proved at all satisfactory. Of the 81,004 charges that I mentioned, we were only able to achieve a totally or even partially satisfactory conciliation in less than half of these cases. This means that in a significant number of cases, the aggrieved individual was not able to achieve any satisfactory settlement through the EEOC and was forced either to give up his or her claim, or, if they had the necessary funds and time, to pursue the case through the Federal courts. I submit to the Committee that the EEOC will not without effective enforcement provisions, be any more successful in resolving those complaints which it continues to receive than it has been in resolving those complaints which it has received so far. We are, therefore, left with the unpleasant prospect that, unless effective enforcement is enacted soon, an ever-increasing number of aggrieved persons will be left without an adequate remedy for violations which are clearly prohibited by existing law.

This is not a healthy situation for any society. In a society such as ours, based upon the democratic principles of equality and the rule of law, this kind of a failure to provide relief becomes particularly acute. Under the present provisions of Title VII, not only are minorities and women locked out of effective remedies by the very law which was established to once and for all end such economic deprivation, but the very governmental process which created the law is called into question and its credibility undermined. While we have established the principle that the resources of the State should be made available to an individual for protecting his collective bargaining rights under the National Labor Relations Act, we have failed repeatedly to enact the same kinds of rights for individuals to protect their prerogative to a job as determined only upon substantive qualifications.

When I testified before this Subcommittee two years ago regarding the legislation that was actually pending before the Committee, I indicated my preference for a court enforcement approach, as opposed to a cease and desist approach. The full Committee amended that bill and presented to the Senate a cease and desist mechanism embodying self-enforcing orders and temporary court enforcement for cases pending before the Commission at the time of passage of the Act. That was the version which ultimately passed the Senate on October 1, 1970.

When I testified before the House General Subcommittee on Labor during March of this year, that Subcommittee had before it a bill embodying cease and desist enforcement, but without the self-enforcing and temporary court enforcement provisions. At that time, I indicated that I still felt that court enforcement was preferable to the form of cease and desist in the original version of H.R. 1746. I also indicated to the Committee that I believed that the Hawkins-Reid bill

could be substantially strengthened by adding the self-enforcing mechanism and the temporary court enforcement approach. In my view, the combined effect of these two provisions would probably produce the strongest form of enforcement power which could be granted to the Commission.

I note, however, that S. 2515, while including the self-enforcing cease and desist orders, does not contain a provision for temporary court enforcement of pending cases. If it pleases the Committee, I would hope that you would consider adding the temporary court enforcement provisions to the bill again this year as you did in S. 2453 last year. This type of a provision would provide us with a very valuable tool. As I testified before this Committee last year, and also in my testimony before the House Committee this year, the Commission, because of its rapidly increasing workload, has not been able to resolve all the complaints before it on a timely basis and, as of June 30, 1971, had a backlog of almost 32,000 cases. Also, as I mentioned in my testimony here in 1969, to institute cease and desist procedures will require a certain amount of time to establish the new requlations under which the enforcement procedures will operate; hearing examiners have to be recruited, and the Commission's internal structure has to be modified. It is, therefore, important that the EEOC be given the temporary court enforcement procedures to be applied to these pending cases, and to those cases which may arise before the cease and desist provisions become operational.

TRANSFER OF OFCC

As I have indicated on many occasions, both before the Congress and in public speeches, the Commission desperately needs the strongest possible enforcement powers. I urge the Committee, however, to carefully consider the proposal embodied in S. 2514 to transfer the Office of Federal Contract Compliance to the EEOC. Given the tremendous backlog of cases which I already mentioned, the additional work that would be required of the Commission when it gets the enforcement provisions, the difficulty the Commission has had in obtaining adequate funding, and the myriad of administrative difficulties embodied in such a transfer, I do not feel that it is desirable or practical to transfer the OFCC functions at this time.

Under the proposal in S. 2515, the EEOC would be assuming the dual role of, on the one hand, the regulatory function of processing complaints of employment discrimination and, on the other hand, of contract compliance enforcement. In my estimate, these two functions are not as compatible as a first glance may indicate. I think, for example, that the rules and regulations which the Commission adopts with regard to the cease and desist enforcement functions of Title VII would not be appropriate for enforcement of the type of functions currently under OFCC operations. Accordingly, I feel the EEOC would thereby be forced to operate under two separate and distinct sets of standards and procedural authorities.

Further, as a direct result of this dichotomy, I can foresee serious problems arising as regards to investigations, remedies, and open conflicts with provisions of Title VII. The transfer of OFCC is not the same as setting up separate bureaus within an administrative agency, like say, for example, in the FCC which maintains separate bureaus and separate provisions to regulate two major different segments of the communications industry—common carriers and broadcasters. While the FCC can maintain, in one agency, two separate and distinct bureaus for regulating the respective segments of the industry, the same ease of operation is not available to the EEOC under the proposed transfer. While broadcasters and common carriers represent totally different companies with different interests and separate legal entities, the companies subject to OFCC regulations are the same companies subject to Title VII jurisdiction.

I can envision numerous conflicts in cases where the same company becomes subject to differing procedures from the same agency. For example, while an individual may sue under Title VII to have an individual grievance redressed, under the provisions of the executive order the proper remedy is contract debarment, not individual redress. Also, the differences between the two remedies will probably necessitate different burdens of proof and differing emphasis on particular kinds of violations. I can readily foresee a situation where EEOC officials responsible for the debarment procedure determine that a contractor is in compliance and those responsible for Title VII investigation that a violation exists.

Similarly, conflicts exist in the area of determining when an investigation in a particular company may be commenced. Under Title VII, the EEOC can initiate an investigation only after a filing of a charge of discrimination, and the company is entitled to judicial review whenever they feel that the investigation is unwarranted. Under the executive order provisions, contract reviews can be conducted at will and are not subject to judicial review.

I could cite the Committee many more examples of conflicts which are bound to arise under the transfer, but I do not want to take the Committee's valuable time to list all of them now. I would like to add, however, that the transfer of OFCC to the Commission will not improve coordination in the administration of Title VII as has been urged. It is my belief that the reverse would probably occur. The very nature of contract compliance and use of the government procurement power is particularly well-suited to the operations of the Department of Labor's manpower programs. This interrelationship between contract compliance and government manpower programs is a particular field of expertise in which the Department has become proficient and for which it has developed the necessary technical procedures. Were the EEOC to be made responsible for enforcing contract compliance, it would be dependent upon the Department's decisions and procedures, and would probably be forced to use Department computer facilities to administer the program.

TRANSFER OF SECTION 707 POWERS OF THE ACT

Section 5 of S. 2515 would transfer the functions of the Attorney General to bring pattern or practice suits under Section 707 of Title VII to the EEOC. I feel that such a transfer would not, at this time, be in the best interests of the Commission and would not promote the most effective administration of Title VII. I defer to the Justice Department to provide the Committee with specific details on the operations of the Department and further explanation of the benefits of the program as currently administered.

I would like to suggest, however, that should the Committee determine that the transfer is necessary, the transfer of the 707 functions should not be made subject to the Commission's administrative remedies as proposed. In S. 2515, as presently written, the power of the Attorney General to bring pattern or practice suits, once transferred, becomes subject to the administrative remedies proposed in Section 4 of the bill. This, in effect, minimizes the effectiveness of pattern or practice suits since they would become no different than any other complaint submitted to the Commission. The effectiveness of pattern or practice litigation is the result of the ability of the Justice Department to bring these large, far-reaching, and often very complex suits directly in the courts. The importance of these suits has largely been the decisions which have resulted and which have set the precedents for subsequent lesser Title VII actions. To nullify this powerful and effective means whereby the courts can interpret and clarify the provisions of Title VII, while at the same time establishing new judicial precedents applicable to other courts and administrative agencies alike, would not, in my judgment, serve to promote the most effective administration of equal employment.

EXPANSION OF TITLE VII JURISDICTION TO INCLUDE SMALL EMPLOYERS

The expansion of the reach of Title VII to include employers with 8 to 24 employees would indeed be an asset to the existing law. Discrimination should be attacked wherever it exists, and small establishments have frequently been the most flagrant violators.

However, since any expansion of Commission operations into new areas raises administrative and procedural problems due to the increased paper work and caseload, I would again like to suggest a gradual expansion of the jurisdiction to allow the Commission to make the necessary adjustments with a minimum of interference to existing enforcement provisions and data compilation. I would like to suggest the same schedule which I proposed to this Committee in my testimony last year on S. 2453. That schedule was as follows:

First Year: Employers of 20 or more persons.

Second Year: Employers of 16 or more persons.

Third Year: Employers of 13 or more persons.

Fourth Year: Employers of 10 or more persons.

Fifth Year: Employers of 8 or more persons.

With this schedule, I feel that the Commission would be able to absorb the jurisdictional expansion, provided, of course, that the corresponding additional staff and monetary resources are also made available, while preserving organizational stability and procedural integrity.

EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

The single largest group of employees in the nation are those employees who are employed by State, county and local governments. The latest statistics indicate that there are approximately 10.1 million such employees, and yet this represents the only large group of employers in the nation whose racial employment practices are almost entirely exempt from any non-discrimination requirements, except the general prohibition contained in the Fourteenth Amendment which, as I'm sure the Committee is well aware, prohibits discrimination by State and local authority. Yet Title VII presently exempts State and local employees from its coverage and thereby, paradoxically, withholds a Federal protection from these employees to whom the government owes a constitutional obligation, while granting it to employees in the private sector, to whom there is no comparable constitutional duty. It seems to me that this unreasonable action should not be allowed to continue. Accordingly, I strongly urge the Committee to adopt the provision of S. 2515 which extends the coverage of Title VII to this class of employees.

Discrimination in State and local employment is as blatant and as widespread as in any section of private business. In a report released in 1969, *For All the People . . . By All the People*, the U.S. Commission on Civil Rights examined the employment policies of State and local government agencies and concluded that:

"The basic finding of this report is 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."

This failure of State and local agencies to accord equal employment to their employees is particularly distressing in light of the importance that these agencies play in the daily lives of the local communities. From local law enforcement to social services, each citizen in a community comes in constant contact with many local agencies. The importance of equal rights 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 service. The exclusion of minorities from effective participation in the bureaucracy not only promotes ignorance of minority problems in that particular community or political subdivision, but also creates mistrust, alienation, and occasionally hostility toward the entire process of government.

The Fourteenth Amendment not only promised, but guaranteed equal treatment to all citizens of States and their political subdivisions. Unfortunately, too often the last sentence of that Amendment, enabling Congress to enforce the article's guarantees "by appropriate legislation," is overlooked and the plain meaning of the Constitution allowed to lapse. We now have before us the "appropriate legislation," and any further delay in insuring adequate protection for this vital area of employment should be avoided.

The EEOC and its enabling legislation in Title VII provide the existing machinery for realization of the guarantees of the Fourteenth Amendment. This mechanism will become even more significant with the enactment of the requisite enforcement powers so that the defect of Title VII is cured. I would add, however, that the necessary funding and personnel must also be granted to make the administration of this provision effective.

FEDERAL EMPLOYEES

Equal job opportunity in the Federal Service is of the highest importance under our system of participatory government. The Federal Government, as the most powerful and most extensive bureaucracy in the nation, has an affirmative obligation to keep its "own house in order" while requiring the same degree of compliance with national objectives from other sectors.

Presently the equal employment responsibility of the Federal Service is located in the Civil Service Commission under the provisions of Executive Orders 11246, issued in 1965, and 11478, issued in 1969. These two orders have established comprehensive coverage of equal employment in every area of the government. The policy, as stated in Section 2 of Order 11478, clearly provides for a continuing emphasis on equal employment in all areas of government service:

"The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so that they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affects employability and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out."

Although I will defer explanation of the specific programs that are administered by the Civil Service Commission to carry out the provisions of the aforementioned section to officials of that Commission, I can see no benefit deriving from a transfer of those functions to the EEOC at this time. Particularly in light of the many other administrative burdens that will be placed on the EEOC by S. 2515, I feel that the transfer would unnecessarily overburden these administrative functions which the EEOC will have to assume. It would, in effect, only transfer the responsibility from one administrative agency to another.

INDIVIDUAL RIGHT TO SUE

Before closing I would like to comment on a very important provision of S. 2515. I am, of course, referring to the private right of action which has been retained in the bill. Individual initiative, though costly and not the preferable form of enforcement, has historically furnished the major impetus for progress in the field of civil rights. It is, in the same manner, indispensable as a complementary tool in building an effective body of Title VII Law.

This is as true in the area of equal employment as it has been in the areas of school and housing desegregation.

Similarly, access to the judiciary should not be reduced to a *parens patriae* type of right, assertable only by the government acting on behalf on an aggrieved individual. Every individual deserves his day in court whether an administrative agency thinks his cause is just or not. Particularly in the area of a violation involving and in any manner they can. The Congress, which has set the national goal of equal employment should not place itself in a position where it begins to restrict the means that an individual has at his disposal to gain satisfaction of a violation of his civil rights.

I would again like to urge the Committee, as I have done here and in the House of Representatives on other occasions, to remedy the defects of Title VII as soon as possible, and to grant the EEOC the most effective enforcement powers possible so that the promises made in 1964 can become realities in 1971.

I wish to thank the Committee for its time in allowing me to present my views on this vital subject. I will be willing to answer any questions that the Committee may have.

Mr. SAXBE. The Office of Federal Contract Compliance, under the direction of the Secretary of Labor, has made important progress in the development of a self-propelled, result-oriented equal employment opportunity program.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. SAXBE. I yield myself 1 minute.

It would be a tragedy to interrupt this progress by transferring this program to an agency unprepared to continue it. The EEOC will have its hands full setting up its new procedures to handle its newly granted cease and desist powers.

I, therefore, urge that the amendment be adopted so that Senate bill 2515 will truly advance the cause of civil rights.

I have, I believe, pointed out the basic reasons why EEOC does not want this transfer. Primarily—and this is supported by a number of civil rights leaders—that agency believes that progress has been made under the present contract compliance, and that this progress will be interrupted if the transfer is made.

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

Who yields time?

Mr. SAXBE. Mr. President, I suggest the absence of a quorum, the time for the quorum call to be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, will the Senator withhold that request so I can have a minute's time?

The PRESIDING OFFICER. A quorum call is in progress.

Mr. SAXBE. Is the Senator opposed to or for the amendment?

Mr. JAVITS. I will get time from the Senator from New Jersey.

The rollcall was resumed.

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, will the Senator from New Jersey yield me 2 minutes?

Mr. WILLIAMS. Certainly.

Mr. JAVITS. Mr. President, I have expressed grave reservations about the transfer, and I am now in the process of coming to a determination as to what to do about this very vexing matter. In the meantime, in order to help Senators who may be similarly troubled by the deficiencies as well as the attractions of the proposed transfer, I would like to submit for the RECORD, and ask unanimous consent to have included in the RECORD, a letter addressed to me, which I think Members of the Senate should have, and both the manager of the bill and the proponent of the amendment, from the Secretary of Labor in which he wishes us to believe that his recent action to shift Richard Grunewald to the position of Assistant Secretary for Employment Standards was a calculated move to really shake up the OFCC and to see to it that its management be made more aggressive than it has been, which implies that whatever other shifts are necessary in personnel will be made in order to give it backbone, and is undertaken by the Secretary to have that effect.

For whatever effect it may have, I believe each Member of the Senate should have that letter available to him, and I have asked unanimous consent that it be printed in the RECORD as a part of my remarks.

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

U.S. DEPARTMENT OF LABOR,
Washington, D.C., January 25, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: The Senate this week resumed its consideration of S. 2515, the Equal Employment Opportunity Act. I am taking this opportunity to register my strong support for Senator Saxbe's amendment which deletes that language in Section 10

of the Bill transferring the Office of Federal Contract Compliance from the Department of Labor to the EEOC. I firmly believe that the transfer of the Office of Federal Contract Compliance would be a major setback to equal employment opportunity efforts.

I urge you to consider very carefully the impact which the passage of Section 10 of S. 2515 would have upon the thousands of men and women in our nation who benefit from affirmative action programs designed to remedy discrimination in employment.

Last October 4, Under Secretary Laurence Silberman stated before the Subcommittee on Labor, "I firmly believe that the contract compliance program is, at long last, well on the road. We all recognize, however, that much remains to be done before the goal of equal employment opportunity is achieved. The program is clearly capable of improvement, and the Department of Labor will continue to strive to improve the quality and magnitude of our efforts."

We know full well that a successful OFCC compliance program requires aggressive and imaginative leadership. My recent action to shift Richard Grunewald to the position of Assistant Secretary for Employment Standards was a calculated move to assure that sound management principles be applied to the operation of the Office of Federal Contract Compliance.

Grunewald's years of experience in management, along with his personal record in Urban Affairs designed to better the living and working conditions of minority citizens constitute the necessary background for "getting the job done" in the compliance field.

I am confident that he and a competent and aggressive OFCC management team will build on the improving record of compliance efforts initiated by this department.

Sincerely,

J. D. HODGSON,
Secretary of Labor.

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

Mr. JAVITS. I yield.

Mr. WILLIAMS. Will that be his only assignment?

Mr. JAVITS. No; he has other assignments. If the Senator will be kind enough to read the letter, he will see that he makes some pretty strong promises on what he proposes to do.

I yield back my time.

Mr. SAXBE. Mr. President, I suggest the absence of a quorum, the time to be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. SAXBE. 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. SAXBE. Mr. President, I yield to the Senator from New York such time as he may require.

Mr. JAVITS. Just 1 minute.

Mr. President, again to help Senators decide how they vote, I intend—because of the parliamentary situation I cannot do it now—if the Saxbe amendment is acted on and it should succeed, to propose an amendment to establish an Equal Opportunity Coordination Council to be composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunities Commission, the Attorney General, and the Chairman of the U.S. Civil Service Commission.

I hope that that will result in meeting what seems to be the main complaint, that is, that it will coordinate the activities of the various bodies concerned, and I shall offer it for that purpose. For the information of Senators, the amendment will be at the desk.

I thank my colleague.

Mr. SAXBE. Mr. President, I suggest the absence of a quorum, the time to be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. SAXBE. 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. SAXBE. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. SAXBE. I yield to the Senator from Illinois.

Mr. PERCY. Mr. President, I rise in support of the amendment offered by Senator SAXBE to delete section 10 from S. 2515, because of my enduring commitment to the cause of civil rights.

Section 10 would cut the equal employment program for Government contractors by transferring the Secretary of Labor's responsibilities under Executive Order 11246 to the Equal Employment Opportunity Commission.

Administration of the Executive order program by the Department of Labor facilitates coordination with other complementary programs which are vitally important to the success of the Executive order.

The availability of manpower training assistance has been critical to the accomplishments of the Executive order program, particularly as regards the construction industry. Very often an employer will not be in a position to undertake a necessary "affirmative action" program to insure equal employment opportunity unless there exists an adequate pool of trained applicants. Close coordination between Federal manpower and equal employment opportunity programs by government contractors is essential. Both of these programs are now centered in the Department of Labor.

During the past 2 years, the resources of the Manpower Administration have been focused with increasing effectiveness in assisting equal employment opportunity programs involving government contractors. At the direction of the Secretary of Labor, the Manpower Administration and the Office of Federal Contract Compliance—the agency within the Department of Labor to which the Secretary has delegated his responsibilities under the Executive order—have been working closely together so that their activities and special expertise will complement one another in the development of meaningful affirmative action programs. The coexistence of the OFCC and the Manpower Administration—including the U.S. Training and Employment service and the Office of National Projects—within the Labor Department makes program coordination and direction more efficient and responsive. To split the equal employment opportunity program from the Manpower Administration would impair coordination and imperil a program whose value is inestimable.

The Executive order program has also drawn upon the expertise of the Labor-Management Services Administration within the Department of Labor. This expertise—and the unique understanding of the Department of Labor as to questions that arise in the context of labor-management laws and collective bargaining agreements—has contributed significantly to the solution of some of the difficult problems of bringing together employers, unions, and representatives of the minority community in a common effort.

Other programs within the Department of Labor also impinge on those of the OFCC and it is important to the success of its mission that the OFCC's program remain in close proximity to them. For example, the OFCC deals primarily with inspection and enforcement of workplace standards. Thus, the OFCC program is similar to such other workplace standards programs administered by the Labor Department as minimum wage, maximum hours, safety and health, age and equal pay programs. Of course, all these labor standards programs are intimately connected with labor relations because of their effect on both labor and management as well as on collective bargaining contracts.

I urge, therefore, that the amendment of my esteemed colleague from the State of Ohio be adopted. Due to the coordination of these multifaceted and related programs within the Department of Labor, significant progress has been made in the employment of minorities and women. It would be a grievous setback to the equal employment opportunity program for Government contractors if the Office of Federal Contract Compliance were to be served from these other programs which are vital to its success.

Mr. President, I ask unanimous consent to have printed in the RECORD a brief summation of the important reasons for retaining the OFCC in the Department of Labor and a discussion of the major achievements of that office.

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

SUMMARY ON RETAINING OFCC IN THE DEPARTMENT OF LABOR

THE OFCC CONTRACT COMPLIANCE PROGRAM IS UNPARALLELED IN THE EQUAL EMPLOYMENT OPPORTUNITIES FIELD

A. The need for affirmative action was first recognized by then Vice President Nixon in 1960 as Chairman of the President's Committee on Government Contracts who observed that "overt discrimination" was not the principal obstacle to achieving equal employment opportunity for today's generation of citizens.

The affirmative action concept was adopted by President John F. Kennedy in 1961 (E. O. 10925) and has since been reaffirmed by Presidents Johnson (E. O. 11246) and Nixon (41 C.F.R. 60–2, etc.).

B. The OFCC's affirmative action programs require that 260,000 government contractors

in all industries adopt positive programs to seek out minorities and women for new employment opportunities.

The OFCC has utilized the proven technique of establishing "goals and timetables" to ensure the success of the Executive Order program.

The "goals and timetables" approach, which is unique to the OFCC's efforts in EEO, coupled with extensive reporting and monitoring procedures has given the promise of EEO a new credibility.

C. Affirmative action means that all Government contractors must develop programs to ensure that all share equally in the jobs generated by the Federal Government's spending. Proof of overt discrimination is not required. The success of the OFCC's affirmative action program requirement is evident among the nation's leading industries.

As a result of OFCC requirements for the construction industry, 46 voluntary and imposed plans have been created to bring more than 30,000 minority workers into the skilled construction trades.

Special efforts in the textile industry resulted in an increase of minority employment rate from 12.8 percent in 1968 to 18.4 percent of the total 1971.

In education, 101 monitored universities had established a goal of 10,784 new hires for minorities and women and actually hired 17,889.

The 2,400 largest banks covered by the Executive Order increased minority employment from 8 percent in 1966 to 14 percent in 1970.

THE OFCC MISSION TO INSURE EQUAL EMPLOYMENT OPPORTUNITY CAN BE ADEQUATELY PERFORMED ONLY WITHIN THE EXECUTIVE BRANCH—AND WITHIN THAT BRANCH, THE DEPARTMENT OF LABOR IS CLEARLY THE MOST APPROPRIATE AGENCY TO FURTHER THAT MISSION

A. To be effective the contract compliance program must be an integral part of the procurement process. The process of procuring goods and services is peculiarly a function of the Executive Branch.

B. Equal employment opportunity is a workplace standard—the Department of Labor is the Government's expert administrator of workplace standards.

Occupational training programs are the keys to successful employment and the Department's Manpower Administration plays a critical role in the implementation of the Executive Order program.

The Department has been a leader in developing programs designed to assist women in the workforce—witness the Department's vigorous enforcement of the Equal Pay Act and the functioning of the Women's Bureau within the Department. Cooperation between OFCC and the Women's Bureau was an essential aspect of OFCC's recent order to contractors requiring development of goals for new hire and upgrading opportunities for women.

Cabinet level direction by the Secretary of Labor has achieved the vital program coordination necessary to program success.

The OFCC is funded and staffed through the Department of Labor and may draw upon the full range of staff and resources of a cabinet agency.

THE PROPOSED TRANSFER OF FUNCTIONS UNDER EXECUTIVE ORDER 11246 FROM THE OFCC TO THE EEOC WOULD JEOPARDIZE THE CONTRACT COMPLIANCE PROGRAM

A. The EEOC is ill-equipped to assume the responsibilities for the implementation of the Executive Order program. Chairman Brown of the EEOC has stated that the assumption of Executive Order responsibilities by the EEOC is administratively impracticable.[1] He has given four reasons:

1. An ever increasing number of cases pending before the EEOC which has already resulted in a two-year backlog.

2. The incompatibility of agency functions: EEOC is a regulatory agency under Title VII—OFCC is a procurement program manager under the Executive Order.

3. New and different responsibilities would disrupt coordination in Title VII and its administration would suffer, and perhaps most importantly there might be serious problems of conflict in both the area of remedies and the area of investigation.

4. There is a great potential conflict in the assumption by EEOC of the Executive Order program responsibility. Chairman Brown described a situation where no violation of Title VII might be found but where a violation of the contract compliance standards would be evident.

B. The affirmative action concept as innovatively and successfully employed by the OFCC has been challenged as a violation of Title VII—the courts have responded by stating that the Executive Order program is independent of Title VII and not subject to some of its more restrictive provisions.

The proposed bill would place the entire Executive Order program under Title VII and might well result in renewed challenges to the many important programs established thereunder—e.g., the "Philadelphia Plan."

C. The proposed bill would endanger the survival of the contract compliance program by making its resources dependent upon the EEOC—an independent, hybrid agency with limited manpower and economic resources.

* * * * *

OFCC HAS ADMINISTERED A RESULT-ORIENTED, HIGHLY PROGRESSIVE AND SUCCESSFUL PROGRAM

A. Chronology of Recent Major Administrative and Management Achievements

1. The Philadelphia Plan imposed on September 22, 1969, and followed by imposed plans in Washington, Atlanta, San Francisco, and St. Louis, set forth definite affirmative action standards for construction.

2. Compliance responsibility for individual contractors revised on October 24, 1969. Compliance responsibility divided among 15 agencies on the basis of standard industrial classification codes.

3. Order No. 4, first promulgated on February 5, 1970, defined in specific terms the affirmative action obligations of non-construction contractors.

4. Minimum standards for voluntary area-wide construction plans were issued on February 9, 1970, and have been implemented in approximately 40 cities throughout the country by the development of "hometown" plans in those areas.

5. Sex discrimination guidelines issued on June 2, 1970.

6. A policy statement on religious and national origin discrimination issued on May 20, 1971.

7. On June 7, 1971, precise standards for the conduct of construction compliance review were sent to the agencies.

8. A new testing order was issued on October 2, 1971.

9. Order No. 4 was substantially revised on December 1, 1971, to provide, *inter alia,* for the development of affirmative action programs to deal specifically with the problem of sex discrimination.

10. Specific religious and national origin guidelines published in the Federal Register on December 29, 1971.

11. Bid Conditions incorporating "hometown" solutions to minority underutilization in construtcion crafts continue to be issued. In excess of twenty sets of Bid Conditions have been issued.

12. New reporting procedures for agencies and contractors are now being devised to facilitate program management.

13. OFCC has developed a program budget system which unifies the entire contract compliance program for budgetary purposes. OFCC reviews the agencies' budget estimates in light of anticipated requirements and projected workloads, and recommends budget levels for each agency. It then works closely with OMB throughout the budget cycle.

14. A target selection system under which nationwide minority employment and promotional opportunities are estimated for purposes of scheduling enforcement activity, projecting agency workloads, and evaluating program efforts has been implemented by OFCC.

15. Agencies are now required to report their compliance activities, including the number of reviews made, affirmative action programs accepted, and show cause notices issued, to OFCC on a quarterly basis.

16. Systems for reporting minority manhours worked on construction sites covered by imposed and voluntary plans have been devised and recently issued.

17. Final Draft of Compliance Officer's Manual in clearance—printing arrangements underway.

18. Target city selection program to assist contracting agencies to direct their resources toward areas with special problems (or where large numbers of achievable opportunities exist for members, minority groups and women) has been developed and is already unway.

19. OFCC is cooperating with the Manpower Administration in a National Planning Association study to develop a system for projecting employment, and upgrading opportunities generated by Government contracts.

B. OFCC's Progress in Administering the Executive Order is Apparent from the Following Data which also Highlights the Direct Correlation between Compliance Activity and the Funding Provided for the Contract Compliance Program.

	Compliance reviews conducted	Budget
Fiscal Year:		
1969	7,000	$10,600
1970	8,000	11,600
1971	31,265	16,045
1972	44,203	24,226

During FY '71, the 31,265 compliance reviews conducted included on-site reviews of contractors with a total employment of over 14 million persons. These contractors have committed themselves to goals for approximately 280,000 minority hires and promotions.

If, as a result of an on-site compliance review, a contractor's affirmative action program is found to be unacceptable, a notice to show why sanctions should not be instituted is issued. The following table sets forth the number of show cause notices issued by each compliance agency through September 1971, and indicates how many notices were issued against construction contractors.

Agency	Total	Construction
Department of Defense	109	13
Department of Commerce	2	0
Veterans' Administration	0	0
Small Business Administration	8	8
Department of Health, Education, and Welfare	120	97
Postal Service	0	0
Department of Interior	1	0
Agency for International Development	1	1
Department of Agriculture	21	0
General Services Administration	90	43
Environmental Protection Agency	0	0
Atomic Energy Commission	7	0
Department of Housing and Urban Development	253	253
Department of Transportation	33	29
Treasury Department	0	0
National Aeronautics and Space Administration	4	4
Total	649	448

[1] Testimony of William A. Brown III, Chairman, EEOC, before the Senate Labor Subcommittee, October 4, 1971.

The import of these figures becomes clear when one considers that from the inception of the Executive Order Program thru August 1970, only 15 contractors had been sent thirty-day notices to show cause why sanctions should not be imposed.

C. There Has Been an Increased Readiness on the Part of the Agencies to Resort to Formal Proceedings as a Means of Assuring Compliance Although Most Contractors in Receipt of a Show Cause Notice Choose to Come into Compliance.

1. The Matter of Edgely Air Products, Inc., HEW Dkt. No. CC–71, resulted in a decision by the Secretary of HEW holding that the contractor had failed to make good faith efforts to meet its goal under the Philadelphia Plan and terminating the contract in question and debarring the contractor from the award of future Federal contracts and subcontracts.

2. The Matter of ARO, Inc., OFCC Dkt. No. 71–100, resulted in a decision by the Secretary of Labor ordering the adoption of a specific seniority remedy.

3. Two contractors performing on construction contracts in the Philadelphia area have been served with formal notices of HUD's intent to terminate their contracts and debar them from future contract awards on October 15, 1971; they were afforded ten days in which to request a formal hearing. The two contractors involved are Randeb, Inc., and Russell Associates, both identified as "persistent violators" of the Philadelphia Plan. Randeb defaulted in appearing at the hearing which it requested and formal hearings are scheduled to begin in late January regarding the compliance of Russell Associates.

4. Additionally, the Director OFCC has assumed jurisdiction in two cases involving possible violations of the Executive Order; in one case involving an air carrier, a compliance review was begun on January 3, 1972. The other matter is currently being investigated.

5. Investigations are also being conducted by the OFCC in several cases arising under the Philadelphia and Washington Plans, Order No. 4 and the Executive Order Program generally. The contractors involved include a major steel fabricator, an elevator constructor and contractors in both the railroad and airline industries.

D. These Activities on the Part of OFCC and the Contracting Agencies Complement the Important Preaward Program for Obtaining Compliance

1. The compliance postures of prospective contractors are evaluated prior to award and a determination made whether they are capable of complying with the Executive Order. A prospective contractor having an inadequate affirmative action program is categorically unable to comply and is in danger of being declared nonresponsible under Order No. 4. OFCC's use of the preaward mechanism, apart from the use of this devise by the agencies, has resulted in the temporary suspension of many billion of dollars in contract awards pending the submission of acceptable affirmative action program and a large number of the most far-reaching commitments for compliance have been obtained in this fashion.

2. No fewer than thirty-six preaward notices have been issued by OFCC against firms with poor compliance postures.

E. Preaward and Post-Award Conciliation Efforts on the Part of OFCC and the Contracting Agencies Backed by the Awesome Contract Suspension, Termination and Debarment Powers, Have Been Successful in obtaining Full Compliance with the Executive Order.

The following cases in which OFCC was the moving party are illustrative of those dealt with in the contract compliance program.

1. Intergration of company-owned housing (3 cases).

2. Elimination of discriminatory seniority systems to allow competition for promotion, layoff and recall by minority employees on the basis of their full company seniority (12 cases).

3. Elimination of discriminatory qualification criteria, such as tests, education and experience requirements (8 cases).

4. Elimination of direct recruitment, hiring or promotional discrimination (11 cases).

F. In Cases Based Upon a Failure to Take Affirmative Action Rather than a Finding of Discrimination, OFCC Required the Establishment of Goals and Timetables for All Job Classifications Which Resulted in a Sharp Increase in Minority Employment Opportunities

1. OFCC completed negotiations with a large aircraft manufacturer in January 1971. Since that time, the contractor has employed 2,396 new employees, of whom 636 were minority group members. This 26.5 percent minority hiring rate exceeded the goals and timetables established during negotiations.

2. A prominent brewing company, maintaining eight facilities across the country, committed itself to goals requiring a 35 percent minority hiring rate following conciliation with OFCC on February 11, 1971. These goals are being met by all facilities, and the contractor is ahead of his timetable for their achievement.

3. A multi-purpose corporation entered into a national agreement with OFCC covering over 200 separate facilities. During the year ending October 1, 1971, the ratio of minority to total hires at virtually all establishments is equivalent to the percentage of minorities in the population within commuting distance of each facility.

4. After committing itself to an affirmative action program containing goals and timetables, a large shipbuilder increased its minority employment from 11.8 percent to 17.7 percent over a 2.5 year period. A large percentage of this growth occurred in white collar jobs: The employment of black males in white collar jobs rose from 3.2 to 6.1 percent, while the employment of black females in these jobs rose to 15.4 from 5.3 percent.

G. These Examples of Large Cases, Processed to a Successful Conclusion with OFCC's Assistance, Do Not Represent OFCC's Total Effort Let Along the Routine, But More Important Activities of the Compliance Agencies.

The Defense Department's Los Angeles Region recently completed reviews of 279 contractors who had submitted affirmative action plans during 1970. All of these 279 contractors were meeting their goals and timetables. Since January 1, 1971, they have employed a total of 26,131 persons, of whom 6,049 were minority group members (2,401 blacks, 3,034 Spanish-Americans, and 614 orientals).

H. The Continued Success of this Program is assured by the Augmentation of OFCC's Capabilities by OMB.

1. OFCC will have a staff of 119 in FY '72, as compared to 26 in FY '69, about a 500 percent increase.

2. It will develop a capability of handling over 400 conciliations and 25 hearings per year itself.

3. It will be amply equipped to monitor effectively the programs of the compliance agencies, and its Operations Office will provide close communication with, and technical assistance to, the compliance agencies.

4. In FY '72, the total compliance program will involve 1,504 individuals and a projected expenditure of $24,000,000—a dramatic increase of more than 200 percent over the 643 individuals and $9,766,000 committed to the program in FY '70.

5. The 1971–72 compliance program has set targets of 580,000 new minority hires and promotions by Government contractors and subcontractors.

6. The reorganization recently effected within the Department of Labor will have a direct and beneficial impact upon the OFCC in its administration of the Executive Program.

THE PURPOSE AND EFFECT OF THE OFCC'S PROGRAM HAS BEEN TO PROMOTE CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITIES

The purpose and effect of the OFCC's program has been to promote civil rights and equal employment opportunities. Because of the many successes which the OFCC has had in the implementation of the Executive Order Program, it is apparent that the transfer of its functions and responsibilities to the EEOC would be detrimental to the cause of civil rights.

From an administrative, management and legal standpoint, persons concerned with the cause of civil rights should show great pause and reluctance in voting for the proposed Section 715, of S. 2515 and its contemplated transfer of OFCC functions to the EEOC. Even one of the strongest advocates of civil rights, Congresswomen Shirley Chisholm, has stated:

"We must recognize this move to put the functions of OFCC under EEOC for what it is: a building trades amendment which was generated by their outrage over the Philadelphia Plan." *National Journal*, November 13, 1971, at 2251.

The PRESIDING OFFICER (Mr. BROCK). All time has now expired.

The question is on agreeing to the amendment of the Senator from Ohio (Mr. SAXBE).

On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CHILES (after having voted in the affirmative). On this vote I have a pair with the distinguished Senator from Minnesota (Mr. HUMPHREY). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Washington (Mr. JACKSON), the Senator from Washington (Mr. MAGNUSON), the Senator from Illinois (Mr. STEVENSON), the Senator from Rhode Island (Mr. PELL), the Senator from Rhode Island (Mr. PASTORE), the Senator from Maine (Mr. MUSKIE), and the Senator from Minnesota (Mr. HUMPHREY) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from Washington (Mr. JACKSON), the Senator from Illinois (Mr. STEVENSON), and the Senator from Washington (Mr. MAGNUSON) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY) is absent on official business.

The Senator from Arizona (Mr. GOLDWATER) is absent by leave of the Senate.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senators from Colorado (Mr. ALLOTT and Mr. DOMINICK) necessarily absent.

The result was announced—yeas 49, nays 37, as follows:

[No. 12 Leg.]

YEAS—49

Aiken	Fong	Randolph
Allen	Fulbright	Roth
Anderson	Gambrell	Saxbe
Baker	Griffin	Schweiker
Beall	Gurney	Scott
Bellmon	Hansen	Smith
Bennett	Hatfield	Sparkman
Boggs	Hollings	Stafford
Byrd, Va.	Hruska	Stennis
Byrd, W. Va.	Javits	Taft
Cooper	Jordan, Idaho	Talmadge
Cotton	Long	Thurmond
Cranston	Mathias	Tower
Curtis	McClellan	Weicker
Dole	Packwood	Young
Ellender	Pearson	
Fannin	Percy	

NAYS—37

Bayh	Harris	Mondale
Bentsen	Hart	Montoya
Bible	Hartke	Moss
Brock	Hughes	Nelson
Brooke	Inouye	Proxmire
Burdick	Jordan, N.C.	Ribicoff
Case	Kennedy	Spong
Church	Mansfield	Stevens
Cook	McGee	Symington
Eagleton	McGovern	Tunney
Eastland	McIntyre	Williams
Ervin	Metcalf	
Gravel	Miller	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Chiles, for.

NOT VOTING—13

Allott	Humphrey	Pastore
Buckley	Jackson	Pell
Cannon	Magnuson	Stevenson
Dominick	Mundt	
Goldwater	Muskie	

So Mr. SAXBE's amendment was agreed to.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, January 26, 1972, he presented to the President of the United States the following enrolled bills:

S. 382. An act to promote fair practices in the conduct of election campaigns for Federal political offices, and for other purposes; and

S. 2819. An act to amend the Foreign Assistance Act of 1961, and for other purposes.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT 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 an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk proceeded to state the amendment.

Mr. JAVITS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with. I will explain the amendment, and I would appreciate it if the clerk would return the amendment to me.

The PRESIDING OFFICER (Mr. SAXBE). Without objection, it is so ordered. The amendment will be printed in the RECORD.

The amendment reads as follows:

On page 61, after line 23 add the following:

SEC. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this paragraph as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, and the Attorney General, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

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

The PRESIDING OFFICER. The time is not under control unless the Senator wants to make an agreement for control.

Mr. JAVITS. I shall only take a few minutes. I do not think it is necessary for a control of time.

Mr. President, this amendment proposes to establish an Equal Employment Opportunity Coordinating Council composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General of the United States, and the Chairman of the U.S. Civil Service Commission, or their respective delegates. The Council will have the responsibility of developing and implementing agreements, policies, and practices designed to maximize the efficiency and effectiveness of the whole equal employment opportunity program of the Federal Government, including, of course, the program covering Federal contractors under Executive Order 11246.

On or before July 1 of each year, the Council is required to report to the President and to the Congress.

Mr. President, when we were debating the amendment which was just agreed to, I said that I would submit an amendment. It seemed to me to be a balance of equity. I voted for the Saxbe amendment without any particular joy in my heart. I know how deeply how many people, including the civil rights organizations, felt about the transfer of OFCC, and I am all for the bill, as is well known. However, on this particular situation, I felt that the backlog was such that in decency to my own argument that cease and desist was necessary to break the backlog, I should not add to it. This is a totally new responsibility and would add to it. Therefore, as we can make this transfer at any time, I felt that in sustaining that point of view and in sustaining my own feeling——

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

The PRESIDING OFFICER. The Senate will be in order.

Mr. JAVITS. Therefore, since we can make this transfer at any time, I felt that in sustaining that point of view and in sustaining my own feelings about the so-called Philadelphia plan, for which I fought and bled successfully on this floor, I felt consistently that we had to leave this particular office at this time where it was. But it was a legitimate point made by Father Hesburgh in the testimony and report which the Senator from New Jersey (Mr. WILLIAMS) so very properly called to our attention, that there is an inadequacy of coordination between this effort and the efforts of the Equal Employment Opportunity Commission. And in view of the fact that the Chairman of the Civil Rights Commission himself made this point, I thought that the best way to handle it if the amendment succeeded, as it has, was to create some kind of high-level agency, not in a money sense or an institutional sense but as a body to ride herd on this particular proposition.

So I announced during the debate on the amendment of the Senator from Ohio (Mr. SAXBE) that I would make this proposal. I hope very much that under the circumstances of the amendment having been adopted it will be found acceptable to both sides. I do not feel that it is an oppositional thing at all; I think it will help both sides to deal with the situation.

Finally, all of us are, I think, agreed on the question whether the administration of this particular office by the Department of Labor has left very much to be desired. The Secretary of Labor himself recognizes that. I read into the Record the letter which he wrote to me, in which he proposes really to shake up this whole office. I think that may have been a matter of influence in respect of how Senators voted. I believe that the office of a high-level council, accountable to the country, will give us a greater sense of assurance that the deficiencies which the office has admittedly had may be more likely to be corrected by the composition of the council, because of the equal voice of the Secretary of Labor, in whose office it now is, as well as of the coordinating functions of the Chairman of the Equal Employment Opportunity Commission and the corrective functions of the Attorney General and of the Chairman of the U.S. Civil Rights Commission, who did recommend the transfer.

For all these reasons, I hope very much that the amendment, in view of the adoption of the previous amendment, will be adopted with the consent of both sides; I yield the floor.

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

Mr. JAVITS. I yield.

Mr RANDOLPH. As I understand, the able Senator from New York is saying, in essence, that in no wise would this be a competitive approach; it would be an approach of coordination, with certain functions allotted to the several agencies mentioned.

Mr. JAVITS. I would take the first statement completely—that it is in no wise a competitive approach; it is a question of coordination. It is not even an allotment of functions. The functions will stay with the office in the Department of Labor. But at least we will have

the security of knowing, first, that it is effectively tied into the Equal Employment Opportunity Commission; and second, that someone on a high level will be riding herd, to see to it that the office is really effective where it is.

Mr. RANDOLPH. I think the purpose of the amendment is excellent. As one who supported the Saxbe amendment, I certainly intended to support the effort of the distinguished Senator from New York.

It is critical that employers be in a position to rely on a coordinated government position on all matters, not the least of which is equal employment opportunity. It is just as vital to employees who feel that they have been subjected to discriminatory employment practices that the relevant agencies of government coordinate their efforts. It is also clear that the Government's effectiveness can be improved significantly. I believe the amendment offered by the distinguished Senator from New York (Mr. JAVITS) will help achieve these objectives.

Mr. JAVITS. I think the Senator from West Virginia very much. I hope the amendment will be accepted, because I think it is almost logically dictated by what we have previously done.

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

Mr. JAVITS. I yield.

Mr. WILLIAMS. The amendment would create an Equal Employment Opportunity Coordinating Council made up of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, and the Chairman of the U.S. Civil Rights Commission.

Mr. JAVITS. The Senator is correct.

Mr. WILLIAMS. Or their respective delegates.

Mr. JAVITS. The Senator is correct.

Mr. WILLIAMS. I merely wanted to inquire about the term "their respective delegates." I am wondering whether we should name the agency or department and require that a delegate be the representative of the office. The delegation at this point somewhat disturbs me. I have the feeling, frankly, that I would rather not see someone outside of the Civil Rights Commission be the delegate of the Chairman of the U.S. Civil Rights Commission.

Mr. JAVITS. There are no hidden motives in the amendment. I would just as soon strike that part. My purpose was to use my best recollection, because I had to write the amendment rather quickly. I had no opportunity to use what we consider "boilerplate." If the Senator's assistant or mine can give us the usual "boilerplate" in this regard, I should be glad to use it. There is no desire to add another dimension to the amendment. We do not do it in other cases of high level interdepartmental committees.

The amendment will be in conference, and the Senator from New Jersey and I will be conferees. My suggestion is that we work out there whatever is agreeable and convenient to the officials concerned. The purpose and intent of the amendment is to have attendance at the highest level. Unless the officials object very seriously, it would be fine with me if they are required to attend.

I am just concerned about doing this in the first instance, as I just do not know. But I would assure the Senator that I will join with him in conference in making it entirely agreeable to the officials, but making it on the highest level. If they are willing, we will strike out the reference to any delegation.

Mr. WILLIAMS. Of course, the Senator from New York has put his finger on my concern. It should be focused at the highest level.

Mr. JAVITS. I thoroughly agree, and I will join with the Senator in doing whatever is necessary for that purpose.

Mr. WILLIAMS. That is agreeable to me.

Mr. JAVITS. I am ready to yield back my time.

Mr. WILLIAMS. I yield back my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. EASTLAND. I ask for the yeas and nays.

The yeas and nays were not ordered.

Mr. JAVITS. Mr. President, may I ask the Senator from Mississippi a question? I shall not take more than 2 minutes.

Does the Senator from Mississippi desire the yeas and nays? That will be fine with me, although I do not think there is any real disagreement. I am willing to let the question be decided on a voice vote.

Mr. EASTLAND. I simply wanted to be recorded as voting "No."

Mr. JAVITS. Then, I think, the Senator is so recorded.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York (putting the question).

The amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SAXBE. Mr. President, I ask unanimous consent that the vote by which my amendment was agreed to be brought up for reconsideration.

The PRESIDING OFFICER. Without objection, the Senate will consider the motion to reconsider.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The PRESIDING OFFICER (Mr. JAVITS). Is there objection? The Chair hears none. The motion to reconsider is in order, and the Senator from West Virginia has moved to table that motion. The question is on agreeing to the motion to table (putting the question).

The ayes appear to have it; the ayes have it, and the motion to table is agreed to.

Mr. BYRD of West Virginia. Mr. President, why was unanimous consent needed to enable the distinguished Senator from Ohio to move to reconsider the vote on this amendment?

The PRESIDING OFFICER. The Chair understands that it was not needed.

Mr. BYRD of West Virginia. Mr. President, in support of the precedents, I should like, with the Chair's help, to clarify that matter: it is my understanding that only if another amendment to the pending bill is before the Senate at the time is unanimous consent required.

The PRESIDING OFFICER. The Senator from West Virginia is correct, and that is the rule.

Mr. BYRD of West Virginia. I thank the Chair.

Mr. JAVITS. Mr. President, apparently the amendment which I proposed, and which was adopted, requires a technical correction, in that the section to which it had reference had been stricken by the Saxbe amendment, and my amendment did not refer to that.

I ask unanimous consent that, preceding the action on the amendment which I have just had adopted, the following words be inserted:

Section 10. Section 715 of the Civil Rights Act of 1964 is amended to read as follows:

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

AUTHORIZATION FOR COMMITTEE ON GOVERNMENT OPERATIONS TO FILE A REPORT NOT LATER THAN FEBRUARY 9, 1972

Mr. BYRD of West Virginia. Mr. President, notwithstanding the provisions of section 133(g) of the Legislative Reorganization Act of 1946, as amended, I ask unanimous consent, at the request of Mr. MCCLELLAN, that the Committee on Government Operations be authorized to report its 1972 expenditures-authorization resolution to the Senate no later than February 9, 1972.

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

AUTHORIZATION FOR COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS TO MEET DURING SENATE SESSION TOMORROW

Mr. BYRD of West Virginia. Mr. President, at the request of the distinguished senior Senator from Alabama (Mr. SPARKMAN), and also at the request of the distinguished senior Senator from Texas (Mr. TOWER), I ask unanimous consent that the Committee on Banking, Housing and Urban Affairs may be permitted to meet during the session of the Senate tomorrow.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House insists on its amendment to the

bill (S. 602) to provide for the disposition of judgments, when appropriated, recovered by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Mont., in paragraphs 7 and 10, docket numbered 50233, U.S. Court of Claims, and for other purposes, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. ASPINALL, Mr. HALEY, Mr. MELCHER, Mr. STEIGER of Arizona, and Mr. TERRY were appointed managers on the part of the House at the conference.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT 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.

AMENDMENT NO. 597

Mr. ERVIN. Mr. President, I call up my amendment No. 597.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk proceeded to read amendment No. 597.

Mr. ERVIN. Mr. President, I ask unanimous consent that further reading of the amendment be omitted.

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

Mr. ERVIN. Mr. President, I modify my amendment so that it will read as follows:

On page 61, after line 23, insert the following new section:

SEC. 10. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or superseded, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government, without first according such employer full hearing and adjudication under the provisions of 5 U.S.C. section 554 and the following pertinent section: *Provided, however,* That if such employer shall deviate substantially from such previously agreed to affirmative action plan, this section shall not apply.

The PRESIDING OFFICER. Does the Senator request that this modification be made?

Mr. ERVIN. Mr. President, I believe I can modify my own amendment.

The PRESIDING OFFICER. That is correct.

Mr. ERVIN. I modify my amendment to read as I have stated, and send the amendment to the desk in that form.

I have had many complaints from employers seeking Government contracts that, after long negotiations with the Office of Contract Compliance of the Department of Labor, they have filed affirmative action plans in full compliance with all of the suggestions made by the Office of Contract Compliance and that such affirmative action plans have been approved by the Office of Contract Appliance, and that after all these procedures have been complied with, the Office of Contract Compliance, without any warning or any notice of any further opportunity to be heard, has refused to approve the contract sought by those employers.

This amendment would merely give some semblance to fair play in cases where employers had filed and had approved by the Office of Contract Compliance an affirmative action plan, and provide that after it had approved it the Office of Contract Compliance could not reject that plan without giving the employer an opportunity to be heard under the Administrative Procedure Act.

The amendment safeguards the Office of Contract Compliance by providing that if there is a substantial deviation from the approved affirmative action plan, this section, which gives the employer in such cases the right to a hearing and adjudication under the Administrative Procedure Act, does not apply.

It seems to me this is a fair amendment and that it ought to be supported by any Senator who believes in fair play under those circumstances. I sincerely hope the Senate will adopt it.

Mr. WILLIAMS. Mr. President, as I heard the amendment stated, I thought I heard the word "superseded," so that the amendment would read:

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or superseded, by any agency . . .

I believe the word should be "suspended."

Mr. ERVIN. Suspended. I will modify the amendment and change the word from "superseded" to "suspended."

Mr. WILLIAMS. Then, as I understand the amendment, it brings the Administrative Procedure Act due process provisions to bear when there is an action to cancel a contract and an affirmative action plan is already in effect with that employer.

Mr. ERVIN. That is the objective.

Mr. WILLIAMS. That is the objective of the amendment.

Frankly, it strikes me as an eminently fair requirement where an employer is working under an agreement for affirmative action. This kind of suspension could sweep away his contract even though he thought he was complying.

Mr. ERVIN. That is correct. If affords an escape valve for the Office of Contract Compliance by providing that this provision is not binding on the Office of Contract Compliance in the event the employer substantially departs from the agreed to affirmative action plan.

Mr. WILLIAMS. That is the objective—provided, however, that if such employer shall deviate substantially from such previously agreed to affirmative action plan, this section—which is the amendment—shall not apply.

It strikes me on its face as a fair procedure.

We had no testimony on it, I will say to the Senator from North Carolina, and no opinions from departments or agencies or otherwise. So it comes de novo, but as it comes de novo, it comes with some effect.

I know the Senator from New York, with the best of his good legal mind, is at work on this amendment at the moment, and so I will yield to the Senator from New York.

Mr. JAVITS. The Senator can practically see my wheels turning, as he can see the wheels of the Senator from North Carolina turning.

There are a few questions I would like to ask the author of the amendment, if he will indulge me. By the way, we are checking upon the question of whether this may not be attributable to the very same section I dealt with, but that will not matter. I will agree with the Senator about writing it so that it will conform to the amendment which was offered by me.

Mr. ERVIN. I tried to conform it. It may be that it deals with the same section. I think we can straighten that out by applying it to the same subsection.

Mr. JAVITS. We do not have any problem, but I wanted to ask the Senator a couple of questions.

There are two things which strike me at first impression, and again, as the Senator from New Jersey (Mr. WILLIAMS) said, it is new matter, first impression, so I hope the Senator will not feel I am just engaging in supererogation. I really do not know.

The Senator speaks, in line 5, of an affirmative action plan. It would seem to me that in order to have it appropriate, the words "in effect" should appear after the word "plan." I do not know whether these plans are limited in time or what is the situation, just off the top of my head, but I certainly believe that it would be necessary to have a plan ongoing at the time, rather than merely qualifying under this section because at one time there was an agreement.

Mr. ERVIN. If they have a plan that has been approved by the Office of Contract Compliance, it has been approved and there it is, it would be in effect.

Mr. JAVITS. Not necessarily, because if it had a time limit, and that time limit had expired, it would still be an affirmative plan which had been approved, but might not be in effect.

It just strikes me as a lawyer that we ought to include the fact that it has been an ongoing plan.

Mr. ERVIN. I think it is implied that it is in effect, but the trouble of it is, if we put that word in there, it may be construed to give them the right to repudiate, and get them back to the very position that the amendment is intended to safeguard the man against.

Mr. JAVITS. I do not see how that could happen, because the initiatory action is on the part of the employer; he can demand a hearing.

In other words, the Government is in a position where, if he gets a hearing, that operates this section. But all I am saying is, I think we ought to be protected against that situation.

Mr. ERVIN. Well, here is the difficulty: The Office of Contract Compliance has been approving plans, time after time they approve a plan and then, after approving the plan, they refuse to give a man a contract based on the plan that they have approved.

The objective of the plan is to prevent discrimination, and all this says is that

after they have approved a plan, they cannot deny the man the contract as long as he is willing to comply with it, and it gives the man the right to go into court and let the court decide whether the plan that has been approved by the Office of Contract Compliance, which they seek to repudiate, complies with the provisions of the Executive order or the provisions of the law outlawing discrimination.

The trouble is that under the present circumstances you cannot sue in the courts because when you offer to give a contract it is not approved; and this is an effort to give some legal remedy where the compliance contract has been approved by the Agency, and then the Agency seeks to repudiate it. It is to try to get out from that arbitrary practice which they now have.

I have many complaints about this. The trouble with the Office of Contract Compliance, so I have been informed by many employers, is that they will never put in writing what they require, but they make the employer come and put his plan in action, and then they either accept it or repudiate it. This ends repudiating it after they have accepted it, and gives him a legal remedy, and allows the court to say whether the contract complies with the Executive order and the law, instead of leaving that matter to be determined solely by the Office of Contract Compliance.

Mr. JAVITS. Well, Mr. President, there is nothing which the Senator has stated which, it seems to me, answers the point which I make, unless he says that by implication, though I do not know where it arises, it must be a plan, to wit an affirmative action plan, which is in effect; because if the contracting Agency, in making and approving the plan, has limited the time of its approval—suppose, for example, that in making and accepting the plan and approving the plan, they said, "We approve it for 1 year" or "We approve it for 2 years," after the expiration of that time, certainly, I would expect that the mover of the amendment does not expect this section to be effective if the time of approval given to the plan has expired.

That is all I am asking. In other words, that it is an affirmative action plan that is in effect.

Mr. ERVIN. The trouble of it is, since the Office of Contract Compliance is the one that makes the contract, they can say, "We have decided that we have changed our mind, and although we have approved this in the past as a sufficient compliance, we now change our mind and demand that you submit another plan"; and if we have "in effect," it is implied that this whole arbitrary power of changing the rules for compliance will be perpetuated.

Mr. JAVITS. As I understand the Senator, then, he expects that Government agencies will be forever bound, without any opportunity to change any kind of plan with any contractor, once they have acted. Under those circumstances, they would never approve a plan; they would be foolish if they did.

Mr. ERVIN. Well, they have to approve a plan.

Mr. JAVITS. If they would approve something more permanent than the Constitution of the United States, which is what the Senator is arguing for; if, once they approve the plan, that is the end of it forever and ever, I just cannot see that.

Mr. ERVIN. No; the amendment does not provide that. It says that once they have approved a plan, the Office of Contract Compliance cannot repudiate its approval, but, instead of having them repudiate it, once they have approved it, the matter is for the courts to decide.

Mr. JAVITS. I am glad to get that construction. Then the amendment says that once they have granted approval, it is approval forever and ever unless otherwise ordered by the courts. I could not approve it on that ground.

Second, Mr. President, I asked the Senator whether it is his intention, and I gather from the language that it is, that nothing may be done about the contract whatever under such a plan—which is, incidentally, a "forever plan"—without an extended court proceeding, or a court proceeding, no matter how long it takes, even if successful appeals to the U.S. Supreme Court may take years—no limitation whatever upon the time taken in respect to court adjudication and hearing, et cetera. Is that not true?

Mr. ERVIN. Yes; if you have a legal remedy afforded a man, I do not know how you can take it away.

Mr. JAVITS. That is all right. I understand.

Mr. ERVIN. I just do not believe in arbitrary action. Under the present circumstances, the Office of Contract Compliance has the arbitrary power to deny a man a Government contract, even though the man is complying fully with the Executive order and the law. It denies access to the courts, and gives to the Office of Contract Compliance an arbitrary power which any absolute eastern potentate would envy.

Mr. JAVITS. Mr. President, I do not see that the amendment of the Senator gives the courts an opportunity to review an affirmative action plan, that is, make a judicial review of an affirmative action plan, at the time that such a plan takes effect, or at any time that it is effective.

What I see is that there is an absolute mandate, without any possibility of it even being changed by the court itself, that so long as there are legal proceedings pending, no matter how dilatory they may be in the conduct of them, nothing may be done about that contract.

On that basis, Mr. President, I think the prejudice is very strongly against the enforcement of the law; it gives any contractor an opportunity just to make the claim, he need prove nothing else; then he goes into court, and just as long as he takes, he takes, and no penalty whatever ensues.

That is a pretty easy deal for anybody who wants to break his affirmative action plan, or has a disagreement about what it means, and there is no penalty whatever—to just take it to the courts and just keep it there. We certainly have a great deal of experience with long court cases. If that is the contruction of the amendment, I would feel, in conscience, that I would have to be very strongly against it. I would have no reason to be against an amendment to give judicial review.

To simply suspend any possibility of action of any kind during the conduct of legal proceedings—I cannot conceive of that as being conducive to fair enforcement of the law, and I shall oppose the amendment.

Mr. ERVIN. Mr. President, if this amendment is not adopted, the Office of Contract Compliance of the Department of Labor has arbitrary, tyrannical power that cannot be reviewed by any court on the face of the earth. If they can deny due process, they can deny hearing, and no power on the face of this earth can interfere with them, even though the affirmative action plan which the office has approved is in full compliance with the law and would be so adjudged by a court of law under the Administrative Procedure Act.

I think that every Member of the Senate who does not think the courthouse door should be totally nailed shut and the Office of Contract Compliance given power which nobody on earth can review, as to whether it is in compliance with the law, ought to vote for this amendment.

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

Mr. ERVIN. I yield.

Mr. WILLIAMS. On line 5 of the Senator's amendment, it reads "where such employer has an affirmative action plan." The word "has" suggests the present tense to me, and that suggests an affirmative action plan that is in effect.

Mr. ERVIN. That is right.

Mr. WILLIAMS. I thought that was one of the questions that the Senator from New York asked. I thought he was suggesting that there was a possibility that under this amendment there could have been a former affirmative action plan but one that was not in effect at the moment when a contract might have been denied or suspended.

Mr. ERVIN. I think the Senator's interpretation is absolutely correct. It must have been approved by the Office of Contract Compliance. It must be in existence.

Mr. WILLIAMS. That clarifies that part of it for me.

The other question I have is as to the impact of the words "under the provisions of title 5, United States Code, section 554, and the following sections thereto." The Senator from New York was developing the suggestion that action on a contract could be held up following long, long court procedures. Is this a procedure going to court or is this the hearing——

Mr. ERVIN. It would go to the court on the record already made in the Office of Contract Compliance.

Mr. WILLIAMS. These are the Administrative Procedure Act provisions of an administrative hearing?

Mr. ERVIN. Yes; all the court would have the power to consider would be the record already made in the Office of Contract Compliance.

Mr. WILLIAMS. On another matter, we were on other sides of an issue of the

dignity of an administrative hearing, and I wanted to clarify that. But that refers to the Administrative Procedure Act agency hearing, with all its provisions.

Mr. ERVIN. Yes; so there cannot be anything very long about that. They already have in writing all the evidence that can be considered.

Mr. JAVITS. Mr. President, the section 554 hearing, which I have not even had a minute to check out, assuming even what the Senator says, which is set up in the appendix to our own report—I do not know whether it is complete or partial here—represents an adjudication which relates to an agency proceeding.

Those cases can take years, and there is no way, if we adopt this amendment and leave it this way, in which that process can be changed. A man might be able to go on violating as much as he likes, so long as he claims he is not.

Mr. President, I have just stood with leaving OFCC in the Department of Labor, and that is why it is my duty to question this amendment. I want to find out if it would nullify or put in the hands of any contractor the ability to nullify any effort to really get a remedy. One other thing: The proviso at the end says:

Provided, however, that if such employer shall deviate substantially from such previously agreed to affirmative action plan, this section shall not apply.

In other words, if the Agency is trying to penalize him because he has deviated, then he is home free under this amendment, and the only time he can be dealt with is if he shall deviate after he says he did not deviate; and the previous transaction is completely overlooked, if you follow the words of this amendment.

So, Mr. President, under these circumstances, I respect the Senator from New Jersey—he has had this matter under first impression, as have I; but I could not be a party to accepting the amendment without further study, especially in view of the good faith involved in just having adopted an amendment which leaves the authority in the Department of Labor. I certainly could not see my way clear to, in my judgment, just emasculate it by this amendment.

Mr. ERVIN. Mr. President, I can understand the Senator from New York favoring nailing the courthouse door shut. But it would mean injustice because of nonreviewable arbitrary exercise of power by a public official. It is a very peculiar position for a lawyer of his distinguished record to take.

These contracts are referred to the Office of Contract Compliance for only one purpose. Otherwise, the contracts are worked out by the other agencies of the Federal Government. They are referred to the Office of Contract Compliance merely for the purpose of affording that Office an opportunity to determine whether the affirmative action plan which is required is in compliance with the laws, the Executive order, and the regulations prohibiting discrimination in employment. That is the only function of the Office of Contract Compliance in the matter. Here they approve an affirmative action plan. They say it is in compliance with the laws, the Executive order, and the regulations. All this says is that after they have approved, they cannot repudiate the approval without affording the employer who has satisfied the other agencies of Government with the terms of the contract the opportunity to have the question determined, not by arbitrary action on the part of an executive office but by a court of justice.

With all due respect to my good friend from New York, the contention that there will be any protracted litigation in a case of this kind is absurd. That is so because that court hears the matter and determines whether there is sufficient compliance with the laws, the Executive order, and the regulations prohibiting discrimination. It has to hear it and determine it on the record. Otherwise the Office of Contract Compliance can dictate and lay down terms that are absolutely inconsistent with the laws, terms which are inconsistent with the Executive order, and inconsistent with their own regulations on the subject. American citizens who have supported this Government by their taxes are powerless and have no remedy this side of heaven.

Thus, Mr. President, I hope that the Senate will adopt the amendment and I suggest the absence of a quorum so that we can get a rollcall on it.

The PRESIDING OFFICER (Mr. SCHWEIKER). 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.

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

The yeas and nays were ordered

Mr. JAVITS. Mr. President, in my judgment, the import of the amendment—and that is the reason I oppose it at this time and perhaps will propose a substitute to it—will not have the effect of fairly and equitably getting a judicial review of a contested situation where an individual Government contractor feels that he is being imposed on notwithstanding the fact that he is complying with the affirmative action plan which is in effect.

Now the distinguished Senator from North Carolina (Mr. ERVIN) argued that the words which he used, "has an affirmative plan which has previously been accepted by the Government," complies in effect with what was told the distinguished Senator from New Jersey (Mr. WILLIAMS), but with me, he denied that. He says, once there had been affirmative action, then there was affirmative action forever. That is one of the things I cannot accept.

Second is the proviso which is tacked on at the end here which says that "if such employer shall deviate substantially from such previously agreed to affirmative action," thereby reiterating the point which the Senator certainly would not concede, in my judgment, but which I think has to be conceded in language, in view of the argument about it—to wit, that once the plan is previously agreed to, it remains forever, the plan to which the Government is bound, even though the Government may not wish further to be bound and the plan itself might have a definite time limitation on it which the parties would have a perfect right to insert. The words "shall deviate" also may indicate that whatever has been the violation with which the contractor is charged is forgiven.

It only means that he shall not have the advantage of this section for any future violation. I certainly think that would vitiate the intent of fairness, especially if there is no limitation whatever in the power of any court to terminate this immunity which is granted to the individual contractor once he makes the claim—that is all he has to do. It seems to me that we can then completely nullify the whole enforcement scheme which is incorporated in the Executive order simply by making a complaint that the Government is penalizing us unduly in respect of the affirmative plan that was approved—God knows when—and whether it is still in effect, and then there is no penalty whatever on the contractor of any kind or character and he can get all the Government contracts he wants.

That certainly is making a real mockery of the whole idea that the Government will have any authority to enforce its Executive order. It is entirely possible—and I do not say that it is not—perhaps to put this particular proposition—although it is one of first impression—into shape, because we do not even know right now, and I do not know and I cannot represent to the Senate whether it is or is not—any right of judicial review in respect of this matter at this time. This is a very important question so that we may at least juxtapose the remedy which is sought here with the remedy now in effect. Therefore I really want a little while to have a good look at this. It may be possible to work out an amendment, or by amending the amendment, or by agreement with the Senator from North Carolina which will make a fair disposition of this matter. I have every desire to do so, but I am not going to be rushed into acting on this matter up or down without having some opportunity to see what should be done about it.

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

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

Mr. ERVIN. Mr. President, I ask unanimous consent that amendment No. 957 be temporarily laid aside.

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

Mr. ALLEN. Mr. President, I call up amendment No. 819, offered by the senior Senator from North Carolina (Mr. ERVIN) and myself, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 59, strike out lines 23, 24, and 25.
On page 60, strike out lines 1 and 2; and reletter subsections (f), (g), and (h) of section 8 appropriately.

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

Mr. ALLEN. Yes, I am glad to yield.

Mr. BYRD of West Virginia. It is my understanding that the distinguished Senator from Alabama is willing to enter into a limitation of 40 minutes on the amendment, to be equally divided between the mover of the amendment and the manager of the bill. Is that agreeable?

Mr. ALLEN. Yes.

Mr. BYRD of West Virginia. Mr. President, I shall withhold my request momentarily. I thank the Senator from Alabama for yielding.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, the amendment seeks to strike from the bill words that were added by the committee to the bill as a proposed addition to the present law. These are the words which the committee seeks to enact and the amendment seeks to prevent from becoming law. The Commission is given the authority—

And to accept voluntary and uncompensated services, notwithstanding the provisions of Section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

What is that section of the code from which the committee substitute seeks to exempt the EEOC? The present law, going back to the year 1870, in the section cited:

No officer or employee of the United States shall accept voluntary service for the United States or employ personnel service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property.

I was not on the committee which brought forth this substitute, but I have read some of the hearings, and I did not come across any testimony in the hearings. I am not saying that some testimony was not there that I did not see, but I would invite the manager of the bill to cite to me those pages. I do not see one single bit of testimony in favor of this language that seeks to give the Commission the authority to accept voluntary and uncompensated service from individuals.

What is the purpose of this language? Why should the EEOC come out from under the law that applies to every other Federal agency in the country? So far as the junior Senator from Alabama knows, no agency, no branch of the Government, is authorized to call in hordes of individuals off the streets and, in effect, to accept their services and give them the power, the authority, and the indicia of office as Federal employees. Obviously, there would be no volunteers unless the persons volunteering were biased or prejudiced or had some ax to grind. Why would they come forward and volunteer to work for the EEOC? There is no reason in the world, except that they would have an ax to grind. They would have a prejudice or a bias, or else they would not offer their services. They would not offer their services to any other branch of the Government, so far as the junior Senator from Alabama is concerned.

Furthermore, Congress is supposed to have the power to circumscribe or to limit the power, the authority, and the scope of the work of any agency of Government by controlling the amount of money appropriated to that department or agency. But in this instance the EEOC would have the authority, unless this amendment shall be adopted, to accept the voluntary and uncompensated services of hundreds of thousands of people—people with prejudices, people with biases, people subsidized by interested organizations, people subsidized by foundations which have an interest in carrying on this work.

So, Mr. President, the EEOC might have 1,000, 2,000, 3,000, or 4,000 Federal employees on the payroll, but there would be nothing whatsoever, in the absence of this amendment, to prevent the EEOC from availing itself of the services of tens of thousands of individuals who would be sent out over the country like a swarm of locusts to harass business and industry—small business, persons employing as few as eight people.

So since the year 1870, according to the footnote to this section, this provision of law has applied to the agencies of the Federal Government—that they shall not have the authority to reach out and get voluntary employees, uncompensated employees, and put them to work.

Does that make sense, Mr. President? Is it not necessary for a Federal employee to pass a civil service examination? Is it not necessary that some check be made as to his reputation, his loyalty to the Government, his educational qualifications, his personality, his fitness for Government employment?

But, under this committee substitute, Mr. President, which we are seeking to change by this amendment, no check need be made, and the Agency could become a colossus, a Frankenstein, or volunteer and uncompensated employees, uncompensated so far as the Government is concerned.

Who would be paying these uncompensated employees and volunteer employees? Not the Federal Government, but someone having an interest in seeking harassment of business and industry and of employees and employers.

Mr. President, all the amendment seeks to do is to take out the language that has been added by the committee. I showed this language to a distinguished member of the committee just the other day. He said:

I was on that committee and heard the hearings. I did not know we had a section like that in the bill.

A very learned member of the committee, a very able Member of the Senate, said:

I had no idea such a section was in the bill.

I hope the manager of the bill will accept the amendment; that he will not insist on taking out the provisions of law which prohibit the use of uncompensated and voluntary employees with respect to this one Agency of Government.

Why should it stand on any basis higher than the Justice Department? Do they accept volunteer employment? Can any zealous person come to the Justice Department and say, "I am interested in this activity of the Federal Government and I want to go out as a volunteer worker for the Government"? What would be the liability of the Government for the acts of such employees? Who would be responsible for what they did? Would the Government be liable or responsible for the act of such employees? What would it be?

There must be some reason—and I think we have suggested some of them—why for 100 years there has been a prohibition against the use of volunteer and uncompensated employees by any branch of the Federal Government, and the bill before the Senate would take the EEOC out from under this very fine safeguard against such a practice.

I would be interested in learning from the manager of the bill why this section was put in. Is not the EEOC going to be satisfied with the appropriations made by the Congress? Is it not going to be satisfied to limit its activity to the scope envisioned by the Congress in setting the appropriation? The machinery set up in the committee substitute would give the EEOC the authority to enlarge this department, to enlarge the scope of its activities, 50 percent, 100 percent, 200 percent—any amount of enlargement that it would care to have—through the use of volunteer employees, compensated by someone else, because you can rest assured that they are going to be compensated. They are not going to work for nothing.

Mr. WILLIAMS. Mr. President, would the Senator like me to reply to the question?

Mr. ALLEN. Yes.

Mr. WILLIAMS. Why is this necessary and whether there is enough money to hire the personnel needed? Was that the question?

Mr. ALLEN. No. I asked the Senator to respond to my inquiry as to why the committee put in the provision giving the EEOC the authority to use volunteer or uncompensated employees when no other branch of the Federal Government has that authority and when there is an express provision in the code prohibiting the use of such employees.

Mr. WILLIAMS. I am not sure whether that is accurate as to any other agency.

Mr. ALLEN. There is a law on it.

Mr. WILLIAMS. I know, but there are exceptions made for other agencies. My understanding is that title VII, when enacted in 1964, said that the Commission shall have power to cooperate with, and with their consent utilize, regional, State, local, and other agencies, both public and private, and individuals. Under this provision, individuals were used who were volunteers. Some question was raised and, in order to insure that volunteers could be used in limited circumstances, this provision was put in the bill, as we had it 2 years ago. It was preserved in this bill. It was in the bill that we voted on and which passed the Senate 2 years ago.

Mr. ERVIN. Is the Senator saying this is not new language?

Mr. WILLIAMS. It was in the bill as introduced.

Mr. ERVIN. The committee report shows otherwise, Senator. It is in italics, which indicates that it was inserted.

Mr. WILLIAMS. While this is being walked over to the Senator, I would say that the following is the situation: This could be called the Johnny Cash amendment in the bill. This provides that a Johnny Cash or a Bill Cosby who wants to use his talent to deal with the idea of equal opportunity in a song, or prose, or poetry, can do so however he wants to: "You fellows have an Equal Employment Opportunity Commission and, if you are being denied, that Commission is there on your side." That is what it is.

That is what it is. It is the Bill Cosby provision of the EEOC bill that is before us.

Mr. ALLEN. Well, now, if the Senator would allow me to engage in a little colloquy with him on this point, was there any testimony before the committee as to the desirability of putting this section or this language in? If so, I would like him to cite it to me.

Mr. WILLIAMS. I do not know that it was formalized in the hearing, but certainly the information reached us that a question had been raised about the procedure being used by the Commission, and to clarify it so there would be no mistaking the authority, this language had been put in, and it was put in when we drafted the bill, yes.

Mr. ALLEN. So the committee decided, then, that it would be necessary to take them out from under the provisions of the code forbidding that practice, is that correct?

Mr. WILLIAMS. To make it clear that volunteers could participate, yes.

Mr. ALLEN. Who pays these volunteers? Would the Senator enlighten the junior Senator from Alabama on that question? Do they have any volunteers from industry or business?

Mr. WILLIAMS. I cannot answer that. I would hope so. I would imagine that there are people from the ministry, from business, from entertainment, and just people who might——

Mr. ALLEN. Who think that discrimination exists throughout the country, and they want to cure that evil?

Mr. WILLIAMS. As I understand it, those who have been used have been helpful in publicizing the fact that this country has an Equal Employment Opportunity Commission.

Mr. ALLEN. Who pays those individuals?

Mr. WILLIAMS. That is it. This is to be noncompensated. These are volunteers.

Mr. ALLEN. I understand, but most of them have to eat, I suppose. Who pays them?

Mr. WILLIAMS. Well, now, there are as I understand it, 100 of the major companies, business organizations, which have been combined in the plans for progress organization, have volunteered their people, their names, themselves. Who pays them for this work? Nobody.

Mr. ALLEN. That is to go out and check other industries and businesses, is it?

Mr. WILLIAMS. No, it is not investigation. It is to publicize the fact of the existence of an Equal Employment Opportunity Commission.

Mr. ALLEN. There is nothing in here that would prevent them from doing some investigating, is there?

Mr. WILLIAMS. I beg the Senator's pardon.

Mr. ALLEN. There is nothing in the bill to prevent them from doing anything the Commission wanted them to do, including investigation.

Mr. WILLIAMS. Well, there is nothing in there because it is so wholly unlikely. There are many things that are not in here that are obviously not needed.

Mr. ALLEN. Would the Senator feel that there would be a chance that, through the use of volunteer uncompensated-by-the-Commission employees, it would be possible for the Commission to double its size without coming to Congress?

Mr. WILLIAMS. No.

Mr. ALLEN. Why not?

Mr. WILLIAMS. Because it would violate every reason known to man, that is why.

Mr. ALLEN. The Senator said 100 industries were turning their employees loose. How many from each industry?

Mr. WILLIAMS. As I have seen it work, a vice president may be assigned to this worthy, worthy activity, without major staff, but he, with his commitment and with the backing of his company, will come to the activity and publicize its support of the work of the Equal Employment Opportunity Commission.

Mr. ALLEN. How many employees does the EEOC have now, does the Senator know?

Mr. WILLIAMS. At this point?

Mr. ALLEN. Yes.

Mr. WILLIAMS. The last figure that reached me was just over 1,000 employees

Mr. ALLEN. Well, how many does the Senator feel it would take to carry on the expanded work, the expanded scope of the Commission, if this bill passes as it now stands?

Mr. WILLIAMS. Well, we have a judgment on that out of the hearings—and I believe it is stated in the committee report. Page 32 shows the estimate of costs, and that could be, with the employees we have now, the increase could be, roughly estimated, it would be an increase over the years projected—1972, 1973, 1974, 1975, 1976—it would be an increase, over the next 4 years, doubling the number of employees. With the 1,000 now, it would be 2,000 then. That is an estimate.

Mr. ALLEN. The Senator would not feel it would be possible for the Commission to utilize another 2,000 from the ranks of volunteer and uncompensated employees?

Mr. WILLIAMS. Well, I do not know where—I think it is most unreasonable to assume that there is any possibility of that. In fact, it is just plain unreasonable to think in those terms.

Mr. ALLEN. Could the Senator say how many volunteer employees the Commission is using now, without the sanction of this section?

Mr. WILLIAMS. Well, the major—the area of greatest impact is one man and his talents: The entertainer, Bill Cosby.

Mr. ALLEN. I understood the Senator to say there were 100 industries.

Mr. WILLIAMS. One hundred businesses have been associated, and I think it is high-level executives; I have already estimated that at 100.

Mr. ALLEN. One hundred businesses, but how many from each business?

Mr. WILLIAMS. That is on a part-time basis. I would say, on a strictly part-time basis, as I have observed it, for every vice president of a regional telephone company, there may be three people working with him, and it is obviously not full time.

Mr. ALLEN. That would be about 300, then? Three for each one of the businesses?

Mr. WILLIAMS. If it were 100, and they each had a total of three, that would add up to 300.

Mr. ALLEN. Under the present law, though, they are not taken out from under this section of the United States Code, are they?

Mr. WILLIAMS. No.

Mr. ALLEN. Yes. Now, if it is 300 without any sanction of law, then, without any bill taking them out from under the code section, there would be no limit to the number of voluntary employees that they could use. Is that correct, there would be no limit?

Mr. WILLIAMS. Well, there is not any limit in the bill as it applies itself, no.

Mr. ALLEN. No. What would these people be? Would they be Federal employees, or what would their status be?

Mr. WILLIAMS. I beg the Senator's pardon.

Mr. ALLEN. What would the status of these voluntary persons be? Would they be Federal employees?

Mr. WILLIAMS. No.

Mr. ALLEN. They would not be Federal employees?

Mr. WILLIAMS. If the president of United States Steel wanted to voluntarily make an announcement of his association or his company's association with the objectives of the Equal Employment Opportunity Commission, that would be permitted under this act.

Mr. ALLEN. Yes. Well, now, if the Southern Christian Leadership Conference wanted to furnish the EEOC with 200 or 300 volunteer employees to go out over the country working on this project——

Mr. WILLIAMS. Which project?

Mr. ALLEN (continuing). They could be accepted, could they not?

Mr. WILLIAMS. Well, what is the project? Which project?

Mr. ALLEN. Well, the matter of bringing equal economic opportunities to the people in the country. That is what the bill is for, is it not? That is what I understood.

Mr. WILLIAMS. Does the Senator mean to publicize and——

Mr. ALLEN. I do not know what they would do. They could investigate if they wanted to.

Mr. WILLIAMS. No, no, no, these are not investigators by any means.

Mr. ALLEN. Where does the bill say that?

Mr. WILLIAMS. These are not employees. The law provides for the employment of people, and the employment of

people for all of the procedures of this Commission. Volunteers are not to go to court or to investigate.

Mr. ALLEN. Where does the bill say that? The bill does not say that. They want to get 10 attorneys in the general counsel's office.

Mr. WILLIAMS. It is in the report, and that does not have the force of law. I would be happy if the Senator would want to offer another amendment to further define the volunteer.

Mr. ALLEN. No. I would rather eliminate the entire section.

I yield the floor, Mr. President.

Mr. WILLIAMS. 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.

ORDER FOR ADJOURNMENT UNTIL 10 A.M. TOMORROW

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

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

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.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT 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. ALLEN. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, I rise in support of the amendment.

I think it is repugnant to the first principle of sound government to allow volunteers to exercise governmental power. The provision which the amendment—which has been ably discussed by the distinguished Senator from Alabama—seeks to strike is found on the last three lines of page 59, lines 23, 24 and 25, and the first two lines of page 60. This provides that the Commission can accept voluntary and uncompensated services notwithstanding the provisions of section 3649(b) of the revised statutes.

I respectfully submit that it is extremely unwise for a commission, which is charged with the performance of a judicial function and which exercises the power of judges, to have the assistance of volunteers who are so biased in favor of the enforcement of the law that they are willing to work for nothing, provided they are allowed to exercise governmental functions and assist a commission that is supposed to sit as an impartial judge of a cause.

For these reasons, I think the amendment of the Senator from Alabama should be adopted and that the Commission should not be accepting the services of biased people whose bias prompts them to volunteer their services. I think it is essentially incompatible with sound government for nongovernmental officials to be performing a governmental function. This provision should be stricken from the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senators from Nevada (Mr. BIBLE and Mr. CANNON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Maine (Mr. MUSKIE), the Senators from Rhode Island (Mr. PASTORE and Mr. PELL), the Senator from Illinois (Mr. STEVENSON), and the Senator from California (Mr. TUNNEY), are necessarily absent.

On this vote, the Senator from Mississippi (Mr. EASTLAND) is paired with the Senator from Washington (Mr. MAGNUSON). If present, and voting, the Senator from Mississippi would vote "yea," and the Senator from Washington would vote "nay."

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from Illinois (Mr. STEVENSON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), and the Senator from California (Mr. TUNNEY) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from New York (Mr. BUCKLEY) is absent on official business.

The Senator from Arizona (Mr. GOLDWATER) is absent by leave of the Senate.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senators from Colorado (Mr. ALLOTT and Mr. DOMINICK), the Senator from Kentucky (Mr. COOK), the Senator from Maryland (Mr. MATHIAS), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The result was announced—yeas 26, nays 53, as follows:

[No. 13 Leg.]

YEAS—26

Allen	Fannin	Randolph
Bennett	Fulbright	Smith
Bentsen	Gambrell	Sparkman
Brock	Griffin	Spong
Byrd, Va.	Gurney	Stennis
Byrd, W. Va.	Hansen	Talmadge
Chiles	Hollings	Thurmond
Ellender	Jordan, N.C.	Tower
Ervin	Long	

NAYS—53

Aiken	Harris	Moss
Baker	Hart	Nelson
Bayh	Hartke	Packwood
Beall	Hatfield	Pearson
Bellmon	Hruska	Percy
Boggs	Hughes	Proxmire
Brooke	Inouye	Ribicoff
Burdick	Javits	Roth
Case	Jordan, Idaho	Saxbe
Church	Mansfield	Schweiker
Cooper	McClellan	Scott
Cotton	McGee	Stafford
Cranston	McGovern	Stevens
Curtis	McIntyre	Symington
Dole	Metcalf	Taft
Eagleton	Miller	Weicker
Fong	Mondale	Williams
Gravel	Montoya	

NOT VOTING—21

Allott	Eastland	Mundt
Anderson	Goldwater	Muskie
Bible	Humphrey	Pastore
Buckley	Jackson	Pell
Cannon	Kennedy	Stevenson
Cook	Magnuson	Tunney
Dominick	Mathias	Young

So Mr. ALLEN's amendment (No. 819) was rejected.

Mr. JAVITS. Mr. President, I move to rconsider the vote by which the amendment was rejected.

Mr. WILLIAMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. BENTSEN). Mr. President, the question now occurs on amendment No. 597, as modified.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, there will be no more rollcall votes today. There will be rollcall votes tomorrow. May I ask the distinguished senior Senator from North Carolina (Mr. ERVIN) whether it will be agreeable with him and with others concerned—Mr. President, may we have order?

The PRESIDING OFFICER. There will be order in the Senate so that we can understand the program for the remainder of the day.

Mr. BYRD of West Virginia. Mr. President, the pending amendment, offered earlier by the distinguished senior Senator from North Carolina (Mr. ERVIN), was temporarily laid aside. May I inquire whether the senior Senator from New York (Mr. JAVITS), the senior Senator from North Carolina (Mr. ERVIN), and the manager of the bill would be willing to dispense with any further action with respect to the bill today and proceed with the resumption of morning business?

The amendment of the senior Senator from North Carolina would continue in its temporarily laid-aside status and would be the pending question tomorrow.

Mr. ERVIN. That is satisfactory.

RESUMPTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there now be a resumption of morning business, with statements therein limited to 3 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

ORDER FOR STAR PRINT OF S. 2909, THE NATIONAL BLOOD BANK ACT OF 1972

Mr. BYRD of West Virginia. Mr. President, at the request of the Senator from Indiana (Mr. HARTKE), I ask unanimous consent that a star print of S. 2909, the National Blood Bank Act of 1972, be authorized, five lines having been omitted at the end of the bill when it was printed. The star print would include the missing lines.

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

ORDER FOR TRANSACTION OF ROUTINE BUSINESS AND FOR UNFINISHED BUSINESS TO BE LAID BEFORE SENATE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that after the two leaders have been recognized on tomorrow under the standing order, there be a period for the transaction of routine morning business, not to exceed 30 minutes, with statements therein limited to 3 minutes, at the conclusion of which period the Chair lay before the Senate the unfinished business.

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

PRESIDENT NIXON'S SPEECH ON THE VIETNAM WAR

Mr. CRANSTON. Mr. President, I wish to speak briefly about the President's statement last night regarding Vietnam. As I listened to the President, my first thoughts were that he had made a fine, fair offer of peace to the other side.

But I asked myself afterward, Why had the other side rejected this offer? I concluded that what had been offered by the President was totally unrealistic; that it was not a plan for peace we can expect the other side to accept. A peace plan to be realistic and workable, must be accepted by both sides. Otherwise it is no peace plan.

It seems to me that there is a "Catch 22" in the President's eight-point program that makes it unacceptable to the other side. That catch is the call for a total cease-fire throughout all of Indochina. Such a cease-fire may seem fair and reasonable from the American point of view. But I can see why it is looked upon by the other side as totally unacceptable.

A general cease-fire in effect asks them to quit, and to quit on our terms. It asks them to give up the civil war they have been waging for years against the South Vietnam Government. It asks them to abandon what they think they will be able to achieve through that civil war. We are being unrealistic to think they will agree.

We are being unrealistic to expect them to settle for an election under which President Thieu would resign only 1 month before the voting. The same Mr. Thieu who has proved himself an expert in rigging elections in that nondemocracy.

The President said the other side wants us to agree to overthrow the South Vietnamese Government. Of course, we cannot participate in any such activity. But I wonder if that is really what the North Vietnamese meant. I wonder if they are not simply saying that they will not relinquish what they believe to be their opportunity to overthrow the South Vietnamese Government themselves, and that they will not accept a proposal under which they would have to give up that opportunity.

It seems unrealistic of the President, who speaks so often of the need for bargaining chips so as to deal from a position of strength, to seek now to deal from a position of relative weakness.

Withdrawal proposals made when we had half a million troops engaged in combat on the ground might perhaps have been listened to maybe. But I think the other side will be unlikely to listen now that we speak from a position of weakness, when our troops are down close to the 150,000 mark or slightly below, when the President is committed to going down to 60,000 by the middle of this year, and when he says he will continue to reduce that strength if and when Vietnamization works effectively. This is an odd time for us to be insisting on a complicated eight-point program before we will agree to get out of the fighting completely.

As to timing, I do not agree with those who allege the President made his offer at this time for political reasons. But I do not believe it is really a plan for peace; I fear it is a preparation for more war. I fear the President is preparing Americans for a possible escalation in the fighting and he wants to show that he has made what many people will take to be a fair offer to stop the fighting before the escalation starts.

The PRESIDING OFFICER. The 3 minutes of the Senator from California have expired.

Mr. BYRD of West Virginia. Mr. President, how much additional time does the Senator from California seek?

Mr. CRANSTON. Three more minutes.

Mr. BYRD of West Virginia. Mr. President, I yield my 3 minutes to the Senator from California.

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

Mr. CRANSTON. There are signs in Vietnam that the other side is infiltrating heavily; that they are readying new stages of an offensive, perhaps a new Tet offensive. The capacity of the other side to hit the South Vietnamese hard increases as our capacity to defend our dwindling forces in Vietnam decreases. I fear that our men there are highly vulnerable. They are more and more dependent on the South Vietnamese for protection, and the South Vietnamese have not shown much capacity for defending themselves, let alone the American forces.

Bombing has not proved effective in any significant way in reducing the scale of the enemy's offensive ability.

It is quite possible there will be a major offensive that will confront us with rising American casualties. The President assured us last night that if the other side does move against us in force, he will retaliate with all the power available to him. That may mean a major escalation of the fighting; and it is quite possible that the President's decision to reveal his "secret" plan at this time was designed to make renewed fighting more acceptable if and when it comes. I hope it will not come; but I fear it may come.

Since what the President has offered is unacceptable to the other side, it is not going to end the war. A rise in American casualties by an escalation of the conflict is not going to reduce the issue of Vietnam in America. Vietnam will perhaps be a bigger issue than it has been for some time, and it may once more seriously divide the American people and create still deeper problems for our country.

What the President has offered is not at all what the people expected. They expected a simple, one-point plan, a plan to enable us to get out of Vietnam totally. What we got was an eight-point plan with a "Catch 22." A one-point plan would provide that we would withdraw all our forces from Vietnam, with the single condition that our prisoners of war must be released as we withdraw. But such a simple, one-point plan has not been offered.

The plan offered to the Vietnamese will not, in my opinion, lead to the end of the conflict. It will not lead to the release of the POW's. They will continue to languish in prison. The President has set a new condition for their release. We will not simply withdraw our troops in exchange for a simultaneous release of POW's. We now also insist on the North Vietnamese first agreeing to a general cease-fire. Not only will the POW's now imprisoned continue to languish as a result, but there may be new POW's when more of our planes are shot down and more crews are captured. I understand there already has been a slight increase in the number of POW's in recent weeks.

It is an unhappy picture I fear we face in Vietnam.

The PRESIDING OFFICER. The Senator's additional 3 minutes have expired.

Mr. GRIFFIN. Mr. President, it is very disappointing to hear a Senator of the United States speak against a cease-fire in Southeast Asia. I am shocked. It is disappointing and shocking to hear a Senator of the United States reject the very fair and generous peace proposal advanced by the President of the United States, a proposal which even Hanoi has not rejected. It is true that Hanoi has not responded to this proposal for some 2 months, but I never thought we would hear it rejected in our own country and before the North Vietnamese have had an opportunity to respond.

It seems to me that the time is at hand when Americans ought to give this President—indeed, any President, in these circumstances—their support for such a fair and generous proposal. At least, they could support him with their silence for a while, so that the President might have an opportunity to try to negotiate a settlement which will get our prisoners of war back. I regret to have to say that. Perhaps it would have been better not even to have acknowledged the remarks of the senior Senator from California. But I observed that he had already held a news conference, which was reported on the news ticker before he spoke in the

Senate. According to the news report, he charged the President with really not seeking peace at all, but preparing the country for an escalation of the war. That is an incredible statement. I regret that the Senator from California made such a statement.

Mr. CRANSTON. Mr. President, will the Senator yield? I should like simply to say——

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

Mr. GRIFFIN. If I have the floor, Mr. President, I yield to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, I listened with interest to the distinguished Senator from California last night after the President spoke. I was encouraged by what the distinguished junior Senator from Michigan had to say just now. At least, there was some hope last night that the Senator from California would join other Members of this body from both parties, in supporting the President of the United States.

I share the views expressed by the distinguished Senator from Michigan. I think now is the time that we should serve notice on Hanoi that this country is united.

I missed a portion of the remarks of the junior Senator from California, but I ask permission at this time to include at the end of my remarks an editorial which appeared in tonight's Washington Evening Star.

The PRESIDING OFFICER. The time of the Sentor from Michigan has expired.

Mr. DOLE. May I be recognized?

The PRESIDING OFFICER. The Senator is recognized.

Mr. DOLE. I ask unanimous consent to have printed in the RECORD following my remarks an editorial from tonight's Washington Evening Star entitled "Nixon's Peace Plan."

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

(See exhibit 1.)

Mr. DOLE. Mr. President, we have had serious debates in this body over the past few years during which those of us who have different views and different convictions have expressed ourselves. I know of no Senator in this body who wants this war to continue 1 more day. Certainly this President does not, nor did his predecessors, who, for all their commendable intentions involved us in Southeast Asia.

I understand the Senator from California said that the President is dealing from a position of weakness. I do not know what the junior Senator from California may have said were the alternatives to the President's course. I suppose there are a couple—first, to turn tail and evacuate our troops from South Vietnam, and second, to have an escalation of the war in order to have a military standoff or a military victory.

The Senator from Kansas knows that President Nixon still has the door open for negotiations. The President is willing to continue his talks with the representatives of North Vietnam.

As of May 1, 87 percent of the number of troops involved in Vietnam on January 1, 1969, when this President assumed office, will have been withdrawn. The cost of the war has been cut by half. Casualties have been cut down to fewer than 10 per week. That is still too many, but there is nothing that indicates our President is not pursuing every avenue to attain peace.

We could review statements that have been made about the President of the United States, first, that the President was inflexible, second, that the President was doing nothing to protect our prisoners of war and Americans missing in action; but I think those who made those statements may want them expunged from the record, because the President's efforts can be documented. Dr. Kissinger, as everyone knows now, has made 13 trips to Paris to attend 13 secret sessions with the leaders of North Vietnam.

I would hope we would all abide by the concern that has been expressed by the Senator from Michigan, that this is not the time for partisanship. This is the time for statesmanship. I believe the President demonstrated that statesmanship last evening. This is the time to remove the issue of American prisoners of war and missing in action from the political arena. No service can be performed for those men or for their families by making politics out of their unfortunate plight. The President has gone, not 1 mile, but many, many extra miles, in the pursuit of peace.

I regret that I missed what the Senator from California had as an alternative.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed for an additional 3 minutes.

Mr. BYRD of West Virginia. Mr. President, the leadership has been objecting to all requests for extensions of time during the transaction of morning business.

May I ask unanimous consent at this time, because of the subject that has arisen, that statements be limited during this period for the transaction of routine morning business to not to exceed 10 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

EXHIBIT 1

NIXON'S PEACE PLAN

We don't know if it will succeed in pulling the rug out from under Senator Mike Mansfield or other opponents of the administration's Vietnam policies. We don't know if it will end the war. But it will take a very determined critic to find much fault with the Vietnam peace plan unfolded by President Nixon to the nation last night.

Part of the revelation was past history. Mr. Nixon's effort to try the road of secret diplomacy, dating back to August 1969, and the 12 subsequent trips to Paris of Presidential Security Adviser Henry Kissinger, unannounced and incredibly unreported, adds a new dimension to the Byzantine diplomacy which seems to be the hallmark of this administration. There will be some, no doubt, who will deplore the secrecy of these initiatives. But in view of the offers made—and rejected by the Communist side in the course of these negotiations—there should also be a considerable amount of crow-eating among those who have accused the administration of obduracy in trying to find an honorable solution to the war.

Very certainly, the terms which Mr. Nixon is now offering in public must be supported by the overwhelming majority of the American people. For those who have urged him to set a "date certain" for a complete American withdrawal from Vietnam, he has complied. The date will be six months from the time that an agreement in principle is reached on the release of American prisoners of war held in Hanoi and on a military cease-fire throughout Indochina. If agreement can be reached on these military provisions, all American participation in the war can come to an end, including air support for the defending South Vietnamese army and the forces of Laos and Cambodia.

The political elements of the President's offer are no less persuasive. An agreement to hold new elections throughout South Vietnam under international supervision, with President Thieu and Vice President Huong resigning a month beforehand, offer a solid basis for a political settlement of the conflict. With National Liberation Front forces guaranteed participation, only those, as Mr. Nixon put it, who cannot differentiate between a settlement and a surrender can reasonably object. And similarly, the American offer to undertake a major program of reconstruction in both North and South Vietnam on the termination of the hostilities is a positive and promising move.

However, the President's objective in making his announcement last night was not limited to silencing his opponents in the United States. It was quite simply to put an end to the war under conditions that would fulfill our obligations to the people of South Vietnam, our own war dead and most reasonable people everywhere. It was aimed also at obtaining release of our war prisoners, without which a complete withdrawal of American forces from South Vietnam would be an unpardonable act of abandonment.

The results, unfortunately, do not depend on reasonable people. They depend rather on leaders who have known for months the general terms on which they could get an end to the killings and a return of peace in Indochina. It is still very uncertain whether these terms are acceptable to them or whether the force of world opinion can induce them to modify their ambitions for military victory. The response may be bitterly disappointing, but at least from now on it should be clear to everyone who is responsible for continuing the war.

Mr. DOLE. Mr. President, I shall be happy to yield to the junior Senator from California at this time to have him explain to me what he proposes we do at this time.

Mr. CRANSTON. Mr. President, I thank the Senator from Kansas. But since he had not heard what I said in full, and since I think the Senator from Michigan, did not exactly understand what I said, I will seek to clarify two or three points.

First, I have not attacked a cease-fire proposal. I would like to see a cease-fire adopted. If the cease-fire could be adopted as the President has proposed, I would be delighted, as would all Americans and all people in South Vietnam. I simply stated as my opinion and my analysis that the other side, which had ignored a cease-fire offer thus far, would reject it. Therefore, because they would reject it, our insisting on a cease-fire would not lead to an end to the war. I was simply making a realistic appraisal of what I believe to be an unrealistic proposal.

Mr. GRIFFIN. Mr. President, if the Senator will yield, I wonder if the Senator from California would agree that it would be more likely that the North Vietnamese will reject it if there are voices in the leadership level in our own country that say they should reject it or that they will reject it.

Mr. CRANSTON. The cease-fire proposal, like much else and probably all that the President now proposes, is not new. Those proposals have been made before. They have been either ignored or rejected. Anybody who would analyze the situation would see plainly that there is no reason to expect that the North Vietnamese will accept these proposals under the conditions prevailing in Southeast Asia.

Mr. DOLE. Let me respond. I think it is clear that those who talk about releasing the prisoners are unrealistic.

Mr. CRANSTON. Why?

Mr. DOLE. Because their release has been rejected by the other side. The President was very effective last evening in pointing out that what they are interested in is the overthrow of the Saigon government, directly or indirectly. I do not believe the junior Senator from California would suggest that we should cooperate in the overthrow of the Government of South Vietnam either directly or indirectly. That is what they want. That is what many of us have said here for months and months. If a date is set for withdrawal in advance, they will make other demands, such as that there shall be no economic aid or that we permit the overthrow directly of the Thieu government. The President made that very clear. The President can document everything he said last evening, and I think the President has.

I find great support for the President in my State of Kansas, from people up and down the street, not Democrats or Republicans, not partisans, but those concerned with our involvement in Southeast Asia.

Frankly, I cannot understand, if the Senator is saying the cease-fire proposal is not a new element, and that they will reject it as they already have. I think we have a right to a cease-fire and a right to protect Americans as they leave Vietnam. Certainly the President has made it clear to the wives and families of the prisoners and missing in action that he is concerned about them and that he has had their interest at heart.

For 30 months the President has been pursuing secret negotiations. We are not going to dictate the terms on the Senate floor. If there are going to be negotiations, they are going to be on a high level, between their leaders and our leaders. This has been tried by the President. He has not stopped. He is still willing to negotiate. He is still carrying on the Vietnamization program.

I understand the North Vietnam Government is sensitive to suggestions made by U.S. Senators and others. I assume the Senator's talk will be welcome to them when they hear about it, that the President is preparing the people for an escalation.

I am convinced that partisanship should be kept apart from this issue. War or peace should not be a partisan issue in 1972 or any other election year. I believe we have some obligation, regardless of party responsibility, regardless of differences of opinion. If we want to go into the origins of the Vietnam war, we can do that, but the American people would like to see it ended, and the great majority of the American people give President Nixon credit for the efforts he has made.

I read the Senator's portion of the statement in which he says this is not politically motivated. It is not. He said it was to prepare the American people for an escalation. If there is an escalation, it will come from the other side. They have been planning it for months. It will probably come at the end of next month. There will probably be an effort to embarrass our President as he leaves for Peking.

There will be an effort to take South Vietnam militarily. The one thing the North Vietnamese want is South Vietnam. They can have it, I assume, in one of two ways: either militarily or by negotiation, which would mean that we would help, through negotiations, to overthrow a friendly government. That has not been our purpose in Southeast Asia.

I would hope that the Senator would review his remarks of last evening on television, where he indicated some support of the President, not because he was from California and not because he was a Republican, but because he was our President, and because he had made the bold initiative for peace.

I would hope that in the weeks ahead, this will not become a debating society for the Republican view, the Democrat view, the Nixon view, or any other view, and I think tonight's Evening Star editorial rather clearly supports that hope.

It is now up to the North Vietnamese. If we are going to sway world opinion, if we are going to develop world opinion, we are going to need a united American opinion; and they are going to listen and be more apt to negotiate the generous terms offered by President Nixon if this country is for the most part united.

The President may even know more, I do not know. But I believe the revelations he made last night disclosed that he has never given up in his pursuit of peace, and those of us who have supported the President can take pride in supporting the President.

I have said, probably a hundred times, that if we look at the record, the record when the President was inaugurated, look at the casualties, the cost, the numbers, and compare that with the record last month, this month, or next month, we will see there has been a great improvement. So I would hope the distinguished Senator from California, in the weeks ahead, would join us in trying to put an end to this war in Southeast Asia. I do not hear any alternative plan from the Senator. The Senator is surely not suggesting that we participate in the overthrow of the Saigon government? The Senator is surely not suggesting that we surrender South Vietnam and abandon it—with our prisoners of war; but I do not know what his alternative is.

I yield back the remainder of my time.

Mr. CRANSTON. Mr. President. In the first place, I do not suggest that the President was politically motivated. Had the Senator from Kansas been present, he would have heard me say the precise opposite. He would have heard me say that I do not believe the President was politically motivated in any way.

Second, I do not believe the United States can, should, or will engage in any acts designed to overthrow the Thieu government in South Vietnam.

Third, in regard to what may be a coming escalation of the Vietnam war. There are signs that is occurring right now. But I do not blame the President for it. I do not suggest that the President of the United States wishes to escalate, plans to escalate, or would initiate an escalation. Recent moves that have heightened the conflict have come first from the other side. But we responded. We heavily increased our aerial bombing. Now there are signs, as the President himself indicated, that the North Vietnamese are now infiltrating southward in greater numbers than has been the case in a long time. And there, consequently, are signs of escalating attacks on ourselves and our allies.

The President made plain last night that if the other side continues to escalate, he will respond with whatever force is available to him. I do not believe he is the original escalator. But he plans to meet the other side's escalation with escalation of his own. He made that plain last night.

Finally, the Senator asks what the alternative is. The alternative is what the President did not propose last night. The President did not propose the simple answer to the problem which many Democrats, within and without the Senate have suggested. The simple answer is that we agree to withdraw totally by a given date, provided the other side releases all prisoners of war, proportionately as we pull out. We should demand no conditions other than the release of our prisoners and the safety of our men.

When we add seven or eight or nine other points, including a requirement for a general cease-fire that in effect asks the one side in a foreign civil war to quit that war on American terms; when we set up an election procedure that we would have people outside Vietnam setting the conditions; and when we suggest that President Thieu can maintain control of the government until 1 month before that election, we place a lot of obstacles in the path of getting our POW's released and our troops withdrawn. I think we should sweep away all such obstacles and get all of our men safely back home, promptly.

Mr. President, I yield the floor.

Mr. GRIFFIN. Mr. President, may I have the remainder of the 7 minutes?

The PRESIDING OFFICER (Mr. BENTSEN). The Senator from Michigan is recognized.

Mr. GRIFFIN. Mr. President, all of us, I suppose, were asked for comments following the President's statement last night, and my comment was that the important reaction to the President's historic statement would come not from Hanoi, but from within the United

States. I think that was the situation and is the situation because I think Hanoi has been and is watching very carefully to see whether or not this President, under these circumstances, is going to be supported by the American people.

Of course, I recognize that there are honest and good-faith differences of opinion. But it seems to me that every American today, regardless of his politics, has got to ask himself, "How can I best contribute to achieving the peace that we all want, and getting our prisoners of war home?"

I am convinced that we do not contribute to that effort by adding to the impression of division without our country. Surely it must be clear, unless you prefer to believe the Communists in preference to the President of the United States, that this Nation has negotiated in good faith and has gone the extra mile.

Under these circumstances, for God's sake, it seems to me that this President, or any President, deserves support, and if not support at least some silence, to see what the response from Hanoi will be, because Hanoi has not rejected this peace proposal. It is being rejected by some of our own people here in our country and in the Senate of the United States.

Now, the fact is that on May 31, 1971, 8 months ago—and I read from the President's statement last night—at one of the secret meetings in Paris, we offered specifically to agree to a deadline for the withdrawal of all American forces in exchange for the release of all prisoners of war and a cease-fire.

Now, that was a proposal upon which we wanted to negotiate. It is true that there was not any particular date set for withdrawal, but we were prepared to negotiate a date of withdrawal. It is true we did not state when or exactly how the prisoners of war would be released, but we were ready to negotiate. It is true that the details of a cease-fire were not spelled out, but we wanted to negotiate.

The other side rejected that offer and refused to negotiate on that basis. Instead they came in with their so-called 7-point peace plan, which insisted upon a political settlement in addition to a military settlement.

Well, we are ready to negotiate as far as a political settlement is concerned as the President spelled out last night, we have offered a proposal for very generous provisions for an election which would include the Vietcong, which would be internationally supervised, with President Thieu resigning his office a month in advance.

Let us see if we can get the other side to negotiate this. Let us not reject it ourselves before they have an opportunity to respond.

I respect the junior Senator from California, and he has a right to his views. Unfortunately, we differ, and we differ very seriously.

Frankly, I am glad that some of the reaction from the other side of the aisle has not been in the same vein. It has been in a highly nonpartisan and very responsible tone, so far as I am concerned, and as I judge it. I think we need that now. Down the road sometime in the campaign, if Senators want to argue some of these things about how the war began or whether or not it was conducted right, that is a different situation. But right now—and I would say this whether it was President Kennedy in the White House or President Johnson in the White House or any other President in the White House—let us give this President some support.

Mr. CRANSTON. Mr. President, as far as I am concerned, this really has nothing to do with the campaign and nothing to do with politics. It has to do with the war that the American people desperately want to end. It has to do with the young people who are involved in the conflict now or who are facing involvement. It has to do with their families and with their loved ones; it has to do with people languishing in prisons in Vietnam.

It seems to me that by listing the many offers that have been made, the Senator from Michigan built a very solid argument for the case I have presented. One offer after another has been rejected or ignored by the other side.

All I have done today is to state my opinion that nothing substantively new has been offered; that this proposal too will be ignored or rejected by the other side. Therefore, the search for peace must go on. It must go on in the White House. It must go on in Congress. It must go on in the country. We must continue the search for peace until we find the right plan that will get us out of this war.

If it turns out to be the plan the President has offered, I shall congratulate him. It will be a great achievement; we will be out of this tragic war. But I sadly admit that I have grave doubts that this will prove to be the case.

Mr. GRIFFIN. Mr. President, in order to complete this colloquy, I ask unanimous consent that the text of the President's address to the Nation last night be printed in the RECORD; and, since I made reference to a wire story concerning statements made by Senator CRANSTON, I ask unanimous consent that the text of that UPI story also be printed in the RECORD.

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

[From the New York Times, Jan. 26, 1972]

TRANSCRIPT OF THE PRESIDENT'S ADDRESS TO THE NATION ON U.S. POLICY IN VIETNAM

Following is a transcript of President Nixon's televised address last night on Vietname policy, as recorded by The New York Times:

Good evening.

I have asked for this television time tonight to make public a plan for peace that can end the war in Vietnam.

The offer that I shall now present on behalf of the Government of the United States and the Government of South Vietnam, with the full knowledge and approval of President Thieu, is both generous and far-reaching.

It is a plan to end the war now. It includes an offer to withdraw all American forces within six months of an agreement. Its acceptance would mean the speedy return of all the prisoners of war to their homes.

Three years ago when I took office there were 550,000 Americans in Vietnam. The number killed in action was running as high as 300 a week. There were no plans to bring any Americans home and the only thing that had been settled in Paris was the shape of the conference table.

I immediately moved to fulfill a pledge I had made to the American people to bring about a peace that could last, not only for the United States but for the long-suffering people of Southeast Asia.

There were two honorable paths open to us.

The path of negotiation was, and is, the path we prefer. But it takes two to negotiate. There had to be another way in case the other side refused to negotiate. That path we called Vietnamization. What it meant was training and equipping the South Vietnamese to defend themselves and steadily withdrawing Americans as they developed the capability to do so.

The path of Vietnamization has been successful.

Two weeks ago you will recall that I announced that by May 1 American forces in Vietnam would be down to 69,000. That means almost one-half million Americans will have been brought home from Vietnam over the past three years.

CITES REDUCTION IN CASUALTIES

In terms of American lives the losses of 300 a week have been reduced by over 95 per cent to less than 10 a week. But the path of Vietnamization has been the long voyage home. It has strained the patience and tested the perseverance of the American people.

What of the short cut? The short cut we prefer, the path of negotiation? Progress here has been disappointing.

The American people deserve an accounting of why it has been disappointing. And tonight I intend to give you that accounting; and in so doing I'm going to try to break the deadlock in the negotiations.

We have made a series of public proposals designed to bring an end to the conflict. But early in this Administration, after 10 months of no progress in the public Paris talks, I became convinced that it was necessary to explore the possibility of negotiating in private channels to see whether it would be possible to end the public deadlock.

After consultation with Secretary of State Rogers, our Ambassador in Saigon, our chief negotiator in Paris, with the full knowledge and approval of President Thieu, I sent Dr. Kissinger to Paris as my personal representative on Aug. 4, 1969—30 months ago—to begin these secret peace negotiations.

TWELVE TRIPS TO PARIS BY KISSINGER

Since that time, Dr. Kissinger has traveled to Paris 12 times on these secret missions. He has met seven times with Le Duc Tho, one of Hanoi's top political leaders, and Minister Xuan Thuy, head of the North Vietnamese delegation to the Paris talks. And he has met with Xuan Thuy five times alone.

I would like, incidentally, to take this opportunity to thank President Pompidou of France for his personal assistance in helping to make the arrangements for these secret talks.

Now this is why I initiated these private negotiations.

Privately, both sides can be more flexible in offering new approaches. And also, private discussions allow both sides to talk frankly, to take positions free from pressure of public debate.

In seeking peace in Vietnam with so many lives at stake, I felt we could not afford to let any opportunity go by, private or public, to negotiate a settlement.

As I have stated on a number of occasions, I was prepared, and I remain prepared, to explore any avenue, public or private, to speed negotiations to end the war.

For 30 months, whenever Secretary Rogers, Dr. Kissinger or I were asked about secret negotiations, we would only say we were pursuing every possible channel in our search for peace. There was never a leak, because we were determined not to jeopardize the secret negotiations.

INITIAL HOPE OF PROGRESS

Until recently, this course showed signs of yielding some progress. Now, however, it is my judgment that the purposes of peace will best be served by bringing out publicly the proposals we have been making in private.

Nothing is served by silence when the other side exploits our good faith to divide America and to avoid the conference table.

And nothing is served by silence when it misleads some Americans into accusing their own Government of failing to do what it has already done. And nothing is served by silence that enables the other side to imply possible solutions publicly that it has already flatly rejected privately.

The time has come to lay the record of our secret negotiations on the table.

Just as secret negotiations can sometimes break a public deadlock, public disclosure may help to break a secret deadlock.

Some Americans who believed what the North Vietnamese led them to believe have charged that the United States has not pursued negotiations intensively.

As the record that I now will disclose will show, just the opposite is true.

Questions have been raised as to why we have not proposed a deadline for the withdrawal of all American forces in exchange for a cease-fire and the return of prisoners of war, why we have not discussed the seven-point proposal made by the Vietcong last July in Paris, why we have not submitted a new plan of our own to move the negotiations off dead center.

As the private record will show, we've taken all these steps and more, and have been flatly rejected or ignored by the other side.

On May 31, 1971, eight months ago, at one of the secret meetings in Paris we offered specifically to agree to a deadline for the withdrawal of all American forces in exchange for the release of all prisoners of war and a cease-fire.

At the next private meeting on June 26, the North Vietnamese rejected our offer. They privately proposed instead their own nine-point plan, which insisted that we overthrow the Government of South Vietnam. Five days later, on July 1, the enemy publicly presented a different package of proposals, the seven-point Vietcong plan. That posed a dilemma. Which package should we respond to—the public plan or the secret plan?

QUESTION PUT TO HANOI DELEGATE

On July 12, at another private meeting in Paris, Dr. Kissinger put that question to the North Vietnamese directly. They said we should deal with their nine-point secret plan because it covered all of Indochina, including Laos and Cambodia, while the Vietcong seven-point proposal was limited to Vietnam.

And so that's what we did, but we went even beyond that, dealing with some of the points in the public plan that were not covered in the secret plan.

On Aug. 16, at another private meeting, we went further. We offered the complete withdrawal of United States and allied forces within nine months after an agreement on an over-all settlement.

On Sept. 13, the North Vietnamese rejected that proposal. They continued to insist that we overthrow the South Vietnamese Government.

Now what has been the result of these private efforts? For months the North Vietnamese have been berating us at the public sessions for not responding to their side's publicly presented seven-point plan.

The truth is that we did respond to the enemy's plan in the manner they wanted us to respond, secretly.

DENOUNCED BY HANOI

In full possession of our complete response, the North Vietnamese publicly denounced us for not having responded at all.

They induced many Americans in the press, in the Congress, into echoing their propaganda. Americans who could not know they were being falsely used by the enemy to stir up divisiveness in this country.

I decided in October that we should make another attempt to break the deadlock.

I consulted with President Thieu, who concurred fully, in a new plan. On Oct. 11 I sent a private communication to the North Vietnamese that contained new elements that could move negotiations forward.

I urged a meeting on Nov. 1 between Dr. Kissinger and special adviser Le Duc Tho or some other appropriate official from Hanoi. On Oct. 25 the North Vietnamese agreed to meet, suggested Nov. 20 as the time for meeting.

On Nov. 17, just three days before the scheduled meeting, they said Le Duc Tho was ill. We offered to meet as soon as he recovered, either with him or immediately with any other authorized leader who could come from Hanoi.

Two months have passed since they called off that meeting. The only reply to our plan has been an increase in troop infiltration from North Vietnam and Communist military offensives in Laos and Cambodia.

RESPONSE A "STEP-UP IN WAR"

Our proposal for peace was answered by a step-up in the war on their part. That is where matters stand today.

We are being asked publicly to respond to proposals that we answered, and in some respects accepted, months ago in private.

We are being asked publicly to set a terminal date for our withdrawal when we already offered one in private.

And the most comprehensive peace plan of this conflict was ignored in a secret channel while the enemy tries again for military victory.

That is why I have instructed Ambassador Porter to present our plan publicly at this Thursday's session of the Paris peace talks, along with alternatives to make it even more flexible.

We are publishing the full details of our plan tonight.

It will prove beyond doubt which side has made every effort to make these negotiations succeed. It will show unmistakably that Hanoi, not Washington or Saigon, has made the war go on.

Here is the essence of our peace plan; public disclosure may gain it the attention it deserves in Hanoi:

Within six months of an agreement, we shall withdraw all U.S. and allied forces from South Vietnam.

We shall exchange all prisoners of war.

There shall be a cease-fire throughout Indochina.

There shall be a new presidential election in South Vietnam.

THIEU TO GIVE DETAILS

President Thieu will announce the elements of this election. These include international supervision and an independent body to organize and run the election, representing all political forces in South Vietnam, including the National Liberation Front.

Furthermore, President Thieu has informed me that within the framework of the agreement outlined above, he makes the following offer: he and Vice President Huong would be ready to resign one month before the new election.

The chairman of the Senate, as caretaker head of the Government, would assume administrative responsibilities in South Vietnam.

But the election would be the sole responsibility of the independent elections body I have described.

There are several other proposals in our new peace plan. For example, as we offered privately on July 26 of last year, we remain prepared to undertake a major reconstruction program throughout Indochina—including North Vietnam—to help all these people recover from the ravages of a generation of war.

We will pursue any approach that will speed negotiations. We are ready to negotiate the plan that I have outlined tonight and conclude a comprehensive agreement on all military and political issues.

Because some parts of this agreement could prove more difficult to negotiate than others, we would be willing to begin implementing certain military aspects while negotiations continue on the implementation of other issues, just as we suggested in our private proposal in October.

Or, as we proposed last May, we remain willing to settle only the military issues and leave the political issues to the Vietnamese alone.

"WOULD WITHDRAW ALL"

Under this approach we would withdraw all U.S. and allied forces within six months in exchange for an Indochina cease-fire and the release of all prisoners.

The choice is up to the enemy. This is a settlement offer which is fair to North Vietnam and fair to South Vietnam. It deserves the light of public scrutiny by these nations and by other nations throughout the world. And it deserves the united support of the American people.

We made the substance of this generous offer privately over three months ago. It has not been rejected but it has been ignored. I reiterate that peace offer tonight. It can no longer be ignored.

The only thing this plan does not do is to join our enemy to overthrow our ally, which the United States of America will never do.

If the enemy wants peace, it will have to recognize the important difference between settlement and surrender.

"LONG AND AGONIZING STRUGGLE"

This has been a long and agonizing struggle but it is difficult to see how anyone, regardless of his past position on the war, could now say that we have not gone the extra mile in offering a settlement that is fair—fair to everybody concerned.

By the steadiness of our withdrawal of troops, America has proved its resolution to end our involvement in the war.

By our readiness to act in the spirit of conciliation, America has proved its desire to be involved in the building of a permanent peace throughout Indochina.

We are ready to negotiate peace immediately.

If the enemy rejects our offer to negotiate, we shall continue our program of ending American involvement in the war by withdrawing our remaining forces as the South Vietnamese develop the capability to defend themselves.

If the enemy's answer to our peace offer is to step up their military attacks, I shall fully meet my responsibility as Commander in Chief of our armed forces to protect our remaining troops.

We do not prefer this course of action. We want to end the war—not only for America but for all the people of Indochina.

SAYS SOME DOUBT UNITED STATES

Some of our citizens have become accustomed to thinking that whatever our Government says must be false; and whatever our enemies say must be true, as far as this war is concerned.

But the record I have revealed tonight proves the contrary. We can now demonstrate publicly what we have long been demonstrating privately—that America has taken the initiative, not only to end our participation in this war, but to end the war itself for all concerned.

This has been the longest, the most difficult war in American history. Honest and patriotic Americans have disagreed as to whether we should have become involved at all nine years ago. And there has been disagreement on the conduct of the war.

The proposal I have made tonight is one on which we all can agree.

Let us unite now, unite in our search for peace, a peace that is fair to both sides, a peace that can last. Thank you and good night.

STATEMENT

Sen. Alan Cranston, D-Calif., said Nixon's peace plan was "totally unrealistic and intended to prepare the American people for a new escalation of the war.

Cranston said at a news conference in his office that the eight-point peace plan would be unacceptable to North Vietnam and that Nixon knew it in making the offer.

The California Democrat said one reason the peace plan was "unrealistic" was that the President was "dealing from weakness" not "strength."

Nixon, he said, was asking the other side "to give up the civil war" and agree to American objectives at a time when U.S. forces are being reduced.

Cranston said he did not believe Nixon's offer was politically motivated.

"I don't think it was political," he said, "but I also do not think it is a plan for peace."

Instead, he said, it was intended "to prepare the American people for an escalation of the war."

Sen. Marlow W. Cook, R-Ky., called the Nixon disclosure "a giant stride towards a peaceful settlement of the way affecting the entire Indochina peninsula. It is bold; it is reasonable."

He said Nixon has offered "more than a plan for withdrawal—he has offered a plan for peace."

Mr. GRIFFIN. Mr. President, may I ask the Chair if any time remains under the 10 minutes?

The PRESIDING OFFICER. The Senator can be recognized for an additional 10 minutes, if he so desires.

Mr. GRIFFIN. Mr. President, with the indulgence of the Senator from West Virginia—I am sure I will not use 10 minutes—and I regret that the junior Senator from California has left the floor.

I have had brought to my attention a UPI story concerning briefing of the press today by Presidential Adviser Henry Kissinger.

I read from it:

WASHINGTON.—National Security Affairs Advisor Henry A. Kissinger said today the United States offered a total withdrawal of American troops from Vietnam by Aug. 1, 1972 with a cease fire in exchange for release of the American prisoners of war.

Kissinger told a news conference in the East Room of the White House that the proposal to set a date for withdrawal was made at a secret negotiating session in Paris with North Vietnamese officials on Aug. 16. It was the first time that the White House has disclosed that it had offered a fixed withdrawal deadline.

At a later point in the story, I want to read this paragraph in particular:

Kissinger said that there was no debate with the North Vietnamese about the cease fire as part of the settlement. "That is not a contentious issue," he said.

Mr. President, I ask unanimous consent to have the full text of the release printed in the RECORD.

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

WASHINGTON.—National Security Affairs Advisor Henry A. Kissinger said today the United States offered a total withdrawal of American troops from Vietnam by Aug. 1, 1972 with a cease fire in exchange for release of the American prisoners of war.

Kissinger told a news conference in the east room of the White House that the proposal to set a date for withdrawal was made at a secret negotiating session in Paris with North Vietnamese officials on Aug. 16. It was the first time that the White House has disclosed that it had offered a fixed withdrawal deadline.

Kissinger also told reporters that the main sticking point in negotiations with the communists has been and remains North Vietnam's determination that the United States overthrow the South Vietnam's determination that the United States overthrow the South Vietnamese Government of President Nguy~n Van Thieu either directly or indirectly. Kissinger said that the United States is not and will not be prepared to take that step. He said the communists want the United States to offer them what they have not been able to achieve militarily.

The President's chief foreign policy advisor, meeting with reporters in the aftermath of President Nixon's televised Vietnam report last night, said that North Vietnam had also demanded that the United States withdraw all military and economic aid from South Vietnam. Including equipment provided the Army of the Republic of South Vietnam.

Kissinger said that "they are in effect asking us to ally ourselves with their overthrow of the people who have been counting on us.

"They want us to achieve for them what they have not been able to accomplish themselves."

"We are still ready to resume talks in either public or private channels," said Kissinger.

"Some time this war has to end," he declared. "Sometimes it has to end through negotiations. It isn't we who are looking for a military end."

Kissinger said that domestic division had played a big role in convincing the President that he should open the book on the 30 months of the secret negotiations that had been carrying on with communist negotiators. He explained that the administration had withstood attacks by the Senate doves and other critics in hopes that the private negotiations would be fruitful.

But he added "we had always thought that if our secret negotiations had not made significant progress by the time Congress returned, we would bring it out in public. We felt it was not fair to protect a channel that was not active. We had endured months of criticism while we thought there was a chance of making progress."

Kissinger declined to go into the secret meetings which were conducted in 1969 and 1970 with the communists. But he dealt blow-by-blow with the meetings which took place in 1971 on May 31, June 26, July 12, July 26, Aug. 16 and Sept. 13.

At the secret meeting on Aug. 16, Kissinger said the U. S. proposed to set a total troop withdrawal date at nine months after conclusion of an agreement of principle. He said this would have been Aug. 1, 1972, provided an agreement was reached by Nov. 1, 1971.

He said that the North Vietnamese turned the proposal down because the withdrawal deadline was too long and that it did not cover the political demands for the overthrow of the Saigon regime.

"For the first time we included a declaration of the American willingness to limit our aid to South Vietnam if North Vietnam would limit its aid," he said.

"On Sept. 13, North Vietnam turned down the offer because the withdrawal date was too long" and it did not include a simple declaration of political neutrality which would remove all U. S. support for the Thieu government.

Kissinger than said the U. S. came back with an offer to shorten the deadline and gave a precise political prescription on how a free election can be organized with President Thieu willing to resign before the election.

He said that the United States has received no reply to its eight point secret IACE plan which proposed in secret on Oct. 11 and made public last night by Nixon. But he said that the disclosure of the plan added to its significance because it gave the "public commitment of the United States and South Vietnam on the question of troop withdrawals, a cease fire and a political solution for the future of South Vietnam.

Kissinger said that there was no debate with the North Vietnamese about the cease fire as part of the settlement. "That is not a contentious issue," he said.

The differences narrows to two main issues:

—The withdrawal of U. S. and Allied troops and the political evolution.

"The North Vietnamese say we should set a date regardless of whatever happens, regardless of the prisoner of war issue," Kissinger said. "In other words we should get out unilaterally."

Kissinger said the United States was not committed to one political structure but still was determined that the people of South Vietnam have a genuine freedom in expressing their own political preferences.

Mr. BYRD of West Virginia. Mr. President, it is my understanding that the distinguished Senator from California (Mr. CRANSTON) will return to the Chamber and will have something further to say.

The Senator from California has just arrived in the Chamber.

Mr. CRANSTON. Mr. President, I wish to add a footnote to the colloquy I was engaged in with the Senator from Kansas (Mr. DOLE) and the assistant minority leader. After I walked off the floor, I was called into the waiting room to meet a constituent, Mrs. Robert Orr, of Woodland Hills, Calif. Mrs. Orr told me she is a mother of a draft age son. She handed me a copy of tonight's Washington Star. On the front page was a banner headline reporting that, "Hanoi Scorns Nixon Plan."

I recount that footnote to show that my earlier presumption that Hanoi would not accept the President's proposals was a realistic presumption, as contrasted with what I called then, and call again, the unrealistic peace proposal made by the President of the United States.

I deeply regret that this is the situation.

I join the distinguished Senator from Michigan (Mr. GRIFFIN) and hope that some plan will be adopted. I would have been delighted had the President's plan been adopted.

Mr. GRIFFIN. But the distinguished Senator from California was willing to make a statement before he knew what Hanoi was going to say; is that not right?

Mr. CRANSTON. It certainly was. It was pretty obvious what their reply was going to be.

NATIONAL COMMITMENT TO ELIMINATE JOB DISCRIMINATION

Mr. BYRD of West Virginia. Mr. President, on September 14, 1971, I introduced S. 2515 for the distinguished junior Senator from New Jersey (Mr. WILLIAMS) and for 32 other Senators. Although I was not a cosponsor of that bill, I support the bill which is now before the Senate, and I shall vote for it on final passage.

There are some features of the bill

with which I am not in complete accord. Nonetheless, I hope that the bill can be improved when in conference with the other body.

I do not favor special treatment or special consideration or favored employment of any individual on the basis of that person's being black or white, male or female. Nor do I believe that every charge of discrimination in employment is valid. In many instances, a charge of discrimination is used as a crutch to cover incompetence and unfitness for a particular job. Discrimination is often blamed also for failure of promotion, whereas in reality, such failure is not because of color but because of conduct.

Notwithstanding what I have just said, the fact remains that discrimination in employment, on the basis of race, does exist, and discrimination against sex does persist. Wherever there is such discrimination in employment, it is violative of the Constitution of the United States. I believe that, where jobs and promotions are concerned, every person should be judged on the basis of his ability to do the job, his willingness to diligently apply himself, his appearance as to cleanliness, his attitude, and his personal conduct insofar as speech, manners, and morals are concerned. In other words, he should rise or fall on the basis of merit, not on the basis of race or religion or sex. Every qualified individual—black, white, or else—should be given an equal chance—not preferential treatment—at employment.

There is no question but that the unemployment rate for Negroes is considerably higher than that for whites. Figures available for 1970 show that the unemployment rate for whites was 5.4 percent, while 9.3 percent of Negroes were unemployed. Likewise, in 1970, the median family income for Negroes was $6,279, while the median income for whites was $10,236.

While statistics on Spanish-speaking Americans are not nearly as current or complete, it is interesting to note that in 1969, the median family income for Spanish-speaking American families was $5,641.

The situation for working women is no less serious. Women continue to be relegated to low-paying positions and the rate of advancement is slower than for men in similar positions. I am informed that 70 percent of all employed women work in order to provide primary support for themselves or to provide a supplement to the income of their husbands which may be needed to meet household expenses. However, within established occupational categories, women are paid less for doing the same jobs as are done by men. For example, in 1968, the latest year for which extensive data are available, the median salary for all scientists was $13,200, but for women scientists, the median salary was $10,000. Similarly, the median salary for a full-time male factory worker was $6,738, while his female counterpart was paid $3,991. This economic disparity is further emphasized by figures which show that while 28 percent of men earn $10,000 per year or more, only 3 percent of the women do so.

Discrimination against women is obviously no less serious than any other prohibitive form of discrimination.

Enactment of this bill will not automatically end employment discrimination. Nor do I believe it to be the Federal Government's responsibility or function to dictate to every little private employer what his employment guidelines should be. The United States Constitution does not outlaw discrimination when practiced by an individual person. But job discrimination based on race, sex, natonality or religion cannot be countenanced with respect to the actions of Federal, State, and local governments, or corporations, or even private employers where a substantial number of employees are concerned.

The bill before the Senate would broaden the jurisdictional coverage of the Equal Employment Opportunities Commission, and would delete the existing exemptions for State and local government employees.

The U.S. Attorney General would be given the authority to bring civil actions involving unlawful employment practices committed by State and local governmental agencies.

Employees of State and local governments are entitled to the same benefits and protections in regard to equal employment as are the employees in the private sector of the economy.

There are presently 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. 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 similarly to State and local government employees. The bill before the Senate would provide such assistance.

The Federal Government, with 2.6 million employees, is the single largest employer in the Nation. The prohibition against discrimination by the Federal Government, based on the due process clause of the fifth amendment, was judicially recognized in *Bolling* v. *Sharpe*, 347 U.S. 497 (1954) and cases cited therein.

Minorities represent 19.4 percent of the total employment in the Federal Government—15 percent are Negroes, 2.9 percent are Spanish-surnamed, 0.7 percent are American Indians, and 0.8 percent are Oriental. Their concentration in the lower grade levels indicates that their ability to advance to the higher levels has, in many instances, been restricted.

In many areas, the pattern at regional levels is worse than the national pattern. For example, a particularly low percentage of Federal jobs are held by Spanish-surnamed persons in areas of high residential concentration of such persons, particularly in California and the Southwestern States.

The position of women in the Federal Government has not fared any better. While women constitute 34 percent, or approximately 665,000 of the total number of Federal employees, 77 percent of the women are employed in jobs which are rated GS–1 through GS–6. Twenty-two percent are in grades GS–7 through GS–12, and only 1 percent are in grades GS–13 and above. The inordinate concentration of women in the lower grade levels, and their conspicuous absence from the higher grades is again evident.

The bill before the Senate should make possible the rectification of such situations wherein discrimination based on race, nationality, or sex is involved.

Recognizing the importance that the concept of due process places on the American ideal of justice, the bill insures fairness to the employer. Charges must be in writing. The allegations will not be made public by the Commission while it is investigating such, and the Commission will undertake to resolve each matter by informal means before issuing a complaint. Commission hearings must be on the record and will be covered by the provisions of the Administrative Procedure Act so as to provide maximum protection to all parties to the proceedings. The respondent would have the right to seek judicial review of a Commission decision which rules against him.

I believe that the Senate bill will provide the instrument for fulfillment of our national commitment to eliminate job discrimination based on race, nationality, religion, and sex. I, therefore, will vote for the bill.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 10 a.m. After recognition of the two leaders under the standing order, there will be a period for the transaction of routine morning business, not to exceed 30 minutes, with statements therein limited to 3 minutes, at the conclusion of which period the Chair will lay before the Senate the unfinished business.

The pending question is the amendment offered by the distinguished Senator from North Carolina (Mr. ERVIN), on which the yeas and nays have been ordered. There is no time agreement on that amendment. However, there will be rollcall votes tomorrow.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, pursuant to the provisions of Senate Resolution 233, as a further mark of respect to the memory of the deceased Carl Hayden, late a Senator from the State of Arizona, and in accordance with the previous order, that the Senate stand in adjournment until 10 a.m. tomorrow.

The motion was agreed to; and (at 6:03 p.m.) the Senate adjourned until tomorrow, Thursday, January 27, 1972, at 10 a.m.