There are also inconsistencies in the McGovern record on civil rights. McGovern cosponsored some but initiated no civil rights legislation on his own and all eight bills he cosponsored never left the committee stage.

To be President a man must have achieved a certain toughness of spirit and soul. It usually comes from some searing incident, personal or political. For my father it was a nearly fatal illness, for Mr. Nixon it was his despair after losing to Gov. Brown for governor of California in 1962. Men of sufficient timbre to be President recover. It took Mr. Nixon six years of dogged effort. In McGovern, I hear the crusading voice, but week by week, I see the same inept changing, the inability to break away from poor advisers and perhaps even from those to whom he has given control of his campaign. These seem to be those for whom power for the so-called New Democrats is more important than the best interests of the country.

We need change, but in my belief the whole system is not ready for the junk yard.

Finally, do I now love the "old Nixon"? Have I forgotten Jerry Voorhis or Helen Gahagan Douglas? Flatly, No. But a man is entitled to grow. I believe I have seen Richard Nixon grow. The office of the President has done it for most men. At this point in our country's history, the Democratic Party has not nominated a man of sufficient stature, proven record or future promise to deny Richard Nixon reelection as President. We Democrats for Nixon support him and at the same time urge election of a Democratic Congress to guarantee there will be no turning backward. We wish to prevent a wild, ill considered leadership coming from a McGovern controlled White House.

WHY SOME DEMS WILL SUPPORT NIXON

HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 20, 1972

Mr. FRENZEL. Mr. Speaker, although this political year should have taught me by now to expect the unexpected, I was still pleasantly surprised to read in the September 12, 1972, Saint Paul Pioneer Press a reasoned and glowing endorsement of President Nixon by FDR's eldest son and former Congressman, James Roosevelt. I could not have made the case better myself.

The article follows:

WHY SOME DEMS WILL SUPPORT NIXON

(By James Roosevelt)

(NOTE.—James Roosevelt, eldest son of President Franklin D. Roosevelt, was elected to six terms in Congress as a Democrat and ran unsuccessfully for governor of California (1950) and mayor of Los Angeles (1965)).

All Democrats and American citizens in general have a right to ask for the reasons why certain Democrats in this coming election will vote for a Republican, Richard M. Nixon. Here are some of them in necessarily abbreviated form.

We believe the powers and opportunities of the office of the President are so vast that America should not deny the incumbent a second term unless the alternative candidate is clearly a better prospective user of those powers and opportunities or unless the incumbent has notably failed in his leadership of the country.

President Nixon, from any objective viewpoint, has opened doors and initiated new sources of trade, disarmament and overall avenues for the peaceful solution of some of the world's most pressing problems by his courageous visit to Peking and Moscow. His handling of Middle Eastern items has lessened tensions and he has given aid to Israel, our best ally in that area, in a manner which has evoked their outspoken appreciation.

Contrast this with the statement of Sen. George S. McGovern that he would give up American naval bases in Greece because we don't like the nondemocratic Greek government. Is that enough reason to give the Russians complete control of the eastern Mediterranean and expose Israel to indefensible pressure from hostile naval forces?

The Nixon handling of the Vietnam war is more open to contention. On one hand he has withdrawn American ground forces from the combat area in an orderly and rapid program. He has offered a peace plan, obviously more than just and fair, and received until now no response showing any real desire for a cease-fire from North Vietnam.

On the other hand, the continued bombing and the precise manner of its renewal are certainly open to criticism from a moral standpoint. But what does the President's opponent offer? An abject pullout of U.S. military forces after which he would go to Hanoi "to beg" for the release of our prisoners of war.

On top of this, for anyone to say, as McGovern has said, that begging will assure the return of the prisoners within 90 days is just plain demogogic.

On the domestic side the issues are even more clearly drawn. In four years the Nixon administration has halved the rate of inflation; there has been no decrease in unemployment but over 2½ million more people are on jobs; business activity is steadily increasing; Social Security benefits have been increased substantially and a good start made on reducing the chaos of the welfare problem.

Contrast this with the almost unbelievable inconsistency of McGovern's position on taxes and welfare.

President Nixon isn't perfect either. Democrats, including myself, are not happy with his Supreme Court appointments, but he didn't veer from 1,000 per cent support to zero.

To be President a man must have achieved a certain toughness of spirit and soul. It usually comes from some searing incident, personal or political. For my father it was a nearly fatal illness, for Nixon it was his despair after losing to Gov. Brown in California in 1962. Men of sufficient timbre to be President recover. It took Nixon six years of dogged effort. In McGovern, I hear the crusading voice, but week by week, I see the same inept changing, the inability to break away from poor advisers and perhaps even from those to whom he has given control of his campaign.

We need change, but in my belief the whole system is not ready for the junk yard.

SENATE—*Thursday, September 21, 1972*

The Senate met at 9 a.m. and was called to order by the President pro tempore (Mr. EASTLAND).

PRAYER

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

Our Father God, amid the bustle and busyness of these days, we pause with quiet and reverent hearts, seeking the peace, the poise, and the power which comes from Thee. Give Thy servants ears to hear and hearts to obey the still small voice from within. Shed Thy light upon our daily work investing even the smallest duty and the humblest task with divine approbation. Help us to give primacy to the things which matter most. Lead us step by step to the completion of the work and fulfillment of the public trust. Make us partners with Thee in making ready the coming of the day when Thy will is done on earth as it is in heaven.

We pray in His name who first fulfilled Thy kingdom. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, September 20, 1972, be dispensed with.

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the calendar beginning with Calendar No. 1122.

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

TWO HUNDREDTH ANNIVERSARY OF DICKINSON COLLEGE

The concurrent resolution (S. Con. Res. 90) commemorating the 200th anniversary of Dickinson College, was considered and agreed to, as follows:

S. CON. RES. 90

Resolved by the Senate (the House of Representatives concurring), That the Congress of the United States extends its greetings and congratulations to Dickinson College, Carlisle, Pennsylvania, on the occasion of the observance and celebration by that institution of its two hundredth anniversary, and expresses its recognition of the contribution which Dickinson College has made to educational excellence, and its appreciation of the leadership role which many distinguished alumni of Dickinson have played in the life and affairs of this Nation.

BILL PASSED OVER

The bill, H.R. 9135, to amend the act of August 19, 1964, to remove the limitation on the maximum number of members of the board of trustees on the Pacific Tropical Botanical Garden was announced as next in order.

Mr. MANSFIELD. Over, Mr. President.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

NATIONAL FAMILY WEEK

The joint resolution (H.J. Res. 135) to authorize the President to issue a proclamation designating the week in November of 1972 which includes Thanksgiving Day as "National Family Week," was considered, ordered to a third reading, read the third time, and passed.

NATIONAL MICROFILM WEEK

The joint resolution (H.J. Res. 1193) to provide for the designation of the week which begins on September 24, 1972, as "National Microfilm Week," was considered, ordered to a third reading, read the third time, and passed.

NATIONAL INVENTORS' DAY

The joint resolution (H.J. Res. 1232) designating, and authorizing the President to proclaim February 11, 1973, as "National Inventors' Day," was considered, ordered to a third reading, read the third time, and passed.

BILLS PASSED OVER

The bills, H.R. 16029, to amend the Foreign Assistance Act of 1961, and for other purposes, and S. 2567, to facilitate prosecutions for certain crimes and offenses committed aboard aircraft, and for other purposes, were announced as next in order.

Mr. MANSFIELD. Mr. President, I ask that these two bills go over.

The PRESIDENT pro tempore. The two bills will be passed over.

NATIONAL SOKOL U.S.A. DAY

The Senate proceeded to consider the joint resolution (H.J. Res. 1263) authorizing the President to proclaim October 30, 1972, as "National Sokol U.S.A. Day," which had been reported from the Committee on the Judiciary with an amendment, on page 1, line 5, after the word "Sokol", strike out "U.S.A.".

The amendment was agreed to.

The amendment was ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution was read the third time, and passed.

The title was amended so as to read: "Joint resolution authorizing the President to proclaim October 30, 1972, as 'National Sokol Day'.".

COAST GUARD FLAG OFFICER STRUCTURE

The bill (H.R. 13697) to amend the provisions of title 14, United States Code, relating to the flag officer structure of the Coast Guard, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

MASTER CHIEF PETTY OFFICER—LIGHTHOUSE SERVICE

The bill (H.R. 10486) to make the basic pay of the Master Chief Petty Officer of the Coast Guard comparable to the basic pay of the senior enlisted advisers of the other Armed Forces, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

COAST GUARD RESERVE

The Senate proceeded to consider the bill (H.R. 14891) to amend title 14, United States Code, to authorize involuntary active duty for Coast Guard reservists for emergency augmentation of regular forces, which had been reported from the Committee on Commerce with amendments, on page 2, line 2, after the word "than", strike out "thirty days a year" and insert "fourteen days in any four-month period and not more than thirty days in any one-year period"; and, in line 16, after "(1)", strike out "may, in the discretion of the Secretary, satisfy" and insert "shall satisfy on a day-for-day basis".

The amendments were agreed to.

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

The bill was read the third time, and passed.

Mr. MANSFIELD. Mr. President, that completes the call of the calendar for the time being.

EXECUTIVE SESSION

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

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

The PRESIDENT pro tempore. The nominations on the executive calendar will be stated.

DIPLOMATIC AND FOREIGN SERVICE

The second assistant legislative clerk read the nomination of C. Robert Moore, of Washington, a Foreign Service officer of the class of Career Minister, now serving as Ambassador Extraordinary and Plenipotentiary of the United States of America to the United Republic of Cameroon, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Equatorial Guinea.

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

INTERNATIONAL MONETARY FUND; INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT: INTER-AMERICAN DEVELOPMENT BANK: ASIAN DEVELOPMENT BANK

The second assistant legislative clerk read the nomination of John N. Irwin II, of New York, to be U.S. Alternate Governor of the International Monetary Fund for a term of 5 years and U.S. Alternate Governor of the International Bank for Reconstruction and Development for a term of 5 years; U.S. Alternate Governor of the Inter-American Development Bank for a term of 5 years and until his successor has been appointed; and U.S. Alternate Governor of the Asian Development Bank.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed; and, without objection, the President will be immediately notified of the confirmation of these nominations.

LEGISLATIVE SESSION

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

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

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Illinois (Mr. STEVENSON) is now recognized for 15 minutes.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum with the time to be taken out of the Senator's time.

The PRESIDENT pro tempore. Without objection, it is so ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

THE POLITICS OF WEALTH AND STEALTH

Mr. STEVENSON. Mr. President, no public figure, no matter what his party, can be happy when charges of political dishonesty, and the evidence of it, are in the air.

When the clouds of suspicion and mistrust gather over Washington, their shadows spread not only over one man or one party or one institution; they darken the entire political landscape.

Those clouds, Mr. President, now hang over Washington; over the White House; over the public and political conduct of President Nixon and his highest appointees.

At first the clouds were no bigger than a man's hand: a hint of fat political contributions unreported; a wheedling letter from a White House aide, on White House stationery, to his brother's business clients.

But in 4 years those clouds have darkened into thunderheads. They hang so thickly now that no one can ignore them; no rain dance of unpersuasive denials can dispel them; no huffing and puffing from campaign headquarters can blow them away.

Only truth—not empty denials—can dispel suspicion. Only candor—not bombast—can clear away the doubts.

But in the absence of forthright explanation, what shall the people conclude about the dealings of Mr. Nixon and his party?

Five men invade a national political headquarters. They are caught carrying the tools of burglary and espionage. With them, incredibly, two men are indicted who have held positions of trust and responsibility in the White House. Their generous bankroll is traced to a secret treasury gathered by the President's highest fundraised—a former Cabinet officer.

Yet we are asked to believe that these men operated with no authority but their own; that large sums of money slipped magically into their hands from Mr. Stans' remarkable safe. We are asked to believe that the accused men had no connection with the highest officials of the Republican campaign; in short, that those in charge of the rake-in had nothing to do with the break-in. We are asked to believe that the fruits of the burglars' labors—the photographs and transcribed conversations—were for their own entertainment, not for the eyes of high Republican officials.

A political war chest estimated at $10 million is solicited—not openly from the public, but secretly from corporations and businessmen who need the Government's good will. Hundreds of thousands of dollars are routed through secret bank accounts in Mexico; delivered in suitcases on private planes; stashed clandestinely in office safes.

Yet we are asked to believe that there is nothing unusual in all of this: That those frenzied efforts at concealment are designed, not to keep anything from the public, but merely to protect friends of the Republican Party from bothersome charities and fundraisers.

The American people are blandly asked once again, to believe the unbelievable. And Mr. Stans' office safe emerges as the most fabulous piggy bank since the sheriff of Tammany Hall and his little tin box.

A lobbyist's memorandum comes to light: Its unguarded language strongly indicates that, in the Washington of Nixon and Mitchell and Kleindienst, antitrust settlements can be had for a price. A chain of evidence emerges which gives weight to those suspicions: A White House aide, we learn, has intervened in the proceedings; a series of secret conferences has taken place between corporate officers and the highest officials of the Justice Department. Stories are told, then retracted and changed to obscure great inconsistencies; the remaining evidence is fed into a shredder.

Yet we are asked to believe that the author of the memorandum, a trusted employee of the corporation, was simply doing a bit of creative writing; that she is somehow unstable and unreliable; that her memo contained mistakes; and finally, that it was never written. We are asked to believe that the White House aide's extraordinary involvement was only an effort to be helpful; that the secret meetings were not negotiations, but mere philosophical discussions.

We are asked, in short, to believe the unbelievable.

In early summer, American farmers sell their wheat harvests at low per-bushel prices—not knowing, because they are not told, that Soviet wheat purchases will send wheat prices up. The Agriculture Department knows; it has negotiated the wheat deals. And the giant grain exporters seem to know: They buy up wheat at the lower prices in hopes of profits later.

Later we learn that Clarence Palmby, the Agriculture Department official most responsible for the Soviet grain deal, is now vice president of Continental Grain. That his successor, Carroll Brunthaver, comes from Cook Industries, another grain trader. That another Agriculture Department figure in the grain negotiations, Clifford Pulvermacher, has been hired by the Bunge Corp., a big grain trader. And finally, that the White House special representative for trade negotiations has close ties to Cargill, another big trader.

The revolving doors between the Nixon administration and the big corporate traders are well oiled, wide open and whirling, it appears. But the American farmer and the public are left outside.

Yet we are asked to believe that it is all coincidence.

Perhaps.

But such coincidences, piled one atop the other, grow too heavy for mere faith to bear. Never, at least since Teapot Dome, have so many, so high, denied so much, so often—so unconvincingly.

There are, for example, repeated charges—and a sizable body of evidence—suggesting that the President's assistant, Mr. Peter Flanigan, has used his position to feather his nest: To see that his own investment house is selected as underwriter of $250 million in postal bonds; to obtain a Treasury waiver which would create a windfall for his Barracuda Tanker Corp.

There are recurring charges—persuasive ones, in my judgment—that the Nixon administration deals extraordinarily generously and gently with corporations whose presidents and chairmen are political friends and contributors. There are indications that Mr. Kleindienst suppressed antitrust suits against the Warner-Lambert Corp.; indications that the Price Commission made rulings specifically favorable to the Combined Insurance Co. of Chicago.

The first company is headed by Elmer Bobst, Mr. Nixon's "adopted father." The second is headed by W. Clement Stone, a friend of Mr. Nixon's whose political contributions total at least half a million dollars.

Mr. Kleindienst has admitted receiving a bribe offer from one Robert Carson which he failed to report at the time. According to his later testimony, Mr. Kleindienst—the highest legal officer in the land, presumably a competent attorney—"did not recognize" the offer as a bribe.

In another scandal involving highly placed administration friends, Mr. Kleindienst first whitewashed, then ignored the dereliction of a U.S. attorney in San Diego; a failure of responsibility which Mr. Kleindienst later conceded was a shocking breach of the public trust. The offending U.S. attorney, Harry Steward, went undisciplined.

The National Steel Corp. of Pittsburgh merges with the Granite City Steel Co., of Granite City, Ill. The merger presents a classic case in antitrust law: the merger of the Nation's fourth and 11th largest steelmakers, direct competitors, greatly reducing competition in the industry.

A complaint is signed and presented to the Attorney General, Mr. Mitchell. But he refuses to prosecute.

Again, Mr. McLaren of the Antitrust Division presses his case; again Mr. Mitchell refuses to act, choosing instead to bend the law to permit the merger.

A director of National Steel is Gilbert W. Humphrey, a large Republican contributor.

His father is George Humphrey, another large contributor whose Hanna Mining Co. owned more than half the stock of National Steel and has long-term contracts with Granite City Steel.

TRUST-BUSTING—OR TRUST-BUILDING?

The collapse of the Sharpstown State Bank of Texas—part of the corporate empire of Frank W. Sharp—sets off a major scandal implying flagrant violations of Federal law. But the central figure in the case, Frank W. Sharp, is granted the privilege of pleading guilty to lesser charges in return for his testimony implicating leading opposition party officeholders in Texas. In short, the big fish was tossed back in favor of some minnows.

Who, at the time of the investigation, headed the Justice Department's Criminal Division? A Texan named Will Wilson—a former attorney for Frank Sharp. Mr. Wilson, it developed, had received a $30,000 loan from Mr. Sharp's interests while in the Justice Department—and almost $300,000 between 1964 and 1968.

After this interesting coincidence, Mr. Wilson finally resigned—but only when another investigation threatened to embarrass the administration.

It would be unfair, Mr. President, to infer that every charge is true simply because it has been made. Most of the suggestions of wrongdoing in this administration await—or have escaped—real investigation.

And that is just the point. The Nixon administration, whatever its reasons, bitterly resists the inquiry these charges warrant.

What are the tactics of Mr. Nixon's administration when faced with damaging allegations?

First. A pained, embarrassed silence.

Second. Denials, without explanations.

Third. False and trivial counter-accusations, like those advanced recently when Republican fund-raising efforts came under suspicion.

Fourth. An expensive, smooth, and clever public relations barrage which separates the President from the work-aday machinations of his party and his administration. He becomes, in the popular mind, a remote, olympian figure, separated from all human contact, not to mention contact with wrongdoers.

Fifth. And finally, Mr. President, there is the magical technique of self-investigation. The administration proudly announces that it has investigated itself and found itself pure! It is a puzzling technique. It is something like ap-

pointing Polly Adler to the Vice Commission.

The administration's tactics, whatever else they may achieve, do not inspire confidence in the integrity of our highest Government officials.

And what is at stake when charges of corruption fly—more than the survival or prestige of one party or set of politicians—is the confidence of our citizens: their faith and trust.

In no administration in recent memory have charges been so thick: charges of wrongdoing; of omissions; of catering to special interests. And surely not in recent memory have the explanations been so pallid; the efforts to confuse and obsure so frantic.

The people are left to conclude what they will. And they will conclude that Mr. Nixon's administration, because it will not permit an impartial investigation of the charges against it, has a great deal to hide.

They are left to conclude that government of the people, by the people, for the people, has given way, in Mr. Nixon's Washington, to the politics of wealth and stealth.

And they are left to conclude that the era of the New Deal and the era of the Fair Deal have given way to Mr. Nixon's era: the era of the deal.

There is another word for all this, Mr. President: It is "corruption."

I speak not only of the corruption which inevitably ensues when money changers invade the temples of government. That form of corruption is as familiar as Teapot Dome. It is, ultimately, a matter for the courts.

There are other forms of political corruption which are more subtle but equally insidious.

One is the invasion of every public enterprise by partisan politics.

We have witnessed, in the past 4 years, the transmutation of the Department of Justice into a branch of campaign headquarters.

The Secretaries of State and Defense have hit the campaign trail; they routinely issue partisan political pronouncements—a new and dismal twist.

Government statistics about jobs and crime are manipulated shamelessly for maximum political mileage.

The very celebration of our Nation's bicentennial has been invaded by partisan hacks and corporate fast-buck artists.

This sort of perversion—this corruption—may build temporary majorities. But it destroys the enduring faith of the people in their institutions.

A second form of corruption invades our politics when high officials subvert the public interest in the name of private interests.

ORDER OF BUSINESS

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. STEVENSON. Mr. President, I have been authorized by Senators MONDALE, HART, and KENNEDY to take such additional time as I may require, the additional time to be charged against their time.

Mr. ROBERT C. BYRD. Mr. President, I hope the distinguished Senator will understand my objection to this. For 2 years we have operated on the basis that 15 minute orders would not be extended by unanimous consent, and not one time has such an order been extended.

We have proceeded on the principle that when a Senator gets an order for 15 minutes that Senator will be here to control that time; otherwise it would be very easy for a half dozen Senators to get 15-minute orders, and then call in and say, "Give my time to Mr. X," and that Senator would end up with an hour and a half of time.

So I have to object.

Mr. President, I ask unanimous consent that the time allotted to Mr. MONDALE be allotted to me. I am here to control the time, and I am glad to yield that time to the Senator from Illinois. But Senators must understand——

Mr. BELLMON. Mr. President, I object.

The PRESIDENT pro tempore. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, would the Senator allow me to finish?

Mr. President, Senators must understand that a Senator must be here to control the 15 minutes when it is allotted. I hope Senators from here on out will be on the floor to control their time. Somebody has to come in early to open the Senate, and the reason for coming in early is to accommodate Senators who request time. The majority leader is glad to come in early, and I am glad to come in early, but Senators who request orders should be here punctually to use or control the time reserved for them.

Now, I ask unanimous consent that the 15 minutes previously allotted to Senator MONDALE be transferred to me so that I may in turn yield it to the Senator from Illinois.

Mr. BELLMON. I object.

The PRESIDENT pro tempore. Objection is heard.

ORDER VACATING RECOGNITION OF SENATOR MONDALE

The PRESIDENT pro tempore. Under the previous order, the Senator from Minnesota (Mr. MONDALE) is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator's time be vacated at the conclusion of the previous unanimous-consent request.

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

Under the previous order, the Senator from Utah (Mr. Moss) is recognized for not to exceed 15 minutes.

Mr. MOSS. Mr. President, I will be happy to yield such time as is allotted to me to the Senator from Illinois to render him the courtesy of being able to finish a speech he prepared for this body.

I yield to the Senator from Illinois.

Mr. STEVENSON. I am very grateful to the Senator. I will be brief.

The PRESIDENT pro tempore. The Senator is recognized.

THE POLITICS OF WEALTH AND STEALTH

Mr. STEVENSON. Mr. President, it is not necessary that men be evil to betray the public trust. They betray it when they are blind, after too many years in the dim light of corporate boardrooms, to distinctions between what is good for the country and what is good for them alone. This is the corruption known as favoritism to the rich—as corporate welfarism.

It is best expressed, I think, in a letter sent last spring by one of Mr. Stans' lieutenants to wealthy Republican contributors:

> I can't emphasize too strongly, that the protection of your stake and my stake is precisely what is at stake here.

His language was not a model of literary excellence. But they knew what he meant.

A third and final corruption is the corruption of arrogance: the corruption which infects our politics when our highest leaders simply will not speak forthrightly to the people.

Again and again, Mr. Nixon has invoked the doctrine of executive privilege to frustrate congressional investigations.

He has refused, with an imperious disdain unprecedented in the White House, to meet the press and submit to their questions. His tactic against the free press has been to ignore them from the top and intimidate them from below.

The President speaks, when he speaks at all to the people, from the security of a television studio, or with the help of scriptwriters, stage managers, and makeup men.

We have come to expect a certain amount of artifice in our politics. But when stagecraft becomes the principal means of encounter between the President and the people, the result is not lively public discourse, but a series of Presidential monologs.

Thus Government becomes, not a relationship between a leader and his people, but a performance between actor and audience. Leadership becomes a gesture of artifice, not truth; the President's acts seem more the posturing of royalty than the earnest efforts of a public servant accountable to the people.

And that, Mr. President, is the final corruption: indifference to the people.

Take all the scandals of yesteryear; pile them block on block, and you cannot equal it. Find enough old Deepfreezes to chill the Sahara; enough vicuna coats to warm the polar icecap; enough Persian rugs to dazzle a sultan—and still you cannot match that final betrayal of the people's trust. The greatest scandal—the ultimate corruption—is an arrogant refusal to answer the questions of the people.

I suspect the administration's response to my remarks will be angry rejoinders and counter accusations. They would do better to ponder the meaning of one of their greatest heroes.

Abraham Lincoln said:

> I must keep some consciousness of being somewhere near right. I must keep some standards of principle fixed within myself.

Mr. Nixon and his political committee would do well to reflect upon those words.

If they do not, they may soon have to replace, as obsolete and inappropriate, the symbol of their party: That great, sturdy, and honest beast, the elephant.

What new device will serve to symbolize the new Republican party?

One good possibility might be the ferret, whose stock in trade is secret maneuvering.

Some might propose the squid, which sets up a screen of ink to frustrate its pursuers.

And, finally, some might suggest the image of Maurice Stans—carrying a suitcase and wearing a sombrero.

MR. STANS AND HIS LITTLE TIN BOX

Mr. MOSS. Mr. President, I now claim the remainder of the time I have been allotted in this great temple of free speech, the Senate of the United States, where every Senator is entitled to have his say.

Like most of my other colleagues, I thought that the Federal Election Campaign Act was a significant step forward; that we would put behind us the disgraceful practices of secret campaign financing by powerful and affluent special interest groups.

Although some of us feared that the President might veto the bill, less it hamper plans for his own reelection campaign, we were, of course, considerably relieved when the President did affix his signature to the act last February. Our fears had been raised when we read in an interview with Maurice Stans, then Secretary of Commerce, that he considered the new law "an administrative nightmare." Stans went on to say in an interview appearing in the February 5 National Journal:

> It places substantial limitations on the ability to raise money; it is not going to be an easy job for anyone to raise the finances that are required.

Mr. Stans has subsequently disproved his fears and perhaps deserves a citation for his amazing facility in raising funds. He may also deserve an indictment, but that will be for others to decide.

When President Nixon signed the Federal Election Campaign Act into law he said:

> By giving the American public full acces to the facts of political financing, this legislation will guard against campaign abuses and will work to build public confidence in the integrity of the electoral process.

Mr. President, does hiding $10 million in campaign contributions collected prior to the April 7, 1972, effective date of the Federal Election Campaign Act, really give "the American public full access to the facts of political financing?" Does the collection of $10 million prior to the effective date of the legislation "guard against campaign abuses?"

What noble sentiments. What excellent phrases. But throughout the Nation, when millions of citizens believed that finally those politicians in Washington had done something to restore a sense of honesty to the political process, we were unaware that in the backroom of the Committee To Reelect the President, whose acronym is CREEP, men were making cynical plans to subvert the very purpose which the President himself had enunciated.

I am saddened to say—as I am sure my colleagues are—that the kingpin in this effort to undermine the Federal Election Campaign Act was a man who should have known better. He appears to be a man with a distinguished record in his profession of public accounting; one who had been granted the opportunity to serve at the highest levels in the Eisenhower and Nixon administrations. In 1960, he was made a member of the Accounting Hall of Fame, and his accounting for the secret $10 million in contributions received by CREEP prior to April 7 is indeed worthy of the Hall of Fame, if not a criminal indictment.

Even more ironic is the awarding in the executive branch of the Maurice H. Stans award for distinguished Federal management. Undoubtedly a prerequisite for this award is significant experience with a document shedding device.

Maurice Stans resigned as Secretary of Commerce on February 15, 1972, to take over another position which was apparently more important to President Nixon—chairman of the Finance Committee To Reelect the President—CREEP.

There may have been some who hoped that the President had given Stans this responsibility to carry out the mandate he publicly enunciated 8 days earlier when he signed the Federal Election Campaign Act—"giving the American public full access to the facts of political financing." But those of us who have toiled in the consumer field knew of Stans callous disregard for the public in his handling of the Flammable Fabrics Act, the Fair Packaging and Labeling Act, and his efforts to subvert virtually all consumer legislation comtemplated by the Congress.

But even those few optimistic souls who did not know about Stans' background were not to be disappointed. For it turned out that Stans' principle objective was to amass the largest pile of money—to sell the administration for the highest price—before April 7, the date when the new law came into effect. The aim, pure and simple, to explain to the fat cats how they could give huge gifts to the Nixon campaign while at the same time evade the capital gains tax, the gift tax, and the Federal Election Campaign Act. Indeed the work of a brillant accountant.

The New York Times has published a typical fund raising letter sent out under Stans direction by his California lieutenants early in 1972:

> The simplest and most painless way to do this is by giving appreciated low-cost securities to several committees in amounts of $3,000 to each committee. In this way, neither the gift tax or the capital gains tax liability is incurred . . . we have a deadline of April 7 to meet for this important gift phase of the drive, because that is the effective date of the new Federal Campaign law which will require reporting and public disclosure of all subsequent campaign contributions in excess of $100, which we all naturally want to avoid.

Why would anyone want to avoid public acknowledgement of his gift? Would the tycoons be embarrassed if the public knew that they had bought off the Republican Party? Of course, and in order to avoid this embarrassment, and to succeed in selling its wares to the highest bidder. Mr. Stans carried the banner of the Republicans throughout this hasty campaign. An avowed disciple of Polly Adler you say? In her wildest dreams, Polly Adler never imagined taking in as much in her entire lifetime as the Republican Party succeeded in earning in 2 months—both engaging, of course, in the same profession.

Given President Nixon's mandate about open finances, is it not a bit disappointing that the premier fund raiser of American politics would not let the public in on some of his secrets? What, for instance, was his pitch to the oil companies after his 3-year campaign as Commerce Secretary to restrict oil imports and to preserve the oil depletion allowance? How did he cozy up to the chemical manufacturers after his celebrated advice that the Government should "go slow" on prosecuting polluters?

Maurice Stans would no doubt have succeeded in keeping the public from learning his tactics in this felonious assault on the American people except for his little felony in which his henchmen were caught. I refer here, of course, to the notorious burglary in the early morning hours of June 17, 1972, when five CREEP agents had the misfortune of being caught by the police as they attempted to ply their trade at the Democratic National Committee headquarters.

For 6 weeks, there was nothing to connect Maurice Stans with the break in at Democratic headquarters. But then, on August 1, it turned out that the burglary was actually bankrolled by a bigger mob, the secret campaign contributors who had entrusted Stans with their funds before April 7.

Columnist James J. Kilpatrick, one whose conservative leanings are well known, wrote:

> The evidence, to this point, was at best circumstantial and tenuous, and the caper had its funny aspects. It isn't funny anymore. It now appears that Maurice Stans, former Secretary of Commerce and Treasurer of the Committee for the Re-election of the President, on April 11 had in his hands a $25,000 check intended as a campaign contribution. Nine days later, on April 20, that same check was deposited to the Florida account of Bernard L. Barker. The following day Barker made a $25,000 withdrawal. This is the same Bernard L. Barker, 55, alias Frank Carter, who was arrested at 2:30 a.m., June 17, caught in the headquarters of the Democratic National Committee at the Watergate Apartment Complex here in Washington.

Stans refused to see reporters, because he was "tightly scheduled," as his aides put it. Indeed he must have been tightly scheduled running around collecting millions of dollars in illegal campaign contributions, dispensing with illicit tax guidance, and shredding the secret documents at CREEP, in a fashion similar to the charade at ITT headquarters here in Washington several months earlier. But then again the shredding could be expected, after all

this was another production of those wonderful folks who gave us the ITT affair.

As President Nixon said about the Watergate burglary, "what really hurts is if you try to cover it up." But Mr. Stans did not listen to the President on this occasion, or perhaps the President did not listen to Mr. Stans. The sad truth is that Maurice Stans has engaged in a massive and disreputable coverup job which serves to point out once again his undistinguished record of service in the private interest.

Consider what we have learned in the last few weeks:

Before the April 7 deadline under the campaign disclosure law, Maurice Stans kept detailed ledger books listing the campaign contributors and amounts they gave. Immediately after April 7, these records were shredded or otherwise destroyed.

On April 3, according to a staff report of the House Banking and Currency Committee, Maurice Stans received a phone call fom Nixon's chief Southwest fundraiser, William Liedtke. What Liedtke wanted to know, he told committee investigators, was whether there were any legal problems if the CREEP received U.S. money which had been funneled through Mexico. According to Liedtke's own recollection, Stans called back a few hours later to say that "it was OK to bring the money to Washington." Clearly, Maurice Stans had put his personal stamp of approval on a plan to render these contributions untraceable by means of a "Mexican laundry operation."

On the evening of April 5, Liedtke carried over $700,000 in checks, cash, and stock certificates in a suitcase from Texas to Washington so he could deliver it to Stans. Obviously, Mr. Liedtke had not seen the American Express commercials which suggest that you buy traveler's checks, but perhaps he knew that American Express did not have the invisible laundry marks of the Mexican laundry. Included in the suitcase was $89,000 in four checks which had passed through the Texas to Mexico to Washington laundry operation. A few days later, the same $89,000 mysteriously appeared in the Florida bank account of accused Watergate burglar Bernard L. Barker.

Questioned by the House Banking and Currency Committee staff about the Mexican transfers, Maurice Stans outdid himself. So many contradictions emerged in his account that the subcommittee staff entitled one section of their confidential report "The Shifting Positions of Maurice Stans." When questioned by the committee on August 30, Stans repeatedly denied knowledge of any State or local GOP finance committee that had transferred any funds to Mexico. He gave a second version on September 5. As the committee report put it:

> Mr. Stans now recalled that on April 3rd he had been informed by our Texas Chairman of a possible contribution of $100,000 in U.S. funds in Mexico!

The House committee was very properly skeptical as to how Stans could have obtained legal opinions to pass on to the Texas chairman about the Mexican transfer "without knowledge of some details of the plans or transactions."

Now that indictments have been returned, the Attorney General feels that the Justice Department has completed the "most extensive, thorough, and comprehensive investigations since the assassination of President Kennedy." If this is the case, then for no other reason we need a new administration in order to replace the current Attorney General and Justice Department which consider that it has finished its work.

Mr. President, Nicholas von Hoffman hit a responsive chord when he suggested in last week's Washington Post that the President was surrounding himself with an "all felony cabinet." The felonies performed may not be those of the current Cabinet, but they certainly can be attributed to the people who surround the President down at CREEP. When the Federal Bureau of Investigation finally completes its investigations into organized crime and into white-collar crime, it will be evident that a number of important political figures will have been investigated and possibly indicted.

Mr. President, I ask unanimous consent that an editorial from yesterday's Washington Post be printed in the RECORD at the conclusion of my remarks.

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

[From the Washington Post, Sept. 20, 1972]

AFTER THE INDICTMENTS: UNANSWERED QUESTIONS

Now that the indictments have been returned against the five men arrested in the Democratic National Committee Headquarters—and the two ex-White House aides who are alleged to have been their helpers, coconspirators and cheerleaders—we have heard the clash and clangor of the expected political rhetoric. Sen. Dole has demanded that Sen. McGovern apologize for all the mean things he has said about Mr. Maurice Stans, finance director of the President's reelection campaign and Sen. McGovern has called the whole thing a whitewash. The Attorney General apparently feels that the Justice Department has completed "the most extensive, thorough, and comprehensive investigation since the assassination of President Kennedy." According to reports from around the country, the people seem to feel that the whole thing is either (a) too complicated for them or (b) just another example of how politics is played by both sides.

So, this may be a good time to review the essence of this affair, because it seems to us that whatever else may be said about it, it is not—in essence—all that complicated, and neither is it exactly an every day event. To our knowledge, this is the first time in the history of the Republic that a link is alleged to have been established between a burglary and a bugging and the effort to re-elect a President of the United States. That is the simple nub of the Watergate affair, although it is true that despite the pious cries coming out of the administration and the President's campaign committee in the wake of the indictments, there are still a whole lot of questions which remain to be answered for the public before election day.

Now, let's run through the major facts of the case as they have been made public. First of all, we have known for some time that the Committee for the Re-election of the President collected $10 million prior to April 7 when disclosure of campaign donors was made mandatory and we know that, having the *legal* right to do so, the committee chose to keep its list of donors secret. Subsequently, on June 17 we learned that five men with electronic devices had been arrested before dawn in the Democratic Party headquarters. We then learned that one of those men was an employee of both the Republican National Committee and the Nixon campaign committee.

Then came news of some of the financing arrangements. Carl Bernstein and Bob Woodward of this newspaper learned that a $25,000 check, intended as a Nixon campaign contribution ended up in the bank account of one of the men arrested at the Watergate. Sometime later, the public learned that $89,000 more—intended for the campaign—had also landed in the suspect's bank account and that the money had been "laundered", i.e. made untraceable, by having been passed through a Mexican bank account. Subsequently, we learned that Mr. Stans kept a cash stash of perhaps as much as $700,000 in his office safe and that somehow the $114,000 (25+89) had passed through that unaccounted for stash. Later, we learned that just before the April 7 reporting deadline, $700,000 in cash and securities, stuffed into a suitcase, was rushed in a corporate jet from Texas to the Nixon committee's headquarters.

An interesting highlight to the secret fund and the tie between that fund and the Watergate business came to public view when it was revealed that the donor of the $25,000 check was a Minneapolis businessman—formerly a prominent Humphrey supporter—whose group later got hasty approval of a federal bank charter.

Then, came the indictments. In addition to the employee of the campaign committee and three apparent freelancers, a White House consultant—recommended for that position by the President's Special Counsel—and a former high official in the Nixon campaign committee, who was also a former member of the White House staff were also indicted. We have confirmation that the Democrats were both burglarized and bugged. And finally, we have the revelation of an aborted reconnaissance of the McGovern headquarters by the two campaign officials and the White House consultant on May 27.

So there you have the outlines of what the public knows. It all establishes a clear link between the burglary and bugging of the Democrats' headquarters, the Nixon campaign committee and at least part of the secret $10 million campaign fund. So now Sen. Dole expects apologies, Mr. MacGregor prophesies that the issue will redound to the President's political credit and, Mr. Kleindienst, among others, presumably wants everybody to applaud his department's work and to say no more for fear of prejudicing a fair trial of the seven men who have been indicted.

Well, we agree that the defendants are entitled to a fair trial and that nobody should do anything to prejudice that. But this is hardly grounds in an election year for silence across the board on a matter that bears heavily on the character and quality of the President's campaign and on the qualifications of men who are working in his name and for his cause. It is idle to suppose that responsibility for the Watergate affair could have ended with the seven men who have been indicted. And it is self-serving and silly to suggest that other aspects of this case, related only indirectly to the Watergate, are not fit subjects for public curiosity. Are we not even to mention authoritative reports that there was a list of top Mitchell lieutenants who had access to the slush fund in Mr. Stans' safe? Or the report that three of the top lieutenants—including G. Gordon Liddy—drew as much as $300,000 from that fund for unaccounted purposes? Or the report that the list of those with access to the safe plus a ledger

giving the names of the donors to the $10 million secret fund were destroyed just after the burglars were arrested at the Watergate? Or the report that Hugh Sloan, former counsel to the Nixon campaign committee, "left because he . . . didn't want anything to do with it?"

And then there are the central questions. Who gave the $10 million and what did they think they were getting in return? Who authorized this venture and the transfer of campaign funds to Mr. Barker's account? How much money was laundered through Mexico and for what purposes? Who authorized that? Did any of the Mexican laundry money come from foreign nationals? Who at Nixon campaign headquarters received and used the information obtained by bugging and by burglary and where did they think the information came from—these after all were not naive men? How could Mr. Stans not know what was going on right in his own safe? And, finally, what kind of authority did Mr. Mitchell give to the fellow riders on his ship?

These are not mean questions. They go, as we have said before, to the heart of the political process and to the peoples' right to know about the people who are offering to govern them for four more years. Mr. Kleindienst's investigation by no means closes the case, for he, and therefore his subordinates, are hardly disinterested parties. Nor can Mr. Stans' indignation, Sen. Dole's anger, Mr. MacGregor's optimism, Mr. Mitchell's invisibility or Mr. Nixon's air of innocent isolation from the whole thing make them go away. *Somebody* engaged in burglary and illegal bugging on behalf of the re-election of the President and the people have a right to know who's responsible. In Mrs. Sloan's purported words, somebody has to "stand up for what is right."

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the Senator from Massachusetts (Mr. KENNEDY)——

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent—I have now been able to clear this with the distinguished Senator from Oklahoma (Mr. BELLMON)—that the time which was allotted to Mr. MONDALE be restored and that I have control of that time.

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

The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, to be charged against the time under my control.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded, and I relinquish the remainder of my time.

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

Under the previous order, the Chair now recognizes the Senator from Massachusetts (Mr. KENNEDY) for not to exceed 15 minutes.

NIXON ADMINISTRATION OIL IMPORT POLICY

Mr. KENNEDY. Mr. President, President Nixon has been in office since January 1969.

Since his inauguration, the price of crude oil in the United States has risen 17 percent.

Since his inauguration, the price of home heating oil in the northeast has risen 20 percent. And since his inauguration, the price of residual fuel oil has risen 100 percent.

These statistics accurately reflect the balance between this administration's concern for the balance sheets of the Nation's oil giants and the pocketbooks of the Nation's consumers.

For in virtually every contest during the past 4 years in which the public interest has been pitted against the private interests of the oil companies, the decsion has gone to the oil companies.

And the result is seen in the glowing reports of the oil companies. The five majors, Standard of New Jersey, Texaco, Standard of California, Mobil, and Gulf, reported a lump sum net income of $1.8 billion in the first half of this year, and $13 billion since 1969, which is substantially better than the average American worker has done since 1969.

For the average citizen, this has meant higher home heating oil prices, rising gasoline prices and skyrocketing utility bills.

And the administration has helped to protect that profit year by year in its stubborn refusal to close the loopholes that permit oil companies to escape taxes that other businessmen must pay. The oil depletion allowance still operates to subsidize oil companies. And even the minimal effort to slice that allowance back to 22 percent was opposed by an oil-conscious administration. The loophole, even after the cutback to 22 percent, costs the Treasury over $1 billion, and other tax loopholes raise the total tax break to the oil industry even higher.

No wonder then that 93 percent of the reported contributions of members of the petroleum industry went to the Republican Party 4 years ago. And no wonder that the first in-depth study of the oil import control system, a study conducted by the President's own task force, was buried when it recommended dumping the oil import quota system.

Peter Flannigan, apparently the President's top oil and energy adviser, and the oil industry's top administration conduit, monitors the oil policy committee that has refused for 3 years to act on the recommendations of that study.

The study not only disputed the allegation that national security required an oil import system; but it found that the system was costing the Nation's consumers $5 billion a year, a sum that is expected to rise to nearly $8½ billion by 1980.

While they did not describe the system in these terms, their documented study clearly concluded that the oil import system was a boondoggle of mammoth proportions maintained to serve the financial interests of the oil industry.

The system operates very simply. Even though the price of a barrel of crude oil on the world market ranges between $1.80 and $2.40 and the U.S. price sits at approximately $3.40 per barrel, U.S. consumers cannot buy the cheaper foreign oil freely. Instead the quota system rigidly works to insure that there is no competition with domestic oil producers and works to insure that all consumers dance to the tune of the oil companies.

And the quota system operates most inequitably against the consumers of the northeast United States. The Cabinet Task Force on Oil Import Control reported in 1969 that the national per capita cost of the oil import program was $24. Yet the cost to consumers in Massachusetts was $35 a person, in New Hampshire, $39, in Maine $41, and in Vermont $45.

The reason is simple. The nine States of the Northeast consume more than 55 percent of the Nation's No. 2 fuel for heating their homes, their schools, their hospitals and their businesses. In fact they consume more heating oil than gasoline. And the phony import quota system forces these States to bear the heavy cost of supporting the price of domestic oil. Currently, the demand for fuel oil is 1 million barrels a day on the east coast, yet less than 5 percent of that can be imported and even then it must be imported from the western hemisphere.

A garrish contrast is seen by comparing fuel costs in Boston and Montreal. Oil from the Mideast is brought in at Portland, Maine, shipped overland to Montreal where it sells for some 3 cents a gallon less than we pay in Boston.

That 3-cent differential means $150 million more for New England consumers each year, including $75 million more for Massachusetts.

And since this administration has come into office, the cost of No. 2 fuel oil has risen 3 cents, meaning that New England consumers are paying $150 million more annually than when this administration came to office. And a similar story holds for the mid-Atlantic States which are paying over $240 million more than when this administration came to office.

In my own State of Massachusetts, I can point to specific examples to show the inequity that the administration's policy now produces. The Boston Housing Authority estimated a year ago that its fuel costs were up 83 percent, some $525,000. The United Shoe Corp. in Beverly found its costs had risen by $100,000. In Taunton, city fuel costs were $700,000 in 1969, $1.5 million in 1970 and $1.8 million last year.

And these costs are passed directly along to the consumer and taxpayer. They are the ones who must bear the burden of this administration's decision to place the interests of the oil companies above the interests of the people.

And this administration has refused to adopt policies to remedy the inequities of the oil import quota system.

It was a Republican President who adopted the quota system in 1959 with an alleged rationale of protecting the national security. Now we have a Republican President whose own cabinet task force has said there is no such national security justification, yet he refuses to accept their judgment.

Instead, he has fiddled and played with the mechanics of an inherently unfair system and the result has been to produce the twin evils of oil shortages and high oil prices.

In 1966, a Democratic President provided for free imports of No. 6 oil into the east coast, which then was the basic source of fuel for hospitals and industries and utilities.

Now when No. 2 oil is fast replacing No. 6 as a result of environmental standards, the administration has simply refused to recognize the problem.

Each fall we are faced with shortages to our stockpiles and there is a frantic tinkering with the machinery to try and provide on an emergency basis a supply adequate for the coming winter.

Never, however, has the administration adopted an import policy that would produce a reduction in price. Its only concern was opening the spigot barely wide enough to prevent New England homes from going cold.

And this year again, despite the administration's proud explanations last year of how it had solved the home heating problem, stockpiles were 10 percent less than they were a year ago. This week, we have witnessed the latest frantic exercise of the administration trying to prevent a winter crisis in the eastern United States that its own policies have created.

For months, observers have noted that No. 2 fuel oil stocks were being depleted and the domestic oil companies were refusing to produce No. 2 oil if they did not get a price increase. Reports of their sniffing out the possibility of price increases with the price commission were frequent.

But the administration did nothing. Instead, it waited until the last possible moment to announce a piecemeal solution that contained within it the seeds of another crisis.

First, the President raised the level of No. 2 imports 5,000 barrels a day, but only for calendar year 1972.

Second, he adopted a borrow-from-Peter-to-pay-Paul policy of permitting importers to borrow 10 percent of the 1973 quota.

Both actions reflect a continued unwillingness to adopt a permanent solution to the home heating problems of the east coast. For the President must be aware that two-thirds of the fuel oil burned in New England during a winter heating season is burned after January 1, and thus he has virtually assured another crisis in January.

In hearings just this week conducted by Senator McIntyre's Small Business Subcommittee, the hollowness of the administration's policy was virtually admitted by its advocates.

For General Lincoln, Director of the Office of Emergency Preparedness, admitted that domestic refiners are operating at near capacity today while stocks of gasoline are 7 million barrels less than a year ago and stocks of home heating oil are down 24 million barrels over a year ago.

Nor is there any bright hope in the future since domestic production has virtually peaked and domestic refiners do not expect any substantial increase in capacity.

What has been demonstrated by these hearings is that for 13 years the consumers of this country have been protecting oil company profits. Yet these companies have been pumping those profits, not into domestic exploration or domestic refining capacity.

Instead they have been soaking up tax benefits at the same time that they invest those enormous profits abroad.

Now there is no possible way for domestic production to meet our increasing demand. The result is that we will have to import—no longer merely to lower domestic prices but to come close to meeting domestic demand.

Under those circumstances, the import quota system makes little sense.

And the action taken by the President this week is about as effective as pasting a band-aid on a dying man when what is needed is corrective surgery.

And the President can carry out that surgery with a fountain pen by signing his name to an Executive order abolishing the import quota system.

With one signature by the President, he could reduce consumer prices for citizens in every State in the Union. With one signature, he could permanently remove the threat of winter home heating oil shortages from the east coast. With one signature, he could stimulate competition.

But he will not take that step. He will not sign that paper. And the basic reason is that this administration owes more and expects more and is concerned more with the profits of the oil industry than with the pocketbooks of the Nation's consumers.

Finally, Mr. President, I just want to underscore the point that was mentioned earlier, that if the justification for the oil import program is national security, than we in the Northeast who consume approximately 55 percent of the Nation's home heating oil should not have to bear additional burdens, prices, or expenses that other parts of the country do not share.

We have 6 percent of the population. We consume 55 percent of the home heating oil, and if the oil import quota restrictions are justified on national security grounds, then the cost of the program should be borne equitably throughout this country.

But more important, I cannot imagine how anyone could believe there is a national security reason for the oil import program. It would seem to me that, in terms of our national security, it makes much more sense to use up the oil that is available in other parts of the world today and preserve some substantial portion of the oil resources that exist in the United States. That makes more sense, so far as the national security of this country is concerned.

If there ever is a conflict with the Soviet Union or one of the other great powers, then the shipping lanes will be threatened. It seems to me we might want to preserve an oil reserve in the United States for that eventuality. Therefore, what we ought to do, both in terms of consumer interests, which means lower prices, and in terms of national security interests, is to use the cheaper oil that exists and is available in other parts of the world now, in order to preserve the oil that exists in the United States. And it should also be noted that the President's Cabinet report found no security justification for the quota restrictions.

There are import restrictions on oil which deny lower prices to the consumer; yet there is an open market on shoe and textile imports, which throw people out of work in New England. So there is a dual standard; and this administration, which has had the benefit of the oil import study, has refused to adjust to this particular problem. As a result, we have seen industry, hospitals, and homes forced to pay these escalated prices.

When the President acts to reduce increased meat prices, he talks about importing more meat and beef; yet when we in New England talk about a problem which has existed for far too long in our part of the country, all we get is a deaf ear.

I think the people of the Northeast know this. They are tired of it. They are demanding some kind of change. They deserve it; and I would certainly hope that the President would provide permanent and meaningful relief to the people of the Northeast.

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. Stevenson). Under the previous order, the distinguished Senator from Arizona (Mr. Fannin) is now recognized for 15 minutes.

THE TRUTH ABOUT THE SALE OF GRAIN TO RUSSIA

Mr. FANNIN. Mr. President, we have heard a great deal recently about the grain deal with Russia and about what has happened. There has been a great deal of criticism about it. Still, when we consider that it has been the desire of this country to expand its markets, and since we have been able to start what could be a tremendous East-West trade program, it is difficult for me to understand why this program would not be enthusiastically received by all Americans interested in the economy of the country and in building a good relationship with other countries of the world.

Mr. President, in a campaign document called "McGovern on the Issues" which circulated widely during the primaries, Senator McGovern included a section on agriculture. It said:

> McGovern proposals include—100 percent parity on wheat.

In the Congressional Record of April 21, 1972, Democratic Representative James Abourezk of South Dakota offered up Senator McGovern's agriculture positions in an entry entitled "Senator George McGovern; Income and the Future of the Family Farm."

In volume 118, part 11, page 13990 of the Congressional Record, Senator McGovern said:

> The Secretary of Agriculture has the authority to set price supports at 90 percent of parity. This authority should be used until a program is devised which would insure 100 percent of parity.

On three other occasions—and reading the Congressional Record is certainly

instructive—referring to bills introduced in Congress, the following is found:

1967—"By Mr. McGovern: S. 7. A bill to provide a special export wheat payment to farmers for a portion of crops of wheat and to provide that price support for corn, beginning with the 1967 crop, shall be at a national average rate of not less than 90 percent of parity, and for other purposes; to the Committee on Agriculture and Forestry." (Congressional Record, vol. 113, pt. 1, p. 190.)

1969—"By Mr. McGovern: . . . S. 236. A bill to provide a special export wheat payment to farmers for a portion of crops of wheat and to provide that price support for corn, beginning with the 1969 crop, shall be at a national average rate of not less than 90 per centum of parity, and for other purposes; to the Committee on Agriculture and Forestry." (Congressional Record, vol. 115, pt. 1, p. 1010.)

1972—"By Mr. McGovern: S. 3138. A bill to provide price support for milk at not less than 90 per centum of the parity price therefor. Referred to the Committee on Agriculture and Forestry." (Congressional Record, vol. 118, pt. 3, p. 2808.)

Mr. President, what I do not understand is why there is this great hue and cry about the grain sales to Russia.

The first accusation made is that the grain sale credit agreement with the Soviet Union was negotiated in April and was not announced to farmers and the public until July 8.

This accusation is absolutely false. The agreement on credit was negotiated starting June 28 and was completed on July 8. The details were announced to the public immediately after the agreement was signed. So the statement that the sales agreement with the Soviet Union was negotiated in April is absolutely false.

Another accusation is that farmers were not notified of the agreement and thus sold wheat before they were aware of the agreement.

It has been brought out in the past few days, according to the Crop Reporting Service of the U.S. Department of Agriculture, that farmers 1 week after the agreement was signed still retained control of approximately 83 percent of the 1972 and old crop wheat stocks.

That certainly answers that accusation.

Another accusation made is that rising wheat prices automatically reduce wheat certificate payments, which make up the difference between market prices and support levels on wheat used for food in this country. Thus farmers did not benefit materially from the Russian purchases.

That is absolutely untrue. Wheat certificate payment to farmers will be reduced approximately $130 million, but farmers will benefit from increased prices for wheat sold for export, which will be the largest in history this crop year. The value of feed grain, wheat, and soybean stocks controlled by farmers, including the 1972 harvest, will increase in value by approximately $1 billion, primarily as a result of the sales to Russia.

Then there is another accusation, that the Russian housewife is being subsidized by the U.S. taxpayer.

Well, the fact is that the export equalization payments on wheat exports to Russia, which make up the difference between U.S. export prices and higher prices paid to U.S. farmers for wheat, are the same as the export payments made on wheat shipments to Japan or any other country. The export equalization payments on the sale of wheat to Russia will cost approximately $120 million. Offsetting this cost is an estimated 4-to-1 return to the U.S. Treasury arising from the Russian sale. The estimated Treasury and tax savings of $500 million comes from higher returns from wheat stocks held by the Government, lower certificate costs, and lower wheat program costs for next year.

Another accusation made is that exporters were tipped off to a potential change in the export payment program a day and-a-half in advance and used this to their advantage.

That is not a fact. The fact is that exporters were called and notified that a change in export policy had been made on sales made prior to the previous day. This was to immediately prevent overselling of certain classes of wheat. This was the procedure that should have been followed—and it was. No information was given to them concerning what action would be taken. That was determined the next day and announced publicly after the market closed. Since the change in export payment applied to sales previously made, the information would not be to any exporter's advantage.

Then there was another accusation, that the Department suppressed a July agricultural attaché report from Moscow indicating crop conditions in Russia were deteriorating.

That is not true. The fact is, the report was a part of an ERS evaluation which was released to the press and was published in such papers as the New York Times, and the Journal of Commerce and received wide circulation.

Another accusation—and I could go on and on, but I give just one more—the Russians received more favorable treatment in the purchase of U.S. grain than other U.S. customers.

The fact is, the Russians purchased grain under the same competitive conditions as any other foreign buyer. No concessions were made on credit terms and no concessions were made on price to Russia. Any nation purchasing wheat from U.S. firms has had the same information and terms available to them as any other nation.

Mr. President, this illustrates perhaps the concern on the part of some people that this administration has been successful, that it has been able to carry through programs never considered possible before. I think there is an element of jealousy generated by this successful accomplishment. I say successful because certainly when we increase our markets for the farmers to the extent that it has been done in the past few weeks through these negotiations, we should be very proud of that success and not apologize for it in any way.

The President seems to be criticized so much in the press about this matter that perhaps there is a misunderstanding as to just what has happened.

To be sure that there is no misunderstanding that everything is thoroughly examined, President Nixon has ordered the FBI to investigate the $750 million sale of wheat to the Soviet Union. The inquiry will be conducted to determine whether anyone has made undue profit due to "misinformation or improperly revealed information on the part of the Federal Government."

As I said, this has been brought out because of the charges made by the Democratic Presidential nominee, GEORGE MCGOVERN, that large grain dealers were given advance information concerning the deal which enabled them to purchase large amounts of grain at lower prices before any public announcement was made.

Mr. President, I think that what I have said before establishes the record, but just to summarize, the two leading members of a House subcommittee investigating the sale of American wheat to the Soviet Union said a few days ago that they could see no wrongdoing on the point of a major figure in the investigation of the deal. Former Assistant Secretary of Agriculture Clarence Palmby had testified before the subcommittee that he had no definite knowledge when he quit his post in June that a United States-Soviet trade deal would be concluded although he had said publicly such an agreement was possible. He said he had no inside information concerning a pact when he joined a private grain firm and produced figures to prove his company did not reap any undue profits from a sale to the Soviets. After his testimony Chairman GRAHAM PURCELL, Democrat of Texas, said he was reserving judgment concerning some aspects of the Department's operations but Palmby's actions had had been totally proper. Representative WILEY MAYNE, Republican of Iowa, said there was nothing to show "any illegal, unethical, or improper conduct."

Mr. President, charges of improper conduct have been presented solely from a political point of view. I think that it is harmful to future negotiations and to those that may be going on with some other countries of the world when this matter is turned into a political affair. I think that it could be damaging to our countries.

Mr. President, politics affects the work of our country in promoting exports and in handling the imports. Therefore, I think we should see in proper perspective just what is happening. I do not think that the President has any doubt that it was properly handled, and the President has leaned over backwards to satisfy the American people that it was in order.

Mr. President, on the same subject insofar as it affects foreign affairs, I refer also to a matter of importation. We know that there is a great energy crisis in this country. We do not say it should be answered solely just by importing more products. As far as the energy crisis is concerned, we do not want to be dependent on other countries of the world to any greater extent than necessary.

We are trying to develop our own resources, both here on the continent and

in other parts of the world. If we could develop our resources in Alaska to a greater extent, it would be tremendously helpful. Action is going forward in this direction. I think that we are making a big step toward increasing our importation here in this country.

We have witnessed in the past few months changes in some of the policies concerning the interstate gas transactions, brought about because of a recognition that this would be of great assistance in helping to overcome these shortages and failures. However, we still face an energy crisis.

President Nixon signed on September 18, 1972, a proclamation authorizing the importation of an additional 622,000 barrels of oil per day for the last quarter of this year. The President has continuously taken into consideration what our needs are in this country as far as our oil supplies are concerned and has acted accordingly.

The President's action at this time was based on the advice of George Lincoln, the Director of the Office of Emergency Preparedness and chairman of the Oil Policy Committee, who determined that domestic production has not kept pace with increasing demands. This action expands by 35 percent the daily level of oil imports into the United States and was the second Presidential adjustment this year on oil import quotas. The move was designed to ward off threats of a home fuel crisis and potential price increases in the event of a shortage.

Mr. President, I commend the President for taking this action.

PROPOSED ORDER FOR ORDERING THE YEAS AND NAYS ON S. 555

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. FANNIN. I yield.

Mr. ROBERT C. BYRD. Mr. President, I ask that it be in order to order at this time the yeas and nays on S. 555.

Mr. SCOTT. Mr. President, would the distinguished Senator withhold that request temporarily? Since I discussed it with the Senator from West Virginia, I understand that the Senator from Colorado wishes to be present. Would the Senator give me a few moments to get the Senator from Colorado here?

Mr. ROBERT C. BYRD. Mr. President, we tried to get the yeas and nays last night. As the Senator knows, we will be able to get them eventually. This is just a matter of saving time.

Mr. SCOTT. I know that it will be possible to get them. However, I did not know a moment ago when I spoke to the Senator from West Virginia that the Senator from Colorado (Mr. DOMINICK) wanted to be present.

Mr. ROBERT C. BYRD. Mr. President, I withdraw the request.

ORDER OF BUSINESS

The PRESIDING OFFICER. At this time, the Senator from Connecticut (Mr. WEICKER) is recognized for not to exceed 15 minutes.

UNKEPT PROMISES

Mr. WEICKER. Mr. President, yesterday the Senate passed S. 2818, a bill to ban the cancer-causing substance, DES, in cattle food. A copy of that bill was on my desk and on the desk of all Senators.

That copy stated that Mr. PROXMIRE, on behalf of himself, Mr. CASE, Mr. KENNEDY, Mr. Moss, and Mr. RIBICOFF sponsored the bill, which had been read twice and referred to the Committee on Labor and Public Welfare.

However, in the November 8, 1971 issue of the CONGRESSIONAL RECORD, volume 117, part 30, page 39734, there is a little item, appearing under Statements on Introduced Bills and Joint Resolutions, which states that S. 2818 was introduced by Mr. PROXMIRE, for himself, Mr. MCGOVERN, Mr. CASE, Mr. Moss, and Mr. RIBICOFF.

On February 24, 1972, there again appeared a small item in the CONGRESSIONAL RECORD, under "Removal of Cosponsors from S. 2818," which stated:

> Mr. PROXMIRE. Mr. President, I ask unanimous consent that the names of the Senator from South Dakota (Mr. MCGOVERN) and the Senator from Indiana (Mr. BAYH) be removed as cosponsors of S. 2818, an amendment of the Federal Food, Drug, and Cosmetic Act.

So, Mr. President, this morning I would like to attempt to give an answer to what transpired between November 8, 1971, when the Senator from South Dakota (Mr. MCGOVERN) was cosponsoring the DES bill and yesterday, when that bill passed this body without the sponsorship of the distinguished Senator.

Mr. President, I have heard it said that a politician is known by the promises he keeps.

There was great promise—promise for the long abused American consumer—in the DES legislation that passed the Senate yesterday. However, the men that made that promise were not the same men who kept the promise.

The bill to ban DES in cattle food, a bill to remove cancer-causing agents from the consumer's meat purchases, was brought to the Senate on November 8, 1971. The men who sponsored this much needed consumer protection were Senators MCGOVERN, CASE, Moss, RIBICOFF, and PROXMIRE.

But as the legislative progress of this bill came to a close yesterday, one of those distinguished Senators was conspicuous by his absence. Senator GEORGE MCGOVERN's name had officially been dropped as a cosponsor of this consumer legislation.

It may be that some people are so busy learning the tricks of the trade that they have no time for those who suffer from the effects of the trade.

Or it may just be another piece of indecision, the kind of indecision that has become a scrap heap of discarded friends and principles.

Whatever the case, on November 8, 1971, Senator PROXMIRE stood before the U.S. Senate to introduce legislation for himself—and I quote now from the CONGRESSIONAL RECORD of that date—

> And for Senators MCGOVERN, CASE, Moss, and RIBICOFF to ban the use of diethylstilbestrol—DES—to artificially stimulate the growth of livestock destined for America's dinner tables.

I am still quoting Senator PROXMIRE:

> This controversial drug is a proven carcinogen, or cancer causing agent, yet it is currently used to promote weight gains in cattle and sheep slaughtered for human consumption.

Certainly there can be little question that DES is a bad bargain for the consumer.

Why then did the distinguished Senator from South Dakota appear in the CONGRESSIONAL RECORD on February 24, 1972, with a request that—and I now quote from the RECORD of that date—his name "be removed" as a cosponsor.

Could it be that the mercantile interests in South Dakota, the cattle business to be specific, educated their distinguished Senator?

Or could it be that the Senator from South Dakota does not know where he stands on this rather well-defined issue?

Could it be that the first "plan" had to be scrapped for a "new plan"?

Why the loud silence in erasing the evidence of cosponsorship? Why the silence in the CONGRESSIONAL RECORD or elsewhere on the shift?

Why is it that when constituents from my home State of Connecticut called the Senator's campaign headquarters here in Washington yesterday they were told the Senator had no position on the DES issue? Was it really no position? Or is it that the Senator loved DES in February as he had not in November?

Come home, Senator MCGOVERN, to the Senate and explain yourself to the millions of consumers across this land, who need to know which promises for the future will be kept.

Can this be the same distinguished Senator who has said—and I quote—

> The Executive branch must use its power to expand consumer information and protection.

The Senate of the United States and the National Cancer Institute have said no to the Nation being "a research laboratory on this kind of issue."

In light of his chameleonism, rather than his consumerism, I ask Senator MCGOVERN, DES—Yes or no?

Mr. SCOTT. Mr. President, if the Senator from Connecticut has time remaining, I would like to ask him to yield for a few quesitons.

Mr. WEICKER. I yield to the distinguished Senator from Pennsylvania.

Mr. SCOTT. Mr. President, would the distinguished Senator from Connecticut agree that it is difficult to know the views of the candidate of the opposition party, since he has been absent from the Senate for most of these votes? I believe his attendance record is 28 or 29 percent. Does not that contribute to the Senator's difficulty in arriving at any ascertainment of the Senator's present views on these matters on which we are legislating?

Mr. WEICKER. It is very, very difficult to ascertain his views, and I would much prefer that he be standing here in order

to answer this question, far better than my asking the question of an empty seat.

Mr. SCOTT. I commend the Senator for having brought out the fact that on a particular bill where the Senator was a cosponsor, he, for reasons which must have seemed to him sufficient, caused his name to be withdrawn as a cosponsor. I believe there should be as much publicity given, if one wishes to talk about disclosure, to the withdrawal of cosponsorship as there is to cosponsorship.

Mr. WEICKER. I concur with the distinguished Senator from Pennsylvania, because I am sure that when this bill was cosponsored there was a great flurry of activity on the part of the junior Senator from South Dakota, as he explained his ventures on behalf of the consumers of America. But now the consumers of America do not know that he is no longer interested in sponsoring this legislation which passed yesterday, almost unanimously. It is not just that he was not here to vote on the measure, but he also apparently does not want to be associated with it.

So if there are points to be made in South Dakota from his withdrawal of cosponsorship, and I think there might be, it is important that my constituents in Connecticut understand that on this piece of legislation the business interests of South Dakota come first.

Mr. SCOTT. Could the Senator explain why the Senator who is the candidate of the opposition has made speeches criticizing the rise in the crime rate but failed to be present in votes on four or five crime bills this week; and why the Senator who is the candidate of the opposition party, who has become an authority on health matters, failed to be present to vote on a number of important health bills, including the health maintenance organization bill yesterday; and why the Senator who is the candidate of the opposition party, who is an expert on foreign policy, failed to be here to vote on the interim agreement or the SALT agreement; and why the Senator who is the candidate of the opposition, who is an authority on revenue sharing, failed to explain to the people of the country, or the mayors and Governors of the country, why he was not present to vote on revenue sharing?

Mr. WEICKER. I might also point out another very important matter in which the Senator failed to participate or vote, since the distinguished Senator from South Dakota has many times expressed a desire to assist the plight of the poor in our American cities. Very important legislation, introduced by the Senator from Massachusetts (Mr. KENNEDY), the distinguished Senator from Maine (Mr. MUSKIE), the distinguished Senator from Kentucky (Mr. COOPER), and myself to increase mass transit facilities in American cities, to enable the poor to move within those cities and to get to their jobs and not have to rely on automobiles. Certainly there was no assistance at all on the part of the Senator from South Dakota in this matter.

Mr. SCOTT. He has conducted a campaign based on the difference between promise and performance, but could his positions stated on the road be regarded as promises and his failure to vote in the Senate or to testify in committee be considered as nonperformance? Does the Senator agree?

Mr. WEICKER. It would certainly seem that way to me. We have a job to do here. I believe, and the distinguished minority leader would know better than I, that at least 2 more weeks of business must be concluded on this floor, business that affects the State, the poor, and the consumers, right down the line. This is the business of the country. And it is the business, it seems to me, of every Senator. If he does that job and does it well it is good politics, but apparently there is more to be gained on the road, while there are those of us here and in the executive branch attempting to make a better United States through our actions and not through words.

Mr. SCOTT. Does it not seem that the absence of the candidate of the opposition, who also happens to be a Senator from South Dakota, is one which weighs heavily on all of us who would like to see Senators in the full performance of their duties, as well as of their faculties and thoughts, too deep for tears suffuse me at this concept?

The PRESIDING OFFICER. The 15 minutes of the Senator have expired.

ORDER OF BUSINESS

Under the previous order the Senator from Pennsylvania (Mr. SCOTT) is recognized for not to exceed 15 minutes.

POLITICAL SPEECHES IN THE SENATE

Mr. SCOTT. Mr. President, this daily exercise—this daily setting up exercise—whereby some Senators on the other side of the aisle set up targets and then Senators on this side of the aisle knock them down, it seems to me, in all candor, is a bit unfortunate. It diminishes the effectiveness of the Senate when it is used as a sort of political cesspool. It slows up the business of the Senate. And I have suggested—and renew my suggestion—to the leadership on the other side of the aisle, who have no part in this tactic, I am sure, that any time the Senators who are daily engaged in this hammering technique wish to get back to business, we on this side would be relieved of the responsibility to reply, and that if we do not have to engage in any of this, then we can get on with the business of the Senate. But I say, too, if they are going to try these diversionary tactics, they will be met with reply, rebuttal, and a riposte. I think this is a kind of hammerhead shark technique, cruising around underwater to slash at would-be prey.

Take, for instance, the criticism of the Secretary of State and the Secretary of Defense for responding to charges made against their conduct of foreign and domestic policy. That criticism has nothing whatever to stand upon, because it is the critics who have forced these replies.

The late Senator Vandenberg's famous dictum in foreign policy matters—that bipartisanship stops at the water's edge—is still good, and members of both parties have, until this election, observed a decent regard for the necessities of executives and the conduct of foreign policy by those executives, whether the Congress was of the same party as the executive or another. That valuable tradition has been broken by injecting foreign policy into this campaign as a major issue and by assaulting the Secretary of State and the Secretary of State's implementations of that foreign policy.

So when the Secretary properly replies that the charges are ridiculous, he is accused of making a political reply. That is nonsense.

The same thing happened with respect to the Secretary of Defense. Normally, the Secretary of Defense does not campaign in a political campaign, but when the Department of Defense is accused of not doing anything about the draft, and the Secretary of Defense replies he is ending it, and when the Secretary of Deense is accused of carrying on a war, and the Secretary of Defense outlines how the President and he, under the President's instructions, are ending it, he is accused of engaging in politics. The very ones who accuse them are the very ones in Congress who summon these witnesses to testify before committees and then refer to the answers as political. This is self-serving, and they really ought to be ashamed of doing that.

I dealt yesterday with the humbuggery of the wheat sale critics. Suffice it to point out that farmers stand to profit by $1 billion through these favorable transactions. The farmers are not criticizing, but the politicians who like the farmer for political dirt are busy in their criticism. This is not because the farmer is not profiting, but because, by reason of the farmer's receiving more money for his products than he has for some time, he will know to whom to be grateful. The party of the opposition has nothing to gain except the conclusion of the farmer that, had it been in power, this kind of favorable result probably would not have taken place.

As to the financing of campaigns, both political parties are bound by the rules of the law we passed, and most of us—except the Senator from South Dakota, who may or may not have been here; no one ever knows—joined in debating and voting for the campaign financing law. We fixed the deadline. By our act, by our fiat it was provided that those contributions, up to a certain date, not be required to be disclosed, nor that anyone be required to disclose for them such contributions, and that after that date there was to be full disclosure. This was worked out by members of both political parties. Neither party has a patent on it. Neither party has the right to claim the benefit for it.

The fact is that Senator MCGOVERN's campaign committees were guilty of at least seven major violations, as charged by the junior Senator from Kansas and never satisfactorily rebutted.

Some Senators speak of their concern about electronic surveillance, but not one of them, even up to this moment, has had his conscience sufficiently nudged to condemn the most recent example of that

technique—the basement caper of John Kerry's brother and his pals in the congressional primary of their party in Massachusetts.

This does not excite anyone. It does not cause great news. The newspapers virtually ignore it. This is so because these gentlemen have white hats, and there is attached to them future sainthood, they already having been anointed in the press for great things. They have their eyes lifted upward toward heaven, and they cannot be criticized by those who are promoting them for future advancement to public office. I ask only that John Kerry be given equal time in the hall of defame among those who have still a modicum of fairmindedeness in their system.

What is the purpose of this daily exercise in frustration, as conceived by members of the majority staff who are acting as recruiting sergeants for willing Senators?

The answer: How to escape from the dilemma created by the Candidate McGovern's staying away from the Senate and the Senate staying away from McGovern? The way to get at that is to try a diversionary operation. Look for targets of opportunity. Fire at will.

That reminds me of the old story of the drill sergeant who told the recruits to "Fire at will." One of them waved his gun around vaguely and generally and said to the sergeant, "Which one is Will?" I think that is our problem. If they cannot find the target they are looking for, they grab a shotgun and scatter the pellets all around, hoping that at least one of them will wing something.

I wish that everybody concerned could stop this futile folly of trying to grab attention up here on Capitol Hill to get a Washington dateline for the purpose of trying to balance out a floundering candidate who has been trying to stop his bottoming out; but since he has an endless bottom, the bottoming out has yet to happen. While the fate of the candidate sinks further and further into the Slough of Despond and he is flailing at opportunistic targets and lands no blows, gallant Senators who wish they could do something for him without having to mention his name have submitted themselves to this recruitment in this sad and forlorn cause.

I say, "Let's stop it. Let's get on with the business of the Senate. You are forcing us to use time that ought to be used on legislation. If you will just confine yourselves to press releases, I renew a commitment I made previously. Instead of making these charges on the floor of the Senate, put them all in press releases and send them up to the Gallery. They won't get any more attention there than they are getting now, but send them up. After all, some of the members of the press can use the blank backs of those press releases for scratch pads. But send them up, and I make my offer once more, that the majority leader and I each designate a Senator, hopefully with time on his hands, to read all the speeches that are sent up to the Gallery for political purposes. Sometime between now and Inauguration Day—I originally said Christmas, but I do not want to interfere with the holiday season, and I think up to Inauguration Day would give us a fair time to do it—if we can catch some Senator on our side, and I can run him down, I will designate him as our reader in chief, and if the other side will have a reader in chief, then we can avoid all this futility and get on with the important business of the Senate."

Mr. President, that is about it. I shall have something to say tomorrow, and tomorrow, and tomorrow, as they creep in their petty pace from day to day, as each of the bitter charges piles itself upon another, in a minuscule attempt to compete with Ossa high on Pelion piled. But the higher we are piling Ossa on Pelion, I think everyone knows what we are really piling up here, and it is time we stop it.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. STEVENSON). Under the previous order, there will now be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 3 minutes each.

POLITICAL SPEECHES IN THE SENATE

Mr. FULBRIGHT. Mr. President, I was a little taken aback by the statement of the Senator from Pennsylvania. I have been here for more than an hour, and the only rather vicious attack upon anyone was that made by the Senator from Pennsylvania. I think he protests too much. I had not heard, this morning, at least, anything which would call forth such a violent and heavy-handed reaction. What I have heard so far has been rather mild.

THE INTERIM AGREEMENT ON OFFENSIVE WEAPONS

Mr. FULBRIGHT. Mr. President, I wish to state for the information of the Senate that the Senate has appointed conferees on the interim agreement. We asked for them the day it was passed. The House has so far not named conferees. I only wish to explain that the delay in the final approval of the interim agreement is the responsibility of the House of Representatives. The Senate conferees are ready to meet with the House conferees at any time, and it should not take very long to dispose of it.

I am informed informally that the House is unwilling to accept all of the language of the Senate bill, that the members of the House committee would like to accept most of it, and informally, without contacting any of the Senate conferees, they have urged staff members to take the initiative to "clean up" the language of the joint resolution.

I do not wish to be a party to any such informal arrangement. If they are unwilling to have a conference, then they can take the Senate resolution as it passed. That is their right, as I understand. But other than that, I see no reason for any further delay.

PARTISAN POLITICS AND THE SOCIAL SECURITY INCREASE

Mr. FULBRIGHT. Mr. President, the effort by President Nixon to take credit for the forthcoming increase in social security benefits is not only blatantly political, but highly hypocritical as well.

It was bad enough for speakers at the Republican Convention to praise Nixon for bringing about a social security increase which he actually opposed. Now, however, we have the outrageous example of the planned inclusion with social security checks of a printed message which implies that the President was somehow responsible for the increase.

This injection of partisan politics into social security payments is in itself deplorable. It becomes especially offensive in this case in view of President Nixon's opposition to the legislation which provided the increased payments. As the Senator from Idaho (Mr. CHURCH) has pointed out, the 20-percent increase was enacted over vigorous and persistent administration opposition.

The message which would be included with the checks to be mailed to 28 million Americans receiving social security checks next month would read:

> Your Social Security payment has been increased by 20 percent, starting with this month's check, by a new statute enacted by the Congress and signed into law by President Nixon on July 1, 1972.
>
> The President also signed into law a provision which will allow your Social Security benefits to increase automatically if the cost of living goes up. Automatic benefit increases will be added to your check in future years according to the conditions set out in the law.

The President, who proposed a 5-percent increase instead of the 20-percent increase approved by Congress, is trying to claim credit for the larger increase. As one who supported this reasonable and needed increase, I resent the President's actions. He is using money from taxpayers to pay for this propaganda which would go to all 28 million social security recipients.

Mr. President, the irony of this whole episode is heightened by the fact that at the time of the passage of this legislation, the President indicated that the Congress was being irresponsible because sufficient funding would not be available. He ignored the fact that the amendment contained not only the 20-percent increase, but also the necessary adjustment in social security taxes to pay for the increase. Now, the President has apparently forgotten all about his baseless charges of irresponsibility, and is trying to claim credit for the increase.

Mr. President, this increase in social security payments was justified in view of the rising cost of living, particularly the costs of food, medical care, and property taxes, items which hit older citizens hard. The increase was vital to many of our elderly citizens and is going to mean that some 1.5 million persons over the age of 65 will benefit substantially from this increase.

I think it is important for the American people to have the facts, so they are not deceived by this propaganda effort.

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

Mr. MANSFIELD. Mr. President, I ask for recognition, and yield my time to the Senator from Arkansas.

Mr. FULBRIGHT. I thank the majority leader.

PRESIDENT NIXON FIELDS HIS CABINET

Mr. FULBRIGHT. Mr. President, I am bound to say that this defense by the Senator from Pennsylvania of the activities of all of the various members of the Cabinet who have been designated as the political propagandists in this campaign is rather strange. I have never, since I have been in politics, seen so many of the Cabinet Secretaries, especially those holding the positions of Secretary of Defense and the Secretary of State, take such an active part in the campaign. Secretary of Agriculture Butz, who has been to my State only recently to make a "salute to Nixon" speech, also, I think, bears a heavy responsibility for this.

According to the September 25 issue of Newsweek magazine, Cabinet members and others whose salaries are paid by the public are crisscrossing the country daily in behalf of the Nixon campaign, coordinated by a computer. Newsweek named Cabinet members Rogers C. B. Morton, George Shultz, John Volpe, Elliot Richardson, Earl Butz and James Hodgson, plus Presidential advisers Robert Finch and Virginia Knauer. These are, of course, only a few of those on the public payroll who have been assigned to campaign.

I would only sum up by saying that I think whatever speeches have been made here on the Senate floor are a very minor part of the effort to set up a political exercise within the Senate. They have not been, I think, nearly as bitter, nor as critical nor have they employed such language as the Senator from Pennsylvania uses. The issues arising out of the Watergate incident and the wheat sale are very substantial issues, and I think they deserve discussion in public without any implication that they are solely of a political nature.

THE CASCADIA RESERVOIR PROJECT

Mr. PACKWOOD. Mr. President, all of us talk about the necessity for frugality in government. All of us are perpetually pointing to examples of waste, or projects that do not have sufficient factual foundation to justify continuance. If we are to be true to ourselves and fulfill our obligations to this country and to our States, then the same searching fiscal spotlight should be focused on projects within our respective States as on those outside.

With this in mind, Mr. President, I wish to place before the Senate today the findings of the General Accounting Office resulting from their review of the computation of the flood control benefits for the proposed Cascadia Reservoir project in Oregon. This GAO study was begun in August 1971, at my request, and in March of this year, GAO representatives presented a midway briefing in my office, attended by personnel of the other Oregon congressional offices. That was one of the finest briefings I have ever had by an agency of the Federal Government, and this report GAO has now given me substantially confirms what they told us during that briefing.

This has been a unique experience for me. This study has involved two Federal agencies—one doing the investigating, and one whose past actions were being investigated. In both instances, I have been extremely impressed with the professional attitude, and responsiveness to duty.

As far as I know, this is the first time the Corps of Engineers' activities on a specific proposed project have been studied by the GAO.

I requested this GAO study after receiving considerable mail in opposition to the project, in favor of protecting the South Santiam River and in support of bringing it into the Oregon scenic waterways system.

Many of these Oregonians questioned the project's costs and its purported benefits.

Of course, many folks in and around the project area had wanted and looked forward to this project since it was first conceived in the early 1950's. As I began to look into the pros and cons of the project, I determined to have a thorough, impartial, and comprehensive review done, and made my request of GAO.

To be quite frank, I did not anticipate the kind of response demonstrated by the Corps of Engineers in Portland. I rather anticipated a reluctance, a halfway effort and downright stubbornness by the corps personnel who became involved in this investigation, but under the guidance of Col. Paul Triem, district corps engineers, we saw a complete shattering of this preconception. In all instances reported to me, Colonel Triem's staff cooperated and aided the GAO in their investigation. With this kind of cooperation and good will, one hoped the corps would emerge intact, with no criticism from its investigators. Unfortunately that did not occur, and in their report the GAO has summarized their findings, listing, among other things, the insufficient data, inadequate studies, and shortcomings of the corps computation of benefits.

But with professional resilience the Portland office of the Corps of Engineers bounced right back, and agreed with the GAO that additional studies were needed, and stated they were planning studies to verify damages estimated for flood stages beyond the 100-year level. This corps office also further stated its plans to study and develop more supporting data on the economic growth of the flood plain. It is my understanding that the corps' Portland office let its first contract on June 30, 1972 to map the river in the Portland area and to develop procedures for studying other locations on the river.

Mr. President, I have often challenged certain dams and other major Federal activities, both within my State of Oregon and in this Nation, on environmental grounds. This, however, is a new rung on the ladder for me, as I asked for this study primarily on economic grounds. It is my desire to make this one-of-a-kind study available to other Members of the Senate and the House of Representatives who may have an interest, and I, therefore, request unanimous consent to have the General Accounting Office's report on the computation of flood control benefits for the Cascadia Reservoir project, Oregon, not adequately supported, printed in the RECORD.

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

COMPUTATION OF FLOOD CONTROL BENEFITS FOR THE CASCADIA RESERVOIR PROJECT, OREGON, NOT ADEQUATELY SUPPORTED

(By the Comptroller General of the United States)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C.

Hon. BOB PACKWOOD,
U.S. Senate.

DEAR SENATOR PACKWOOD: This is our report on inadequate computation of flood control benefits for the Cascadia Reservoir Project, Oregon. Our review was made pursuant to your request of August 6, 1971. Whereas the matters presented in this report have been discussed with officials of the Corps of Engineers, we have not obtained the comments of the Department of the Army.

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

COMPTROLLER GENERAL'S REPORT TO THE HONORABLE BOB PACKWOOD, U.S. SENATE

WHY THE REVIEW WAS MADE

At the request of Senator Bob Packwood, the General Accounting Office (GAO) reviewed the Corps of Engineers' computation of flood control benefits for the Cascadia Dam and Reservoir, a multiple-purpose project to be located on the South Santiam River in the Willamette River Basin, Oregon.

Background

Cascadia—one of 14 dams completed or planned in the Willamette River Basin—is intended to control floods for 160 miles from its site on the South Santiam River to the Columbia River, an area which includes Salem, Oregon City, and Portland.

The estimated cost to construct Cascadia increased from $28.4 million at the time it was authorized in 1962 to $58.4 million as of January 1972. Although about $1.1 million had been appropriated to study the Cascadia project through fiscal year 1971, funds to construct the project have not been appropriated.

FINDINGS AND CONCLUSIONS

The Corps' computation of flood control benefits is not adequately supported in three key areas.

Cascadia's ability to control floods

The Corps' Portland District Office estimated that Cascadia would provide some control over all floods in the Willamette River Basin up to that flood which would occur once in 10,000 years. However, the district did not study or demonstrate the project's capability to control floods greater than that which would occur once in 500 years. About 24 percent of Cascadia's benefits are attributed to its capability to control floods more severe than the 500-year flood level.

Determining flood damages

The district estimated the damages which would result from all possible floods up to a flood so severe that it probably would occur only once in 10,000 years. Damage surveys of the 1955 flood, and the 1964 flood—the highest recorded flood, which has a probability of occurring once in 100 years—were used to establish damage values. However, the district performed no studies to project flood damages from the 100-year flood to the 10,000-year flood. About 62 percent of Cascadia's flood control benefits are based on the projected damage values for floods greater than the 100-year level of severity.

Projecting future growth in the flood plain

The district determined the value of property in the flood plain by estimating normal growth, induced growth (caused by the greater use of property made possible by increased flood protection), and the effects of protective measures such as flood plain zoning and floodproofing.[1]

Data on the total Willamette River Basin was used to estimate normal growth; this data was not supported by specific studies of potential growth within the area Cascadia was to affect. Professional judgment, rather than specific studies, were used to project induced growth and zoning's potential effects on growth.

Reporting benefit-cost ratios

The district used two approaches to compute Cascadia's benefits—the incremental and the system approaches—and used both to develop benefit-cost ratios.

The *incremental* approach determines benefits by comparing existing flood conditions with the conditions that would exist if the project were constructed. The *system* approach computes flood control benefits by distributing total benefits to all projects in a system according to the extent that each project would reduce floods.

The project's system benefit-cost ratio, 4.18 to 1, markedly exceeds the incremental ratio, 1.32 to 1, because the former recognizes flood control benefits not directly attributable to Cascadia. With one exception, the Corps had reported only the system approach ratio to the Congress in its requests for construction funds.

GAO favors the incremental approach because it compares the benefits directly attributable to the project with the costs of providing these benefits.

Review of postauthorization studies

The Corps requested construction funds before the Office of the Chief of Engineers had formally reviewed and approved the Portland District's postauthorization studies of the project, contrary to Corps regulations.

Effect of interest rates on Cascadia's benefit-cost ratio

Opponents of the project questioned the interest rate used to analyze the Cascadia project's economics because they believed the rate was too low. Corps regulations and directives permit the 3¼-percent rate used by the Portland District to update the economic analyses of the project. The incremental approach would not economically justify Cascadia at any interest rate more than 4 percent. (See pp. 23 to 25.)

RECOMMENDATIONS OR SUGGESTIONS

The Secretary of the Army should require that—additional studies be made to verify the flood control benefits claimed for Cascadia and; the incremental benefit-cost ratio and the system benefit-cost ratio be reported to the Congress when requests for authorization or appropriations are made.

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Corps' Portland District Office agreed that additional studies were needed, and the Corps was planning studies to verify damages estimated for flood stages beyond the 100-year level. The district also plans to study and develop more supporting data on economic growth of the flood plain.

A contract, according to district officials, was let on June 30, 1972, to map the river in the Portland area and to develop procedures for studying other locations of the river.

CHAPTER 1

INTRODUCTION

At the request of Senator Bob Packwood, we reviewed the Corps of Engineers' computation of flood control benefits for the Cascadia Dam and Reservoir, South Santiam River, Oregon. The review was performed at the Corps' district office in Portland, Oregon, which had developed the data and performed the studies used in computing the project's flood control benefits. Whereas the matters presented in this report have been discussed with Corps officials, we did not obtain comments from the Department of the Army.

The Flood Control Act of 1962 (Public Law 87-874) authorized construction of the Cascadia Dam and Reservoir, a multiple-purpose project to be located on the South Santiam River in the Willamette River Basin. In addition to controlling floods, the project will provide recreation, navigation, and downstream power.

To control floods on the Willamette River Basin, the Corps planned to construct a system of 14 multiple-purpose dams, of which 11 are completed and functioning; Cascadia would be the 12th dam. Two additional projects—Gate Creek and Holley—have been authorized but, like Cascadia, are not yet under construction.

The map on the following page shows the 14 multiple-purpose Corps' projects in the Willamette River Basin. Cascadia would help control floods for about 160 miles from its site on the South Santiam River to the Columbia River, immediately downstream from Portland. Corps' studies show major flood-damage centers downstream from Cascadia in the Salem, Oregon City, and Portland areas.

The estimated cost to construct Cascadia increased from $28.4 million at the time it was authorized in 1962 to $58.4 million as had been appropriated for project studies of January 1972. Although about $1.1 million through fiscal year 1971, the Congress did not approve the first request for $600,000 for project construction in the President's fiscal year 1972 budget, because the South Santiam River could possibly be declared a scenic waterway under Oregon's 1970 Scenic Waterways Act. A Portland District official advised us that the President's fiscal year 1973 budget did not include a request for project construction funds because the scenic waterway issue had not been resolved.

On May 16, 1972, the Oregon State Highway Commission recommended to the Governor that the South Santiam River not be designated a scenic waterway. The State Water Resources Board made the same recommendation to the Commission. Since the Governor is authorize to designate new scenic waterways only after they have been recommended by both the Highway Commission and the Water Resources Board, the scenic waterway issue apparently may no longer affect Cascadia.

As of June 1972, the Portland District had not prepared its fiscal year 1974 budget estimate. Any decision to include construction funds for Cascadia in the fiscal year 1974 budget would be made later, according to a district official.

Benefit-cost analysis

Benefit-cost analysis is the Corps' basic tool for economically evaluating a project. Project benefits are the net identifiable increases in goods or services which result from project construction. Flood control benefits include reduction in flood damage and the increased utilization or enhancement of property that will result because of the project.

The district used two approaches—the incremental approach and the system approach—to compute Cascadia's flood control benefits and use both to develop project benefit-cost ratios.

The incremental approach attempts to identify the specific value of benefits gained, from the value of costs to construct, operate, and maintain the project. This approach determines flood control benefits by comparing existing flood conditions with the conditions that would exist if the project were constructed. Thus, the incremental approach credits benefits to Cascadia which result directly from its construction.

The system approach attempts to allocate to each project the total estimated flood control benefits from all existing and authorized projects in the Willamette River Basin. Total system benefits are the sum of the benefits determined for each project in the system using the incremental approach, plus the benefits resulting from the increased effectiveness of the projects acting as a system. The system approach determines a project's share by distributing the total benefits among all the projects of the system according to the extent that each project would reduce flood stages. The system approach assumes Cascadia would help control all floods, including the smaller, more frequent ones.

Using a system approach, the district estimated in January 1972 that Cascadia's annual project benefits were about $11.7 million, of which flood control benefits accounted for $10.8 million, or about 92 percent. The district also computed a 4.18-to-1 benefit-cost ratio for Cascadia.

Using the incremental approach, the district computed the benefit-cost ratio at 1.32 to 1, with total average annual benefits of about $3.7 million. About $2.8 million, or 76 percent, of this amount is for flood control.

We primarily examined the Corps' incremental approach to compute flood control benefits, because this approach identifies only those benefits resulting directly from Cascadia's construction and does not allocate benefits claimed for the whole system.

In chapter 3, we discuss our views on the Corps' need to report to the Congress the benefit-cost ratio resulting from both the incremental and system approaches.

CHAPTER 2

CORPS' ACTIONS PLANNED TO VERIFY CASCADIA'S FLOOD CONTROL BENEFITS

Flood control benefits are estimated by determining the project's capability to reduce flood stages throughout the range of possible floods and the damages which reducing flood stages would prevent.

Existing Corps' projects afford a high degree of flood protection to the Willamette River Basin. Most of the flood control benefits estimated by the Corps to justify constructing Cascadia and other proposed basin projects under study were derived on the basis of providing additional protection against floods greater than the largest recorded flood.

Our review of available documentation raised questions as to whether the Corps' support for three key issues was adequate: (1) Cascadia's ability to control the full range of floods for which they claimed bene-

[1] "Floodproofing" is a combination of structural changes and adjustments to properties subject to flooding primarily to reduce or eliminate flood damage. "Flood plain zoning" is a legal means used by the community to preclude the occupancy of the flood plain by certain types of residential, commercial, or agricultural development.

fits, (2) the damages which would be prevented by controlling floods greater than the largest recorded flood, and (3) the projected increased value of damageable property in the flood plain over the economic life of the project.

Cascadia's ability to control floods

The Portland District estimated that Cascadia would provide some control over all floods in the Willamette River Basin up to that flood which would occur once in 10,000 years. This estimate is particularly significant for the basin because Corps' studies show that the highest recorded flood occurred in December 1964 and had a recurrence probability of once in 100 years.

Information from the district shows that about 62 percent of Cascadia's flood control benefits are associated with the project's ability to control large floods which would occur less frequently than once in 100 years. The 11 existing projects are designed to control the smaller, more frequent floods to stages at which relatively small damage would result.

To determine Cascadia's ability to control the full range of recorded and projected floods, the district analyzed the project's capability to reduce flows of five floods up to the 100-year level.

The district then developed a hypothetical flood for the Willamette River Basin called a Standard Project Flood and studied Cascadia's capability to exhibit some control over it. Corps' regulations define "Standard Project Flood" as a flood which:

"* * * may be expected from the most severe combination of meteorologic and hydrologic conditions that are considered reasonably characteristic of the geographical region involved, excluding extremely rare combinations."

The Standard Project Flood for the Willamette River Basin has a recurrence frequency of once in 500 years.

For projected floods more severe than the Standard Project Flood, the district estimated that Cascadia's effectiveness would gradually decrease to zero for the 10,000-year flood in all reaches [1] except Portland, where the limit would be a 5,000-year flood. Because no known floods had approached these magnitudes, the dam's effectiveness was based on judgment; no studies had been made to support Cascadia's capability to control floods above the Standard Project Flood.

The following table compares Cascadia's total flood control benefits claimed and that portion of these benefits derived from floods more severe than the 500-year flood.

River reach	Percent of total flood control benefits	Percent of total benefits due to floods over the 500-year frequency
South Santiam	5	1
Santiam	6	1
Salem	21	1
Grand Island	9	0
Newberg	2	0
Oregon City	20	2
Portland	37	18
Total	100	[1] 24

[1] Difference due to rounding.

Although approximately 24 percent of the benefits claimed for Cascadia were attributed to more severe floods than those which would occur once in 500 years, the district did not study the project's capability to control these larger floods.

[1] When typical flood damage is analyzed, the area subject to flooding is divided into subareas, usually designated as river reaches. In selecting the reaches, the district considers factors such as political boundaries, zoning plans, and differences in development.

Determining flood damage

To assign dollar values to the expected flood level reductions, the district estimated the damages from the full range of floods that Cascadia would help control. It used damage surveys from the 1955 flood (a 10-year flood) and the 1964 flood (a 100-year flood) to establish damage values for floods that would occur once in 100 years. For floods above the 100-year level, an upper limit damage value was estimated on the basis of a 10,000-year flood (a 5,000-year flood was used in the Portland reach).

The following table compares the actual damages caused by the 100-year flood and the district's estimate for the upper limit flood.

[In millions]

River reach	Surveyed damages for 100-year flood [1]	Estimate damages for upper limit flood [1]
South Santiam	$3.7	$16.7
Santiam	1.3	7.6
Salem	7.6	172.0
Grand Island	4.8	18.3
Newberg	1.2	5.8
Oregon City	17.0	80.8
Portland	11.2	585.0

[1] All damages at 1965 price levels.

The district used these limits to establish damage values for intermediate floods, although the upper limit damage value was an estimate. It did not conduct damage surveys or studies to support either the upper limit values or the damage values for the intermediate floods above the 100-year level.

The following table shows the portion of the total flood control benefits that are derived from floods more severe than those which occur once in 100 years.

River reach	Percent of total flood control benefits	Percent of total benefits due to floods over the 100-year frequency
South Santiam	5	2
Santiam	6	1
Salem	21	8
Grand Island	9	2
Newberg	2	
Oregon City	20	13
Portland	37	35
Total	100	[1] 62

[1] Difference due to rounding.

About 62 percent of Cascadia's claimed flood control benefits are for floods over the 100-year frequency. Damage surveys or studies do not support such benefits.

Projecting future growth in the flood plain

To project increased property value that would occur in the flood plain during Cascadia's economic life, the district applied the following factors: (1) the normal growth rate, (2) the induced growth rate, and (3) nonstructural alternatives, such as floodproofing and flood plain zoning.[1]

The district developed the normal growth rate to reflect long-term increases in economic development in the area subject to flooding, using the 1969 Willamette Basin Comprehensive Study Report [2] as its primary source. District officials advised us that the report showed regional and subregional growth rates but not specifiv growth rates for the flood plain. Corps regulations make the following reference to regional studies.

"Trends and forecasts developed for larger areas, such as entire cities, metropolitan areas, river basins or states, should not be assumed directly applicable to flood areas in estimating flood damages and flood control benefits, without adequate demonstration of their applicability, or adjustment to the smaller areas."

District officials said that they had not made studies of the flood plain which would determine whether the normal growth rates used were applicable.

The district developed the induced growth (or land enhancement) rate to estimate the increased use of property that further flood protection from the project would make possible. Concerning the derivation of induced growth rates, Corps regulations state:

"Evaluation * * * will require consideration of past use of the affected property and the probable future uses of the property * * *. Care must be taken to exclude that portion of the earning power of property creditable to the additional investments other than for flood control, that must be made in order to realize an increased or higher utilization of the property. This is particularly important when use of land for residential and industrial purposes is involved. * * * Increased utilization benefits will be evaluated on the basis of sound and conservative estimates of probable future land use."

District officials based the induced growth rate on their professional judgment and not on a study of the flood plains. They expect most of the induced growth in the flood plain to accrue from converting agricultural land to residential or industrial use.

The third economic factor was an adjustment to reflect nonstructural alternatives to constructing the project, such as floodproofing and flood plain zoning. This adjustment assumes that maximum floodproofing and flood plain zoning will reduce the growth of flood damageable property in the 100-year flood plain. Thus, this factor reduces the flood control benefits claimed.

The district made the following adjustments for nonstructural alternatives for Cascadia.

1. A 10-percent reduction in existing urban benefits within the 100-year flood plain.

2. A 50-percent reduction in future urban benefits within the 100-year flood plain.

District officials made these adjustments on the basis of professional judgment and not on specific studies.

SUMMARY

The district estimated that Cascadia would help control floods up to the 10,000-year flood level. However, the district did not study or demonstrate the project's capability to control floods greater than that flood which would occur once in 500 years. About 24 percent of Cascadia's flood control benefits are attributed to its capability to provide some control over such floods.

The district estimated the damage which would result from all possible floods up to the 10,000-year flood. Their estimates, however, were limited to determining damages which resulted from recorded floods, the highest of which had a recurrence probability of once in 100 years. The district did not make any studies to support its projections of flood damages from the 100-year to the 10,000-year flood. About 62 percent of Cascadia's flood control benefits are depend-

[1] "Floodproofing" is a combination of structural changes and adjustments to properties subject to flooding primarily to reduce or eliminate flood damage. "Flood plain zoning" is a legal means used by the local community to preclude the occupancy of the flood plain by certain types of residential, commercial, or agricultural development.

[2] The report resulted from a comprehensive study of water and related land resources in the Willamette River Basin. The study was directed and coordinated by the Pacific Northwest River Basins Commission's Willamette Basin Task Force. The task force consisted of representatives of six Federal departments, the Federal Power Commission, and the State of Oregon.

ent on the projected damage values for floods greater than the 100-year flood.

The district determined future growth in the value of damageable property in the flood plain during the project's 100-year economic life by estimating the normal growth rate, the induced growth rate, and the potential effects of measures such as flood plain zoning. The normal growth rate was estimated from basin and subbasin growth rate data on the total Willamette River Basin and was not supported by studies of potential growth ra e within the flood plain to be affected by Cascadia. The district based the induced growth rate and the potential effects of growth due to zoning on professional judgment rather than on specific studies.

RECOMMENDATION TO THE SECRETARY OF THE ARMY

We recommend that additional studies be made to verify the flood control benefits claimed for Cascadia.

ACTIONS PLANNED BY THE PORTLAND DISTRICT

We discussed the need for additional studies to support the flood control benefits claimed for Cascadia with Corps officials at the Office of the Chief of Engineers (OCE) in March 1972 and with district officials in May 1972.

By letter dated June 5, 1972 (app. I), the District Engineer, Portland District, advised us of the district's plans to initiate studies to verify damage values estimated for flood stages above the 100-year flood.

Referring to the damage studies, the District Engineer stated:

"* * * The Portland District agrees that there is a need to verify flood frequency-damage relationships for rare floods based on detailed field studies to resolve the issues raised and to provide better data for other Willamette Basin projects. Because of the critical manpower shortage in the District and the urgency for completion of the damage survey, we propose to accomplish this work through contractual agreements with one or more architect-engineering firms.

"The initial contract, which we are presently preparing, will cover field and office work for re-evaluating flood stage-damage relationships for the Portland reach of Willamette River which extends from the mouth of the Willamette to Oregon City. Our plans call for this work to be under contract by 30 June 1972. Work on the remaining reaches of the basin will follow as funds become available * * *."

Concerning other issues which relate to computing flood control benefits, the District Engineer stated:

We also recognize the need for developing more supporting data pertaining to hydrologic analysis and economic growth in the various reaches of the flood plain. Our present plan is to conduct the necessary work for resolving these two problem areas in-house as the Corps of Engineers has special expertise in these two fields. Attached is a brief outline of the scope and coverage we feel is required."

The first contract, according to district officials, was let on June 30, 1972, to map the Portland river reach and to develop procedures to be applied in studying the other river reaches.

We believe that the studies, as summarized in the outline of study requirements attached to appendix I, should provide the additional data needed to better determine the flood control benefits to be expected from Cascadia and other planned Willamette River Basin projects.

CHAPTER 3

OTHER PROJECT MATTERS CONSIDERED DURING OUR REVIEW

We considered other matters relating to the project such as (1) the Corps' method of reporting benefit-cost ratios to the Congress, (2) the Corps' review of Cascadia's postauthorization studies, and (3) the effect of interest (discount) rates on the project's benefit-cost ratio.

Reporting benefit-cost ratios

In our opinion, the Corps did not fully disclose Cascadia's economic effectiveness to the Congress because the Corps, in requesting postauthorization study and construction funds, reported benefit-cost ratios which include flood control benefits not directly attributable to Cascadia.

The benefit-cost ratio compares the estimated average annual benefit to be realized from a project with its estimated average annual costs. As such, the Corps used it as the prime indicator of economic effectiveness. It is the principal single factor provided to the Congress which can compare and evaluate a project's relative economic effectiveness and merit.

The Corps had used two approaches—the incremental and the system—to compute project benefits and to report project benefit-cost ratios. With one exception, the Corps had reported to the Congress only those benefit-cost ratios for Cascadia determined on the system approach. According to a North Pacific Division official, the Corps reported only Cascadia's system benefit-cost ratio in its requests for postauthorization study funds and in its initial request for construction funds for fiscal year 1972. The only time Cascadia's incremental benefit-cost ratio was reported to the Congress was in July 1971 in recall testimony on the fiscal year 1972 budget.

The two approaches resulted in markedly different ratios. Portland District analyses prepared in January 1972 showed benefit-cost ratios for Cascadia of 4.18 to 1 under a system approach and 1.32 to 1 under an incremental approach. The following table shows Cascadia's benefits and costs under the two approaches.

[Dollar amounts in millions]

Approach	Average annual benefits: Flood control	Other	Total	Average annual cost	Benefit-cost ratio
System	$10.8	$0.9	$11.7	$2.8	4.18 to 1.
Incremental	2.8	.9	3.7	2.8	1.32 to 1.
Difference	8.0	.....	8.0	.....	

The difference in benefit-cost ratios shown by the table is due solely to the $8 million difference in flood control benefits.

Cascadia would derive the major portion of its benefits from reducing floods in excess of the 100-year flood, because projects already constructed effectively control the smaller, more frequent floods. The system approach, however, assumes that Cascadia helps control all floods including those smaller, more frequent ones.

Senate Document 97, Eighty-seventh Congress, second session, provides guidance in formulating, evaluating, and reviewing plans for using and developing water and related land resources. Senate Document 97 requires that tangible benefits exceed project costs. It defines "benefit" as increases or gains in the value of goods and services which result from conditions *with* the project, compared to conditions *without* the project. Thus, we believe that using an incremental analysis to determine a project's economic feasibility would comply with Senate Document 97.

CONCLUSIONS

Because some projects' benefit-cost ratios are reported on an incremental approach and others such as Cascadia are reported on a system approach, the Congress does not have the information necessary to judge the projects' relative effectiveness or merit. This could result in approving projects which are far less deserving than others being considered.

We believe that the incremental approach best measures Cascadia's economic effectiveness because it compares the increase in benefits to be provided by the project with the project costs.

RECOMMENDATION TO THE SECRETARY OF THE ARMY

Whereas the Corps may wish to inform the Congress of a project's benefit-cost ratio determined by the system approach, we recommend that the Corps also report the incremental benefit-cost ratio to the Congress when it requests project authorization or appropriations for construction.

REVIEW OF CASCADIA'S POSTAUTHORIZATION STUDIES

The Corps requested funds to construct Cascadia before it had formally reviewed and approved the Portland District's postauthorization studies of the project.

The first request for Cascadia's construction funds was contained in the President's fiscal year 1972 budget. Referring to funding requirements, the Corps' regulations on postauthorization studies state that:

"Post-authorization studies of individual projects will normally require, as a minimum, the submission of a general design memorandum in two phases followed by feature design memorandums covering separate aspects of the work. In Phase I of the general design memorandum, appropriate studies and investigations will be made to either reaffirm the authorized project or reformulate the project to meet present day conditions and/or criteria. Phase I will be primarily a planning document in which formulation, evaluation, coordination, and preliminary cost allocation will be presented in sufficient detail to support the conclusions and recommendations made. Phase II will be * * * concerned primarily with the technical design of the structures * * *."

Corps' regulations further state that the postauthorization schedule:

"* * * should provide for approval of Phase II * * * of the general design memorandum prior to the request for funds to initiate construction of the project."

At the time of our review, the only postauthorization studies submitted to OCE for formal review and approval were the district's design memorandums covering the project's hydrological aspects and site selection. The district was completing the general design memorandum, which discusses the flood damage and economic analysis. OCE officials had not reviewed the details supporting the district's determination of flood control benefits for Cascadia.

In March 1972 we discussed our preliminary findings with OCE officials to determine whether they felt the district's procedures in determining Cascadia's flood control benefits were appropriate and adequate. They concluded that more analysis and support were needed to justify the district's conclusions.

OCE, in our opinion, should have reviewed and approved Cascadia's postauthorization studies before it requested construction funds from the Congress. Subsequently, OCE officials plan to explore certain aspects of the project with the district office, such as the development of the hydrologic aspects of the project, the methodology used in evaluating Cascadia's flood control benefits, and the Corps' policy of reporting project economic feasibility with both systems and incremental analyses to the Congress. As discussed on pages 17 and 18 of this report, the Portland District plans additional studies.

Effect of interest rates on Cascadia's benefit-cost ratio

A major factor in the Portland District's determination of Cascadia's flood control benefits and the resulting benefit-cost ratio

is the interest or discount rate.[1] Opponents of the project have questioned the interest rate applied to Cascadia's economic analysis because they believe that it is too low. Corps' regulations and directives allow the 3¼-percent rate used for Cascadia. The incremental approach would not economically justify Cascadia if the interest rate exceeded 4 percent.

Senate Document 97, approved May 15, 1962, provides guidance on the interest rate to be used. It states:

"The interest rate to be used in plan formulation and evaluation for discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis shall be based upon the average rate of interest payable by the Treasury on interest-bearing marketable securities of the United States outstanding at the end of the fiscal year preceding such computation which, upon original issue, had terms to maturity of 15 years or more."

Cascadia was authorized in 1962 on the basis of economic analysis using a 2⅝-percent interest rate. A district official said that the interest rate required for updating economic analyses of the project increased annually until fiscal year 1968 when it reached 3¼ percent.

In December 1968, the Office of Management and Budget (OMB) announced that it was adopting a new formula to compute the discount rate to be used in formulating plans and analyzing the economics of Federal projects. In announcing the formula, the OMB instructions stated that the new rate would be applied to future projects, and that "The old rate—3¼ percent—will be used on authorized projects if non-Federal financial commitments are made by December 31, 1969." Subsequent OCE instructions added the following criteria:

"For any active projects that have no requirements of local cooperation or reimbursement, a discount rate of 3¼ percent will be used."

Pending completion of Bureau of Reclamation studies on possibly using the project for irrigation (a purpose which would require reimbursement), there are no allocated share of costs for non-Federal interests to repay for Cascadia. Neither are there any other reimbursable, or potentially reimbursable, project purposes involved. Thus, the Corps believes that Cascadia can continue to use the 3¼-percent interest rate.

Since 1968 a statement of the discount (interest) rate to be used during the ensuing fiscal year has been published annually in the Federal Register. For fiscal year 1972 this interest rate was 5⅜ percent. But this rate does not apply to Cascadia.

On December 21, 1971, the Water Resources Council published a study, entitled "Proposed Principles and Standards for Planning Water and Related Land Resources," in the Federal Register. The principles and standards suggested that discount rates from 7 to 10 percent may be appropriate and proposed that a 7-percent rate be used to evaluate water resource projects during the next 5 years, because the rate approaches the total cost of Federal borrowing. If adopted by the Federal Government, these proposed principles and standards would replace those contained in Senate Document 97.

To determine the potential impact of the Water Resources Council's proposal regarding discount rates, the Corps reevaluated the economic feasibility of proposed and authorized but unconstructed projects using the proposed interest rates. Using an incremental approach the Portland District analyzed the economic feasibility of Cascadia using the 3¼-percent rate, the fiscal year 1972 rate of 5 percent, and the proposed rates of 7 and 10 percent. Cascadia's benefit-cost ratio for each of the interest rates was as follows:

Interest rate used (percent)	Benefit-cost ratio[1]
3¼	1.29 to 1
5⅜	.61 to 1
7	.41 to 1
10	.24 to 1

[1] The Portland District subsequently re-evaluated project costs. As a result, the costs decreased and the benefit-cost ratio increased. The incremental benefit-cost ratio shown elsewhere in this report (1.32 to 1) is based on the revised costs.

The sensitivity of Cascadia's economic feasibility under the incremental approach to changes in the interest rate is depicted on the chart on the next page. It shows that at any interest rate above 4 percent Cascadia would not be economically justified.

(Chart not printed in RECORD.)

APPENDIX I

DEPARTMENT OF THE ARMY,
PORTLAND DISTRICT CORPS OF ENGINEERS,
Portland, Oreg., June 5, 1972.

Mr. MICHAEL ZIMMERMAN,
U.S. General Accounting Office,
Washington, D.C.

DEAR MR. ZIMMERMAN: Reference is made to your telephone request of 1 June 1972 concerning progress being made on re-evaluating stage-damage relationships for the Willamette River Basin flood plain.

The basic problem centers around the fact that much of the flood control benefits for Cascadia and other proposed projects under study are derived from flood frequency probabilities greater than the largest flood for which damages are recorded. That flood for December 1964 had a recurrence probability of once in about 100 years, on the average, throughout the basin. Thus a significant portion of the flood control benefits have been evaluated on the basis of extrapolated frequency-damage relationships, rather than being based on field appraisals of probable flood damages that would result from these larger probable floods.

Several issues have been raised by representatives of environmental organizations and the General Accounting Office with respect to the reliability of flood control benefits. The Portland District agrees that there is a need to verify flood frequency-damage relationships for rare floods based on detailed field studies to resolve the issues raised and to provide better data for other Willamette Basin projects. Because of the critical manpower shortage in the District and the urgency for completion of the damage survey, we propose to accomplish this work through contractual agreements with one or more architect-engineering firms.

The initial contract, which we are presently preparing, will cover field and office work for re-evaluating flood stage-damage relationships for the Portland reach of Willamette River which extends from the mouth of the Willamette to Oregon City. Our plans call for this work to be under contract by 30 June 1972. Work on the remaining reaches of the basin will follow as funds become available. Seven reaches would be affected by Cascadia storage, 5 on the Willamette and 1 each on Santiam and South Santiam Rivers. There is a total of 33 river reaches on Willamette River and its tributaries, 7 of which are on Willamette River. Damages in each reach will be classified into not less than 3 damage categories. That is, 3 damage curves, 1 for each category, will be made for each river reach.

We also recognize the need for developing more supporting data pertaining to hydrologic analysis and economic growth in the various reaches of the flood plain. Our present plan is to conduct the necessary work for resolving these two problem areas in-house as the Corps of Engineers has special expertise in these two fields. Attached is a brief outline of the scope and coverage we feel is required.

I wish to take this opportunity to express my appreciation for the cooperative spirit, the open-minded approach, and the sincere effort put forth by the General Accounting Office personnel in their determination to appraise Corps procedures as related to issues discussed herein. I trust this letter furnishes the information necessary to answer your questions pertaining to these problem areas. If further information is desired, please do not hesitate to call my office.

Sincerely yours,

PAUL D. TRIEM,
Colonel, Corps of Engineers, District Engineer.

OUTLINE OF STUDY REQUIREMENTS

1. *System and Incremental Analysis Requirements.* An incremental analysis is required for all projects under study regardless of whether they are part of a defined system. For the incremental analyses, discharge-frequency and discharge-damage data are required for conditions without the project (but including all projects existing and under construction) compared with conditions with these projects plus the project under study. For projects which are included in a system analysis, the following data are required:

a. Definition of the system objective; identification of projects in the system and a showing that the project being added is essential to attainment of the system objective.

b. Comparative discharge-frequency and discharge-damage data for unregulated conditions and conditions provided by regulation of the complete system.

c. Presentation and explanation of how system regulation effects are to be apportioned among components of system (by reaches as pertinent), and resulting benefit distribution among all projects in the system.

2. *Hydrologic Analysis: Discharge-Frequency Curves.*

a. Explain fully the derivation of the unregulated curve:

(1) Supporting explanation of its development, including why the most probable or average curve is used.

(2) Explain reason for skew coefficient used, by reference to and summary of findings of regional studies that established it.

b. Identify, on maps, several flood plains. For actual floods, the 1964 flood plain and that of at least one smaller flood should be shown. Additional flood plains of larger floods should also be identified as necessary to establish the shape of the curve, including an estimate of the flood plain for the largest flood for which benefits are claimed. The study should describe, by reaches, factors which affect damage determinations such as increased depth and duration of inundation and velocities, as well as increased areas.

c. Present summary of routings for representative floods, including the largest for which any regulation is claimed, supporting and describing the effectiveness of such regulation in terms of prospective damage reduction by reduced area or reduced depth and duration of inundation, etc. This should include support particularly for effectiveness at the upper end of the curve, and emphasis should be given to the Portland reach and other reaches where, because of extent of damages, the protection is most needed or most significant to the benefit analysis.

d. Regulated curves for the complete system by appropriate reaches.

e. Regulated curves for existing conditions

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[1] In formulating water resources projects, the values of benefits and costs that accrue at varying times are comparable only if all are adjusted to a uniform time basis. The use of interest rates provides a means for converting estimates of benefits and costs to a common time point or period.

(projects existing and under construction) by same reaches as item d above.

3. *Discharge-Damage Analysis.* The incremental justification for any additional projects under study apparently rests primarily on reduction of damages from floods of lesser frequency than once in about 100 years on the average. Large floods also are a significant factor in system benefit analysis. Actual damages from such rare floods have not been experienced. Therefore, it is essential that estimated damages and benefits be fully supported. Data necessary to establish the shape of the curve and its upper limits will require extensive field and office appraisals to support claimed benefits, to include the following:

a. Based on flood plain delineations provided from the hydrologic analysis (2b), determine from field observations the acreages, types of use, property, and property valuations for the actual and estimated flood plains. Data for the actual floods should include the 1964 flood and one or two smaller floods. At least two or three larger floods should also be included, including the largest flood for which benefits are claimed.

b. Some supporting data should be shown for damage estimates, such as acreage, crop types and typical production losses applicable to agricultural damages, and for other types of damages appropriate description of derivation, such as major industrial plants, loss of bridges, numbers of residential units and per unit damage, etc. The basis for damage estimates for the larger floods should be well supported in terms of additional areas, depths of inundation, increased velocities, etc., which explain the increases relative to actual historical records of damages. Comparable explanatory data should also be furnished in support of claimed damage reductions.

c. The summary breakdown of damages by type of property should conform with ER 1120–2–113, paragraph 3b (4), i.e., agricultural, commercial, industrial, residential, utilities, etc., with agricultural further broken down between crop and other.

d. Existing and future damages should be shown separately by categories, also per ER 1120–2–113. Rates of growth used to derive future damages should be in terms of indicators appropriate to each category of damage. Reliance cannot be placed solely on historical or projected national relationships between selected economic indexes and categories of property or activity without corroborating evidence that flood plain variables demonstrate a generally similar relationship.

e. Land enhancement benefit should be identified as appropriate, and supported.

The PRESIDING OFFICER. The Senator from California is recognized.

(The remarks of Mr. TUNNEY, when he introduced S. 4014, are printed in the RECORD under Statements on Introduced Bills and Joint Resolution.)

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. First, Mr. President, with no time to be taken out of either side, I ask unanimous consent that the Subcommittee on Labor of the Committee on Labor and Public Welfare; Commerce Committee; the Subcommittee on Parks and Recreation of the Interior and Insular Affairs Committee, Armed Services Committee, Finance Committee, and the Public Works Committee may be authorized to meet during the session of the Senate today.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

PROPOSALS FOR ADDITIONS TO THE NATIONAL WILDERNESS PRESERVATION SYSTEM

A communication from the President of the United States transmitting, pursuant to law, proposals for sixteen additions to the National Wilderness Preservation System (with accompanying papers); to the Committee on Interior and Insular Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SYMINGTON, from the Committee on Armed Services, without amendment:

H.R. 16251. An act to release the conditions in a deed with respect to certain property heretofore conveyed by the United States to the Columbia Military Academy and its successors (Rept. No. 92–1197); and

H.R. 4634. An act to direct the Secretary of the Army to release on behalf of the United States a condition in a deed conveying certain land to the State of Oregon to be used as a public highway (Rept. No. 92–1196).

By Mr. McCLELLAN, from the Committee on the Judiciary, with amendments:

S. 3316. A bill to grant the consent of the United States to the Arkansas River Basin compact, Arkansas-Oklahoma (Rept. No. 92–1198).

By Mr. RANDOLPH, from the Committee on Public Works:

S. 4018. An original bill authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes (Rept. No. 92–1199).

Mr. RANDOLPH. Mr. President, this morning the Committee on Public Works ordered reported an original bill authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes. This is a major piece of resource management legislation which promises to substantially reduce flood damage and improve navigation in many areas of the Nation.

Mr. President, I report from the Committee on Public Works an original bill authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

Mrs. SMITH. Mr. President, as in executive session, from the Committee on Armed Services I report favorably the nominations of 21 flag and general officers in the Army, Navy, and Marine Corps.

The PRESIDING OFFICER. The nominations will be placed on the Executive Calendar.

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

Maj. Gen. John Russell Deane, Jr., U.S. Army, to be assigned to a position of importance and responsibility designated by the President, in the grade of lieutenant general;

Maj. Gen. Donald Harry Cowles, U.S. Army, to be assigned to a position of importance and responsibility designated by the President, in the grade of lieutenant general;

Maj. Gen. Elmer Hugo Almquist, Jr., U.S. Army, to be assigned to a position of importance and responsibility designated by the President, in the grade of lieutenant general;

Lt. Gen. Stanley R. Larsen, Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of lieutenant general;

Maj. Gen. Phillip Buford Davidson, Jr., U.S. Army, to be assigned to a position of importance and responsibility designated by the President, in the grade of lieutenant general;

Vice Adm. Walter L. Curtis, Jr., U.S. Navy, for appointment to the grade of vice admiral when retired; and

Harry C. Olson, and sundry other officers, for promotion in the Marine Corps.

Mrs. SMITH. Mr. President, in addition, I report favorably 275 nominations in the Army, 2,873 in the Navy, 96 in the Marine Corps, and 16 in the Air Force—Air National Guard in the Reserve—all in the grade of colonel/captain or below. Since these names have already appeared in the CONGRESSIONAL RECORD, in order to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

The nominations, ordered to lie on the desk, are as follows:

IN THE AIR FORCE

Air Force nominations beginning Frederick H. Barnes, to be lieutenant colonel, and ending Gene A. Allen, to be lieutenant colonel, which nominations were received by the Senate and appeared in the Congressional Record on September 5, 1972.

IN THE ARMY

Army nominations beginning Irma V. Bouton, to be lieutenant colonel, and ending Richard J. Williams, to be second lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on September 6, 1972.

IN THE NAVY

Navy nominations beginning David H. Acton, to be ensign, and ending Philip M. Lightfoot, Jr., to be captain, which nominations were received by the Senate and appeared in the Congressional Record on September 5, 1972;

Navy nominations beginning David S. Ailes, to be captain, and ending Eugene M. Riddick, to be commander, which nominations were received by the Senate and appeared in the Congressional Record on September 6, 1972; and

Navy nominations beginning David D. Abelson, to be lieutenant, and ending William C. Jarrett, to be commander, which nominations were received by the Senate and appeared in the Congressional Record on September 6, 1972.

IN THE MARINE CORPS

Marine Corps nominations of John Caldwell, to be second lieutenant, and Clarence U. Gebsen, to be lieutenant colonel, which nominations were received by the Senate and appeared in the Congressional Record on August 15, 1972; and

Marine Corps nominations beginning Vincent A. Albers, Jr., to be colonel, and ending William A. Tate, to be colonel, which nominations were received by the Senate and appeared in the Congressional Record on September 6, 1972.

ENROLLED BILLS SIGNED

The President pro tempore today, September 21, 1972, signed the following enrolled bills which had previously been

signed by the Speaker of the House of Representatives:

S. 1031. An act to credit certain service rendered by District of Columbia substitute teachers for purposes of civil service retirement;

S. 2478. An act to provide for the disposition of funds to pay a judgment in favor of the Shoshone-Bannock Tribes of Indians of the Fort Hall Reservation, Idaho, as representatives of the Lemhi Tribe, in Indian Claims docket numbered 326–I, and for other purposes;

S. 2575. An act for the relief of William John West;

H.R. 2185. An act to declare that certain federally owned land is held by the United States in trust for the Lac du Flambeau Band of Lake Superior Chippewa Indians;

H.R. 2589. An act to amend section 1869 of title 28, United States Code, with respect to the information required by a juror qualification form;

H.R. 6204. An act for the relief of John S. Attinello;

H.R. 10436. An act to provide with respect to the inheritance of interests in restricted or trust land within the Nez Perce Indian Reservation, and for other purposes; and

H.R. 14974. An act to amend certain provisions of law relating to the compensation of the Federal representatives on the Southern and Western Interstate Nuclear Boards.

ORDER FOR STAR PRINT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a star print be ordered of report No. 92–1155 on the bill (S. 3362) known as the Surface Transporation Act of 1971, in order to correct certain errors appearing in the original printing of the report.

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

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. SCOTT:

S. 4012. A bill to make additional immigrant visas available for immigrants from certain foreign countries, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. MONDALE:

S. 4013. A bill to amend the Social Security Act to make certain that recipients of aid or assistance under the various Federal-State public assistance and medicaid programs (and recipients of assistance under the veterans' pension and compensation programs or any other Federal or federally assisted program) will not have the amount of such aid or assistance reduced because of increases in monthly social security benefits. Referred to the Committee on Finance.

By Mr. TUNNEY (for himself and Mr. GURNEY):

S. 4014. A bill to amend the antitrust laws of the United States and for other purposes. Referred to the Committee on the Judiciary.

By Mr. THURMOND:

S. 4015. A bill to authorize the Secretary of the Interior to convey certain mineral interests of the United States to the owner or owners of record of certain lands in the State of South Carolina; and

S. 4016. A bill to authorize the Secretary of the Interior to convey certain mineral interests of the United States to the owner or owners of record of certain lands in the State of South Carolina. Referred to the Committee on Interior and Insular Affairs.

By Mr. PELL:

S. 4017. A bill to establish a Regional Railroad Rights of Way Authority. Referred to the Committee on Commerce.

By Mr. RANDOLPH, from the Committee on Public Works:

S. 4018. An original bill authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes. Ordered to be placed on the calendar.

By Mr. BIBLE:

S. 4019. A bill to provide for the administration of the Mar-A-Lago National Historic Site, in Palm Beach, Florida. Referred to the Committee on Interior and Insular Affairs.

By Mr. KENNEDY:

S. 4020. A bill to encourage and support the dissemination of news, opinion, scientific, cultural, and educational matter through the mails. Referred to the Committee on Post Office and Civil Service.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SCOTT:

S. 4012. A bill to make additional immigrant visas available for immigrants from certain foreign countries, and for other purposes. Referred to the Committee on the Judiciary.

Mr. SCOTT. Mr. President, I am today introducing legislation to eliminate several unfair practices which have developed subsequent to the enactment of certain amendments in 1965 to the Immigration and Nationality Act. My bill would provide for additional special immigrant visas, on an annual basis, to each country of the Eastern Hemisphere, and would trim the backlog in visa issuance in the so-called fifth preference category—brothers and sisters of U.S. citizens.

Very simply, the old system for selecting immigrants to the United States was based on a national origins quota concept. Legislation passed by the Congress replaced that system with an overall ceiling on Eastern Hemisphere immigration on a first-come, first-served basis, within various preference categories. However, during the phaseout period of the old system, the backlogs in some oversubscribed preferences were not removed. Furthermore, immigration from the former high quota countries was adversely affected. Immigration, particularly from Ireland, was cut back severely while the "brothers and sisters" backlog, particularly from Italy, was reduced by a very small amount.

The bill I am introducing today, as a counterpart to one already approved by the House of Representatives, restores to these countries the immigration benefits originally intended for them. One purpose of the bill is to facilitate the immigration of aliens chargeable to the beneficiary countries who would not otherwise qualify for immigration or who would experience a delay in obtaining an immigrant visa because of the oversubscription of the Eastern Hemisphere preference classification to which they were entitled. The special visas granted would primarily benefit Germany, Great Britain, Ireland, and Poland.

A second purpose of the bill is to reduce the backlog in the "brothers and sisters" preference. The old national origins system provided disproportionate national quotas, to govern the admission of immigrants, without regard to the reunification of families. In the transition to the new system, some countries, particularly Italy, were discriminated against. Under my bill, the special visas issued would benefit Italy, Greece, Poland, and Portugal.

Mr. President, it seems to me that if we are to continue our immigration and nationality program, we ought to make it fair and equitable, especially for the countries, such as Ireland and Italy, which have been adversely affected. I am hopeful that this new legislation will move us closer to that goal.

By Mr. MONDALE:

S. 4013. A bill to amend the Social Security Act to make certain that recipients of aid or assistance under the various Federal-State public assistance and medicaid programs—and recipients of assistance under the veterans' pension and compensation programs or any other Federal or federally assisted program—will not have the amount of such aid or assistance reduced because of increases in monthly social security benefits. Referred to the Committee on Finance.

SOCIAL SECURITY PASS THROUGH

Mr. MONDALE. Mr. President, on June 29 the Congress passed an urgently needed 20 percent increase in social security benefits. I am proud that I was a cosponsor of that long overdue legislation.

However, more recently, on the Senate floor, I said that many social security recipients were losing all or part of their 20-percent increase, although the Congress did not intend this to happen.

Let me read parts of two letters I have received from Minnesota concerning this pitiful and cruel situation.

One poverty stricken widow wrote to me saying that—

> The Minneapolis Housing Authority is raising my rent as a result of my increase in Social Security . . . and I will be losing my food stamps also. The way I figure it, I would be better off without the raise.

Another elderly couple in Cushing, Minn., sent me the notice of a rent increase they had received from the housing authority and said that their old age assistance check was being reduced dollar for dollar to take away every cent of the social security increase. The elderly wife wrote:

> Senator, I just haven't been able to keep up as it is and now to get a cut in our Old Age checks. Living is so terribly high. Everything is so terribly high. We pay taxes, insurance, we have payments. We don't begin to have what we need.
>
> My husband is a cripple from arthritis and 79. We are two people that just don't like to beg. We have no other income, just our Social Security and Old Age Assistance . . . and now giving more on Social Security but taking away Old Age Assistance . . . we aren't getting any raise. What can be done?

These are typical letters. Recipients of old age assistance and aid to the blind and disabled, those with veterans' pensions, people receiving food stamps, the medically indigent and many people in public housing are finding that the 20-

percent social security increase will mean a reduction or even a loss of these other benefits.

This is happening because in most States, those who receive old age assistance will lose dollar for dollar any increase they receive in their social security benefits.

In Minnesota, the terrible problems illustrated by the letters I have just read are not limited to a few. Sixty percent of the 23,000 elderly citizens who receive old age assistance—about 14,000 senior citizens—may be in danger of losing part or all of their social security increase. These are the poorest of the poor—living in small apartments, often alone, faced by soaring inflation which hits them much harder than it does other people.

Another 2,000 elderly Minnesotans will lose all entitlement to old age assistance as a result of the 20-percent social security increase—and will thereby lose all or part of their medicaid and food stamp benefits.

In addition to this problem with old age assistance, there is another serious threat to the recent social security increase of those elderly Americans who live in public housing. As a result of increased rentals for many public housing units—in Minnesota and throughout the country—these elderly citizens will lose as much as 25 percent of their social security increase.

These rental increases can be avoided, not only for social security beneficiaries, but for all other public housing tenants as well, if the President will simply release $130 million for public housing operating subsidies—funds which have already been appropriated by the Congress. I have recently written to the President, urging him to release these funds.

But although the President can roll back increases in public housing rents himself—this is only part of the solution to the problem. Congress itself must act to make it mandatory to pass through the 20-percent social security increase by preventing cuts in old age assistance, medicaid, food programs, and housing rents.

The bill I am introducing today is a bill which my colleagues from Minnesota, Congressmen FRASER and KARTH, have already introduced in the House. It will correct the serious injustices which I have mentioned and it will also focus attention on the underlying problem—our failure to adequately coordinate programs for the elderly.

I ask unanimous consent that the bill be printed in the RECORD at this point.

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

S. 4013

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 2(a)(10)(A) of the Social Security Act is amended by inserting "(I)" immediately after "(i)", by striking out "(ii)" and inserting in lieu thereof "(II)", and by inserting immediately before the semicolon at the end thereof the following: ", and (ii) the State agency shall, in the case of any individual who is entitled to monthly benefits under the insurance program established under title II, disregard any part of such benefits which results from (and would not be payable but for) the general increase in benefits under such program provided by section 201 of Public Law 92-336 or any subsequent cost-of-living increase in such benefits occurring pursuant to section 215(i) of this Act".

(b) Section 402(a)(8)(A) of such Act is amended by striking out "and" at the end of clause (i), by striking out "; and" at the end of clause (ii) and inserting in lieu thereof ", and", and by adding after clause (ii) the following new clause:

"(iii) in the case of any individual who is entitled to monthly benefits under the insurance program established under title II, any part of such benefits which results from (and would not be payable but for the general increase in benefits under such program provided by section 201 of Public Law 92-336 or any subsequent cost-of-living increase in such benefits occurring pursuant to section 215(i) of this Act; and".

(c) Section 1002(a)(8) of such Act is amended by striking out "and" at the end of clause (B), and by inserting immediately before the semicolon at the end thereof the following: ", and (D) shall, in the case of any individual who is entitled to monthly benefits under the insurance program established under title II, disregard any part of such benefits which results from (and would not be payable but for) the general increase in benefits under such program provided by section 201 of Public Law 92-336 or any subsequent cost-of-living increase in such benefits occurring pursuant to section 215(i) of this Act".

(d) Section 1402(a)(8) of such Act is amended by striking out "and" at the end of clause (B), and by inserting immediately before the semicolon at the end thereof the following: ", and (D) the State agency shall, in the case of any individual who is entitled to monthly benefits under the insurance program established under title II, disregard any part of such benefits which results from (and would not be payable but for) the general increase in benefits under such program provided by section 201 of Public Law 92-336 or any subsequent cost-of-living increase in such benefits occurring pursuant to section 215(i) of this Act".

(e) Section 1602(a)(14) of such Act is amended by striking out "and" at the end of subparagraph (C), by striking out the semicolon at the end of subparagraph (D) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(E) the State agency shall, in the case of any individual who is entitled to monthly benefits under the insurance program established under title II, disregard any part of such benefits which results from (and would not be payable but for) the general increase in benefits under such program provided by section 201 of Public Law 92-336 or any subsequent cost-of-living increase in such benefits occurring pursuant to section 215(i) of this Act;".

SEC. 2. (a) Subsection (g) of section 415 of title 38, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) In determining the annual income of any individual who is entitled to monthly benefits under the insurance program established under title II of the Social Security Act, the Administrator, before applying paragraph (1)(G) of this subsection, shall disregard any part of such benefits which results from (and would not be payable but for) the general increase in benefits under such program provided by section 201 of Public Law 92-336 or any subsequent cost-of-living increase in such benefits occurring pursuant to section 215(i) of the Social Security Act."

(b) Section 503 of title 38, United States Code, is amended by adding at the end thereof of the following new subsection:

"(d) In determining the annual income of any individual who is entitled to monthly benefits under the insurance program established under title II of the Social Security Act, the Administrator, before applying subsection (a)(6) of this section, shall disregard any part of such benefits which results from (and would not be payable but for) the general increase in benefits under such program provided by section 201 of Public Law 92-336 or any subsequent cost-of-living increase in such benefits occurring pursuant to section 215(i) of the Social Security Act."

(c) In determining the annual income of any person for purposes of determining the continued eligibility of that person for, and the amount of, pension payable under the first sentence of section 9(b) of the Veterans' Pension Act of 1959, the Administrator of Veterans' Affairs shall disregard, if that person is entitled to monthly benefits under the insurance program established under title II of the Social Security Act, any part of such benefits which results from (and would not be payable but for) the general increase in benefits under such program provided by section 201 of Public Law 92-336 or any subsequent cost-of-living increase in such benefits occurring pursuant to section 215(i) of the Social Security Act.

SEC. 3. Notwithstanding any other provision of law, in the case of any individual who is entitled for any month after August 1972 to a monthly benefit under the insurance program established by title II of the Social Security Act, any part of such benefit which results from (and would not be payable but for) the general increase in benefits under such program provided by section 201 of Public Law 92-336, or which results from (and would not be payable but for) any cost-of-living increase in such benefits subsequently occurring pursuant to section 215(i) of the Social Security Act, shall not be considered as income or resources or otherwise taken into account for purposes of determining the eligibility of such individual or his or her family or the household in which he or she lives for participation in the food stamp program under the Food Stamp Act of 1964, for surplus agricultural commodities under any Federal program providing for the donation or distribution of such commodities to low-income persons, for admission to or occupancy of low-rent public housing under the United States Housing Act of 1937, for subsidized mortgages or rentals under title II of the National Housing Act, or for any other benefits, aid, or assistance in any form under a Federal program, or a State or local program financed in whole or in part with Federal funds, which conditions such eligibility to any extent upon the income or resources of such individual, family, or household.

SEC. 4. The amendments made by the first section of this Act shall be effective with respect to calendar quarters ending on or after September 30, 1972. The amendments made by section 2 of this Act shall apply with respect to annual income determinations made pursuant to sections 415(g) and 503 (as in effect both on and after June 30, 1960) of title 38, United States Code, for calendar years after 1971. The amendments made by section 3 of this Act shall be effective with respect to items furnished after August 1972.

By Mr. TUNNEY (for himself and Mr. GURNEY):

S. 4014. A bill to amend the antitrust laws of the United States and for other purposes. Referred to the Committee on the Judiciary.

THE ANTITRUST PROCEDURES AND PENALTIES ACT

Mr. TUNNEY. Mr. President, we have learned a great deal about the impor-

tance of the Nation's antitrust laws in recent months and in particular about the manner in which they are administered. Two recent books, Morton Mintz and Jerry Cohen's "America, Inc." and the Ralph Nader study group's "The Closed Enterprise System," have focused with remarkable clarity upon the impact of economic concentration on the everyday lives of American citizens.

Combined with tne Judiciary Committee's recent hearings, these events have crystalized the rather vague concept of antitrust into a very tangible reality.

Perhaps for the first time since the now famous electric company price-fixing cases in the 1950's, public attention has been focused in a very direct and emphatic way upon the administration of the Nation's antitrust laws. Concern has been renewed about the standards and the safeguards which apply when the stakes are high.

That concern is not limited to any one party or one administration. Confidence in the process by which public decisions are made is an issue in which every public official has a very immediate investment. Moreover, it is an investment which must be shared with every member of the electorate. The disaffection which an increasing number of Americans have come to feel for their Government poses the gravest of threats to the delicate balance by which we all consent to be governed.

The problem is especially acute where the issue is antitrust because the stakes are high. Antitrust cases often carry with them profound implications not only for the particular defendants but for the millions of voiceless consumers with whom they deal. The decision to settle a case, and the components of that settlement, may affect the price, the quantity, and the quality of the most basic commodities. The elimination of several independent bakeries or dairies in a metropolitian area, for example, may have a very direct effect upon the cost of bread and milk to millions of families. Or the commodity might be drugs. For example, between 1953 and 1961, 100 tablets of the antibiotic tetracycline retailed for about $51. Ten years later, after exposure of an illegal conspiracy which had set prices, the same quantity was approximately $5, a 90-percent decrease.

In short, enforcement of the antitrust laws may have a very profound effect on the lives of every citizen of this country.

But beyond the economic effect, there is a political effect. Increasing concentration of economic power, such as has occurred in the flood of conglomerate mergers, carries with it a very tangible threat of concentration of political power. Put simply, the bigger the company, the greater the leverage it has in Washington. Bigness may not be bad in itself, but it carries with it a wide range of implications and consequences that must be examined very carefully.

We are not yet a corporate state but we may wish to decide whether we want to be before it happens by default.

All of these considerations point to the fact that the public has a direct and vital interest in effective enforcement of the antitrust laws, particularly in the process by which antitrust cases are resolved.

For these reasons I am today introducing S. 4014, the Antitrust Procedures and Penalties Act. I am pleased and honored to have my distinguished colleague on the Antitrust and Monopoly Subcommittee, Mr. GURNEY, join me as a prime sponsor.

The bill which we are introducing today has three basic provisions. The first establishes a reasonable but specific set of standards and guidelines to govern the process by which antitrust suits may be settled and consent judgments entered. The second increases the penalties for criminal violations of the antitrust statutes. Finally, a third provision revises the Expediting Act to improve the process of appellate review of antitrust cases, and in particular to authorize the United States appeal from the denial of a preliminary injunction at the trial court level.

I. CONSENT DECREE PROCEDURES

By the most recent figures available, over 80 percent of the civil antitrust suits brought by the Justice Department are disposed of through consent decrees—voluntary settlements negotiated between defendants and the Government and adopted by the court prior to trial. Essentially the decree is a device by which the defendant, while refusing to admit guilt, agrees to modify its conduct and in some cases to accept certain remedies designed to correct the violation asserted by the Government.

The consent decree has a number of major public consequences, however. First, it means that the substantial resources of the Justice Department will be removed from the effort to establish that the antitrust laws were violated. Because consent decrees by statute carry with them no prima facie effect as an admission of guilt, private parties who may have been damaged by the alleged violations are left to their own resources in their efforts to recover damages. As a practical matter because of the protracted nature of antitrust litigation, and the deep pockets of many corporate defendants, few private plaintiffs are able to sustain a case in the absence of parallel litigation by the Justice Department.

In addition, however, the consequences to the public of the provisions contained in the decree itself may be of major significance. Depending upon the skill of the Justice Department's attorneys and opposing counsel, and the relative leverage which they can bring to bear, a bad or inadequate consent decree may as a practical matter foreclose further review of a defendant's practices both inside and outside the scope of the decree.

Similarly, where the decree establishes guidelines for future conduct, the enforcement and modification of those guidelines takes on even more importance.

Finally, the public's interest in deterrence of future antitrust violations by the defendant and by other potential defendants may be affected profoundly by the willingness of the Justice Department to settle cases and the price exacted for such settlements.

None of these points implies that settlement of an antitrust case should necessarily be discouraged. There is in fact little question that consent decrees have been a particularly valuable enforcement tool.

But because of the frequency of their use, because of the importance a particular decree may have, and because of importance of public confidence in the manner a decree is arrived at, I believe we must provide specific standards and procedures to assure that the decision to settle and the settlement itself are in fact in the public interest.

A. PUBLIC IMPACT STATEMENT

Section 2 of the bill adds a new subsection (b) to section 5 of the Clayton Act (15 U.S.C. S. 16). This new subsection provides that any consent decree proposed by the United States must be filed with the court in which the case is pending and simultaneously published in the Federal Register at least 60 days prior to the effective date of the decree. In addition, the Government must file a "public impact statement" containing the following:

First, the nature and purpose of the proceeding;

Second, a description of the practices or events giving rise to the alleged violation of the antitrust laws;

Third, an explanation of the proposed judgment, relief to be obtained thereby, and the anticipated effects on competition of that relief, including an explanation of any unusual circumstances giving rise to the proposed judgment or any provision contained therein;

Fourth, the remedies available to potential private plaintiffs damaged by the alleged violation in the event that the proposed judgment is entered;

Fifth, a description of the procedures available for modification of the proposed judgment;

Sixth, a description and evaluation of alternatives to the proposed judgment and the anticipated effects on competition of such alternatives.

Each of these items is relatively self-explanatory. In sum, they have a dual purpose: First, they explain to the public, particularly those members of the public with a direct interest in the proceeding, the basic data about the decree to enable such persons to understand what is happening and make informed comments or objections to the proposed decree during the 60-day period. Second, the items listed in the subsection will serve to focus additional attention by both sides during settlement negotiations upon the factors which should be considered in formulating a decree.

The requirements of this provision are departures from the current practice of the Antitrust Division, but are not necessarily burdensome ones. At present, proposed consent decrees are filed with the court 30 days before they are to be entered. Typically the Department issues a brief press release recounting the fact of the filing of the decree and in some cases giving some additional but limited information about the litigation. Following the 30-day period during which public comments are received—but rarely

solicited—the decree is entered by the court.

This new subsection lengthens the comment period to 60 days and provides for circulation of both the decree and an analysis of its public impact by publication in the Federal Register. In addition, an affirmative duty is placed upon the Department to provide copies of both upon request.

The public impact statement required by this section is analogous to the environmental impact statement presently required from governmental agencies by the National Environmental Protection Act. It is therefore not without precedent but rather reflects a continuing concern on the part of the Congress to assure that decisions having a major public impact be arrived at through procedures which take account of that impact.

In addition, the public impact statement will serve as the basis for vastly improving the quality of comments filed in response to the decree. In so doing, it may render more meaningful the period for public comment which exists in shorter form under present procedure. Given the enormous amount of time and resources devoted to the prosecution of most antitrust suits, it is both logical and necessary that the end result be as carefully considered as possible.

The significance of this latter point should not be overlooked. Regardless of the ability and negotiating skill of the Government's attorneys, they are neither omniscient nor infallible. The increasing expertise of so-called public interest advocates and for that matter the more immediate concern of a defendant's competitors, employees, or antitrust victims may well serve to provide additional data, analysis, or alternatives which could improve the outcome.

B. PROCEDURES FOR PUBLIC COMMENT AND DEPARTMENTAL RESPONSE

As explained above, the bill would lengthen the present 30-day public comment period to 60 days. A new subsection (c) would be added to section 5 of the Clayton Act which would require the Attorney General or his designee to establish procedures to carry out the provision for public comment on the decree. The bill also provides that the 60-day period may be shortened by order of court but only upon a showing that extraordinary circumstances require it and that such a shortened time period would not be adverse to the public interest.

An additional requirement contained in this subsection is the filing by the Justice Department of a formal response to comments submitted to it pursuant to this provision. This requirement has two purposes: First, to give some assurance that public comments will in fact be considered by the Department when received; and second, to provide additional data to the district court in making its decision whether to enter the decree.

This latter point is particularly important because of the historically limited role which the courts have played in scrutinizing consent decrees. Before a court can be expected to exercise an independent judgment with respect to the merits of a particular decree, it must have adequate information available to it.

The public impact statement required by the bill, and the departmental response to public comments, can provide significant contributions toward the adequacy of the data available to the court.

C. ENTRY OF THE DECREE

A new subsection (d) which the bill would add to section 5 of the Clayton Act establishes the general criteria by which the court should determine whether to enter a particular decree.

The mandate is phrased first in general terms: Before entering any consent judgment, the court shall determine that entry of that judgment is in the public interest.

The mandate is a highly significant one because it states as a matter of law that the role of the district court in a consent decree proceeding is an independent one. The court is not to operate simply as a rubber stamp, placing an imprimatur upon whatever is placed before it by the parties. Rather, it has an independent duty to assure itself that entry of the decree will serve the interests of the public generally.

Though this may seem a truism to some, too often in the past district courts have viewed their roles as simply ministerial in nature—leaving to the Justice Department the role of determining the adequacy of the judgment from the public's view. While in most cases that judgment may be a reasonable one, there may well be occasions when it is not. Furthermore, the submission of the proposed decree to the court and its subsequent embodiment in a judgment lends a permanence that endures long after the passing of a particular administration of the Department.

For all of these reasons, the mandate placed upon the court by this section, even though a general one, carries with it a major significance.

In addition, however, and as an aid to the court in making its independent judgment, the bill provides a number of more detailed criteria for determination of the public's interest. Those criteria are as follows:

First, the public impact of the judgment, including termination of alleged violation, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies, and any other considerations bearing upon the adequacy of the judgment;

Second, the public impact of entry of the judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaints, including consideration of the public benefit to be derived from a determination of the issues at trial.

The thrust of those criteria is to demand that the court consider both the narrow and the broad impacts of the decree. Thus, in addition to weighing the merits of the decree from the viewpoint of the relief obtained thereby and its adequacy, the court is directed to give consideration to the relative merits of other alternatives and specifically to the effect of entry of the decree upon private parties aggrieved by the alleged violations and upon the enforcement of the antitrust laws generally.

These latter two points merit some additional explanation. First, as is well known by the antitrust bar, in the vast majority of cases, the Government is the only plaintiff with resources adequate to the task of protracted antitrust litigation. Thus, a major effort of defense counsel in any antitrust case is to neutralize the Government as plaintiff and leave prospective private plaintiffs to their own resources. Consent decrees have that effect because by statute they cannot be used as prima facie evidence of a violation in subsequent suits by private plaintiffs.

Thus, removal of the Government as plaintiff through entry of a consent decree has a profound impact upon the ability of private parties to recover for antitrust injuries. Such a result is by no means improper nor perhaps in every case unreasonable. But because of that impact, it is a factor which should enter into the calculus by which the merits of the decree are assessed. It may well be that the economic cost to the public of a particular antitrust violation merits the application of governmental resources toward gaining a recovery of that cost in damages for those who can establish their injury.

Similarly, the court is instructed to look at the question of antitrust enforcement generally to determine whether there may be overriding public interest in denying a particular settlement or even forcing a trial on the merits. For example, it may be that a particular case presents issues which demand an outcome which carries value as precedent. Such considerations would thus be added to the guides by which the court would arrive at its decision.

D. PROCEDURES AVAILABLE TO THE COURT

To assist the court in making the determination of public interest required by the bill, a variety of discretionary procedural devices are provided in a new subsection (e). Those procedures are as follows:

First, take testimony of government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

Second, appoint a special master pursuant to rule 53 of the Federal Rules of Civil Procedure, and such outside consultants or expert witnesses as the court may deem appropriate, and request and obtain the views, evaluations or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect thereof in such manner as the court deems appropriate;

Third, authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae intervention as a party pursuant to rule 24 of the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

Fourth, review any comments or objections concerning the proposed decree filed with the United States under subsection (c) and the response of the United States to such comments or objections;

Fifth, take such other action in the public interest as the court may deem appropriate.

A few key factors should be mentioned. First, all of the procedural devices continued in this subsection are discretionary in nature. They are tools available to the district court for its use, but use of a particular procedure is not required.

The decision to make those procedures discretionary is dictated by a desire to avoid needlessly complicating the consent decree process. There are some cases in which none of these procedures may be needed. On the other hand, there have been and will continue to be cases where the use of many or even all of them may be necessary. In fact, in a very few complex cases, failure to use some of the procedures might give rise to an indication that the district court had failed to exercise its discretion properly.

Second, the procedures are not meant to be exclusive. Rather, they are designed as guides for the courts to follow. To a considerable extent, they serve as safe harbors for a court to look to when faced with a difficult case. By following one or more of the procedures contained in this provision, an individual judge can develop the data he needs without fear that he is embarking upon an untried and perhaps reversible journey. This point is particularly significant where courts have been confronted in the past with the argument that any effort to make an independent examination of the decree is unprecedented.

Turning to the specific procedures provided by the bill, most are quite simple. The first two mechanisms, testimony of expert witnesses and special masters or other expert consultants, are designed to allow the court to obtain from whatever source necessary the technical expertise required to assess the merits of the decree or its consequences. This might include, for example, calling upon an economist from the Antitrust Division to explain the practices complained of and the effect of the relief sought. Or it might involve testimony from an expert obtained by the court from the SEC or some other Government agency. In a particularly complex case, it might include appointing one or more special masters or expert consultants to analyze and evaluate the decree or other arguments in its support. In short, the court would be authorized to obtain, from whatever source deemed appropriate, information sufficient to make an informed judgment about the decree.

In addition, the court may take appropriate measures to solicit comments on the decree from groups, agencies of government, or individual members of the public to assure itself that the decree has received adequate public attention. While it seems clear that the court would have such authority in the absence of legislation, this provision like those discussed above serves to encourage such requests by removing any aura of extraordinariness.

A third provision outlines a variety of methods in which interested third parties may be authorized to participate in the proceedings. The thrust of this provision is broadly flexible. It ranges from full intervention as a party under rule 24 of the Federal Rules of Civil Procedure down through a wide variety of more limited forms of participation. The basic point, however, is that the court is given broad discretion to fashion the degree of participation necessary to assure an adequate airing of the merits of the decree. Thus, for example, it need not allow an intervenor to come in with all the rights of a party to the litigation, but can choose instead to confer more limited rights. The effect of this provision should be to allow more extensive participation by so-called public representation where useful or appropriate without needlessly complicating the entire litigation.

The fourth procedural mechanism deals with public comments other than through actual participation in the proceedings before the court. Thus, public comments received during the 60-day period for such comments together with the Justice Department's response would be available to the court.

Finally, a blanket authorization for other appropriate procedures is included to encourage the court to fashion such additional tools as may be useful in fulfilling the mandate placed upon it to evaluate the proposed decree.

E. RECORD OF LOBBYING ACTIVITIES

One of the unfortunate lessons which the American people have learned in the past few months is that access to governmental institutions and governmental decisionmakers is inherently unequal. Large corporations and their officials can obtain a hearing at the highest levels of government on a scale that is beyond the imagination of the average citizen. This problem is not unique to the present administration, it is a fundamental reality of any administration. And it will continue to be a problem as long as we continue to finance political campaigns by watering at the big money trough.

But having said that, we must also assure that adequate safeguards govern the manner and extent of corporate influence.

The problem is particularly critical where the antitrust laws are concerned because to a considerable extent those laws are viewed as a direct threat by those who exercise the greatest corporate influence. And because the stakes are high the level of lobbying is equally high.

For this reason, it is particularly important to assure some measure of public scrutiny of the exercise of that influence. Justice Brandeis once said, "Sunlight is the best of disinfectants." And it is sunlight which is required in the case of lobbying activities attempting to influence the enforcement of the antitrust laws.

To deal with this problem in a constructive way, the bill proposes a new provision in the Clayton Act which would require a disclosure of lobbying activities on behalf of any defendant in connection with a consent decree proceeding.

The bill adds a new subsection (f) which provides that not later than 10 days following the filing of any proposed consent judgment as required by the bill, each defendant must file with the district court a description of any and all written or oral communications by or on behalf of that defendant with any officer or employee of the United States concerning or relevant to the consent judgment or the subject matter thereof. Included under this provision are contacts on behalf of a defendant by any of its officers, directors, employees or agents or any other person acting on behalf of the defendant, with any Federal official or employee. Thus, for example, the provision would include contacts with Members of Congress or staff, Cabinet officials, staff members of executive departments and White House staff.

The only exception is a limited exception for attorneys representing the defendant who are of record in the judicial proceeding. The exception is designed to avoid interference with legitimate settlement negotiations between attorneys representing a defendant and Justice Department attorneys handling the litigation. However, the provision is not intended as a loophole for extensive lobbying activities by a horde of "counsel of record."

In operation, the provision would require disclosure, for example, of a meeting between a corporate official and a Cabinet officer discussing "antitrust policy" during the pendency of antitrust litigation against that corporation. The disclosure intended is a disclosure of the fact of the meeting and the general subject matter. It obviously does not envision an outline of the conversation. But the essential data, that is, the date, the participants, and the fact that antitrust matters were discussed must be disclosed.

In addition, the bill requires that prior to entry of the consent judgment by the court, each defendant must certify to the court that the requirement of the section have been complied with and that the filing is a true and complete description of all such contacts or communications.

The requirements of this section are by no means burdensome. They demand no extraordinary efforts on the part of any defendant in order to comply with the duties imposed in the section.

Furthermore, they apply equally to contact with any branch of Government, including the Congress. I believe it is important that we in the Congress accept the same scrutiny as we would impose on any other branch. Furthermore, I believe there is a great deal to be gained by having a corporate official who seeks to influence a pending antitrust case through congressional pressure, know that his activity is subject to public view.

For all these reasons, I believe this section will be an important contribution toward vastly improving the atmosphere in which the Antitrust Division must operate in seeking to enforce the law. I have little doubt that enactment of this section might enable the Government's attorneys to do an even better job of litigating a particular case.

F. PRIMA FACIE EFFECT

A final provision in the consent decree procedures retains the provision presently contained in section 5 of the Clayton Act which prevents use of a consent decree in any way in subsequent litigation as prima facie evidence of violation. A new subsection (g) would be added which provides that proceedings before the district court in connection with the decree and public impact statements filed pursuant to the provisions of the bill are not admissible against any defendant in any action or proceeding brought by any other party against that defendant under the antitrust laws or by the United States under section 4A of the Clayton Act, nor may they constitute a basis for introduction of the decree as prima facie evidence against such defendant in any such action or proceeding.

The basic reason for including this provision is to preserve the consent decree as a substantial enforcement tool by declining to give it prima facie effect as a matter of law.

Although there have been suggestions that such effect be written into the law this bill does not reflect such suggestions. Since the primary purpose of the new consent decree procedures is to improve the process by which such decrees are used, continuation of the protection against prima facie effect appears necessary.

However, this provision is not intended to affect the Government's ability to require a so-called asphalt clause providing such effect where such a clause is deemed appropriate.

II. INCREASED CRIMINAL PENALTIES

A second part of the bill increases the penalties for criminal violations of the antitrust laws from $50,000 to $100,000 for individuals and to $500,000 for corporations. In an era when the profits available through antitrust violations can run to the millions of dollars, this increase is long overdue.

Former Attorney General John Mitchell, himself no stranger to corporate boardrooms, said this in support of increased corporate penalties in 1969:

> The maximum fine for violations of the Sherman Antitrust Act was increased to $50,000 in 1955. Since that time the assets and profits of corporations have increased dramatically, while the purchasing power of the dollar has decreased greatly. Consequently, the basic purpose of such a fine—to punish offenders and to deter potential offenders—are frustrated because the additional profits available through prolonged violation of the law can far exceed the penalty which may be imposed. The $50,000 statutory maximum makes fines in criminal antitrust cases trivial for major corporate defendants.

The need for this increase is self-evident. The only way violations of the antitrust laws will be deterred is by making the cost of violations unacceptable. Increasing the fines is not the only solution; more jail sentences for individual defendants might well be the most effective deterrent. But increasing the monetary penalties might well remove some of the profits which make antitrust violations attractive to otherwise ethical businessmen.

Increasing the maximum fine will do nothing if judges fail to use it effectively. Actual fines in the past have been far below the maximum possible. The Ralph Nader study group report on antitrust enforcement recently estimated that between 1955 and 1965, corporate fines averaged $13,420 and individual fines $3,365. Unless judges are prepared to make a violation economically painful, mere increases in statutory maximums will carry little deterrent value.

III. APPELLATE REVIEW OF ANTITRUST CASES

Mr. President, the final portion of this bill would amend the Expediting Act to improve the procedures for appeals in antitrust cases, and particularly to permit immediate Supreme Court review of those cases of general public importance. Additionally, it would remove the present uncertainty as to whether or not the interlocutory appeal statute is available under the Expediting Act. This present uncertainty has hampered the Department of Justice in obtaining preliminary injunctions in antitrust cases because of the doubt as to the applicability of appellate review.

In brief, the proposal would amend section 1 of the Expediting Act (15 U.S.C. 28, 49 U.S.C. 44) which provides for a three-judge district court in civil actions where the United States is a plaintiff under the Sherman or Clayton Antitrust Acts or certain sections of the Interstate Commerce Act, when the Attorney General files with the district court a certificate that the case is of general public importance. The section also provides that the hearing and determination of such cases shall be expedited. The amendment would eliminate the provision that a three-judge court be impaneled when the Attorney General files his expediting certificate, but would retain the expediting procedure in single-judge courts.

The bill would amend section 2 of the act (15 U.S.C. 29, 49 U.S.C. 45), which provides that appeal from a final judgment of a district court in any civil action brought by the United States under any of the acts covered by section 1 of the Expediting Act will lie only in the Supreme Court. The amendment would eliminate direct appeal to the Supreme Court in such actions for all but cases of general public importance, substituting normal appellate review through the courts of appeals with discretionary review by the Supreme Court. The amendment provides that any appeal from a final judgment in a government civil case under the antitrust laws, or other statutes of like purpose, and not certificated by the Attorney General or the district court as requiring immediate Supreme Court review will be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28 of the United States Code. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a)(1) and 2107 of title 28 of the United States Code, but not otherwise. Any judgments entered by the courts of appeals in such actions shall be subject to review by the Supreme Court upon a writ of certiorari.

The amendment also provides that an appeal and any cross-appeal from a final judgment in such proceedings will lie directly in the Supreme Court if, not later than 15 days after the filing of appeal, (1) upon application of a party, the district judge who decided the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice or (2) the Attorney General files in the district court a certificate containing the same statement. Upon filing of such an order or certificate, the Supreme Court shall either dispose of the appeal and any cross-appeal in the same manner as any other direct appeal authorized by law or deny the direct appeal and remand the case to the court of appeals. Review in that court could then go forward without further delay. This is similar to the procedure of the Criminal Appeals Act (18 U.S.C. 3731).

These revisions represent a substantial improvement in the appellate process for antitrust cases. In addition, the provisions authorizing appeal by the Government from a denial of a preliminary injunction at the district court level are directly responsive to the repeated pleas of the former head of the Antitrust Division, Richard McLaren, voiced recently. Judge McLaren repeatedly emphasized the need for legislation to give the Government the right to appeal from such denials:

> Again, I refer to the fact that we have asked, or the Department asked, repeatedly for legislation that would give us the right to appeal in those denials.

That request has been echoed recently by Donald Baker, Chief of Policy Planning and Education for the Antitrust Division:

> Under present law, the government has no effective appeal from a denial of a preliminary injunction in a merger case. We have sought unsuccessfully to get that power in recent years. Congress has not acted.

This bill will resolve that problem in a manner acceptable to the Justice Department. All of the revisions of the Expediting Act contained in this bill have been endorsed by the Department in hearings during the 91st Congress.

Mr. President, I ask unanimous consent that a copy of the bill and a section-by-section analysis of it be printed at this point in the RECORD.

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

S. 4014

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 "Antitrust Procedures and Penalties Act."

CONSENT DECREE PROCEDURES

SEC. 2. Section 5 of the Act entitled "An Act to Supplement Existing Laws against Unlawful Restraints and Monopolies, and for Other Purposes", approved October 15, 1914 (38 Stat. 730; 15 U.S.C. 16) is amended by redesignating subsection (b) as (h) and

by inserting after subsection (a) the following:

"(b) Any consent judgment proposed by the United States for entry in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which that proceeding is pending and published in the Federal Register at least 60 days prior to the effective date of such decree. Simultaneously with the filing of the proposed consent judgment, unless otherwise instructed by the court, the United States shall file with the district court, cause to be published in the Federal Register and thereafter furnish to any person upon request a public impact statement which shall recite:

"(1) the nature and purpose of the proceeding;

"(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

"(3) an explanation of the proposed judgment, relief to be obtained thereby, and the anticipated effects on competition of that relief, including an explanation of any unusual circumstances giving rise to the proposed judgment or any provision contained therein;

"(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that the proposed judgment is entered;

"(5) a description of the procedures available for modification of the proposed judgment;

"(6) a description and evaluation of alternatives to the proposed judgment and the anticipated effects on competition of such alternatives.

"(c) During the 60-day period provided above, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposed consent judgment. The Attorney General or his designate shall establish procedures to carry out the provisions of this subsection, but the 60-day time period set forth herein shall not be shortened except by order of the district court upon a showing that extraordinary circumstances require such shortening and that such shortening of the time period is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

"(d) Before entering any consent judgment proposed by the United States under this section, the court shall determine that entry of that judgment is in the public interest. For purpose of this determination, the court shall consider:

"(1) the public impact of the judgment, including termination of alleged violation, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies, and any other considerations bearing upon the adequacy of the judgment;

"(2) the public impact of entry of the judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint, including consideration of the public benefit to be derived from a determination of the issues at trial.

"(e) In making its determination under subsection (d), the court may—

"(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

"(2) appoint a special master, pursuant to rule 53 of the Federal Rules of Civil Procedure, and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual group or agency of government with respect to any aspect of the proposed judgment of the effect thereof in such manner as the court deems appropriate;

"(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to rule 24 of the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

"(4) review any comments or objections concerning the proposed judgment filed with the United States under subsection (c) and the response of the United States to such comments or objections;

"(5) take such other action in the public interest as the court may deem appropriate.

"(f) Not later than 10 days following the filing of any proposed consent judgment under subsection (b), each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any officer, director, employee, or agent thereof, or other person except counsel of record, with any officer or employee of the United States concerning or relevant to the proposed consent judgment.

Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this section have been complied with and that such filing is a true and complete description of such communications.

"(g) Proceedings before the district court under subsections (d) and (e), and public impact statements filed under subsection (b) hereof, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 4A of this Act nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding."

PENALTIES

SEC. 3. Sections 1, 2, and 3 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (26 Stat. 209; 15 U.S.C. 1, 2, and 3) are each amended by striking out "fifty thousand dollars" and inserting "five hundred thousand dollars if a corporation, or, if any other person, one hundred thousand dollars."

EXPEDITING ACT REVISIONS

SEC. 4. Section 1 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 28; 49 U.S.C. 44), commonly known as the Expediting Act, is amended to read as follows:

"SECTION 1. In any civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, wherein the United States is plaintiff and equitable relief is sought, the Attorney General may file with the court, prior to the entry of final judgment, a certificate that, in his opinion, the case is of a general public importance. Upon filing of such certificate, it shall be the duty of the judge designated to hear and determine the case, or the chief judge of the district court if no judge has as yet been designated, to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

SEC. 5. Section 2 of that Act (15 U.S.C. 29; 49 U.S.C. 45) is amended to read as follows:

"(a) Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, or any other Acts have like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgment entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28 of the United States Code. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a)(1) and 2107 of title 28 of the United States Code but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28 of the United States Code.

"(b) An appeal from a final judgment pursuant to subsection (a) shall lie directly to the Supreme Court if:

"(1) upon application of a party filed within five days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice; or

"(2) the Attorney General files in the district court a certificate stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice; or

"(3) the district judge who adjudicated the case, sua sponte, enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice."

A court order pursuant to (1) or (3) or a certificate pursuant to (2) must be filed within fifteen days after the filing of a notice of appeal. When such an order or certificate is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. That Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a)."

SEC. 6. (a) Section 401(d) of the Communications Act of 1934 (47 U.S.C. 401(d)) is repealed.

(b) The proviso in section 3 of the Act of February 19, 1903, as amended (32 Stat. 848, 849; 49 U.S.C. 43), is repealed and the colon preceding it is changed to a period.

SEC. 7. The amendment made by section 2 shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act.

ANTITRUST PROCEDURES AND PENALTIES ACT—SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title

The Act may be cited as "The Antitrust Procedures and Penalties Act."

Sec. 2. Consent Decree Procedures

Section 2 adds a series of new subsections to Section 5 of the Clayton Act (15 USC § 16) to establish procedures governing the filing and entry of a consent judgment settling a civil antitrust suit by the United States. These new subsections, numbered "(b)-(g)" are inserted after the present subsection "(a)" in Section 5 of the Clayton Act.

SUBSECTION (B)—PUBLIC IMPACT STATEMENT

This subsection provides that any consent decree proposed by the United States must be filed with the court in which the case is pending and simultaneously published in the Federal Register at least 60 days prior to the effective date of the decree. In addition the Government must file a "public impact statement" containing the following:

(1) the nature and purpose of the proceeding;

(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) an explanation of the proposed judgment, the relief to be obtained thereby, the anticipated effects on competition of that relief and an explanation of any special circumstances giving rise to the proposed judgment or any provision contained therein.

(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that the judgment is entered;

(5) a description of the procedures available for modification of the judgment;

(6) a description and evaluation of alternatives to the proposed judgment and the anticipated effects on competition of such alternatives.

The public impact statement required by this subsection is analogous to the environmental impact statement presently required from governmental agencies by the National Environmental Policy Act.

SUBSECTION (C)—PROCEDURES FOR PUBLIC COMMENT AND DEPARTMENTAL RESPONSE

This subsection lengthens the present 30 day public comment period to 60 days. It also provides that the sixty day period may be shortened by order of court but only upon a showing that extraordinary circumstances require it and that such a shortened time period would not be adverse to the public interest.

An additional requirement contained in this subsection is a filing by the Justice Department of a formal response to comments submitted to it pursuant to this provision. This requirement has two purposes: first, to give some assurance that public comments will in fact be considered by the Department when received; and second, to provide additional data to the district court in making its decision whether to enter the decree.

SUBSECTION (D)—ENTRY OF THE DECREE

This subsection establishes the general criteria by which the court should determine whether to enter a particular decree.

The mandate is phrased first in general terms: Before entering any consent judgment, the court shall determine that entry of that judgment is in the public interest.

In addition, however, and as an aid to the court in making its independent judgment, the bill provides a number of more detailed criteria for determination of the public's interest. Those criteria are as follows:

(1) the public impact of the judgment, including termination of alleged violation, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies, and any other considerations bearing upon the adequacy of the judgment; and

(2) the public impact of entry of the judgment upon the public generally and persons alleging specific injury from the violations set forth in the complaint; including consideration of the public benefit to be derived from a determination of the issues at trial.

SUBSECTION (E)—PROCEDURES AVAILABLE TO THE COURT

This subsection adds a series of discretionary procedural devices to assist the court in making the determination of public interest required by the Act. Those procedures are as follows:

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master, pursuant to Rule 53 of the Federal Rules of Civil Procedure, and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspect of the proposed judgment or the effect thereof in such manner as the court deems appropriate;

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies; including appearance amicus curiae, intervention as a party pursuant to Rule 24 of the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

(4) review any comments or objections concerning the proposed decree filed with the United States under subsection (c) and the response of the United States to such comments or objections;

(5) take such other action in the public interest as the court may deem appropriate.

SUBSECTION (F)—RECORD OF LOBBYING ACTIVITIES

This subsection provides that not later than 10 days following the filing of any proposed consent judgment as required by the bill each defendant must file with the district court a description of any and all written or oral communications by or on behalf of the defendant with any officer or employee of the United States concerning or relevant to the consent judgment or the subject matter thereof. Included under this provision are contacts on behalf of a defendant by any of its officers, directors, employees or agents, or any other person acting on behalf of the defendant, with any federal official or employee. Thus, for example, the provision would include contacts with Members of Congress or staff, Cabinet officials, staff members of executive departments and White House staff.

The only exception is a limited exception for attorneys representing the defendant who are of record in the judicial proceeding. The exception is designed so as to avoid interference with legitimate settlement negotiations between attorneys representing a defendant and Justice Department attorneys handling the litigation. However, the provision is not intended as a loophole for extensive lobbying activities by a horde of "counsel of record."

In addition, the subsection requires that prior to entry of the consent judgment by the court, each defendant must certify to the court that the requirements of the section have been complied with and that the filing is a true and complete description of all such contacts or communications.

SUBSECTION (G)—PRIMA FACIE EFFECT

A final provision in the consent decree procedures retains the provision presently contained in Section 5 of the Clayton Act which prevents use of a consent decree in any way in subsequent litigation as prima facie evidence of violation. A new subsection (g) would be added which provides that proceedings before the district court in connection with the decree pursuant to this Act and public impact statements filed pursuant to the act are not admissible against any defendant in any action or proceeding brought by any other party against that defendant under the antitrust laws or by the United States under Section 4A of the Clayton Act, nor constitute a basis for introduction of the decree as prima facie evidence against such defendant in any such action or proceeding.

The basic reason for including this provision is to preserve the consent decree as a substantial enforcement tool by declining to give it prima facie effect as a matter of law.

SECTION 3. CRIMINAL PENALTIES

This section increases the penalties for criminal violations of the antitrust laws from $50,000 to $100,000 for individuals and $500,000 for corporations.

SECTION 4—7. EXPEDITING ACT REVISIONS

These sections incorporate revisions of the Expediting Act which previously passed both House and Senate in the 91st Congress. They provide for intermediate appellate review of antitrust cases, with direct appeal to the Supreme Court retained for cases of general public importance. In addition, the present uncertainty regarding the opportunity for appeal by the Government from a denial of a preliminary injunction by a district court is resolved by allowing such appeals.

By Mr. PELL:

S. 4017. A bill to establish a Regional Railroad Rights of Way Authority. Referred to the Committee on Commerce.

Mr. PELL. Mr. President, I introduce today for reference to the Senate Committee on Commerce a bill to allow the establishment of regional rail roadbed authorities to take ownership of the roadbed of bankrupt railroads and to issue revenue bonds to aid in the recapitalization of bankrupt railroads. I also ask that the bill be printed in full following these remarks.

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

Mr. PELL. Mr. President, I think there would be few people who would disagree with the statement that we must preserve our Nation's freight and passenger rail service capacity. The economic and environmental justifications for that proposition has been well debated on this floor for many years.

The disagreement remains with the means the Congress should use to maintain the viability of our railroad services.

Very few persons want to nationalize the railroads.

Very few persons want to subsidize the railroads.

The question then remains as to what other means exist for saving our railroad system, especially our railroad system in the Northeast Corridor.

I believe there is a third alternative which is actually a very simple alternative.

I would propose that railroads be treated by Government policy in the same manner as airlines and truck companies are treated.

Airlines are provided runways and airlanes and truck companies are provided highways through the implementation of governmental policies. Yet railroads are left solely responsible for providing their own rights-of-way.

I think it is unreasonable to expect that railroads will remain competitive with other modes of transportation if railroads are to be the only mode of transportation which are to be left to finance completely their own rights-of-way.

It seems to me that there is a way through our constitutional authority for maintaining interstate commerce for Congress to maintain the vitality of the railroad industry without nationalizing the railroad or without subsidizing the railroad.

I believe we can accomplish this end by treating railroad beds like highway toll roads.

I am offering today a bill which would establish independent regional Federal authorities to take ownership of the roadbeds of a bankrupt railroad's roadbed through the issuance of tax-exempted revenue bonds which the bankrupt railroad could then use in tax-free transaction to exchange for their existing long-term debt.

The regional railroad rights-of-way authority would lease back to the bankrupt railroad the continued use of the railroad bed through an arrangement where the railroad pays for the maintenance of the roadbed; that is, through a net-net lease.

The lease would be given on the basis of a minimum payment together with a predetermined car toll similar to the procedure used on toll roads. Electronic devices are available which could be placed along the roadbed at various points to audit the use of the roadbed.

The bonds that would be issued by the regional authority would pay a 5 percent tax exempted dividend and be completely negotiable in tax-free exchanges.

If a regional authority determined that a particular railroad was not providing adequate freight service to a region, or in certain cases, inadequate passenger service, the regional authority would give a lease to another competing railroad in conjunction with the lease to the initial railroad or in replacement of the lease to the first railroad.

If, by some unlikely circumstance, the roadbeds acquired by the authority were not able to be leased to a railroad or able to generate enough income to pay off the bonds, the authority could sell the roadbeds to commercial developers. Since real estate is as constantly appreciating investment and since most railroad beds likely to be purchased by an authority as needed for services will lie in densely populated areas, there is no likelihood that the sale of the nonusable roadbeds to commercial developers would not produce more than enough income to repay the defaulted revenue bonds.

This proposed regional rail rights-of-way authority would provide a number of benefits.

First, it would provide a means for keeping needed rail service of bankrupt railroads in effect without any direct costs to the Federal Government. The railroad roadbeds obviously would no longer be a source of tax revenue under this proposal; but this is not an argument against the authority since a railroad that is bankrupt is also not a source of tax revenue.

Second, the revenue bonds of the authority would serve to make the railroad's roadbeds a liquid asset thus enabling the bankrupt railroad to reduce its liabilities, to save on the amortization costs attached to its roadbed, and to provide for the creation of new capital needed by railroads to modernize their equipment and to improve their service.

Third, since the railroad rights-of-way authority could lease the use of its roadbed to more than one railroad, it could provide for competitive service to communities being served by an inefficient railroad.

Fourth, no new bureaucracy would be created, and the operation of the newly created National Rail Passenger Corp.—Amtrak—would be simplified. Since the railroad rights-of-way authority would have no operational authority, only authority to appraise, condemn, and issue bonds for rail rights-of-way, there would only be the need for a very small number of personnel to operate the authority. Since Amtrak could contract directly for the costs of the roadbeds it would use with the railroad rights-of-way authority instead of contracting through existing railroads which are only concerned with freight service, Amtrak would be better able to ascertain the true costs of its roadbed usage and would be in a better position to contract for a better treatment of its passenger trains vis-a-vis freight trains.

I believe if this proposal was enacted it would be a great boon to the Northeast. It could mean the end to Penn Central's bankruptcy, a modernization and improvement of Penn Central's freight service, and a return to sound financial footing for all the railroads serving the Northeast.

My own State of Rhode Island has been particularly hard hit by Penn Central's bankruptcy in terms of direct job loss from Penn Central and in terms of damage done to my State's industry due to the lack of reliable and low-cost freight service.

This proposal I am offering today would reverse, I would hope, that situation.

I know that one nationally known businessman in my own State, Mr. Royal Little, believes this proposal can make that difference.

His imaginative thinking has provided the inspiration for this proposal; and I believe that his well-known financial sagacity should provide confidence in us. This proposal is one of substance and one that is economically viable. I realize its chances of passage in this Congress are limited. But this is an approach and an idea that I believe not only has merit, but will come to be, and the sooner the better. I know I will fight for it as hard as I can.

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

S. 4017

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 "Regional Railroad Rights of Way Authority Act".

DEFINITIONS

SEC. 2. For the purposes of this Act the term—

(1) "Authority" means the Regional Railroad Rights of Way Authority established pursuant to section 3 of this Act;

(2) "railroad" means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1 (3));

(3) "railroad right of way" means real property which is owned by a railroad and is within 300 feet on either side of a track, the roadbed for such track, and such structures and devices as are permanently installed on such real property, and may include such additional realty adjoining such real property as the Authority deems necessary for the purposes of this Act.

STATEMENT OF PURPOSE

SEC. 2. The purpose of this Act is to assist railroads, which because of financial problems are having difficulty providing adequate transportation services, by purchasing from such railroads their rights of way and providing for the continued use of such rights of way by lease.

REGIONAL RAILROAD RIGHTS OF WAY AUTHORITY

SEC. 3. (a) There is established in the executive branch of the Government an independent agency to be known as the Regional Railroad Rights of Way Authority. The Authority shall be subject to the supervision and direction of a Board of Trustees which shall consist of five members to be appointed by the President, by and with the advice and consent of the Senate, for terms of five years, except that the terms of four of the trustees first taking office after the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of one year, one at the end of two years, one at the end of three years, and one at the end of four years. A vacancy shall be filled only for the unexpired portion of any term and trustees shall hold office until their successors are appointed. Trustees shall serve on a full-time basis and shall be compensated at the rate provided for level III of the Federal Executive salary schedule.

(b) The President shall designate the trustee to serve as Chairman and as Vice Chairman. Three trustees shall constitute a quorum.

FUNCTIONS OF THE AUTHORITY

SEC. 4. (a) The Authority—

(1) shall, after obtaining two independent appraisals of value, acquire by purchase or condemnation all right, title, and interest to the rights of way of any railroad in the United States which is undergoing reorganization under section 77 of the Bankruptcy Act, and provide compensation therefor with obligations issued pursuant to clause (2);

(2) shall issue, after consultation with the Secretary of the Treasury, and have outstanding in such amounts as are necessary for the purposes of carrying out its functions pursuant to clause (1) and for redeeming obligations issued pursuant to this clause, negotiable obligations which (A) are not obligations of the United States but are secured by the assets of the Authority, (B) are in denominations of $200,000 each, (C) bear interest, which shall be exempt from Federal, State, or local income taxes, at a rate of at least 5 per centum, determined by the Authority, (D) have maturities of at least 30 years but not to exceed 50 years, determined by the Authority and are not redeemable before maturity, and (E) shall be redeemed at maturity by the Authority;

(3) shall enter into a lease or leases with each railroad from which right of way is so acquired providing (A) for the use of all or part thereof by such railroad at a rate determined by the Authority on a per car or other equitable basis but amounting on a per annum basis to not less than 5 per cen-

tum of the amount paid for such right of way, and (B) for maintenance in accordance with standards established by the Authority to be carried out by such railroad, except that in any case approved by the Secretary of Transportation the Authority may lease the use of such right of way to one or more additional railroads at such rate and in such event the minimum provided in this clause shall apply to the total received from all such railroads; and

(4) may enter into such arrangements as may be appropriate for the use or disposition of property acquired pursuant to this Act which is not thereafter leased to a railroad or otherwise necessary for rail transportation purposes.

(b) Amounts received by the Authority in carrying out its functions pursuant to this Act may be deposited in a special fund in the Treasury which shall be available to the Authority, without appropriation, for carrying out the purposes of this Act or may be used to purchase interest bearing obligations of the United States.

(c) Property owned by the Authority shall not be subject to State or local taxes.

TAX FREE EXCHANGES

SEC. 5. For the purpose of the Internal Revenue Code of 1954 the receipt by a railroad of bonds pursuant to section 4(1) of this Act and the receipt of any such bonds from a railroad in payment of any part of its capital indebtedness shall be treated as an exchange to which section 1031 (relating to tax free exchanges) applies.

ADMINISTRATIVE PROVISIONS

SEC. 6. (a) In addition to any authority vested in it by other provisions of this Act, the Authority, in carrying out its functions, is authorized to—

(1) prescribe such regulations as it deems necessary governing the manner in which its functions shall be carried out;

(2) appoint employees, subject to the civil service laws, as necessary to carry out its functions, define their duties, and supervise and direct their activities;

(3) utilize from time to time, as appropriate, experts and consultants, including panels of experts, who may be employed as authorized in title 5 of the United States Code;

(4) accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized in title 5 of the United States Code for persons in the Government service employed without compensation;

(5) rent office space in the District of Columbia or outside thereof; and

(6) make other necessary expenditures.

(b) The Authority shall submit an annual report to the President for transmittal to the Congress on or before the 15th day of January of each year. Such report shall summarize the activities of the Authority for the preceding year, and may include such recommendations as the Authority deems appropriate.

APPROPRIATIONS AUTHORIZED

SEC. 7. There is authorized to be appropriated not to exceed $——— to the Authority for administrative expenses only during the initial two years pursuant to this Act.

By Mr. KENNEDY:

S. 4020. A bill to encourage and support the dissemination of news, opinion, scientific, cultural, and educational matter through the mails. Referred to the Committee on Post Office and Civil Service.

PROTECTION OF MAGAZINES FROM RISING SECOND CLASS POSTAL RATES

Mr. KENNEDY. Mr. President, I send to the desk for appropriate reference a bill to alleviate the impact of the Postal Service's new second-class mailing rates on the Nation's magazines and other publications, and I ask that it may be referred to the appropriate committee.

I do not introduce this legislation lightly, the Postal Reorganization Act of 1970 established the U.S. Postal Service, a quasi-governmental, self-governing entity, to replace the traditional Post Office Department. Many hours of thought and expertise were spent in deciding the appropriate administrative procedures that would be necessary to allow the new Postal Service to function effectively. An important result of this legislation has been the general "hands-off policy" applied by Members of both the House and the Senate—that is, a strong reluctance by Congress to interfere in the ongoing decision of the new agency.

At the same time, however, I believe that in cases such as the present, involving an across-the-board increase of 127 percent in the postal rates charged magazines and other periodicals, there are overriding considerations of public policy that require Members of Congress to speak out.

Some weeks ago, I joined with Senator GAYLORD NELSON, of Wisconsin, and a number of other Senators in supporting legislation (S. 3758) in the Senate to help mitigate the unfair impact of these new rates. Now, I am pleased to join with Congressman MORRIS UDALL, of Arizona, in introducing new legislation in the Senate and the House of Representatives to alleviate the crisis.

The death of some of the Nation's most popular magazines in recent years because of financial hardship attests to the very real danger posed to all publications by the new rate increases. The backbone of our free society is the robust exchange of ideas. That is why I believe the present situation is one in which the simplistic economic standard applied by the Postal Service in determining the rate increases must yield to the more important standard of freedom of the press enshrined in the first amendment.

The bill that I am joining Congressman UDALL in introducing contains four principal provisions:

First, it establishes a 10-year period for phasing in the increases for all second-class publications, rather than the current 5-year program. The phasing in will take place in 2-year steps, with the next adjustment occurring in July of 1974.

Second, a ceiling of 66⅔ percent of the applicable rates is established for the first 250,000 copies of any publication. In this way, important new protection is provided for small volume magazines and other journals.

Third, all future rate increases for nonprofit magazines would be borne one-half by the publishers and one-half by congressional appropriations.

Fourth, the bill provides for automatic funding to pay the cost of these Federal postal subsidies. In this way, it will be possible to guarantee that adequate funds will always be available to protect the Nation's magazines, instead of subjecting them to the vagaries of the annual appropriations process.

There is little doubt that the postal rate increases are a death sentence for many of the Nation's magazines. It is my hope that the new Congress which convenes next January will make this issue one of is first priorities.

In the face of the overwhelming threat, Congress must act promptly to alleviate the burden of this confiscatory rate increase, and to prevent the demise of many publications that serve a cherished historical purpose in our democracy. They may not have the clout to challenge the administration and the Postal Service on their own, but that is why Congress sits.

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

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

S. 4020

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

(a) Section 3626 of title 39, United States Code, is amended—

(1) by inserting "(a)" immediately before "If the rates of postage for any class of mail or kind of mailer";

(2) by striking out "with annual increases as nearly as practicable, so that—" and inserting in lieu thereof "with annual increases as nearly equal as practicable for mail under former sections 4421, 4422, 4452, and 4454, and with biennial increases (after 1972) as nearly equal as practicable for mail under former sections 4358 and 4359, so that—";

(3) by inserting "(and the ninth year in the case of mail under former section 4358)" immediately after "tenth year" in paragraph (1);

(4) by deleting "4359," in paragraph (2);

(5) by deleting the word "and" at the end of paragraph (1), deleting the period at the end of paragraph (2) and inserting in lieu of the period a semicolon and the word "and", and adding immediately below paragraph (2) the following new paragraph (3):

"(3) the rates for mail under section 4359 shall be equal, on and after the first day of the ninth year following the effective date of the first rate decision applicable to that class or kind, to the rates that would have been in effect for such mail, if this subsection had not been enacted.";

(6) by adding immediately after "unless he files annually with the Postal Service a written request for permission to mail matter at such rates." the following new sentence: "Notwithstanding any other provision of this section, rates established by the Postal Service for the first 250,000 pieces of each issue of a publication of a class or kind authorized to be mailed under former sections 4358 and 4359 of this title shall not exceed 66⅔ percent of the otherwise applicable temporary or permanent rate then in effect."; and

(7) by adding at the end of such section the following new subsections:

"(b) Notwithstanding any other provision of this title, the revenues received from rates for mail under former section 4358 shall not exceed 50 percent of the amount that would otherwise be received from any increase in rates for such classes required by the provisions of this chapter after July 6, 1972, if this subsection (b) had not been enacted."

"(c) Notwithstanding any other provision of this title, the revenues received from rates for mail under former section 4359 shall not exceed 50 percent of the amount that would otherwise be received from any increase in rates for such classes established in any proceeding under the provisions of

this Chapter instituted after July 6, 1972, if this subpargaraph (c) had not been enacted.".

(b) The changes in existing law made by this section shall become effective on such date (not later than the ninetieth day after the date of enactment of this Act), published in the Federal Register by the United States Postal Service, as the Postal Service shall determine.

SEC. 2. Section 2401 of title 39, United States Code, is amended—

(1) by deleting in subsection (b)(1) "there are authorized to be appropriated to the Postal Service the following amounts:" and inserting in lieu thereof "the Secretary of the Treasury, at the beginning of each fiscal year, shall credit to the Postal Service Fund, out of any moneys in the Treasury not otherwise appropriated, the following amounts:";

(2) by deleting in subsection (b)(1)(A) "1972" and inserting in lieu thereof "1974"; and

(3) by amending subsection (c) to read as follows:

"(c) At the beginning of each fiscal year, the Secretary of the Treasury shall credit to the Postal Service Fund, out of any moneys in the Treasury not otherwise appropriated, such sums as may be determined by the Postal Service annually to be equal to the difference between the revenues the Postal Service would have received if sections 3217, 3403—3405, and 3626 of this title and the Federal Voting Assistance Act of 1955 had not been enacted and the estimated revenues to be received on mail carried under such sections and Act. Determinations by the Postal Service under this subsection (c) shall be subject to verification by the Comptroller General of the United States.".

ADDITIONAL COSPONSOR OF A BILL

S. 555

At the request of Mr. KENNEDY, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 555, to authorize the establishment of an older worker community service program.

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 364

At the request of Mr. STEVENSON, the Senator from New Jersey (Mr. CASE), the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Rhode Island (Mr. PASTORE), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from California (Mr. TUNNEY) were added as cosponsors of Senate Resolution 364, calling for suspension of assistance to the regime of General Amin, of Uganda.

SAFE DRINKING WATER ACT—AMENDMENT

AMENDMENT NO. 1558

(Ordered to be printed and to lie on the table.)

Mr. STEVENS (for himself, Mr. COTTON, and Mr. COOK) submitted an amendment intended to be proposed by them jointly to the bill (S. 3994) to assure that the public is provided with an adequate quantity of safe drinking water, and for other purposes.

SURFACE TRANSPORTATION ASSISTANCE ACT—AMENDMENTS

AMENDMENTS NOS. 1559 AND 1560

(Ordered to be printed and to lie on the table.)

Mr. STEVENS submitted two amendments intended to be proposed by him to the bill (S. 2362) to restore and maintain a healthy transportation system, to provide financial assistance, to encourage investment, to improve competitive equity among surface transportation modes, to improve the process of Government regulation, and for other purposes.

CONSUMER PROTECTION AGENCY—AMENDMENTS

AMENDMENTS NOS. 1561 THROUGH 1566

(Ordered to be printed and to lie on the table.)

Mr. MOSS. Mr. President, on behalf of Mr. MAGNUSON and myself I offer six amendments to S. 3970, a bill to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

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

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

AMENDMENT NO. 1561

On page 23, line 8, after the word "proceeding": "against the person to whom the interogatory is addressed."

AMENDMENT NO. 1562

On page 21, line 20, after the word "required" delete all through the word "Code" on line 22 and substitute in lieu thereof the following: "to protect the interest of consumers and, subject to section 3502, Title 44, United States Code where applicable,"

On page 22, beginning on line 22 delete all through the word "fraud" on line 23 and substitute in lieu thereof the following: "is necessary to protect the interest of consumers."

AMENDMENT NO. 1563

On page 33, line 14, after the word "Operations" delete the words ", and to such other committees as the Senate may deem appropriate" and insert in lieu thereof the following: "and to the Committee on Commerce".

AMENDMENT NO. 1564

On page 26, line 19, after the word "not" delete the words "in any manner" and after the word "indicate" insert the word "expressly".

AMENDMENT NO. 1565

On page 17, line 23, after the word "and" insert the word "may"; on line 24 delete the word "to"; on page 18 line 1 after the word "wherever" insert the words "he determines that"; on line 4 after the word "arose" insert a semicolon and delete the comma after the word "or".

AMENDMENT NO. 1566

On page 24, line 19, after the word "subject" insert the word "only".

REGULATION OF SURFACE MINING OPERATIONS—AMENDMENT

AMENDMENT NO. 1567

(Ordered to be printed and to lie on the table.)

Mr. COOPER (for himself and Mr. BAKER) submitted an amendment intended to be proposed by him to the bill (S. 630) to provide for the future regulation of surface mining operations, and for other purposes.

ADDITIONAL STATEMENTS

MULTISERVICE TRANSPORTATION OPENS OPPORTUNITIES FOR KANSAS CITIZENS

Mr. SYMINGTON. Mr. President, the Department of Transportation in Kansas City recently completed a demonstration project designed to identify and meet the special transportation needs of disadvantaged inner-city residents.

Through its multiservice transportation—MUST—program, Kansas City helped open employment opportunities and improved access to community services and activities for residents of the city's consolidated employment program project area.

The final report on MUST, which has been sent to our office, indicates that the two phases of activity under the program were successful in providing the improved transportation services needed to open opportunities for the particularly disadvantaged residents of the inner city.

Under phase I of MUST, two kinds of special bus routes were established, providing service at low cost to the riders.

The first, the inner-city fixed routes, improved access to the city's services and activities for residents of the project area, particularly those on fixed incomes, senior citizens, youth and low-income workers with pay scales generally under $2 an hour.

Also under the first phase, special employment routes were established to provide project area residents better job opportunities in suburban employment centers which generally provide higher pay scales. The effort was made to bring bus service within three blocks of potential riders. In instances where ridership was particularly scattered, feeder systems and some door-to-door services were tested.

Aside from transporting over 292,000 persons at a relatively low cost, the greatest success of phase I is that most of the routes are still operating. Two of these, the routes to Western Electric and EWA, are now in private operation, in accordance with the ultimate goal of their establishment.

The second phase of MUST, designed to increase the mobility of the disadvantaged, provided transportation on a flexible, nonscheduled basis by responding to clients needs through referral calls. In cooperation with the Human Resources Corporation, the concentrated employment program, and other groups, phase II offered transportation to health, welfare, and educational services.

Under phase II, MUST officials also cooperated in providing transportation

to participants in the summer youth program and inner-city youth recreation programs.

Approximately 350 senior citizens benefited from group tours of public parks, the zoo, the art gallery and museums under phase II of MUST; and in cooperation with the Regional Health and Welfare Council, almost 400 children were transported to schools for the physically or mentally handicapped.

All six goals of MUST were at least partially achieved during the 2 years of operation.

Unfortunately, the provisions of present authorizations for such experiments to not permit Federal assistance for the continued operation of MUST, and many of the activities had to be terminated last winter.

We of Missouri, nevertheless, are proud of Kansas City's pioneering efforts in the field of transportation of the considerable success of their work.

I congratulate the MUST program director and the other responsible officials for their ingenuity and resourcefulness to carry out an experiment which has inspired new initiatives for improving opportunities for disadvantaged inner-city residents.

THE 158TH ANNIVERSARYY OF THE BATTLE OF BALTIMORE

Mr. MATHIAS. Mr. President, this month, 158 years ago, the courageous people of Baltimore repelled an attack on their prized city by an invading British Army. In 1908, to commemorate this heroic feat, the State legislature declared September 12 a fixed legal holiday in the State of Maryland.

The history of the battle for Baltimore is replete with acts of courage and patriotism. The people of Baltimore have always been extremely proud of their city, and in 1814 they showed a magnificent ability to sustain adverse circumstances, never abandoning their pride for accommodation.

On September 12 of this year, the Frederick Post published an excellent chronicle of Baltimore's struggle for liberty entitled "Defenders' Day—Maryland's and Baltimore's Proudest Hour." I highly recommend this story to the Senate and ask unanimous consent that it be printed in the RECORD.

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

[From the Frederick (Md.) Post, Sept. 12, 1972]

DEFENDERS' DAY—MARYLAND'S AND BALTIMORE'S PROUDEST HOUR

(By Judge Edward S. Delaplaine)

Today is Defenders' Day, one of ten fixed legal holidays in the State of Maryland.

Defenders' Day was made a legal holiday by an act of the Maryland Legislature approved by Governor Austin L. Crothers on April 1, 1908.

The holiday had its origin in the heroic defense of Baltimore against the British invaders on September 12, 1814. The people of Baltimore had been terrified by the news of the capture of Washington and the burning of the United States Capitol and the President's House. It was feared that Baltimore would be the next city to be attacked. The British had a special hatred of Baltimore—a prosperous city with about 46,000 inhabitants—on account of the fact that more than 500 British vessels had been sunk or captured by privateers from Baltimore.

Some of the Baltimoreans thought it would be advisable to pay a ransom, as Alexandria had done; but on the 24th of August, 1814, when the Mayor of Baltimore Edward Johnson, cited a number of the leading citizens to the Council Chamber for a hurried conference, they immediately determined to resist.

General John Eager Howard, a former Governor of Maryland, who was one of the heroes of the Revolutionary War, 62 years old, declared that though he had four sons in the Maryland Militia and owned as much property as any man in Baltimore, yet he would rather have his sons killed and his property destroyed than surrender and disgrace the country.

In the threatening crisis the patriotic citizens took all the precautions they could to defend their city. The group in the Council Chamber organized a Committee of Vigilance and Safety with Mayor Johnson as chairman. They decided to ask United States Senator Samuel Smith to take command of all military forces that might come to the defense of the city.

Without delay a delegation called on Senator Smith and urged him to take command. Like John Eager Howard, Samuel Smith was a hero of the Revolution. Smith, too, was 62 years old, but he was as tough and active as ever. He was ready and willing to take command. He took off his toga and put on his uniform.

Under an act of the Legislature, passed in 1793, the Maryland Militia had been organized into three divisions, each commanded by a Major General. There were 51 regiments in the State. This number was seemingly sufficient for adequate military protection; but in the wild excitement stirred by the threat of disaster, companies of volunteers were speedily recruited. In Frederick Town, for example, on the 25th of August, when news of the disaster at Bladensburg was received, there was no trouble in recruiting volunteers. The whole town was in commotion. The Court House yard was full of wagons filled with government archives sent from Washington, and the Central Bank was stocked with specie sent from the Baltimore banks for safe keeping.

The man who called for recruits was Captain John Brengle, 42 years old whose father, the venerable Lawrence Brengle, became the first Mayor of Frederick three years later. Captain Brengle's lieutenants were Matthias E. Bartgis and William Kolb.

Captain Brengle rode through the streets calling for volunteers. He had the hearty co-operation of the Rev. David Frederick Schaeffer, the enthusiastic young pastor of the Lutheran Church. Pastor Schaeffer, a graduate of the University of Pennsylvania, had taken charge of the Frederick congregation in 1808 when he was 20 years old; he was now 26, a tall, sturdy man with a strong, clear voice. He rode in the procession by the side of Captain Brengle encouraging the men of the community to join the company. With the aid of Pastor Schaeffer, Captain Brengle completely recruited his company within less than four hours.

In Hagerstown there was a similar burst of patriotic feeling. The lead in recruiting in Washington County was taken by Captain Thomas Quantril, who called his company the "Homespun Volunteers."

The brunt of the defense fell, of course, upon Baltimore. During the final days of August men and boys had pickaxes and shovels digging fortifications around the eastern edge of the city. The Baltimore banks advanced more than $600,000 to pay the expenses of defense. Many private citizens volunteered to donate to the fund.

It was the 11th of September when the news came to Baltimore that the British fleet, which had upwards of 50 vessels, had arrived off North Point. The terrifying news was announced to the people by the firing of three alarm guns from the Court House green. It was Sunday noon. The church bells were rung to call the militiamen to arms.

Through the streets of Baltimore the cry rang out: "The British are coming! To arms! To arms!"

In one of the churches the pastor in dismissing the congregation said: "My brethren, the alarm guns have fired. The British are approaching. I commend you to God and word of His Grace. I pronounce the benediction, and may the God of Battles accompany you."

In another church the pastor said: "May the Lord bless King George, convert him, and take him to Heaven as we want no more of him."

General Smith hoped to assemble 16,000 militiamen to defend the city. But many of them had been scattered and demoralized by the disaster at Bladensburg. How could the volunteers withstand the British veterans who had captured and burned the Nation's Capital?

General Smith, placing 10,000 men at the fortifications on Hampstead Hill, ordered one brigade, including more than 3,000 men, commanded by General John Stricker, to advance toward North Point. Most of the men in this advance brigade were Baltimoreans, but with them were three companies of volunteers from Pennsylvania and the company of "Homespun Volunteers" commanded by Captain Quantril from Hagerstown.

Sunday afternoon at 3 o'clock Stricker's brigade—most of the men in uniforms, but some wearing homespun clothes—enlivened by fife and drum corps marched down Baltimore Street to the Philadelphia Road. They marched by the earthworks at Hampstead Hill and down the North Point peninsula and finally Sunday night at 8 o'clock, they arrived at the Methodist meeting house near Bear Creek. They were hungry and tired. Fortunately General Smith had stocked the area around the meeting house with rations for 3,000 men and hay for 200 horses. Here the marchers were ready to lie down for a restless night's sleep.

At 3 o'clock Monday morning the British fleet began moving toward the shore. By 4 o'clock a thousand men had disembarked. By 6:30 approximately 4,700 had landed. At 7 o'clock the bugles sounded, the columns formed, and the veterans were on their way toward Baltimore.

Riding on his black horse was the commander of the invading army, General Robert Ross, who had won distinction in France, Italy, Portugal, and Egypt. Riding along with him was Admiral George Cockburn, the officer who had ridden with Ross into the City of Washington and who had ascended the rostrum in the House of Representatives and, calling the mob together, put the motion: "All in favor of setting fire to this harbor of Yankee democracy, say Aye!"

Early in the morning General Ross and Admiral Cockburn stopped at the farmhouse of Robert Gorsuch and there were given a substantial breakfast. When the officers were about to leave, Mr. Gorsuch asked them whether they intended to come back in time for supper.

"No!" General Ross growled, "I'll eat supper in Baltimore—or in Hell!"

Shortly afterwards, when Ross was riding alone, a bullet pierced his right arm and entered his chest. Staggered by the blow, he

fell off his horse. He was found lying in the dust. An officer galloped away madly calling for a doctor. A doctor came and began binding the wounds but the General knew it was useless. He was put on a farm cart and jolted along the road toward the beach. For a short while they rested under a tree. When they reached the beach the General was dead.

The battle that Monday afternoon was a terrible ordeal for the citizen soldiers who faced the veterans of King George III—"Wellington's Invincibles" and seamen who had served under Nelson, the daring fighter who had fought the combined French and Spanish fleets off Cape Trafalgar when he had sent his famous signal: "England expects that every man will do his duty."

About 4,000 British troops were ordered to advance. John Stricker's brigade was supposed to have numbered over 3,000; but one of his regiments was held in reserve, and quite a few of the defenders disappeared, so that the actual fighting force was reduced to less than 2,000. Some of them had "run in the Bladensburg races," but most of them had never been under fire. The defenders wavered and began to fall back. The battle lasted about an hour and a half. It has been estimated that 24 of the defenders were killed, 139 wounded, and 50 taken prisoner.

By 4 o'clock the news reached Baltimore that General Stricker's men were retreating. All over the city the people were terrified.

But the British decided to embark and move toward Fort McHenry. Sir George Prevost, Governor General of Canada, was so confident that Baltimore would surrender that he proposed that a jubilee planned at Montreal to celebrate the capture of the City of Washington should be postponed for a few days in order that the surrender of Baltimore could be celebrated at the same time.

More than 1,000 heavy bombs were hurled on Fort McHenry. But Fort McHenry was strongly built. In spite of the terrific bombardment it withstood the attack. "Turning his field glasses in the direction of North Point as the mists began to clear away, Francis Scott Key was able to discern a hurried movement on the shore. Men were getting into boats, the boats were moving toward the transports. This was proof that the army and the navy of George III had been repulsed."

A few hours later on that thrilling 14th day of August in 1814, a number of the men who had been at North Point and Fort McHenry assembled in the tavern outside the fort to celebrate their deliverance. It was, however, more than a celebration, more than a jollification. The men were not in the mood for merrymaking. Then and there they formed an association, one sacred to them, which they called "The Defenders of Baltimore in 1814,"; they entered into a solemn pledge that they would assemble every year on the 12th day of September, the anniversary of the Battle of North Point; they selected Major General Samuel Smith, one of the Senators from Maryland, as their Military Commander.

Because of the fact that the young citizens in Stricker's brigade fell back when fired upon by the British veterans, the British viewed the Battle of North Point as a rout of the Americans and a victory for the British. General Ross, who was killed before the battle started, has been acclaimed for his part in winning the victory for the British.

An illustration of the credit given to General Ross is the inscription on the monument over his grave in Halifax. This inscription states that Ross was killed "at the commencement of an action which terminated in the defeat and rout of the troops of the United States, near Baltimore, on the 12th of September, 1814."

Another illustration is the inscription on the monument erected in the General's honor at the ancestral estate of the Ross family in Ireland. This says that the British Army "under his conduct attacked and dispersed the Americans at Bladensburg on the 24th of August, 1814, and victoriously entered Washington, the Capital of the United States."

Another illustration is the memorial tablet in St. Paul's Cathedral. This says that the General, "having undertaken and executed an enterprise against the City of Washington, the Capital of the United States of America, which was crowned with complete success, was killed shortly afterwards while directing a successful attack upon a superior force, near the City of Baltimore, on the 12th of September, 1814."

The people of Maryland have had a different view. They have not only revered the defenders of Baltimore for their patriotism and courage, but have regarded their performance at North Point and at Fort McHenry, by saving Baltimore from capture, as a victory for the patriotic defenders of Baltimore. As a consequence of their devotion to their country, Baltimore is the only major city on the Atlantic seaboard of all the thirteen original States that has never had a foreign flag to wave overhead since the founding of the United States as a sovereign Nation.

For these reasons the Legislature of Maryland passed the act making the 12th of September a legal holiday and Governor Crothers signed the act on April 1, 1908.

The defenders themselves were proud of their performance. They kept their pledge: year after year they assembled to celebrate the defense of Baltimore.

In the year 1842 the survivors framed a more formal organization calling it "The Old Defenders' Association." In this year plans were made to organize "The Association of Sons of the Defenders."

The Old Defenders themselves held their last reunion on September 12, 1883. Out of all those who were willing to sacrifice their lives for the defense of their homes and their country, there were only twelve survivors who were able to attend the reunion after the passage of 69 years. Assembling in Druid Hill Park, they were photographed on the portico of the mansion there.

One more year rolled by. On the 12th of September, 1884, only four of the Old Defenders were able to appear. An invitation was extended by Mr. Robert Rennert to be his guest at an anniversary banquet in the Hotel Rennert. They were brought in carriages to the hotel as heroes. This was the last dinner of the Old Defenders. The Old Defenders' Association had come to an end.

Four more years passed. On the 12th of September, 1888, only two of the Old Defenders were still alive. They were Nathaniel Watts and James C. Morford. In that year descendants organized "The Association of the Descendants of the Defenders of Baltimore in the War of 1812."

This long name was retained for five years. Then, in October 25, 1893, when the association was incorporated, the name was changed to "The Society of the War of 1812 in the State of Maryland."

The next step was the organization of "The General Society of the War of 1812." This has led to the formation of Societies in many States and the District of Columbia.

Among those who have served as President General of the General Society is a native of Frederick, S. Denmead Kolb, who is now residing in Salisbury, Maryland. Mr. Kolb served as President General from 1964 to 1968. His ancestors were Lieut. James H. Marriott, who was one of the men wounded in the Battle of North Point, and Lieut. John William Kolb, who served as commander of the Frederick Barracks, the historic stone buildings constructed during the administration of Governor Thomas Johnson.

On Hampstead Hill a marker has been erected in honor of the citizen soldiers who answered the call to arms in September, 1814. Another plaque has been erected to mark the location of the old tavern where the defenders assembled on September 14, 1814, to celebrate their deliverance from the invaders.

The most distinctive of the monuments in Baltimore is the Battle Monument erected in Monument Square, Calvert and Fayette Streets, in memory of those who died in 1814 while fighting in defense of the city.

The cornerstone of the monument was laid on September 12, 1815. In keeping with the fact that the monument was to be in honor of the gallant dead, the occasion assumed the nature of a public funeral. A huge procession was formed around a hearse, which was drawn by six white horses and escorted by a detachment of cavalrymen. The hearse carried the design of the proposed monument prepared by Maximillian Godefroy, the city's leading architect, who had left France to escape from persecution. In the procession were militiamen who had defended the city.

Conspicuous among those at the laying of the cornerstone were Mayor Johnson, General Samuel Smith, General John Stricker, who had commanded the City Brigade at North Point, and Colonel Armistead, who had commanded the garrison at Fort McHenry. The principal address was delivered by the Rev. Dr. James Inglis, a Presbyterian clergyman.

Godefroy's design was elaborate. The sculpture was done by Antonio Carpellano, an Italian pupil of Antonio Canova, the Italian sculptor who achieved international fame as one of the greatest exponents of neoclassical art.

The monument consists of an Egyptian pyramidal base surmounted by a pedestal with eagles at the four corners. From the pedestal rises a column on the top of which is a female figure ten feet high symbolizing the City of Baltimore. She wears a mural crown, and in one hand she holds up the laurel wreath of Victory while the other hand rests upon the rudder of a ship as the symbol of Maritime Power.

On the column are bas-reliefs of the attacks on North Point and Fort McHenry. The decoration also include lachrymal urns, fillets with the names of the fallen, and other details that have special significance.

The laying of the cornerstone of two imposing monuments within a little over two months—the Washington Monument on July 4, 1815, the Battle Monument on September 12—focused the attention of the Nation upon Baltimore. Since that time it has been known as the Monumental City.

Consequently it would be understandable to find Defenders' Day better understood and appreciated in Baltimore than in other parts of the State.

REPRESENTATIVE WILLIAM FITTS RYAN

Mr. PELL. Mr. President, I deeply regret the death of our colleague, William Fitts Ryan.

He was a man of idealism and integrity—a man whose ideas came to function.

His death is a loss to our Congress and to our Nation.

My admiration for him was immense, and, for that reason, I was glad to campaign for him in his district.

I extend my condolences to his wife and family, who have lost not only a wonderful husband and father, but a leader of our Nation. I ask, at this point, that an editorial published in the Washington Post be inserted in the RECORD.

There being no objection, the editorial

was ordered to be printed in the RECORD, as follows:

WILLIAM FITTS RYAN

In the death of William Fitts Ryan, New York City has lost a congressman of courage and the House has lost a member who often had uncanny foresight. Mr. Ryan's political courage was displayed early on, when in the late 1950s he challenged the entrenched might on New York's Tammany Hall. The ferocity of Manhattan politics, especially when Democrats go at each other, has ended many political careers before they began, but Mr. Ryan gambled successfully that the voters were tired of backroom manipulation. Once elected to the House, he continued taking risks by backing issues and ideas long before popularity made them safe. He called for admission of China to the U.N., spoke out against spending for nuclear arms and thought it foolish to renew funding for the House Un-American Activities Committee. Today, critics of the war are common, but few of the arguments they make now were not made years ago by Mr. Ryan. Though Mr. Ryan was often called by his critics a "wild-eyed" liberal, the turning of events suggests that his eye was not wild at all but well-controlled and excellent in vision.

In the June primary, Mr. Ryan won a spirited victory but the exhaustion of the campaign was apparently costly to his failing health. On the House floor following announcement of Mr. Ryan's death, his colleagues eulogized him for one and one-half hours, a deserved tribute. Another kind of tribute will also be made by some members: a renewal of efforts to continue practicing the political ideals William Ryan believed in.

INCREASING CREDIT DEMAND FROM GOVERNMENT

Mr. SCOTT. Mr. President, I invite the attention of the Senate to an article published recently in the Wall Street Journal, written by Dr. Maurice Mann, executive vice president of the Western Pennsylvania National Bank in Pittsburgh.

Dr. Mann theorizes that Federal credit programs have contributed to mushrooming in recent years of credit demand from Government and its agencies. Mann has served as assistant director of the Federal Office of Management and Budget and as vice president and general economist for the Federal Reserve Bank of Cleveland and, therefore, is obviously qualified to pass judgment on this subject. Dr. Mann offers several suggestions which deserve the consideration of Senators. 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:

HAS FEDERAL BORROWING HIT LIMIT?

(By Maurice Mann)

In recent years there has been an explosion in the number and dollar size of federal credit programs. In addition to serious economic and federal budget consequences, this development has contributed to the burgeoning of federal government and federally supported credit demands in the nation's financial markets.

It is estimated, for example, that combined Treasury and federally-assisted borrowing from the public will amount to approximately $60 billion in 1972. This would represent roughly 50% of expected total credit demands in the economy. Only three years ago, the comparable statistics were $16 billion and 18%.

To be sure, there is not a one-for-one relationship between the proliferation of federal credit programs and the volume of federal and federally-related borrowing. Nonetheless, both phenomena reflect responses to the same kinds of issues and problems and both give rise to serious questions about the allocation of the nation's real and financial resources, the federal budget, and the impact on financial institutions and financial markets.

Federal credit programs (or credit aids) are designed specifically to utilize the prestige and the market power of the federal government to channel available financial resources into selected areas of the economy. These areas include housing and home ownership, the development of agriculture and natural resources, promotion of private business, area development, higher education and foreign economic development.

Federal credit aids take essentially four forms:

(1) Direct loans by federal departments and agencies such as the Rural Electrification Administration.

(2) Federal insurance or guarantees of private loans such as FHA and VA-guaranteed mortgages.

(3) Federal interest subsidy payments to private lenders such as low income housing programs.

(4) Loans by federally-sponsored agencies such as FNMA.

A DRAMATIC ACCELERATION

The expansion of federal credit programs has accelerated dramatically in recent years. For example, the special analysis section of the federal budget shows that federal and federally-assisted credit outstanding amounted to just under $100 billion in fiscal 1961 and to less than $150 billion in fiscal 1967. The budget estimate for the 1973 fiscal year amounts to $580 billion, a very substantial increase, to say the least. The numbers in themselves are perhaps not as important as the fact that this considerable growth involves a massive re-allocation or redistribution of the nation's real and financial resources.

This is the case primarily because expanded use of federal credit programs does not increase the amount of savings in the economy—the amount that is available to finance spending or investment. Consequently, by increasing (sometimes justifiably) the market power or market position of selected users of funds, these programs tend to favor certain areas at the expense of others. In effect, given a fixed amount of available resources, the use of federal credit programs represents a political decision to rely on the clout of the federal government to take resources from one pocket and put them in another.

There is strong evidence that all of this has no been very carefully thought through, particularly as reflected in the adverse impact on the economy, the budget and the financial markets.

There are, of course, a number of factors that account for the rapid expansion of federal credit programs in recent years. Over and above their political attractiveness, perhaps one of the most important reasons is that, for the most part, they are not included in the federal budget and are thus not subject to the budget review process. Increasing reliance on credit programs seems to be regarded as a feasible and painless approach to attaining a number of major national objectives or goals. Unfortunately, this is not the case at all: Exclusion from the budget gives credit programs a considerable amount of priority over federal programs that are subject to budget controls and, in fact, discriminates against the latter.

It is not surprising that a number of credit programs tends to take off in size and activity as soon as restrictions are removed. A case in point is the recent removal of the Export-Import Bank from the budget. Freed from budget constraints, the agency's borrowing is scheduled to jump from $100 million in fiscal 1972 to over $900 million in fiscal 1973. This is not necessarily "bad"—indeed, encouraging exports is a high national priority. Nevertheless, the "freeing up" of a credit program removes the discipline of budget review and the test of the budget process and the allocation of budget resources. It also sets a very dangerous precedent for other agencies still in the budget.

Given the advantage of subsidy, those involved in credit programs, the beneficiaries, are able to take advantage of other potential users of credit who are not subsidized. In short, an interest rate advantage quickly turns into an availability of credit advantage. In addition, subsidized users of credit under the federal credit programs tend to be insulated from the credit-rationing impact of monetary policy as well as the financial market and institutional restraints that are imposed on other users of credit. Moreover, it is not insignificant that recipients of federal inerest subsidies are frequently insulated from increases in market interest rates.

To some observers, the proliferation of federal credit programs shows signs of turning into an uncontrollable monster, at least to the extent that credit is no longer allocated in the marketplace but rather by fiat or by political decisions to subsidize specific users of credit. The mortgage market has, of course, been the beneficiary of a political decision to isolate it from the full force of credit market developments, particularly during periods of credit restraint. As a result, in calendar 1972 nearly 60% of the total flow of funds into the mortgage market will be directly or indirectly supported by the federal government.

The list of agencies engaged in supporting the mortgage market in one form or another is formidable and includes the Federal Home Loan Banks, FNMA, GNMA, FHA, the Veterans Administration, the Farmers Home Administration and the Department of Housing and Urban Development, among others.

The "federalization" of the mortgage market, to all intents and purposes, can be expected to insulate housing fairly successfully from monetary policy and credit restraints. While this may be well and good for housing, it may not be the most desirable way of spreading the burden of adjustment to monetary policy changes or of allocating the nation's resources.

Continued and further federalization of other credit sectors would raise serious doubts as to whether a restrictive monetary policy will ever be able to have a desired general effect throughout the economy. Indeed, under the circumstances that are emerging, it appears that virtually all of the burden of restrictive monetary policy would be placed on those sectors of the economy that receive relatively less federal credit support. I do not think it is out of line to speculate that the burden of restrictive monetary policy in the future will fall even more heavily than in the past on small businesses, individuals and state and local governments.

CONTROLS AND CURTAILMENT

In my opinion, in view of the various problems—budget, resource allocation, and financial markets—caused by the politically influenced flow of resources into federal credit programs, it seems imperative that effective controls must be placed over the total volume of federally-assisted credit. In short, its growth must be considerably slowed, if not curtailed.

The proposed Federal Financing Bank that has been suggested by the administration as a means of bringing some order into the proliferation of federal agency security offerings would be of some help at least to the extent it was successful in restricting the total amount of borrowing. But I'm afraid it would not accomplish very much. For one thing, it would be like locking the barn door after most of the horses had been stolen.

The heart of the problem would still be the accelerated growth of federal programs that need to be financed.

Also, while the Federal Financing Bank would cover most lending agencies—that is, in terms of the number of agencies—most of the major lenders would not be covered. In fact, perhaps as much as 90% of federally-supported borrowing would be excluded from FFB coverage. The excluded agencies include the Federal Land Banks, the Banks for Cooperatives, FNMA, the Federal Intermediate Credit Banks and the Federal Home Loan Banks.

Restricting federal agency borrowing is easier said than done, as illustrated by the reported resistance of the U.S. Postal Service to any borrowing restrictions. Congress recently authorized the Postal Service to borrow up to $10 billion over the next several years. The Postal Service would obviously, and understandably, prefer not to be submerged in the anonymity that would result if it were to sell its offerings to the Federal Financing Bank and were to accept the constraints thereby imposed. Indeed, it can hardly be expected that any such agency would accept without resistance any attempt to establish borrowing ceilings.

If we are at all serious about getting a handle on the outsize growth of federal credit programs, it is clear that something meaningful needs to be done. As a starter, Congress should require that all federal credit programs be brought into the government's annual budget process and budget review. These programs should be evaluated and coordinated in the same way and under the same procedures as all other federal programs. Moreover, as Murray L. Weidenbaum has pointed out in testimony before the Joint Economic Committee, all proposals to create or expand federal credit programs should be evaluated in terms of the relationship between the interest rate charged in the program, the rate that would be charged in the private market, and the rate needed to cover the cost to the federal government.

CONGRESS SHOULD ACT

In addition, more detailed and more evaluative consideration should be given to the immediate and eventual impact of existing and new federal credit programs on the economy—in total as well as on the individual sectors—and on the financial markets—for both public and private debt. Finally, it would seem desirable for Congress to impose annual ceilings on the total volume of federally assisted credit, the amount of debt created through federal insurance and guarantee programs, and the total volume of borrowing by federal and federally-supported credit agencies.

If all, or even some of these proposals had been in effect prior to now, I have serious doubts that the federal government would be directly or indirectly supporting approximately 50% of the funds raised in financial markets in calendar 1972. Moreover, I feel strongly that if such proposals were to be adopted and rigorously followed, we would be able to prevent federal credit programs from proliferating far beyond the purposes for which they were originally intended. At the minimum, the federal government in one form or another would become a less dominant factor in the nation's financial markets. I suspect this is a turn of events that most economists and nearly all financial market participants would welcome.

THE CASE FOR STATEHOOD

Mr. KENNEDY. Mr. President, the Members of this Senate for a long time, have known that I am concerned with the safeguard of citizens rights guaranteed by the Constitution. I believe that it is the responsibility of our Government to insure equal protection and representation under the law to all citizens. It is the right of the governed to have a voice in the councils of Government. Their right to have a voice in the formulation of policies effecting their lives ought not be denied.

I, therefore, find a great deal of agreement with Mr. Sam Smith's article "The Case for Statehood," written in the Washington Post, September 17, 1972. Two years ago I begin to campaign for the District of Columbia to elect two Senators and representation in the Congress based upon its population. Though my amendment dealt only with congressional representation for the District of Columbia, I have always supported and voted for home rule. I firmly believe that the residents of the District of Columbia deserve the benefits of full citizenship that all American citizens enjoy.

Mr. Smith presents an exceptionally reasonable argument for the Nation's Capitol to achieve these benefits through statehood. He fully explains why the Capital City deserves to operate and function as a self-supporting State. As a State, the District Government could increase its borrowing potential from the U.S. Treasury; it could institute badly needed tax reforms; and it could provide for better jobs and homes for its residents.

The time for the Congress to initiate the exercise or these constitutional rights for the 750,000 citizens residing in Washington, D.C., is long overdue. I am pleased to commend to the Senate "The Case for Statehood." 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:

THE CASE FOR STATEHOOD

(By Sam Smith)

In March, 1969, Douglas Moore, Chuck Stone, Jesse Anderson and several other black activists held a news conference to announce the formation of the D.C. Statehood Committee. They issued a manifesto that declared that "statehood for the District of Columbia is a natural right which can no longer be denied and must be achieved by whatever means necessary by the people."

It turned out to be another 12-hour revolution—beginning with a morning press briefing and ending with the 11 p.m. news. It was not until more than a year later, in the fall of 1970, that statehood emerged as a prominent issue in District affairs with the campaign of Julius Hobson for delegate. In that first delegate election, Hobson and the Statehood Party received 13 per cent of the vote, a surprising figure for a brand new party. Since that time, statehood has moved from being an obscure, eccentric issue to become a major element in the debate over the future status of the District. As an idea, its time may not yet have come, but it is coming.

Two statehood bills have been introduced in the House. Sen. George McGovern came within a few days of introducing one in the Senate in June, 1971, but backed off after a plea from one of Walter Fauntroy's key supporters. Two Statehood Party members sit on the D.C. School Board and the president of the Board, Marion Barry, has said he is for statehood or any other form of self-government the city can get. The same attitude prevailed among candidates in the first delegate race. Even Republican John Nevius said he would support statehood if the people of the District wanted it. Only Democrat Fauntroy, among those running, flatly opposed the idea. And earlier this year, House District Committee chairman John McMillan surprised even statehood supporters when he stated that he might consider statehood as a second choice after his pet plan to give the District back to Maryland. Said McMillan: "The only way you are going to get pure, unadulterated representation is by ceding the city back to Maryland or through statehood."

It hasn't been a bad two years for a radically new proposal to end the nearly 175-year dispute over local status. The growing interest in statehood stems in part from the fact for the first time the fundamental principle of self-determination has not been begged. Statehood is the only status for the District that would make Washingtonians fully and irrevocably equal to other American citizens.

HOME RULE PITFALLS

Contrary to popular impression, traditional home rule proposals fall far short of this goal. To meet the constitutional requirement that Congress retain exclusive legislative jurisdiction over the District, home rule advocates have usually provided for a presidential and/or congressional veto over the actions of the locally elected government. Thus, the local government would be free only to the extent that it did not alienate the federal government. A commuter tax, a civilian supervisor of the police department, a ban on automobiles downtown are the sort of issues that would be sure to raise a congressional clamor for a veto. If Congress got really mad, it could simply take away the home rule it had granted. As Sen. Thomas Eagleton, chairman of the Senate District Committee, blithely pointed out when this issue was raised: "The Lord giveth and the Lord taketh away."

This is not an idle threat. Congress has rescinded home rule once before, in the 1870s, and has changed the form of local government several times. And the congressional browbeating of the School Board after the release of school children for a war protest march last spring is a reminder that local elections would be no guarantee of an end to congressional interference.

It would also be possible, although not widely favored, to seek home rule through a constitutional amendment. Such an amendment would fix the form of government in the constitutional process and would require another amendment to change that form. An amendment might, for example, provide the District with a mayor-city manager government, an 11-man City Council and a fixed federal payment. If the city wished to eliminate the city manager's office, change the payment or alter the size of the council, it would be unable to do so without years of national consideration.

Statehood would avoid these pitfalls. Under statehood, the District would be granted political equality with the other units of the federal system. Unlike home rule, statehood would not leave Congress or the President with a veto over District affairs. Unlike a constitutional amendment to change D.C.'s local government or grant it national representation, statehood could not be revoked. It would, by simple majority vote of Congress, permit the three-quarter million residents of the District to join the Union as full and equal members.

A SIMPLE PROCEDURE

Statehood could be made possible by the simple expedient of redefining the size of the District. The Constitution puts an outer limit on the size of the District—10 miles square—but indicates no minimum size. Congress could redefine the District of Columbia to include an unpopulated area stretching from the Supreme Court and

Library of Congress to the Lincoln Memorial (including the Mall and the Federal Triangle) and grant the rest of the city statehood.

The technical procedure for obtaining statehood is relatively direct:

1. Congress could authorize and fund an elected constitutional convention to draw up a state constitution and negotiate an agreement with the federal government for an annual payment in lieu of taxes and for transitory grants to get the new state on its feet. The enabling legislation would define the area of the new state and of the remaining federal district.

2. The District would hold a constitutional convention, draw up a constitution and submit the issue of statehood to referendum.

3. The convention, upon the approval of the people, would petition Congress for admission of the proposed state to the Union.

4. Congress, by majority vote, would grant admission.

Naturally, such a profound change in the status of Washington has aroused criticisms. One of these is that statehood would weaken the federal government's security in the city. Yet dozens of other stable countries, such as England, France and West Germany, manage to grant self-government to their capital city without endangering national security. Should problems arise, the federal government has abundant power to deal with riots, as has been demonstrated by the use of federal troops in other cities in recent years.

It is also said that the District is too small to be a state. Yet it has a population larger than 10 states and 20 independent nations, including 12 that have an equal voice with the United States in the U.N. General Assembly. (One of these, Iceland, is a member of NATO, although it has a population about a quarter that of the District.) Every territory since 1789, with the exception of Oklahoma, had fewer people at the time of its admission than the District has now.

THE FEDERAL PAYMENT

Perhaps the most frequent criticism of the logic of statehood is that the new state could not support itself. Critics suggest that the present federal payment to the city would dwindle or disappear entirely, leaving Washington essentially bankrupt. Yet the District's colonial status has in no way assured it a reliable and just federal payment. The payment has varied from 12 to 50 per cent of the local budget and the percentage today is about half what it was in 1878.

The fact that the federal payment has varied so markedly under the single status that the District has experienced in the past century points to a major misunderstanding concerning the payment: It is not a function of status so much as of simple equity. The federal government absorbs a great deal of otherwise taxable land; it requires a large number of municipal services; and it consumes manpower and space that might otherwise be used in activities more profitable to the city, such as industry and commerical services. These conditions will remain regardless of status, and fairness requires that the federal government offer proper compensation—more than the present $250 per capita.

As a state, with two senators and two congressmen and with no congressional veto over local affairs, the city would be in a better position to seek a fair payment from the government than it is now or would be under home rule. One would be hard-pressed to find examples of Congress attempting to bully a state in the way that it now does the District and would most likely continue to do under home rule. One of the basic principles of Congress is a reluctance to undercut the special interests of its members. The back-scratching tradition on local issues is based on the realization that the vote one casts today can be reclaimed tomorrow. The city-state would benefit considerably from this new leverage. It is hard to conceive of a Congress deliberatly alienating the four-member delegation from Washington in a dispute, say, over a mere $20 million of federal payment. Congress just doesn't work that way.

The argument that the new state could not support itself is a familiar one in the history of statehood movements. It was one of the major reasons cited for opposition to Alaskan statehood. But it has also been true that new states have historically been aided towards financial self-sufficiency through special grants of money and, more dramatically, immensely valuable lands, Statehood, in fact, may be considered almost a prerequisite to financial self-sufficiency for units of the federal system. In order to be financially equal, one must first be politically equal.

The two most recent states, Hawaii and Alaska, benefit from enormous federal grants at the time they were granted statehood and for years thereafter. Hawaii got a trust of public lands to support public schools and other public improvements. Alaska got 103 million acres of federal land, $28.5 million in transitional grants, 90 per cent of the proceeds of government-owned mines and 70 per cent of the sales of fur seal skins and sea otter skins.

SELF-SUPPORTING STATE

But the economic justification for statehood does not rest on the assumption of fair compensation from the federal government, but rather on the economic potential of the city itself. Contrary to the myth of the "dying city," Washington has been, and will continue to be, a center of expanding opportunity for many of its citizens, especially the black majority. As George Grier, vice president of the Washington Center for Metropolitan Studies, wrote in a recent issue of the Voice newsletter:

"Racial transition has not turned Washington from a white middle- and upper-income city to a black poor city. It is more prosperous today than ever before. The total number of black families in the District with annual incomes over $15,000 approximately tripled in the decade (1960–1970), even after the correction for inflation. The same was true for those earning over $12,000. The number with incomes of $8,000 or over more than doubled. There now are actually more black families at these higher income levels than there were white families with the same incomes in 1960."

When people talk about the city's eroding tax base, they are really talking about the fact that government expenditures have outstripped the growth in the tax base. The financial erosion is not taking place on the streets of Washington but in the District Building. If anything is dying in the District, it is the District government. The reasons for this again argue for statehood: the inability of the District government to set policy without approval of Congress and the White House, the unresponsiveness of an appointed local government to the citizens of the city; and incompetence and bureaucratic self-aggrandizement unchecked from above by Congress or from below by the people.

Under statehood, the city-state would be able to raise revenues in a manner of its own choosing without fear of a congressional veto or, worse, the potential that the limited form of self-government granted under home rule might again be repealed entirely. Sources for the increased revenues might include:

Increased borrowing: Under the present system the District has a limited ability to borrow from the U.S. Treasury. Under statehood it could sell bonds to finance public school construction and other public works. If the District borrowed at the per capita level of the Maryland suburbs, for example, it would double the borrowing level of the city.

Property tax reform: Property taxes are a major source of local income. Yet the District does not administer these taxes fairly, nor does it tax all the property it could. For example, under statehood the city might end the property tax exemption for profit-making holdings of otherwise non-profit organizations. Further, the introduction of a progressive property tax, with those owning more property taxed at a higher rate, could add to receipts, as could a tax on other forms of wealth.

Lotteries and race tracks: Julian Dugas estimated the other day that a locally owned lottery and race track could produce as much as $50 million a year in new revenue.

An improved tax base: The District government has done little or nothing to attract the type of employment that would enable the poorer residents of the city to pay more taxes. Unlike almost every other city in the country, our government has failed to seek light industry and service firms that require blue collar employment, preferring instead to subsidize the construction of office buildings for nontaxpaying suburbanites. While businesses produce pollution, so do the tens of thousands of Maryland and Virginia cars that pour into the city daily. The encouragement of low-polluting commercial enterprises would be a net gain for the city.

More tourism: Perhaps the greatest potential lies in further development of the city's tourist trade. While the District government subsidizes the Board of Trade's tourist promotion efforts, tourist facilities have increasingly been allowed to drift into the suburbs. Further, the city has totally failed to take advantage of one of its long-term assets, its status as a black city. Properly promoted, Washington could become the Quebec of America, attracting people not just because it is a center of monuments and political power, but because it is culturally unique. This would mean jobs and money for black residents.

In its housing programs, such as they are, the District has likewise failed to provide lower-income residents wtih a chance to become bigger taxpayers. It has failed to provide the basic equity that supports the American middle class: home ownership. Instead, the government has either done nothing or else dabbled in showcase programs for the middle class such as Southwest and Fort Lincoln.

The city's use of available land and housing has been unimaginative. Thousands of abandoned homes put a drag on the tax rolls. Lots are rented to Parking Management, Inc., at ridiculously low prices instead of being put to productive and potentially higher taxed use. Meanwhile, the city fritters away time and funds on childish and costly schemes like the ill-fated sports arena which would have drained rather than filled the city's treasury.

To top it off, programs such as urban renewal and freeway construction have driven people off taxable land permanently or for years at a time. One of the prime victims of this myopic policy has been the small businessman, an important taxpayer, who must honestly regard the District Building these days as his enemy rather than his friend.

Under statehood, it would be easier for the District to reverse the destructive policies of local planners and the federal government over the past two decades and not only make a better, more attractive city but improve the tax base dramatically as well.

NOT SO RADICAL

To some, statehood appears an attractive idea but politically impractical. This criticism often comes from those who have spent the better part of their political lives failing to achieve home rule.

Actually, the long-term outlook for statehood is hardly bleak.

One of the hopeful signs is that it has attracted interest on both the left and the right. Rep. McMillan's comments were not merely cant aimed at upsetting Del. Fauntroy. To the conservative mind, statehood fits neatly into the traditional federal system. The Constitution made it easier to create new states than it did to allow blacks, women or those under 21 to vote; statehood can be achieved by simple majority vote of Congress. The steady enlargement of the Union throughout its history has not been the result of radicalism; the last two states admitted, for example, came in during the hardly radical Eistenhower administration. For liberals and radicals, on the other hand, statehood is attractive because it offers an end to the colonial administration of three-quarters of a million Americans.

If the District were admitted, it would not, in all probability, be the last state. Statehood has been seriously proposed for Puerto Rico and New York City. At least one economist has suggested that the urban crisis might best be resolved by granting statehood to the 17 largest metropolitan areas, ending the subservience of so many cities in rural-dominated state legislatures. The creation of new states is one of the built-in flexibilities of the Constitution designed to permit the nation to change as it grows. The potential should not be allowed to lie fallow.

Building a political base for statehood has obviously just begun. The first step is to break the century-old allegiance to the belife that home rule is the best that we can hope for. This is happening. The politicians, the local civic elite and the media are slowly becoming aware of statehood and are being forced to deal with it. Although much of the present pressure comes from the D.C. Statehood Party, other organizations may soon feel secure enough to add statehood to their goals now that the Board of Trade has endorsed home rule.

Once a local consensus for statehood has been achieved, Congress would begin to feel the pressure. As a national issue, statehood would be easier to explain and attract support for than home rule has been. Labor unions, big city mayors, black organizations and others would welcome an urban state; its votes in Congress would give them an interest in its creation. The support from these sources for home rule has been pathetic, largely because hardly anyone outside the District has a vested interest in home rule.

If Congress failed to act, the District could follow the pattern set by Tennessee when it entered the union in 1796. Tennessee held unofficial elections and sent unauthorized "members" to Congress. The elected "members" pressed for statehood and Congress granted it. The same procedure was used by Alaska. In 1956, an officially approved nonvoting delegate, Bob Bartlett, was sent to Washington, but so were "Sens." Ernest Gruening and William Egan and "Rep." Ralph Rivers. This so-called Tennessee Plan has been used on six other occasions to help obtain statehood for territories.

The drive for statehood for the city of Washington stems from the bitter experience of colonies everywhere, even those under the most beneficent adminstration. It gains strength from the realization that any solution short of statehood would leave District residents short of full citizenship. It does not guarantee a successful future; it only makes it possible.

OUTSTANDING CAREER OF CLEOPATRA CAMPBELL, FREDERICK COUNTY, MD.

Mr. MATHIAS. Mr. President, it has been my pleasure to follow the outstanding career of Cleopatra Campbell, one of two women lawyers in Frederick County, Md. Miss Campbell has great expertise and knowledge of the law, and I am delighted that she has been named assistant prosecutor for Frederick County's State's attorney.

Last month, the Morning Herald of Hagerstown, Md., published an excellent article entitled "Cleopatra Campbell's Got the Stamp of 'Competence,'" in which Miss Campbell voices her views on women in the legal profession. Her comments are well worth reading. I ask unanimous consent that this feature be included in the RECORD.

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

CLEOPATRA CAMPBELL'S GOT THE STAMP OF "COMPETENCE"

(By Susan Stitley)

"I'm not on a campaign to prove anything," Cleopatra Campbell, "except that I can do it."

Miss Campbell, 36, one of twelve woman lawyers in Frederick County, two weeks ago was named assistant prosecutor for the county State's Attorney. She is the first woman prosecutor Frederick has had.

She said it is the "stamp of competence on a woman lawyer" to be named to this position.

"You would assume any man appointed would be competent," she explained. "But a woman has really got to be competent" to justify the appointment.

Miss Campbell is glad for the opportunity to prepare and prosecute criminal cases in District Court because of the experience she will get.

She said the judges have all been very complementary to her, and so have the lawyers, "as lawyers go."

She's gotten many congratulatory notes, telegrams and calls since her appointment. One she recalled was from a woman she didn't know who said she knew how Miss Campbell felt ince she was the first woman deacon in her church.

While she is holding the assistant prosecutor job, she must give up her own criminal defense work, but she still may maintain her civil practice.

She says she hopes to concentrate more on corporate law in her private practice, because "corporations—they're good to you."

But she also might get back into criminal defense when her stint as prosecutor is over. "I like trial work," she said.

She said she prefers cases, like those in District Court, which are not long and drawn-out, but are over with quickly.

Miss Campbell made up her mind to become a lawyer after spending several years in counseling positions at both Colorado College, Colorado Springs, and at Frostburg State College.

She became frustrated, she said, and decided people who did things were lawyers.

"I decided it was lawyers who had a piece of the action, who were part of their community and knew what was going on.

"And I wasn't going to let anybody take advantage of me."

So she received her law degree from the University of New Mexico in 1967 and came to Frederick on August 1 to practice in the law firm of Mathias, Mathias and Michel.

She picked Frederick to practice because she had been born on the Eastern Shore and her parents still reside in the Baltimore area. She made a list of all the "pleasant places near my origins, and Frederick was on the top."

Shortly after she joined the Frederick firm, Charles Mathias Sr. died, and Charles Mathias Jr. resigned last year. Now only she and Glenn Michel remain.

Miss Campbell feels she's had to make it on her own in law. "Mr. Michel gave me a chance, but it was up to me to prove myself."

She also feels that things would have been easier for her if she had been a man.

"The average woman lawyer is better than the average man lawyer," she claimed. "She's gotta be or she wouldn't be there."

In law school, however, she said, the female students got "special treatment."

"We got away with more," she explained, "but not because we were women. Because we were better students, better prepared, better all the way around."

She said she has gleaned from comments that people feel a woman lawyer is the last one you would go to, so she has to work harder to prove herself.

But it's not as hard to justify herself to a business client, she said, as to his superior.

In commenting on wrongs in this country's system of justice, Miss Campbell said, "We have to ask ourselves, under all circumstances, do we normally give a person a fair trial?"

Her answer is yes.

But she said she has to note "our escapism or substitute blame."

"Whenever we have a criminal case and one of those involved doesn't like the decision, he's always ready to blame 'them.' The judge was paid off, the lawyer was incompetent or the witness lied," she commented.

"Not many people are willing to acknowledge that justice is done. They blame anybody but themselves."

She thinks one glaring wrong in the system is the inequality of people. But she said it is not the law, but the administration and enforcement that is the problem.

"There is a failure to pay people according to merits, not race, color or sex," she pointed out. "And there is the eternal problem of fair housing for the poor.

"I was raised under the puritan, Protestant ethics that if you wanted it, you worked for it," said Miss Campbell, who is chairman of Frederick County's Judicare program which provides free legal service for poor people.

"But this leaves out the possibility that one did not have the opportunity, incentive or parents to provide encouragement.

"In our society there are lots who don't have these factors. And they will remain poor, not because they're lazy but because they will never get out of the cycle. They can't help themselves," she observed.

"I think practicing law is full of life—full of the things that make up lives," Miss Campbell said. "There's lots of opportunity to be involved and you're the one that's negotiating."

She added that the position is full of risk and responsibility, "but it's not humdrum."

A WORLD ASSEMBLY ON AGING

Mr. CHURCH. Mr. President, on September 13, I was to have addressed the 25th Annual Conference on Aging of the Institute for Gerontology, University of Michigan-Wayne State University.

As chairman of the Senate Special Committee on Aging, I was especially hopeful that I could participate in that event. The annual Michigan conference, now a quarter-century old, has had a powerful influence upon the thinking and deeds of those directly concerned in making a better life for older Americans. I salute the sponsors and planners of that conference for all they have done.

This year's conference had special significance, too, because of the tribute paid to seven "pioneers in aging" selected this year: James E. Birren, E. V. Cow-

dry, Wilma T. Donahue, Robert J. Havighurst, Ollie A. Randall, Nathan W. Shock, and Clark Tibbitts. Each of these leaders in gerontology received a medal presented in recognition of pioneering achievements in the field of aging.

My address was to give the view from Capitol Hill on the progress that has been made in devising and implementing a national policy on aging since the 1971 White House Conference on Aging. I could not personally deliver my speech because of a heavy workload in the Senate. It was, however, read in my absence.

Regrettably, I had to report to the conferees that progress toward a realistic, farsighted national policy on aging is slow and uncertain, largely because the Nixon administration has failed to take advantage of the opportunity presented by the White House Conference. Even yet, however, I believe that Presidential leadership could help us regain lost ground.

My speech also dealt with a matter more closely related to the overall theme of the conference, "Aging around the world: Dimensions of the future." I proposed that a world assembly on aging be conducted in the next 3 to 5 years, possibly under the auspices of the United Nations.

Such an assembly, it seems to me, would involve governments in a cooperative venture which would help each nation determine what kind of commitments must be made in a world in which larger and larger segments of the population live a lengthening number of years in what we now call retirement.

My speech alludes to a "retirement revolution" which exists not only in the United States, and in other industrialized nations, but in many other nations in varying stages of development.

Mr. President, I believe that the proposal is worthy of deliberation. I ask unanimous consent that my address of September 13 be printed in the RECORD.

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

TOWARD A NATIONAL POLICY ON THE AGING—A VIEW FROM CAPITOL HILL

(By Senator FRANK CHURCH)

My pleasure at being here this morning is tempered only by the realization that I am a Johnny-come-lately when it comes to aging.

It's true that I *am* an older worker, by Department of Labor standards. *That* happened three birthdays ago.

And it's true that I have served on the Senate Committee on Aging since it was founded eleven years ago.

And it's equally true that in 1969 I came to one of these annual conferences on aging in order to conduct a hearing on consumer problems of the elderly.

But that was a mere three years ago, and this conference is the twenty-fifth one sponsored at the University of Michigan. You began back in 1947, when—I must admit—I was just in the process of becoming a young Democrat. But now, of course, I've passed the arbitrary retirement age for that organization, too.

Here, at this conference, you have already honored the American Pioneers in Aging: men and women who first concerned themselves about gerontology when most people didn't know what the word meant.

Last night you heard from Wilma Donahue, Clark Tibbitts and others who made the conferences here a genuine nationwide event, an idea exchange, a springboard for action to be taken during the following year.

A little later today you will hear from Wilbur Cohen, a man who shuttles back and forth from college campus to agencies of power in Washington with the greatest of ease, advancing the cause of social justice no matter where he is.

But I will say, Wilbur, that I hope you are soon back at H.E.W., serving a President of your choice in an Administration which understands just exactly what you had in mind when your work was interrupted almost 4 years ago. You are a great American, and this Nation needs you.

Well, here we are.

Twenty-five years after the first Michigan conference.

Two White House Conferences on Aging later.

And for today, I have been asked to give the view from Capitol Hill: just how well are we doing in establishing a policy on aging—a policy which, in my view, should guide action and be shaped by action?

I wish I could say to you that I think that the Congress and the Executive Branch have neatly tied together a national policy solidly based upon the White House Conference recommendations which were analyzed for you by an earlier speaker.

But of course I cannot. In the case of Congress, 1972 has been primarily a year for the seizing of opportunity.

In the case of the Administration—as I will discuss in just a few moments—I am sorry to say that 1972 has thus far been, in my view a year of inadequate response to the challenge of the White House Conference and to the needs of older Americans.

Very quickly, let me tell you of the major legislative developments since the Conference.

First, of course, is the enactment of a 20 percent increase in Social Security.

That across-the-board benefit rise attached to—of all things—a bill authorizing the increase of the national debt limit.

In addition, that debt ceiling bill was made the vehicle for an amendment which will establish, for the first time—a cost-of-living adjustment mechanism for Social Security benefits. This is the long-awaited action needed to make Social Security much more "inflation-proof" than it now is.

That 20 percent increase is the largest dollar increase in the history of Social Security. And I am proud to have led the Senate effort which resulted in its passage, which also will remove 1.4 million older persons from the poverty rolls.

But I am dissatisfied about several matters related to passage of the 20 percent bill.

My first complaint is that, while welcome, the 20 percent increase resulted in relatively modest monthly increases:

From $133 to $161 for the average retired worker;

From $223 to $270 for the typical retired couple;

From $70.40 to $84.50 for minimum monthly payments;

For widows, still the hardest hit group of all, from $114 to $137.

Those extra dollars are vitally needed, but they still fall far short of what yet must be done.

We must, for example, finally take older Americans off welfare throughout this Nation.

We should end the Old Age Assistance program by establishing a national standard of retirement income above the poverty level for all persons of age 65 and up.

To do that, we should supplement below-poverty retirement income with a monthly check issued through the Social Security Administration.

Furthermore, we should take from H.R. 1 other proposed reforms which would make Social Security, Medicare, and Medicaid far more useful than they now are to elderly Americans.

If that kind of action is possible before Congress adjourns this year, I will certainly support it.

My second major complaint about the 20 percent increase is that the Administration—even the President himself—opposed the Congressional initiative, and then consented only grudgingly when the time came to sign the legislation.

The President made it look as if Congress had him over a barrel—or perhaps even *under* a barrel.

But I think that the extreme reluctance of the Administration to face up to the 20 percent was uncalled for.

After all, in 1971 the Advisory Council on Social Security—a distinguished body headed by Arthur Flemming—had recommended more realistic actuarial assumptions on the status of the Social Security trust funds. And these assumptions, it soon became evident, could make a 20 percent increase possible.

And this paved the way for Senate action, without any serious problem. Very quickly, the House of Representatives accepted the Senate amendment without much fuss at all.

Here was a case of everyone being in step but the President and his Secretary of Health, Education, and Welfare.

Instead of taking the lead, the Administration resorted to its usual policy: to have no policy at all on retirement income.

That non-policy was made all-too-clear when a high-ranking HEW official said earlier this year that it was his practice to wait and see what Congress might do on Social Security. And then he would make a lower bid.

What kind of attitude is that when almost one out of four older Americans lives in poverty?

What kind of attitude is that when almost 40 percent can't afford what the Department of Labor says is required for a modest retired couples budget?

I think that the Administration has failed, and is continuing to fail, on the number one problem facing older Americans: they simply don't have enough dollars to keep up with the rest of our society.

But I don't think that Congress has done all it should, either.

And I think, too, that we have come to a point along the road where we should consider some major innovations in national policy on retirement income.

For that reason, I am announcing to you today that the Senate Special Committee on Aging will conduct hearings early next year on "New Directions in Social Security".

It is clear, I think, that we in this nation can no longer rely on catch-up benefit raises or even an automatic cost-of-living adjustment mechanism.

We have to grapple with other issues:

How can we make the payroll tax less onerous for so many workers?

What more can be done—besides adjusting the Social Security "retirement test"—to deal with one of the biggest complaints now made by the elderly—the feeling that they are being forced to give up work when they reach retirement age?

How can we make retirement more secure for women?

How can we deal fairly with elderly members of minority groups, so many of whom do not live to age 65?

Should general revenues be used for specific, limited purposes?

At this point I should say that Senator McGovern's new proposals on retirement income would deal very effectively with several major issues in this area. His proposals would receive careful attention at the hearings I have just described.

I said before that 1972 was primarily a year for Congress to seize opportunities.

That was the case on Social Security. And it happened on other fronts as well.

The Executive Branch, after opposing a Nutrition for the Elderly Bill all during 1971, finally embraced it early this year. And it was passed within a matter of weeks. Since then, the Senate has approved full funding of $100 million for this program, which should provide not only hot meals but related services and companionship.

That same appropriations bill, by the way, included two amendments which I advanced:

An additional $5 million to the National Institute of Child Health and Human Development for research and training on aging.

An additional $1 million to help assure enforcement of the Age Discrimination in Employment Act.

But, of course, you know what happened to my amendments and to the entire appropriations bill. The President has vetoed that bill, and now the funding level for programs on aging is temporarily in doubt.

Here again, Congress wanted action, but an Administration committed to bombs in Indo-China and unemployment and high military spending at home decided it had to say no.

Congress is now about to take final action on the extension of the Older Americans Act. The Senate has bills before it which would increase the authority of the Administration on Aging considerably, and which would give a higher place in the hierarchy to aging in general. My own bill, S. 3181, for example, would create an office on aging at the White House level in addition to a beefed-up AoA. I hope that the Senate Committee on Labor and Public Welfare adopts these provisions in its bill.

On the House side, an impressive bill H.R. 15657, has already been passed. It would strengthen the role of AoA by making the Commissioner directly responsible to the Secretary of Health, Education, and Welfare, by establishing special impact programs, and by several other innovative steps.

Here again, however, it appears to me that the Executive Branch has not taken advantage of the momentum generated on aging in Congress during the past few years. Its own bill to extend the Older Americans Act reflected, in my view, a great deal of serious thought about establishing a coordinated social service system for older Americans. But I find at least two flaws in it.

One: The Administration seems intent on establishing a new layer of "planning" agencies somewhere between State and county governments. It seems to ignore all the planning that has been conducted by those units of government within recent years.

Two: The Administration bill does nothing at all to take the Administration on Aging from where it now is—lost somewhere far down in the HEW apparatus—to a position of higher visibility and effectiveness. Everyone who has studied the problems of aging—including President Nixon's own task force in 1970—has been critical of the misplacement of AoA within the Social and Rehabilitation Service.

But the Administration is willing to let the status remain quo. Not only that, Congress is supposed to pour funds into the AoA, even though the Administration refuses to heed our misgivings.

So much for AoA. I can only hope that, as has so often been the case of late, the Administration will finally accept a Congressional initiative just when it seems about to become law, anyway.

I hope that turns out to be the case, too, on three other bills which were approved by the Senate Committee on Labor and Public Welfare on June 21.

The Older American Community Service Employment Act or Senate Bill S. 555. This bill is commonly described as a senior service corps bill, and it would authorize $250 million over two years for enlistment of low-income persons 55 or older in service projects right within their own home towns.

The Middle-Aged and Older Workers Employment Act (S. 1307). This bill would provide practical help to persons who face employment problems in mid-careers. That problem might be unemployment, underemployment, or a simple desire to change jobs. At a time when one million persons 45 years old or older are out of work, such legislation is desperately needed.

Finally, the Research on Aging Act, S. 887, has been reported to the Senate. It would establish a National Institute of Aging at NIH. A similar bill has already been passed by the House.

Let me spell this out: all three of the bills I just mentioned have been *opposed* by the Administration. Here again, I wish that more positive action had been taken.

Congress has done a great deal else in 1972. As for Administration action, another speaker today—a man who had a great deal to do with making the White House Conference on Aging such a great success—will soon give you his analysis—an analysis which understandably differs from mine.

Incidentally, I would like to add my own personal note of thanks to Arthur Flemming for taking on his assignment with the Conference as well as his present position as Special Advisor to the President. He has always been a man of decency and advocacy. The entire field of aging is in his debt for all he has done—and everything else that he would like to do.

But I think that Dr. Flemming would readily agree with me when I say that neither Congress nor the Administration has yet even begun to develop a genuine, well-thought-out, step-by-step national policy on aging.

We are aiming at targets of opportunity, rather than at the strategic heart of each matter.

For that reason, I have introduced a bill which would authorize what might be called "mini" White House Conference on Aging every two years or so during this decade. Unlike the big White House Conference on Aging—which invited thousands of delegates—the interim conferences would invite specialists to examine one major issue at a time. Retirement income, of course, would have first priority. Their findings could be used to help measure progress made since the White House Conference.

These mini-conferences would be useful, but they will not substitute for three other vital ingredients:

Presidential leadership that genuinely attempts to implement major White House Conference recommendations.

Efforts within Congress to carry out such recommendations or to take initiatives of its own.

The continuing high degree of interest shown by the elderly themselves, by academicians, and by public administrators and others who are directly related to our success or failure in dealing with problems faced by older Americans.

I put Presidential leadership at the top of that list of prerequisites because I believe that it is not too late—even yet—for a really determined Chief Executive to make full use of the magnificent opportunity presented to this nation by the 1971 White House Conference on Aging.

When we in Congress instructed the President to call that Conference, we had high hopes for it.

I, personally, still have that kind of hope.

But I must face the fact—and so must everyone else who cares about older Americans—that the Administration response to that Conference has been one of tactics rather than one of substance.

As I said before, the Administration has yet to announce its goals on retirement income.

It offers a nursing home "reform" program which puts primary emphasis upon policing, rather than improvement of care.

It has thus far failed to present a workable strategy for improving and strengthening the Older Americans Act, even though Congress has voted dramatic increases in funding for the Administration on Aging.

And can anyone tell me what the Administration goals on housing for the elderly are?

All down the line, the Administration seems to have a "this too shall pass" attitude when it comes to aging.

Its spokesmen—from the President on down—seem anxious only to get through the next two months or so without any real commitment, any real program, on aging.

It happens, however, that the President is also a candidate. One measure of his campaign—a measure of key importance to the Senate Committee on Aging, to everyone at this conference, and to 20 million older Americans and their offspring—is whether the President will level with the American public on aging.

If he does not, even under the rigors of a political campaign, then what could we expect if he were to win another term in office?

Thus far I've confined myself to the topic you assigned to me: the view from Capitol Hill on a National Policy on the Aging.

But the view from Washington, D.C., extends in other directions as well, and I would like to take a few moments to share a few thoughts with you on the more general subject of this Conference:

"Aging Around the World: Dimensions of the Future."

I'm glad that you have chosen that topic because it is closely related to a proposal which I want to make to this Conference.

It seems to me that the United States must look beyond its own efforts on aging, just as this Conference has done over the past three days.

Other nations, as well, must face up to the fact that what has been called a "retirement revolution" is a reality in developing nations as well as the most advanced nations.

The full extent of that revolution is as yet unknown, but the United Nation's report—described earlier in this Conference by a representative of the U.N.—provides several important bits of evidence about its significance.

That report notes that about 200 million older persons—people of age 65 and over—reside on planet Earth.

That report points out that this total is about 24 million more than just 5 years ago.

And thirteen years from now—1985—the overall total may be 270 million, 70 million more than the total today.

These numbers are impressive but they tell only part of the story. We must compare the growth in the numbers of aged with the growth in other age groups.

Between now and 1985, overall population growth will be about 11 percent.

For the aged, this increase will be far higher: 24 percent.

In less developed nations, total population growth will be up 27.8 percent between 1970 and 1980, it will be up 38.2 percent for the aged.

It is no wonder that the United Nations report says the world has an aging population, with social and economic implications which are not yet clearly understood.

We also face a prospect which is pleasant in personal terms, but which is monumental when considered in terms of world impact.

I'm referring to speculation that man's years on earth may be extended because of scientific breakthroughs of one kind or another.

Everyone here, I am sure, is familiar with recent statements which seem to promise that those breakthroughs are at hand. I don't know about that, but I am impressed when I pick up an article by a high official of the World Health Organization and find that he is speculating, in matter of fact fashion, about the social implications if life expectancy increased by 15 years or so.

And mind you, he is not talking only about extending life by controlling disease. He is talking about delay of the actual aging process. Certain lines of research are aimed at postponing the onset of frailty, and it is this prospect that is being examined by the W.H.O.

Imagine: a world in which the people in their 60s, 70s, and beyond could have the energy and physical capacity of middle-age. The W.H.O. official is right to tell us that we should expect major change if such new patterns of life become real.

But even if it does not—at least in the immediate decades ahead—there is ample reason to ponder what is happening now.

As we have already seen, in absolute numbers and in percentages, the number of elderly is increasing.

Earlier retirement ages are becoming more common in many nations.

If present trends continue, birthrates will continue to decrease in many parts of the earth.

On the basis of what we can already foresee, we have many questions to ask.

How much of an economy should be committed to retirement income?

If skills become obsolete in middle age in industrial nations, what will be the effect upon employment status of those affected? What effect will unemployment or underemployment have on their social insurance payments for retirement?

What if nations around the world follow one after the other in establishing lower compulsory retirement ages? How will the lower number of productive years affect tomorrow's retirement?

In developing nations, what effect upon the elderly will result from the widespread move of younger people from rural areas to urban?

We could pose other questions, as did the U.N. study. But I think that the point is clear:

No nation in the world can ignore the "retirement revolution," and every nation can help other nations in a common effort to deal with the situation described so well by the U.N.

The elderly throughout the world cannot be expected to live in exclusion. But they can make many positive contributions to the societies in which they reside, if we alter our social and economic systems—and our attitudes, as well. No easy task, to be sure. But one that stands a better chance of success if nations talk to one another. The stage may be set, right now, for such communication.

The United States has recently concluded a White House Conference on Aging. Interest is still high; momentum could be made to grow.

The Ninth International Congress of Gerontology took place just two months ago in Kiev, Russia. There scientists brought each other up to date on research findings on everything from the cellular aging process to income maintenance. This Congress, to be followed in three years by the next international meeting in Israel, certainly adding to the momentum on aging.

The United Nations is expected to report early next year on its survey with an eye toward seeking additional action within the U.N.

And there are plans afoot for individual multi-nation conferences on one subject or another in 1972 and beyond.

Everywhere we see momentum. What is needed now is direction and some mutual goals.

I therefore propose that nations work together, possibly through the United Nations, to plan and conduct a World Assembly on Aging within the next 3 to 5 years.

That Assembly could be the finale toward which all the other conferences would work.

It would involve the scientists who participate in the International Congresses of Gerontology.

Its major function would be to involve governments in a cooperative venture which would help each nation determine what kind of commitments must be made in a world in which larger and larger segments of the population live to be older.

As a first step, the United States and the Union of Soviet Socialist Republics should take steps to broaden the agreements they have reached to deal with cancer, heart, and environmental diseases. Those agreements should also include cooperative action on aging. I have made this suggestion to President Nixon, and I hope that it can be acted upon in the near future.

What is needed now, however, are actions by the United States and other governments to cooperate in steps leading to the world convocation I have mentioned.

It may well be that such an assemblage could best be conducted through the United Nations, employing some but not all of the methods used in the World Conference on Environment in Stockholm this year.

It may well be that smaller, regional conferences could be held as part of a global effort to arrive at a better basis for action on aging.

Whatever the final form, discussion on the Assembly should begin at an early date. I wish to assure you that I personally will do all I can to have that dialogue begin and I will welcome your suggestions as to the next steps.

At the risk of being called isolationist—which seems to be a reappearing label these days—I would like to point out that the United States has certain selfish interests that could be served by a World Assembly on Aging.

For one thing, a World Assembly on Aging would be an additional prod for development of a national policy on aging—something we hoped that the White House Conference would do. The momentum generated at that conference, while still impressive, needs recharging. If the United States had to prepare for an international meeting at which it would develop its commitment on aging in conjunction with other nations, we could be more certain that a national policy would not only be formulated, but implemented.

Second—and this is suggested by my last point—we must have comparisons with other nations if we are to develop real perspective on our own failures and achievements. I do not say that the United States lags or is ahead of other nations in terms of the general well-being of older people. But it is probable that some nations are ahead of us in certain fields, such as housing, and that we are ahead of other nations in other ways. We should at least find out where we stand, and what we can do with other 'Nations'.

You have other speakers this morning and I will end my global speculations in order to make way for them.

My final comment is one with which, I suppose, few people will disagree. For that reason it should be repeated until its message is understood, rather than merely acknowledged.

I believe that great things can happen when people live with an injustice or worse for so long that finally they begin to question it.

We in this nation lived with war in Indo-China for years before we recoiled and said that this was inhuman and intolerable.

We in this nation are questioning the terrible drain that military spending puts on each one of us and those in need of help denied to them because we spend instead for arms.

We in this nation are questioning even our liberalism and wondering whether we substitute token programs for actual concern and real remedies.

Out of such questioning is our hope for the future. This is as true in the field of aging as in everything else. I have been with you today as much to ask questions as to make suggestions. I have enjoyed the opportunity to share the work we must all do on behalf of today's elderly and tomorrow's, as well.

Thank you for having me here today.

STATE TAXATION OF INTERSTATE COMMERCE

Mr. MATHIAS. Mr. President, with the agreement of the committee on the conference on the revenue-sharing legislation, H.R. 14370, I think that whether one opposed or favored this far-reaching legislation, all will agree its enactment will accomplish a fundamental and far-reaching change in Federal-State fiscal relationships.

Federal revenues to be shared with the States, whether in the form of existing categorical grants or the new unfettered general revenue sharing, are, of course, derived in large part from income earned by business in interstate commerce. Therefore, I firmly believe that the next order of priority for the Congress in the area of Federal-State fiscal relationships is enactment of legislation to bring order into the present chaotic system of taxing interstate commerce by State and local governments. We expect the States and localities to be responsible in their use of Federal funds, but we must also demand that they act responsibly in breaking down the tax barriers that now impede the free flow of commerce between the 50 States.

Mr. President, a clear explanation of the relationship of revenue sharing to the problems of State taxation of interstate commerce I have seen was presented during the hearings before the Committee on Finance on July 26, 1972, by Mr. Roland M. Bixler, representing the National Association of Manufacturers. Mr. Bixler, a resident of Connecticut and a small businessman, is president of J-B-T Instruments, Inc., and chairman of the NAM's subcommittee on State taxation of interstate commerce. Mr. Bixler's testimony, in part, follows:

Revenue sharing legislation in general, and federal collection of state taxes in particular, raise again the question of a much older and more protracted problem—state and local taxation of interstate commerce. In fact, this subject has been before Congress since the 1950's—long before we had even heard of the "fiscal crisis" in state and local finance. Exhaustive studies have been made and the House, by wide margins, twice has passed bills that would set minimum standards for taxing multistate businesses and grant some relief from the maze of complicated state and local tax requirements. Unfortunately, the Senate has not acted.

The burden on business in seeking to comply with the array of different state and local regulations and procedures is staggering, as the number of jurisdictions taxing companies engaged in interstate commerce is literally exploding. There are 46 sets of corporate income tax laws and 46 sales and use tax laws in effect at the state level—not to mention the numerous other laws of general

applicability such as gross receipts tax laws, capital stock laws, etc.

Prior to 1945, only New York City and New Orleans imposed a local sales tax. By 1971, more than 3500 local governments, including approximately 3000 municipalities and 500 counties, levied sales taxes.

The problems is especially critical for small and moderate-sized firms. By definition their business operations are modest and thus their relationship to most states is slight. Yet, the myriad jurisdictional rules of the various states reach and grab at these businesses in such a variety of ways that these firms are often forced by cost alone to noncomply and thus to risk a build-up of liability that can threaten their existence. The difficulties facing all firms doing interstate business are pointed out by this quote from the Recommendations of the House Special Subcommittee on State Taxation of Interstate Commerce, published in 1965:

"With respect to all of the taxes considered in this report, the threshold question facing the interstate company is whether or not its activities within a State are sufficient to make it taxable by that State. For each kind of tax, there is a broad range of activities for which liability is asserted by some States and not by others. In many cases, the determination of whether or not liability exists is difficult, if not impossible.

". . . When the problem of determining whether there is liability is reviewed in terms of the cumulative effect of all four types of taxes, the variety and complexity is greatly increased. Not only do jurisdictional standards differ among the States, but they are also nonuniform for different taxes within a single State."

Despite much prodding, the states have not been able or willing to cooperate in setting sensible jurisdictional and apportionment standards on their own. The result is a serious threat to our "common market" of the 50 states.

We ask you now to consider the issue as a pertinent part of your deliberations on revenue sharing. You should consider that:

(1) If the federal government is to share its tax revenues, which depend so greatly on interstate commerce, with lower tax jurisdictions, it is incumbent on the federal government to require not only that these funds be spent in a responsible manner, but that the recipients of such aid show responsibility in their jurisdictional reach and apportionment procedures for taxing interstate commerce.

(2) If the federal government is to provide for collection of state income taxes and require participating states to conform their tax bases with the federal income tax, there is all the more reason to require the states to use common standards for taxing interstate business.

(3) Most of the past resistance to federal interstate tax legislation has been the fears of revenue loss expressed by the states. Although not well documented, any such "losses" would be *de minimus* compared to the financial benefits (at least $5 billion per annum) that general revenue sharing would bring to states and localities.

The NAM's own interest in the field of state taxation of interstate commerce dates back many years. In addition to participating in litigation in the early 1950's, the Association was also involved in the discussions leading to the passage of P.L. 86–272 in 1959 and in the studies and hearings conducted last decade by the House Select Subcommittee on State Taxation of Interstate Commerce. Members and staff of the Association have discussed the subject at length, statements have been hammered out in policy sessions, and testimony has been presented to the Congress on several occasions.

Throughout this period, the NAM has consistently urged that the problems concerning state taxation of interstate commerce can be solved by enactment of a limited bill establishing federal jurisdictional standards for all types of state taxes levied on interstate commerce.

Therefore, we strongly urge you to take action on the interstate taxation issue. Specifically, the business community has favored the jurisdictional rule and other standards contained in S. 317 introduced by Senators Ribicoff and Mathias and other Members of the Senate.

However, we are not insisting on any one particular piece of legislation. As a matter of fact, as a result of recent efforts at compromise in order to get some movement on the problem after these many years, there is gathering support in the business community for a measure that would fall short of S. 317. This would set certain jurisdictional and apportionment standards but would allay revenue loss fears of the states by preserving certain court decisions regarding collection of sales and use taxes. A registration procedure would be established to protect businesses selling in interstate commerce from liability for payment or collection of taxes in states where they have no business location.

We feel that this type of measure would go a long way toward solving the interstate tax problem and could receive widespread support as a middle ground position.

Beginning with my service in the House of Representatives, and particularly as a member of the Special Subcommittee on State Taxation of Interstate Commerce, I have long been convinced that we must have permanent Federal legislation establishing minimum uniform rules for setting forth the conditions under which all types of State and local taxes can be levied. The Congress has not acted on this subject since 1959 when stopgap legislation, Public Law 86–272, was enacted.

In the 92d Congress, along with the distinguished senior Senator from Connecticut (Mr. RIBICOFF), I have been pleased to cosponsor the Interstate Taxation Act, S. 317. Additional cosponsors of this act include Senators BEALL, BROCK, CASE, COOPER, GURNEY, and HUMPHREY. It is similar to legislation I introduced in the 91st Congress. It is also similar to legislation which passed the House by overwhelming majorities in both 1968 and 1969. In this 4-year period, however, the Senate has not had an opportunity to act. The Committee on Finance has not held hearings.

The distinguished chairman of the Committee on Finance (Mr. LONG) has assured me on a number of occasions that the committee plans to hold hearings on the subject of State taxation of interstate commerce before this Congress adjourns. He has given such public assurances as recently as the revenue-sharing hearings held by the Committee on Finance in July of this year. Even if the time remaining during the closing days of the 92d Congress do not permit enactment of this vitally needed legislation, I hope that public hearings can still be held so that we can act early in the 93d Congress.

Mr. President, in recent years there appears to have been an unbridgeable gap between the position of State and local governments and that of the business community. The States, particularly those who have joined together to form the Multistate Tax Commission, are adamantly opposed to the type of legislation urged by a broad spectrum of the business community. I do not believe that this apparent gap is unbridgeable.

In recent months, three major business organizations—the National Association of Manufacturers, the National Association of Wholesalers-Distributors, and the Council of State Chambers of Commerce—have been developing a new interstate taxation bill in an effort to meet some of the objections of State and local governments.

From my long study of the problems of interstate taxation, the working drafts of this new bill I have seen convince me that it represents major concessions on the part of the business community in order to reach an accommodation with the views of State and local governments. This is particularly so with regard to sales and use tax jurisdiction and apportionment of income or capital for tax purposes.

Despite the concessions which the business community appears to be willing to make, this bill will not represent a marked departure from S. 317 and earlier versions. It will still provide Federal minimum standards designed to relieve the most pressing tax problems of companies doing business in more than one State. Its basic elements will be similar to the bill of which I was one of the authors and which passed the House initially in 1968 and again in 1969.

In addition to the three business organizations which are developing this new legislation, I am informed it has been reviewed and approved in principle by a large number of other business groups, including Air Transport Association, American Machine Tool Distributors Association, Association of Institutional Distributors, Automotive Service Industry Association, Direct Mail Advertisers Association, Distilled Spirits Institute, Manufacturing Chemists Association, National Small Business Association, Printing Industries of America, Inc., and the Society of American Florists.

Mr. President, I plan to introduce this legislation before the close of this session. I will not claim that it will provide all of the answers to the complex problems of State taxation of interstate commerce, but it merits serious study by all those who would be affected by it, the business community, other taxpayers and State and local governments. If it is seriously considered by the Committee on Finance along with all the other bills introduced on this subject during public hearings which I hope will be held very soon, I believe we can come up with a practical Federal solution. I would remind Senators that Congress, in 1959, by enactment of Public Law 86–272, clearly establishes the right of the Federal Government to exercise its authority in this important area.

TRUTH IN TAX COLLECTIONS

Mr. NELSON. Mr. President, on August 10, the Senator from Minnesota (Mr. MONDALE) introduced S. 3903, The Truth in Tax Collections Act of 1972. The bill would require the Internal Revenue Service to make clear to taxpayers which of its current instructions have been rejected by any Federal court. It would

also require the IRS to reconcile differences among its instruction pamphlets and to advise taxpayers which one may be regarded as authoritative. Finally, it would permit a taxpayer contesting a deficiency assessment in the tax court to see his appeal through to final adjudication without having to pay the claimed deficiency or post a bond.

The bill was discussed in two recent newspaper columns by Mr. E. Edward Stephens. In an article entitled "Bill Demands IRS Tell 'Whole Truth,'" published in the Philadelphia Evening Bulletin of August 21, Mr. Stephens pointed out that—

When in doubt, the service generally construes the law unfavorably to the taxpayer, and writes its interpretation into instructions to be issued with the tax forms.

Thus, a taxpayer's interest will often require him to contest the IRS interpretations. But, the service does not even give him a clue as to whether other taxpayers may already have succeeded in identical challenges to the IRS instructions.

In a column published in the New York Daily News on September 1, Mr. Stephens noted that—

The tax court is the only forum where one can contest an IRS deficiency without first paying the interest and penalties.

Therefore, the advantage in using the tax court route is lost by the taxpayer if he must pay the deficiency claim before he can appeal an unfavorable ruling by the tax court. This inequity is underscored by the fact that taxpayers lose an overwhelming number of cases in the tax court—almost 70 percent in the first half of 1972. Yet, they do far better upon appeal. The Mondale bill would permit the taxpayer to pursue his appeal to finality before having to pay the deficiency.

Mr. President, I ask unanimous consent that the two columns be printed in the RECORD.

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

COUNSEL TO THE TAXPAYER—BILL DEMANDS IRS TELL "WHOLE TRUTH"

(By E. Edward Stephens)

Q. Is it true that the Internal Revenue Service doesn't tell the whole truth when it instructs taxpayers on how to fill out their tax forms?

A. Yes—and Minnesota's hard hitting senior senator, Walter F. Mondale (D), wants IRS to come clean.

Taking the warpath, he joined battle Aug. 10 by introducing a bill, S. 3903, pointedly called the "Truth in Tax Collections Act of 1972." It was referred immediately to the tax-writing Senate Finance Committee.

The senator said IRS instructions are "badly misleading" the taxpayer.

"We would readily condemn a similar action if it were taken by a private company," he commented.

IRS has a tough job interpreting any provisions of our highly complex Internal Revenue Code. When in doubt, the service generally construes the law unfavorably to the taxpayer, and writes its interpretation into instructions to be issued with the tax forms.

PROTECT THE REVENUE

Many taxpayers balk. They drag IRS into court, and often succeed in overturning IRS regulations or rulings.

The rub is that IRS usually doesn't change its instructions when this happens. There isn't a word to let unsuspecting readers know that any part of the instructions may be invalid.

Senator Mondale doesn't question the service's right to take "arguable" positions to "protect the revenue." He knows that U.S. Supreme Court decisions are the only ones that IRS must apply to all taxpayers.

A lower court decision doesn't bind IRS except in the case of the taxpayer who filed the suit.

But, Mondale said, it's unfair to give other taxpayers only one side of the story in official instructions. And, he added, this is particularly unjust in the case of a little guy who can't afford tax counsel.

MONDALE'S FIVE STEPS

Where any court has rejected or modified an IRS position, Mondale said, all taxpayers should be informed. The instructions should put readers on notice that it might be advantageous to seek further information on specific points, or to retain counsel.

IRS moguls often say they don't want to collect a single penny that isn't due under the law. To this, the plain-speaking Minnesota senator retorted "Facts belie the claim."

The Mondale bill is designed to make IRS tell the whole truth. If it were enacted in its present form, IRS would have to take five actions.

Prepare an "authoritative" set of instructions interpreting the tax laws as of the date of issue, for use in preparing returns and other documents that taxpayers must file.

FOOTNOTES AND MORE

Revise the set from time to time.

Make these instructions available to any taxpayer on request.

Refer to this set, in all other instructions, as the "authoritative" source of instructions for preparing returns and other papers.

Note conspicuously in all instructions, via footnote or other device, any instance in which a provision of the code has been held, by any U.S. "court of competent jurisdiction," to have a meaning or application other than that in the instructions.

U.S. courts of competent jurisdiction include the Tax Court, Court of Claims, district courts, and circuit courts of appeals, as well as the Supreme Court.

TAXPAYER'S COUNSEL—BILL TO CURB IRS ABUSES HAS APPEAL

(By E. Edward Stephens)

Q. According to one of your columns, if I lose a case in the U.S. tax court, the Internal Revenue Service can move in and collect whatever the court says I owe—even though the U.S. court of Appeals later may decide that I didn't owe a dime in the first place. Is anybody trying to correct this deplorable situation?

A. Yes. An Aug. 10, Minnesota's senior senator, Walter F. Mondale (D), introduced a bill (S-3903) to set things right. It provides that if you go to the tax court, IRS can't collect until the case is finally resolved against you on appeal.

The Mondale bill is long overdue. For nearly 50 years, U.S. taxpayers have been victimized by the outrageous law now in force.

Organized in 1924 as the Board of Tax Appeals, the tax court is the only forum where you can contest an IRS deficiency without first paying it, with interest and penalties. The court was set up for this very purpose.

The system works fine if you win the tax court decision. But if you lose there, the result can be disastrous—even though you win the case hands down on appeal.

For example, suppose you go to the tax court. You have one interpretation of an Internal Revenue Code provision; IRS has a different construction. The judge plumps for IRS. (In the first six months of 1972, taxpayers lost 69.7 per cent of the tax court decisions.)

You go on to the U.S. Court of Appeals. Still, you must pay the deficiency, or post a bond guaranteeing payment. This is the law today—pay up or put up.

If you can't raise the cash, you're in trouble. The bonding company will charge a stiff fee; and you'll never get it back. The government won't reimburse you, even if the Court of Appeals decides you were right all along.

This is bad enough. But usually the situation is far worse. If you're short of assets, chances are no bonding company will take the risk. You're thrown into the hands of tough "revenue officers"—formerly called "collection officers"—who have tremendous power.

They can grab your bank account and any other personal property you own, seize your real estate, sell everything at rock bottom forced sale prices, pay auction fees, storage costs and other selling expenses, and apply what's left of the proceeds against your deficiency.

Now suppose that, after this disaster, you win the case in the court of appeals. Does IRS have to put you back in the condition you were in before it sold you out?

Not by a longshot. IRS will hand you back the net amount of money it realized on the sale of your property. For instance if your car netted $40 above storage and selling expenses, this is what IRS will pay you, plus interest.

IRS doesn't have to replace the car, or your home. If you were forced out of business, it doesn't have to set you up again. If you were fired because your salary was attached, IRS doesn't even apologize.

For heaven's sake. Let's get the Mondale bill enacted.

STATEMENT BY CLIFFORD ALEXANDER ON DISCRIMINATION IN FEDERAL EMPLOYMENT

Mr. KENNEDY. Mr. President, perhaps one of the most serious failings of our Government is the denial of equal employment opportunities for minorities and women on Federal jobs. Because Washington, D.C., employs a higher percentage of Federal employees than any other metropolitan area, the effect of discrimination in Federal employment is more serious in this town than in other communities.

Representative WALTER FAUNTROY is currently conducting hearings on the problem of discrimination in Federal employment.

Clifford Alexander testified earlier this week about the way minorities have been denied equal job opportunities in our Federal agencies. Because Mr. Alexander is a former chairman of the Equal Employment Opportunity Commission, he was expertly able to document the failings in the system. I am impressed with the testimony he presented on this matter, and I ask unanimous consent that it be printed in the RECORD.

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

STATEMENT BY CLIFFORD L. ALEXANDER, JR.

In August of this year, a series of events were triggered which are already having profoundly negative effects on the employment conditions of minorities. The head of the American Jewish Committee (Philip E. Hoff-

mann) sent an identical letter to President Nixon and Senator McGovern, for reasons that are all too politically apparent. Hoffmann's letter raised the specter of unqualified minority workers receiving positions based solely on their race and of unqualified students being enrolled in institutions of higher learning just because they are Black. The letter presumed that "merit" was not being considered when Blacks were hired. Both the response of President Nixon and candidate McGovern failed to properly challenge the underlying fallacious assumption of Mr. Hoffmann—that is that Blacks were receiving something extra not accorded their white brothers. Both Hoffmann and Nixon imply that a merit test is being applied only to white applicants and that Blacks need only walk through the door and they will be given a desk and a paycheck every week. President Nixon used the occasion of Mr. Hoffmann's letter to set in motion a series of actions which are having and will continue to have a serious negative affect on the economic position of Blacks in this country. Nixon has already started to erode a rather weak but much heralded Philadelphia plan (to provide employment opportunities for Blacks and other minorities in the construction trades). Corporations are asking if they can forget about the sometimes effective tool of affirmative action programs which would increase minority employment. With respect to the Federal Government, Nixon in his response to Hoffmann said:

"With respect to these affirmative action programs, I agree that numerical goals, although an important and useful tool to measure progress which remedies the effect of past discrimination, must not be allowed to be applied in such a fashion as to, in fact, result in the imposition of quotas, nor should they be predicated upon or directed towards a concept of proportional representation.

"I have asked the appropriate departmental heads to review their policies to ensure conformance with these views."

It is clear for anyone who bothers to look that Black people are excluded from the higher paying, more responsible jobs in the Federal Government.

A review of the executive branch and regulatory agencies is in order. But the kind of review that is required is precisely the opposite from the kind Nixon ordered. The review would reveal the following:

That in the Office of Management and Budget, under the President's direction, there are 67 supergrades and not a single one is held by a Black.

In the Department of Justice, there are 318 supergrades and only four Blacks are employed in these job categories.

In the Department of Commerce, the umbrella agency for much of the highly tauted Black capitalism shell game, there are 374 supergrades (GS–16's through 18's) and only one is held by a Black. The quota for Blacks, however, in Commerce is at the bottom of the GS structure, where the pay is the lowest and the responsibilities are the least. In Commerce, Blacks make up 30 percent of the GS–1's through 4's.

In Civilian Department of the Air Force, there are 170 supergrades—no Blacks.

In the Navy, 334 supergrades—no Blacks.

In the Department of the Army, 237 supergrades—2 Blacks.

Those who carry the picture of America to the rest of the world state, A.I.D. and the Peace Corps have 42 in supergrade jobs and not a Black.

The Atomic Energy Commission has 349 individuals in supergrade positions and the Black quota is—yes—zero.

The Environmental Protection Agency has 44 supergrades and only one Black. This same agency has 649 GS–14's and 15's; of that number, ½ of 1 percent (3) are Black.

Finally, the Interstate Commerce Commission has 113 supergrades with no Blacks, but the Black quota is very high in the GS–1 through 4 at the I.C.C. There of the 248 GS–1 through 4's, 167 are Black or 67.3 percent. The issue of discrimination in employment, because of the unfortunate events following the Hoffmann letter, needs thoughtful and constructive action and analysis. After a review, the action that Nixon and Company must take is to provide opportunities for promotion and employment and see to it that those who are in positions of responsibility and are discriminating are removed from those positions. But Nixon has made one thing perfectly clear, this is not the direction in which he wants his Government to move. We now have the politically sensitive term "quota" being used to pit Black against white, worker against

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the handful of techniques that have been employed that have to any significant degree increased minority employment opportunities. One tool that I personally utilized while Chairman of the Equal Employment Opportunity Commission and which has proved to have some limited effectiveness is the "affirmative action plan."

It establishes in various job categories targets or goals for the employment and promotion of minority workers. It says that those targets or goals will be met within a specified time period. It says that the standard for acceptable performance will be applied with equality to Blacks and whites. Most importantly, it forces the reluctant employer to examine the rich and plentiful Black labor market in this country. Affirmative action plans recognize that pledges of voluntary compliance and statements of good will don't put money in Black pockets.

The unhappy history of Plans for Progress proved this beyond a shadow of a doubt. How useless mere verbal assurances can be. In 1968, as Chairman of E.E.O.C., we conducted hearings on white collar discrimination in New York City. We compared 46 Plans for Progress corporations to 54 non-Plans for Progress corporations. The unhappy result of our findings based on the employment statistics of the corporations themselves, was that in every significant job category, non-Plans for Progress companies (those that were not involved in the voluntary Plans for Progress program) were employing more minorities than Plans for Progress companies (Plans for Progress companies had signed vague pledges with the Vice President of the United States, to promote and ensure equal employment opportunity for Black Americans).

Thus, establishing targets and goals, and demanding that they be achieved in a given time frame is and has been an effective tool. Any affirmative action plan worth its salt, recognizes that whoever is hired or promoted will be capable of doing the job in question. This is important from the employer's point of view certainly, but it is obviously important to the prospective minority worker whose sense of dignity and worth and satisfaction in a job well done, is just as strong as his counterpart in the white working world.

Appeals to bigotry in 1968 were made through the code words "law and order." In 1972, those appeals are being made through the code word "merit." Let us all remember that twice as many Blacks as whites are unemployed. That the average Black family makes only $60.00 for every $100.00 that white families make. That Blacks are excluded from better paying jobs in corporations and as we have seen in the earlier statistics I presented to you, in the Federal Government. Many of us would have been delighted had a hue and cry been raised when quotas were all white some years ago. There the technique of quota was being used to keep Blacks out of jobs. Today, for those who confuse quota with target and goal, let it be said that if that five-letter word is used to afford minorities what is due them, then all power to the word "Quota."

One definition of quota is "the share or portion received or granted to a person, as being one of a certain number entitled to a part." Blacks in Government or any other field of employment are entitled to jobs they are qualified to perform. Up to today, those who have been given appropriate opportunities have been the exception rather than the rule. Actions to change the bigoted behavior of past governmental supervisors need to be undertaken and enforced. We are supposed to be living in a society of laws and under law, minority employment rights are theoretically protected. It is the responsibility of this President, even though it isn't his inclination, to see to it that Blacks and other minorities receive the opportunities to which they are entitled. The last thing we need at this point in our history is the pitting of hard working whites against hard working Blacks for the achievement of short-term political goals.

Finally, let us take a closer look at discrimination in the Federal Government—and particularly the U.S.C.S.C. The United States Civil Service Commission is given two grave and important responsibilities.

One: They are supposed to be in the forefront in seeing to it that all federal agencies become equal opportunity employers.

Two: They play an important part in the complaint mechanism by which aggrieved minorities and women may officially complain of instances where they believe they have borne the brunt of employment discrimination. It is clear under executive order and by law the Civil Service Commission has the two aforementioned powers and responsibilities.

It is also clear in fact that the Civil Service Commission has never exercised its authority on behalf of minorities and women. Why? There are several reasons.

One: The Civil Service Commission is for all practical purposes a plantation. All of the individuals in Washington charged with running the EEO program are white males. All those in subordinate categories are minorities. Each of the Civil Service Commission's regional directors and deputy directors is white. The 10 EEO representatives in those regions are minority and report to white deputies and white directors. The plantation mentality that governs the Civil Service Commission's hierachy says publicly that problems of harassment and retribution against complaints are virtually nonexistent. Any member of a minority group who has had the backbone and dares to complain, knows differently. The plantation is run by 53 supergrade positions. Those 53 big house plantation positions are all held by white males.

The plantation testers at the Civil Service Commission administer the Federal Service Entrance Examination. The FSEE has never been validated in accordance with generally accepted standards and guidelines from employment tests. It is a test that is blatantly discriminatory against Blacks.*

The Civil Service Commission should be administering affirmative action plans throughout the Federal Government. But what agency is going to take them seriously when the C.S.C.'s record is so blatantly biased. It is a sad fact that the powers that be in the Federal Government spend their time constructing defenses for past failings—rather than seeking equity for minority workers.

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* This finding was verified in a September 1971 study of the Urban Institute.

GENOCIDE CONVENTION DOES NOT USURP THE SUPREMACY OF THE CONSTITUTION

Mr. PROXMIRE. Mr. President, one of the concerns that has repeatedly arisen in the controversy over the Genocide Convention is that the convention, if ratified, would become the supreme law of the land superseding the Constitution. Opposition to the treaty on these grounds is especially concerned with article VI of the convention which deals with trial of persons convicted of genocide.

The fear has been expressed that the treaty would provide for prosecuting procedures beyond that which is provided by the U.S. Constitution. Mr. President, such concerns are groundless. The U.S. Supreme Court and other Federal tionship between the Constitution and treaties. The Supreme Court has said:

> To construe this clause (Article VI, clause 2) as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions would permit amendment of the Constitution in a manner not sanctioned by Article V. *Reid v. Covert*, 354 U.S. 1.

Further, the courts have said:

> The treaty making power of the federal government is subject to prohibitions within the constitution against state or federal government, and does not extend so far as to authorize what the constitution forbids. *Amaya v. Stanolind Oil*, 158 F.2d 554.

And again:

> No article or term of treaty may nullify any guarantee of right preserved by the Constitution to citizens. *Pierre v. Eastern Airlines*, 152 F. Supp. 486.

Thus it is clear that the Constitution has precedence over all treaties. Should there ever be a conflict between the Constitution and the convention, under our system of government, the conflict would be resolved in favor of the Constitution.

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

VIETNAM—PEACE JEOPARDIZED BY McGOVERN

Mr. BENNETT. Mr. President, while American negotiators and diplomats are in one of the most delicate periods of negotiation to end the war in Vietnam, I have watched with growing concern the political activities of the last few weeks, the end results of which may delay the peace we are seeking. I know my concern is shared by the great majority of American citizens.

In the last three and a half years, this administration has engaged in the most arduous pursuit—publicly and privately—of a responsible settlement of the Indochinese conflict. Today, those negotiations are at their most sensitive and critical stages.

Though the enemy has been intransigent throughout this process, President Nixon has taken a number of risks which make clear our desire for peace. The United States has withdrawn over a half million U.S. troop forces from Vietnam, and prior to the recent all-out invasion of the South by the Communists, the air sortie rate had been cut in half.

Moreover, the United States has made a series of far-reaching peace proposals—including provisions for an internationally supervised ceasefire throughout Indochina; the return of all prisoners of war; and a political settlement among the Vietnamese based on new elections fair to all parties concerned. Our proposals have been fair, imaginative, and flexible. Throughout this intense effort, which began the day President Nixon entered office, we have rightly refused to negotiate only one point: the overthrow of the duly elected Government of South Vietnam as a concession to the enemy.

Recently, however, well-intentioned but woefully misguided efforts by an assorted group of personalities have resulted in the direct and unfortunate interference with negotiations by the American Government. These personalities, whose common bond is support for and affiliation with a candidate for the presidency, have been shockingly careless about the basic facts of the situation and of the negative consequences their actions may have on the prospects for peace.

In rapid sequence, the most prominent efforts have come from a candidate for the vice-presidency, a former Cabinet official, and a private citizen best described as a political operative for the Democratic presidential candidate.

Senator GEORGE McGOVERN, whose views these gentlemen surely share, must obviously be aware that he cannot evade the consequences of actions by men so very close to his candidacy.

It is in light of this situation and this responsibility that the most recent Vietnam-related events and statements connected with the McGOVERN campaign must be discussed. The confusion, contradiction, and obfuscation of the past few weeks is in need of the fresh air of public exposure.

First, and perhaps most obviously, Senator McGOVERN and his people have proved ill-informed. They have neglected to do some of the most basic homework on this complex issue, and Senator McGOVERN has in an unusually derogatory manner even gone so far as to refuse any personal briefings or discussions at the White House as offered by the President. Thus, even in a period of particularly delicate negotiations, the Senator has preferred to rely on indirect and often ill-informed reports from his subordinates, the press, and even the North Vietnamese.

We have been confronted with a series of clumsily orchestrated side-shows: Pierre Salinger of the Citizens for McGovern Committee has been in Paris. Ramsey Clark, whom the Senator has described as his potential choice for FBI Director has recently returned from Hanoi. And vice-presidential candidate Sargent Shriver is making incredible allegations on U.S. television.

The Pierre Salinger case is typical of the ineptitude which has marked these escapades. When the story broke that Mr. Salinger has been directed by Mr. McGOVERN to contact the North Vietnamese delegation in Paris to discuss the question of POW's and an end to the war, McGOVERN first flatly denied that he had instructed Salinger. Two hours after the denial, and after Salinger's persistent linkage with McGOVERN, the Senator acknowledged that he had indeed asked Mr. Salinger to be his emissary. Subsequently Mr. McGOVERN's staff began issuing contradictory pronouncements about the purpose and intent of the Salinger effort.

One thing is clear, however. Senator McGOVERN played an irresponsible game with very delicate and important matters concerning the foreign policy of the United States and negotiations under progress. While the American people have every right to expect that peace in Vietnam be given every possible chance for success, the path to that peace has been trod upon by the amateurish and partisan efforts of Senator McGOVERN's agent.

Consider for a moment this scenario. At the very time the U.S. Government is conducting complex and sensitive negotiations with the other side, a candidate for the presidency asked his political lieutenant—a man totally inexperienced in the art of diplomacy—to make personal contacts to see if a sort of private peace agreement could be reached in virtual contradiction to the foreign policy of the U.S. Government. Such a maneuver cannot but damage the chances for peace.

And while the cloak and dagger charade of Mr. Salinger was taking place in Paris, a more blatant and open affair was taking place in the capital city of America's enemy. Ramsey Clark, a former Attorney General of the United States, and the man who GEORGE McGOVERN feels would make a "perfect" FBI Director, had traveled to Hanoi for what can be considered one of the most disturbing actions in the long and difficult history of this war.

Given a guided tour by his Communists hosts, Mr. Clark did not even wait until his return to announce his findings. Over Hanoi Radio, the voice of Ramsey Clark was heard to say how American POW's were in better health than he was; how American Air Forces were purposely bombing North Vietnamese dikes; and, generally, how America was thoughtlessly killing civilians.

That Mr. Clark would cite as evidence only that which his hosts decided he could see is shocking enough. But not to wait at least until he was off enemy soil to broadcast his charges, compounded the disturbing and distressing actions of Mr. Clark.

We are asked to believe that on the basis of talking with 10 American prisoners of war—all captured since November 1971—that Mr. Clark has given us an adequate profile of the conditions of the prisoner-of-war camps in North Vietnam and the fate of 1,700 Americans who are missing in action or are known to be prisoners in the hands of Hanoi and its Communist allies. If the Clark presentation is an accurate profile, why has not North Vietnam let the International Red Cross in to see the camps and to verify the actual fact? Why did not Mr. Clark make that point

a central theme of his report? Instead, Mr. Clark chose to concentrate on the bombing of North Vietnam, which he calls "criminal" and "absolutely unjustifiable," but which the United States has carried out only in response to the massive Northern invasion—a subject about which Mr. Clark managed to say nothing critical.

Mr. Clark's sincerity is not placed into question. But the spectacle of a former Cabinet official being so naive and gullible as to accept on face value the tour offered and sights chosen for him by his hosts is beyond comprehension. Surely, Mr. Clark might have been more wary of the validity of what he was allowed to see, but he has not betrayed such wariness in public forums.

From the time he returned to the United States there have been only discrepancies in Mr. Clark's performance. As he returned from Hanoi, he proudly announced that he had in writing a guarantee from the Foreign Minister of North Vietnam that there would be no difficulty in getting the American POW's home if there was an end to the war. Upon closer inspection, however, Mr. Clark turned out to be reading notes from the Foreign Minister which said that all that was necessary to accomplish the release of POW's was the acceptance of the Communist's "seven point" proposal. Now there is nothing new in these seven demands, which have been under negotiation for many months. But the salient sections of the seven-point proposal are tantamount to a call for American surrender—not mentioned by the Nation's former No. 1 lawyer.

The enemy simply demands that the United States withdraw unilaterally, end all military and economic aid to the South Vietnamese, and see to it that a government suitable to them is imposed upon the South Vietnamese people. We have been working for months to get the other side to modify these patently unreasonable proposals—but in one short visit to Hanoi, Mr. Clark believed he had discovered the way out of the war.

In the simplest terms, Mr. Clark's utter lack of understanding of the past record of Vietnam negotiations is a disservice to the American people. Perhaps most tragically, it may yet harm serious efforts to break the negotiating deadlock which stands in the way of peace in Southeast Asia. The longer the deadlock, the longer our POW's will be kept from home.

In the end it comes down to this. What conclusion can the American people draw from a man who once served as Attorney General, who visits Hanoi and swallows whole the propaganda and shopworn proposals of the leading violators of peace in Indochina—there are more than 100,000 North Vietnamese troops in South Vietnam; more than 80,000 Hanoi forces in Laos, and more than 50,000 in Cambodia. This aggression, plus the latest massive invasion of the South by the North using 500 tanks would surely represent ample justification for the air and sea operations which the President has ordered used against North Vietnam. Does Mr. Clark's posture help the cause of peace? It does not.

And finally, we come to the patently ridiculous charge by R. Sargent Shriver, GEORGE MCGOVERN's running-mate, that President Nixon missed a golden opportunity for peace in either late 1968 or early 1969. The record shows that as Ambassador to France during that period, Mr. Shriver did not in any manner transmit an awareness of such an alleged, and in fact, mythical golden opportunity for peace to the then Secretary of State Dean Rusk or to President Johnson. In point of fact, the North Vietnamese launched major "high point" attacks in February 1969, and they rejected all peace proposals.

Mr. Shriver, of course, continued to serve as Ambassador to Paris under President Nixon in 1969. He now says that he finally resigned because he was disappointed about missed opportunities and about the fact that President Nixon did not do what President Eisenhower did to settle the Korean war in 1953. Shriver's letter of resignation, however, contains no such assertions. To the contrary, Shriver praised Mr. Nixon's efforts to achieve peace in Vietnam.

Furthermore, for Mr. Shriver's information, President Eisenhower did three things about gaining a responsible settlement in Korea. First, in 1953, he started training new Korean divisions—a kind of Koreanization program. Second, he started special bombing of North Korea's strategic hydroelectric system. Third, he passed the word to the Communist side that no restrictions would be observed as to the type of weaponry to be employed if there was not a real peace achieved through negotiations. One wonders whether Mr. Shriver or Senator MCGOVERN really wishes that President Nixon had adopted such a policy in 1969.

Mr. Shriver simply had not done his homework. Unfortunately, this voyage into fantasy by Mr. Shriver has only added to the difficulty of persuading enemy negotiators to move off their intransigent positions. Mr. Shriver knows full well that there was no "golden" peace offer by the Communists in 1969. Yet he persists in distorting the record before the American public solely, one would guess, to disavow himself from war policies to which he was so closely wedded as a very high official in the Johnson administration.

These last few weeks have been most difficult. We are not interested in making fine debater's points, we are interested in finding peace. Senator MCGOVERN, his advisers and spokesmen do not hold their views lightly, I am sure. I know them to be individuals who present their views sincerely, and I respect them for it though I disagree with them. That, for example, their solution includes allowing a Communist takeover of South Vietnam is not really in question. We disagree strongly with that view, and as long as President Nixon is responsible for our Nation's foreign policy, that disagreement will remain.

We are dealing here with misplaced intentions, and it is my judgment that the American people, who want progress in the peace talks, deserve more than the misplaced intentions of Senator MCGOVERN. The hour calls for wise and intelligent leadership, seasoned judgment, careful decisions, and quiet, genuine progress toward the ultimate goal of peace.

It has frankly been embarrassing to see the clumsy activities of the MCGOVERN campaigners take place at the very time the President is actively negotiating with the enemy through authorized government channels. Irresponsible public statements, trips to Hanoi, attempted personal negotiations with the Communists, and distortions of the past record all do little to assist us in gaining what we all want—an early end to the killing and a responsible settlement to the conflict in Southeast Asia.

ADDRESS BY FORMER PRESIDENT LYNDON B. JOHNSON

Mr. HUMPHREY. Mr. President, appearing in today's New York Times are excerpts from a speech delivered by former President Lyndon B. Johnson at the dedication of the Scott and White Clinic, in Temple, Tex.

I commend this article to the Senate because it is a passionate plea by a wise statesman for the Nation and its people to live up to their greatness.

Writing in the autumn of another year gone by, Lyndon Johnson urges a new springtime for the American people. A time of rebirth—a time when we will allow our vision of what America can become to triumph over our perceptions of failure.

I believe that all Senators would agree with the former President that—

> We have no time for melancholy—we have work to be done—the greatest work any generation of Americans ever faced.

This spirit must guide us as it guided him.

Mr. President, I ask unanimous consent that President Johnson's address be printed in the RECORD.

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

AS THE DAYS DWINDLE DOWN

(By Lyndon B. Johnson)

TEMPLE, TEX.—With the coming of September each year, we are reminded, as the song says, that the days are dwindling down to a precious few. By the calendar, we know that soon the green leaves of summer will begin to brown; the chill winds of winter will begin to blow; and—before we are ready for the end to come—the year will be gone.

If we permit our thoughts to dwell upon this perspective, these days can become a melancholy season.

As it is with the calendar, so it sometimes seems to be with our country and its system. For there are those among us who would have us believe that America has come to its own September. That our days are dwindling down to a precious few. That the green leaves of our best season are turning brown and will soon be falling to the ground. That before long we will feel the first chill wind of a long American winter—and that our nation's stand as mankind's "last best hope" will be done.

For those who preach this prophecy—and for those who believe it—this period of our affairs can only be a melancholy season. But it is to that mood—and to the perceptions which foster it—that I want to address my remarks today.

Over the course of a long, full and gratifying life, I have seen many Septembers and have known many autumns. In public service—and in private life—I have experienced a full measure of unwelcome winters. Yet melancholy is not a mood which I have ever allowed to weigh for long upon my spirits.

I live—as I have always worked—by the faith that with each passing day, we are always approaching nearer to the beginning of a new springtime. It is by that perspective I see our country now.

If I believe anything of this land—if I know anything of its people and their character—I believe and I know that we have not come to and are not approaching America's September.

On the contrary, it is my conviction—a conviction which deepens every day—that this land and its people are quickening with the new life and new potential of what will become the springtime of a new America.

I do not say this merely to offer reassurance in anxious times. Far from it, I intend what I say to be taken as a challenge—a challenge to every citizen of every age.

No nation can be more than the visions of its people. Americans cannot be more than we believe ourselves capable of becoming. Thus we are directly challenged to choose between two very different perceptions of what we are and what we can make of America itself.

On the one hand, we can choose to guide our course by the light of the bright perceptions—of America the beautiful, America the just, America the land of the free and the home of the brave.

Or, on the other hand, we can choose to move toward the shadows of what some have called "the dark perception" of America the unclean, America the unjust, America the unworthy.

For myself—as, I am sure, for many of you—there is no real choice. I want to open the soul of America to the warm sunlight of faith in itself, faith in the principles and precepts of its birth, faith in the promise and potential of its resources and skills and people. Yet I know that, in these times, this is not easy.

For too long, we have permitted the dark perception to pervade our midst. Day after day, month after month, the portrayal of America as unclean, unjust and unworthy has been ground into the consciousness of our people.

We no longer see the blooming flowers for we are searching for the litter. We no longer celebrate the many fresh triumphs of justice for we are lingering over the residue of yesterday's shortcomings. We no longer measure the miles we have come toward a more humane, civil and peaceful world for we are too busy calibrating the remaining inches of times we are trying to escape and leave behind.

This is our clear and present challenge.

When we permit these dark perceptions to dominate us, we are allowing our future to be shaped by visions that are small and mean and diminishing to our potential. We are, in simple terms, dooming those who come after us to know what could only be a second-rate America.

This is a future which I am unwilling to accept.

I have devoted my time on this earth to working toward the day when there would be no second-class citizenship in America, no second-quality opportunity, no second-hand justice at home, no second-place status in the world for our ideals and benefits.

I do not intend now that second-rate visions shall set our course toward settling for a second-rate America. That is why I speak as I do now.

All through the pages of history we read the heart-rending stories of those who set out in quest of great goals and discoveries, yet when they were almost to the edge of success, they hesitated—not knowing or understanding how near they were to their aims. Out of that moment of hesitation, all too often they lost forever their opportunity to succeed.

In many respects, that seems to me to be a pattern we ourselves are in danger of repeating.

Over all the years of our nation's existence, we have been setting goals for ourselves and striving tirelessly to reach them. Those goals have been both the slogans and the substance of national affairs for generation after generation.

Full employment. Decent wages. Adequate housing. Education for everyone. Opportunity for all. Good health, good medical care, good hospitals for even the least among us. Above all, equal justice under the law for all our fellow men. America's goals have been simple and basic.

They have permeated and motivated all our institutions—churches and schools, professions and labor unions and corporations and foundations—as well as our government at every level.

All our American resources and strengths—private and public—have been committed to the effort and we have come very close to success.

Nowhere—over all the globe—have any people, under any other system, come nearer to fulfillment of such aspirations than we have under our system.

Yet, at the very moment we were near to realization, we have allowed our effort to go slack, our momentum to slow and we have entered a season of hesitation.

Why?

Basically, I believe, it is because we have not understood—and still do not fully comprehend—where we are or what we are about.

Whatever may be your own perception of where we are and where we may be heading, let me say for myself that I see little today suggesting that our system is failing—but I see all too much which convincingly argues that by our doubts and hesitation we may be failing the promise and potential of our system.

We are not living in times of collapse. The old is not coming down. Rather, the troubling and torment these days stems from the new trying to rise into place.

With our nation's past efforts, with our long and faithfully kept commitments, with our infinite successes in so many fields, we have brought into being the materials, as it were, with which to construct a new America.

Faced with the task of such great dimensions, we have no time for melancholy. We have no cause for moroseness. We have work to be done—the greatest work any generation of Americans has ever faced. Believing that, I say—let's be on with our labors.

The essentials of a new America—a better America—are all on hand and within our reach. It is our destiny—and, I believe, our duty—to take up our appointed positions and commence the labors that will change what needs change among us.

Our real challenge lies not in suppressing change but utilizing it to vitalize and energize our society. Change is not our enemy. On the contrary, this society has no deadlier danger than refusal to change.

This is what I believe our young Americans are trying—and have been trying—to communicate to us. With their fine young minds, fresh new learning and clear new vision, they are seeing many segments of our society as it needs to be seen and understood.

The most frightening thing that could happen to us today would be for us to close our eyes to new ideas, and to close our ears to those—particularly the young, in whom we have invested so much hope and effort through the years of our existence—who are trying to tell us how they would go about perfecting the visions of America.

It is just such spirit that we honor on this occasion. It is by restoring that spirit to our lives and our nation's life that we can honor our own trust as Americans.

This article was adapted from an address last Saturday by President Johnson at the Scott and White Clinic in Temple, Tex.

COSTS OF NATIONAL HEALTH INSURANCE

Mr. KENNEDY. Mr. President, I ask unanimous consent that a letter by Mr. Alfred Baker Lewis, national treasurer emeritus of the National Association for the Advancement of Colored People, be printed in the RECORD. The article was published in the Hartfort Courant on July 18 and addresses the key question of the costs of national health insurance. A great deal of bad information has been propagated concerning the costs of the national health insurance proposals that I have introduced in the Senate—the health security program—and I am pleased to see Mr. Lewis' thoughtful intent to set the record straight in this regard.

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

HEALTH COSTS

(By Alfred Baker Lewis)

To the Editor of The Courant:

Dr. C. A. Hoffman, just elected president of the American Medical Association, attacked the bill for comprehensive government health insurance introduced by Senator Kennedy and backed both by organized labor and the N.A.A.C.P. He used the old and discredited argument that it would cost too much.

There is nothing in government health insurance which increases the social or financial cost of ill health. The cost is already borne in full by our population. Either the ill person pays for it, or his family pays for it because it comes out of savings for old age or for the education of his children. His employer pays for it in part by loss of his work. If he carries insurance—and few policies are comprehensive—his fellow policy holders pay for it. If he is on welfare, or forced on to welfare by the high cost of medical and hospital care, the state and local taxpayers who carry most of the burden of public welfare relief, pay for it.

All that government health insurance does is to redistribute the cost. So far as this means transferring the cost of ill health for those on welfare from the state and local taxpayers to the Federal Government's general budget, there is no addition to the cost and some real gain in economic justice. The Federal Government's tax system is based mainly on the graduated personal income tax and the corporation profits tax. This is roughly based on the principle of taxation in accord with ability to pay. The tax systems of local government bodies and the states are based mainly on property and sales taxes which are regressive because they tend to bear more heavily on the poor in proportion than on the rich. The local and state taxpayer would gain every penny that the Federal taxpayer had to pay additionally.

Government health insurance would reduce the total cost of ill health in one significant way. Insofar as medical and hospital costs are covered now by private insurance companies, the competitive costs of getting the business, known as acquisition costs, and the costs of collection are substantial. I know because I was formerly an insurance company executive. The acquisi-

tion costs would be totally eliminated by government health insurance.

The cost of collection for government health insurance for those who have jobs and their families would be minuscule. It would simply be added to the sums now deducted from payrolls for old age benefits. The well person would pay for his sickness when well, and would get his needed medical and hospital costs free when he was hit by illness or non-industrial accidents.

TENTH ANNIVERSARY OF KMEX–TV, CHANNEL 34, LOS ANGELES, CALIF.

Mr. TUNNEY. Mr. President, I invite the attention of Senators to a proud event that will occur this month in Los Angeles, Calif.

KMEX–TV, Channel 34 in Los Angeles, will observe its 10th anniversary on September 30, 1972, marking a decade of virtually unparalleled growth and acceptance by southern California's Spanish-speaking audience.

Unfortunately, my duties in Congress prevent me from personally being in Los Angeles to congratulate KMEX–TV on its 10th anniversary, but I would like to take this opportunity to salute KMEX and wish the station continued success.

I know it could not have attained its 10th years except for the tremendous support it has received. All Californians should be proud of KMEX and its pioneering efforts to bring the first Spanish-language programing to California.

KMEX has realized its social and educational responsibilities to the public, and has brought it some of the finest service.

KMEX began broadcasting on September 30, 1962, and at that time was the first and only Spanish language television station in California. Currently, KMEX enjoys a popularity among the ethnic audience it serves that is second to none.

KMEX, today, is the western flagship of the Spanish International Network—SIN—and the corporate and broadcast headquarters of SIN-West, the regional network of Spanish language television stations in California, whose programing is available to 3.2 million Spanish-speaking Californians.

As evidence of its early influence, KMEX was largely instrumental in stimulating the sale of television UHF converter equipment while it pioneered Spanish-language programing in southern California.

KMEX's broadcast philosophy is based on serving the educational needs of its viewers while providing them with some of the finest ethnic programing available. The station broadcasts the finest Spanish-language programing from around the world, including the prestigious and highly popular programs from Telesistema in Mexico. KMEX presents live satellite programing, which is occasionally fed to other American national networks, and produces its own programing to suit the needs of Spanish-speaking Americans. The station has a high degree of public service programing that in addition to informing and educating, encourages Spanish-speaking Americans to take a larger role in the community.

Perhaps most importantly, KMEX presents the most comprehensive news relative to the Spanish-language community. The station has been singled out for a Peabody Award for their news, which is the most valued award of broadcast journalism. Locally, it provides 75 minutes of news daily as well as news to the regional network, and the Spanish International Network, and occasionally news to the Telesistema network in Mexico.

This year, KMEX sent Guillermo Restrepo, KMEX newsman, to the Democratic, Republican, and Raza Unida political conventions. The station broadcast included continuous reports to its Los Angeles viewers, as well as the SIN network, with a wrapup report at the end of each convention—a significant first for the pioneering Los Angeles station.

KMEX has been the first to break the news of many important events in the Los Angeles community. Notably, its news reporters and cameramen have either been the first on the scene or the only reporters allowed at the scene of some important news stories. KMEX news director Ruben Salazar lost his life during the East Los Angeles riots. KMEX was the only station allowed to film hijacker, Chavez-Ortiz, who hijacked a plane to Los Angeles to draw attention to the plight of many Mexican-Americans.

In the spirit of cooperation and recognizing the public's right to know, KMEX consistently shares its exclusive film stories with other independent and network television stations in the Los Angeles community, in addition to the SIN network.

Evidence of KMEX's growth over the past 10 years is reflected in its increased percentage of daily programing hours. The station's total broadcast day has increased 80 percent.

When it premiered in 1962, KMEX–TV reached an audience of 1,200,000 Spanish language people. Now, in 1972, KMEX reaches 1,900,000 in its five county southern California broadcast area.

KMEX is much more than the typical entertainment media. It is a cross between an educational and a commercial station that realizes its tremendous social obligations to the Spanish-speaking people of southern California. It is the voice of its audience; editorializing, entertaining, informing, encouraging, and teaching.

The station has become involved in raising money for education scholarships; health projects, such as raising money for kidney machines or campaigns against dope addiction; refunding projects for bilingual education; acquiring better government service for its community; and advocating increased political activity by Spanish language Americans.

KMEX has accomplished much in the past 10 years and plans to accomplish much more in the next decade.

The employees of KMEX feel their community responsibilities most keenly and all are involved in projects and organizations within their community. None illustrates this so well as Danny Villanueva, general manager of KMEX, who is actively involved in a number of local and statewide public service organizations and average 160 speeches a year.

Danny Villanueva is a hard-driving broadcasting executive, a highly respected television newsman, and tireless worker for the Mexican-American community.

Involved with KMEX–TV almost since its inception, Danny has striven for the past 9 years to create a Spanish language network to serve the needs of the United States' large Spanish-speaking population.

During a successful professional football career with the Rams and Cowboys, Danny joined KMEX in 1963, as sports director. He became director of community relations and news director in 1968, and station manager in 1969. Two years later, he was appointed general manager of KMEX.

Danny's advocacy journalism is a result of the tremendous social obligations that KMEX must undertake since the Spanish-speaking do not have a Time or Newsweek or Los Angeles Times which meets their needs.

Almost all of Danny's free time is spent working for the Mexican-American community. He has a strenuous speaking schedule and participates in scholarship fund drives, youth programs, and a variety of community activities.

During the disastrous earthquake which struck Los Angeles in 1971, Danny approached several retail food establishments and persuaded them to make available supplies of emergency food. He took it upon himself to deliver the food to Santa Rosa parish in San Fernando, Calif.

Mr. President, I know that all Senators will join me in wishing KMEX a very happy 10th birthday and much future success.

NIXON AND BIG OIL

Mr. MOSS. Mr. President, many Americans must have shared my shock and dismay when press reports linked contributions by the textile industry to the Administration's securing of voluntary textile import quotas; when the Justice Department settled its antitrust suit against ITT in return for a $400,000 campaign contribution by that company; when following a large contribution by the dairy industry, dairy price supports were increased; and when Minnesota investor Dwayne Andreas received a bank charter in record time following his contribution to the Republican Party. But the relationship between campaign contributions and favorable Government action is even more insidious with respect to the petroleum industry.

The oil barons have traditionally been heavy contributors to political campaigns. In 1968 the contributions of members of the petroleum industry was greater than any other occupational classification: $800,000; 93 percent of this amount went to the Republican Party. Also in 1968, $430,000 was contributed by directors of the American Petroleum In-

stitute, the oil industry's trade association. This was the largest amount reported for any business association. In addition, the amounts contributed by major oil families in 1968 was substantial. For example, Herbert Alexander reports in his book "Financing the 1968 Election" that the Pew family, heirs to the Sun Oil Co., contributed $159,000. Mrs. John D. Rockefeller and David Rockefeller, heirs to the Standard Oil of New Jersey Co., contributed more than $1.5 million to the Republican campaign. Interestingly in 1968, J. Hugh Liedtke, chairman of the board of Pennzoil United, reported contributions of $18,000, and Mr. W. C. Liedtke, Jr., president of Pennzoil United, contributed $14,000 to the Republicans.

All of these 1968 contributions were reported under the loophole-filled 1925 Corrupt Practices Act. Because under this law only limited records were required and reporting provisions could easily be circumvented, these figures represent only a small proportion of actual amounts contributed. Other estimates range as high as $20 million actually contributed to the Republican Party by the petroleum industry in 1968.

Maurice Stans, chairman of the Finance Committee To Reelect the President, in 1968 told big donors that their contributions are to insure that the executive branch of Government is in the right hands. The petroleum industry's investment of campaign contributions has indeed paid handsome returns.

The oil import quota program operates to maintain oil prices at artificially inflated levels to the detriment of the American economy and consumers. President Nixon's own cabinet task force on oil import control recommended after 11 months of careful study that the present quota system be abandoned. But Peter Flanigan had now emerged as President Nixon's energy advisor and he focused his attention on the political aspects rather than the economic aspects of oil importation. He simply overruled all the recommendations which would have cut domestic oil prices. The political aspects had to do with campaign contributions from the oilmen of Texas.

Prior to becoming a presidential advisor, Flanigan had close ties to the petroleum industry. He was senior vice president of Dillon, Read & Co., a New York investment banking firm which handled financing for many oil and gas clients including Union Oil Corp. of California and Texas Eastern Gas Transmission. In addition, Flanigan was president of Barracuda Tanker Corp., which owned three petroleum tankers.

The oil import quota program costs consumers $5 billion per year. But this did not satisfy the petroleum industry. Since 1954, when the Supreme Court ruled that the Federal Power Commission should regulate the price the natural gas producers charge, the industry has sought to rid itself of this regulatory burden. Year after year the industry exerted immense pressures on Congress to exempt it from effective regulation. Having failed in securing such legislation, the petroleum barons turned their attention to a sympathetic Nixon administration. In the 1968 campaign Nixon promised his major contributors that he would ease the Government's regulation of their businesses. Nowhere was he more interested in making good on his promise than with the Federal Power Commission.

President Nixon's first appointment to the Federal Power Commission was chairman John Nassikas. Nassikas was formerly general counsel for Manchester Gas Co. His views have consistently paralleled the position of the industry on major policy matters. They liked him, and he talked their language. Under Nassikas' direction, natural gas prices increased more than $111 million in 1970, $531 million in 1971 and 1972's increases are likely to be the largest ever. In addition, the Federal Power Commission has encouraged pipelines to make enormous profits by importing liquefied natural gas—a costly substitute that is three times as expensive as the domestic product.

Nassikas was not able to do all this by himself. He needed the help of other Nixon appointees. Pinkney Walker was next selected for the Commission by President Nixon. Walker was a member of the economics faculty of the University of Missouri and its business school dean.

At various times he had served as a consultant for Southwestern Bell Telephone Co., Mississippi River Transmission Corp. and Missouri Power & Light. He participated for a fee in programs set up by the Panhandle Eastern Gas Pipeline Co., the American Gas Association, and Bendix Corp. In every consultant case he urged higher profits for the companies and higher prices for the consumer. But most importantly, after Walker became a Commissioner he emphatically stated his preference that the Federal Power Commission should not have the power to control the price gas producers charge the pipelines—a duty which the FPC was ordered to perform by the Supreme Court.

But the most interesting appointees to the Federal Power Commission were Gordon Gooch and Rush Moody. Gooch was selected for the position of FPC General Counsel. Gooch was involved in Texas Republican politics and was a partner in the law firm of Baker, Botts, Shepherd & Coates. It is one of the most powerful oil and gas law firms in Texas. A senior partner of that firm, Baine P. Kerr, is general counsel of Pennzoil United.

Baker, Botts has been a training ground for many bright young attorneys who went on to other gas and oil firms. One of these was Rush Moody, Jr., who later became a partner in Stubbeman, McRae, Sealy, Laughlin & Browder. This firm's clients included Mobil, Atlantic Richfield, and Humble Oil Companies; it also represented Pennzoil United.

Rush Moody was selected by Nixon as another FPC Commissioner. It has been reported that spokesmen for certain Texas oil and utility interests first sounded out Moody's law partner, Tom Sealy, about accepting the appointment. Later Sealy received another inquiry from Hugh and William Liedtke, chairman and president respectively of Pennzoil United. This is a multibillion-dollar conglomerate which owns among other things, United Gas Pipeline. It is regulated by the FPC. The Liedtkes therefore were very interested in the composition of the Commission. Sealy not only was a personal friend but his law firm also handled legal work for Pennzoil. He decided, however, that he did not want to go to Washington and suggested his law partner for the FPC vacancy. The Liedtkes immediately began pulling strings inside the White House to get Moody appointed. Not surprisingly, since his appointment Rush Moody has repeatedly stated that he does not favor FPC regulation of natural gas prices at the wellhead.

Today, Gordon Gooch, the former FPC General Counsel, is now serving on the Committee to Reelect the President as regional coordinator of New York and Pennsylvania—among other things he is responsible for fundraising in these States.

Rush Moody continues as a Federal Power Commissioner.

The Liedtke's of Pennzoil United are a center of controversy in the Watergate incident. According to a House Banking and Currency Committee report, on April 5, 1972, a young man arrived in the offices of Pennzoil and said he had money for Liedtke. These offices had become a major collection point for Republican contributions from Texas, Mexico, and surrounding areas. The agent opened a pouch and deposited four checks totaling $89,000 and 110 $100 bills on Liedtke's desk. Liedtke placed these funds together with other amounts collected in a suitcase which contained approximately $700,000. Late in the afternoon of April 6, one day before the new Federal Election Campaign Act was to become effective, the Pennzoil officials took the $700,000 to the Houston airport to a waiting Pennzoil Company plane, and delivered it to the Finance Committee to Reelect the President. $114,000 of the $700,000 eventually found its way into the account of Bernard Barker, one of the five people arrested inside Democratic Headquarters at the Watergate in connection with a break-in and alleged bugging of Democratic Committee offices. Barker and six others are now under Federal criminal indictments.

Today the Nixon Administration is considering the nomination of Robert Morse for another Federal Power Commission vacancy. According to press reports, until he began his own practice recently in San Francisco, Morse had been with the large law firm there of Pillsbury, Madison, and Sutro. While at the firm his clients included Standard Oil Co., of California, which he represented in some of the Commission's largest and most important natural gas cases—those which involve setting area price ceilings for natural gas in both Southern Louisiana and the Permian Basin. Morris' nomination would follow the Nixon tradition of making a mockery of the FPC mission: to protect consumers from exploitation at the hands of the natural gas companies.

Where does this leave the American

public? The inequitable oil import quota system, which serves only to line the pockets of the petroleum interests, remains. The Federal Power Commission is completely dominated by industry members. So pleased is the industry that Pennzoil United stated in a recent annual report:

> Recent developments are encouraging. The past two years brought more serious and candid concern, especially by the Federal Power Commission, than the entire decade before.

The campaign contributions of the petroleum barons cost the public dearly: in addition to the oil import quota system, special tax provisions such as the foreign investment tax credit for petroleum companies cost consumers an additional $2.4 billion a year. The oil depletion allowance, often criticized as the most inefficient way to stimulate exploration, costs the American public another $1.4 billion a year.

The Federal income tax rate for corporations whose profits exceed $25,000 annually is 48 percent. But because of special privileges, the major petroleum companies pay an effective income tax rate of less than 7 percent. Natural gas rates have been increasing with the blessing of the FPC at a rate of billions of dollars a year and the public may be forced to pay up to $750 billion under a new regulatory procedure which the FPC has recently embarked upon. In addition the oil companies appear to be immune from antitrust prosecution. Oil companies control more than 83 percent of natural gas production, nearly 30 percent of the Nation's coal reserves and 80 percent of the uranium reserves. Increasingly a major customer, whether he seeks to purchase oil, natural gas, coal, or atomic power, must deal with the same seller. Yet the Justice Department takes no steps against these obviously anticompetitive practices.

No wonder Maurice Stans obtains large donations by urging campaign contributors to protect the investment they made in 1968.

All of Nixon's appointees to the Federal Power Commission are from the industry that is to be regulated. Several important officials have moved from the industry to the Federal Power Commission and then to the Committee to Reelect the President. Under the Nixon administration, national policy is not decided by voters at the polls but by contributions of special interest groups. Nearly 2 years ago it was written: "President Nixon's willingness to put private interests ahead of public interests, however, may yet become the biggest scandal of his administration." That prophecy is now fulfilled.

PROMPT PASSAGE OF OCEAN-DUMPING BILL IS URGED

Mr. ROTH. Mr. President, I invite the attention of the Senate to a most interesting article published in the New York Times Sunday Magazine, for September 10, 1972. Written by Miss Sara Davidson, it is an in-depth portrait of Capt. Jacques-Yves Cousteau, the indefatigable undersea explorer and scientist. Captain Cousteau's enthusiasm, love of life, and love of nature come through very clearly in this illuminating article. He is truly a man whose interests are not confined to oceanography, but stretch across a very broad area of human knowledge.

Captain Cousteau is no stranger to other Members of Congress. Last year, he testified before committees of both House and Senate in support of the ocean-dumping legislation, when, with characteristic eloquence and simplicity, he told the Senate Commerce Committee:

> The cycle of life is intricately tied with the cycle of water. Anything done against the water is a crime against life. The water system has to remain alive if we are to remain alive on this earth.

The ocean-dumping bill has, I understand, been approved by both Houses, and the conference report has been written. I think this is an appropriate occasion to suggest to our leadership that time is wasting, and the sooner we can vote on the conference report, the sooner we can start working to correct the damage that has already been done to our coastal waters by indiscriminate dumping and the sooner we can put a stop to ocean dumping across the board. I offer this suggestion not in any accusatory sense, but rather in recognition that this is a vital bill, necessary to the welfare of our country and one which, as the votes in the House and in the Senate have already demonstrated, has the support of the overwhelming majority of Members of both Houses.

Frankly, this legislation is of extreme importance to all coastal States, but especially to my home State of Delaware. As many Members of Congress know from their summer outings to Rehoboth and other resort communities in Delaware, my State is blessed with relatively unspoiled and undeveloped coastal areas. However, although Delaware can thank only good fortune for originally having received such natural resources, I think I can say with considerable pride that we have preserved those resources by virtue of self-sacrifice and discipline. We have rejected the lucrative prospects of establishing heavy industry in the coastal area, and we have consciously set aside large and beautiful expanses of beach and estuary as parks and wildlife sanctuaries.

Despite this discipline and sacrifice, however, our coastal areas are faced with potential damage as a result of ocean dumping. Because ocean dumping is an inexpensive, simple solution to the problem of waste disposal, other States dump treated sewage less than 14 miles off our coast. In all fairness, I must admit that there is still some question whether the Delaware coastline is damaged by this dumping. Scientists and laymen alike disagree.

But the point I wish to make is this: My State of Delaware should not be forced to bear the risk which inheres as long as the effects of ocean dumping remain in doubt. We have worked hard to preserve our coast, and we have sacrificed so that our resources would remain relatively pure and unspoiled. That sacrifice and dedication should not be jeopardized so that others can save money.

The ocean dumping bill would ultimately solve Delaware's dilemma. Under the bill as passed, the Environmental Protection Agency would be required to approve affirmatively any ocean dumping; also, a prerequisite to EPA consideration would be scientific studies to ascertain the effects of the ocean dumping. But such studies cannot commence until this bill is passed and becomes law.

We have already waited 1 year for this bill to become law. Once it passes, we will be required to wait another 6 months until the ocean dumping bill becomes effective and EPA has authority to act. And once EPA has the authority to act, we will probably have to wait another 2 years before scientific studies can be completed. In short, Mr. President, my State must already wait more than 2 years. Even if the bill were passed today, Delaware would bear the risk for another 2 years. That is long enough. There is no reason for enactment of this legislation to be postponed unnecessarily. I am personally eager that it be considered as soon as possible, and stand ready and willing to assist in the resolution of any disputes which may be impeding the progress of this legislation. As I said, the sooner we can pass this bill, the sooner we can get to work.

ECONOMY OF PEOPLE'S REPUBLIC OF CHINA

Mr. PROXMIRE. Mr. President, I am pleased to announce that the Joint Economic Committee today released a volume of committee hearings on the economy of the People's Republic of China. These hearings were preceded by a compendium published in May 1972 on "People's Republic of China—an Economic Assessment" which updated and to some extent modified an earlier committee assessment. The current study found the performance of the Chinese economy more impressive than did our earlier one.

Using the study as a point of departure, the hearings were held in June. We were privileged at that time to have our session inaugurated by the Senate majority leader, Mr. MANSFIELD, and by the Senate minority leader, Mr. SCOTT. Their formal statements and their responses to committee questions drew on their recent trip to China, as well as their profound knowledge of this subject.

Another feature of the hearings is a letter from House majority leader, HALE BOGGS, who provided us with highlights of his trip. Mr. BOGGS, who participated in the hearings just prior to departing to China, was accompanied on that trip by House minority leader, Mr. GERALD R. FORD.

The witnesses before the committee represented a range of professional judgment on the various aspects of the Chinese economy which, taken in its entirety, in my opinion, provides a highly interesting insight into this intriguing subject. While individual conclusions of witnesses varied somewhat, I believe that certain general points of agreement emerged clearly.

One area of agreement is the general assessment that China is now an economically viable unified nation and has the capability of remaining so. Another general consensus is that the isolation of mainland China from the world community has ended. The People's Republic of China has joined the United Nations, the President of the United States and leaders of both Houses of the U.S. Congress have visited China, and a modest flow of American academicians, newsmen, and private citizens have journeyed to the Chinese mainland. The People's Republic of China is also undergoing domestic change. Although Mao Tse-tung is today the undisputed leader of China, many changes and considerable instability has characterized his two decades of Communist rule. The great leap forward program in the late fifties and the great proletarian cultural revolution almost a decade later interrupted economic growth and, at least temporarily, appeared to rupture the political and social stability of changing Chinese society.

A third point is that, while the People's Republic of China may continue to bear a heavy military burden on its scarce resources, it is likely to use its military capabilities primarily to protect its own borders. Of particular concern to China is the common border with the Soviet Union. Limited naval and logistics capabilities restrict the expansion of Chinese military power beyond its borders, especially across water. Although the Chinese nuclear capability remains small, and to this point used primarily as a deterrent to Soviet military action, it may have a significant, future political effect on its neighbors, especially Japan.

Another point of agreement is that the major short run constraint to improved relations is the war in Indochina; the long run problem is Taiwan. If the Vietnam war ends and U.S. presence is withdrawn from all of Indochina, relations may be materially improved through increased trade, exchanges of a cultural, scientific, or media nature. Significant as the new relations may be they are likely to remain relatively modest as compared with our economic, cultural, and scientific intercourse with other countries in the area such as Japan. And in the longer run resolution of the Taiwan question will remain a bar to cordial relations of the United States with China.

Senators MANSFIELD, SCOTT, and the academic witnesses agreed that at present the Chinese leadership appears willing to downgrade the negative effect of the Taiwan issue on United States-Chinese relations. The agreed perception appeared to be one of gradually improving United States-Chinese relations. Professor Lattimore, one of the witnesses, found a different interpretation of the current change in relations between Peking and Washington in a shift from a policy of negotiation from strength to one built—at least in the short run—on a position of weakness, that is, the Vietnam withdrawal policy of the Uinted States.

Our witnesses also agreed that in spite of the adoption of family planning and other birth control programs and the improvement in Chinese agricultural performance, demographic pressures on subsistence are likely to continue. All the witnesses appeared to accept the conclusions of the Joint Economic Committee study that the average Chinese citizen was currently adequately fed and clothed.

The end of Soviet aid in 1960 represented a short-run setback for the Chinese economy. Western sources of high technology products have now replaced Soviet economic ties and the influence of the Soviet "model" in Chinese development has disappeared with little apparent prospect of recovery. The political and ideological schism between the two Communist giants not only led to termination of Soviet aid, but a perhaps permanent state of hostility between them. The depth of antipathy and the concern by each of the political and military threats presumed by the other was noted by most of the witnesses. Several noted that this mutual concern and hostility may have been a major factor in the improvement of relations between each Communist country and the United States. Indeed, the twin summits may have been possible only because of the Sino-Soviet hostility. China, especially, may wish to use its new relations with the United States to offset a continued Soviet effort to isolate and contain her influence within the confines of the Chinese borders.

Most witnesses believed that there is no assurance that current economic vitality and political stability under the leadership of Mao Tse-tung and Chou En-lai will continue. The periodic shifts from more pragmatic, economically rational policies, to more ideological, politically destabilizing policies of Chairman Mao might recur. There are many diverse interests at the top and the passing of the aged current leadership could be followed by open airing of differences. Although there is considerable uncertainty as to the composition of the "post-Mao" leadership and the policies that will be followed, the nation appears economically and politically unified and committed to a broad course of social and economic change. Still, what might appear to outside viewers as irrational, ideological, and nonpragmatic may be consistent with the perceived needs of Chinese leadership and people. In this sense what may seem to outsiders to be political and social instability disrupting future economic growth may, in fact, be a part of the process of social and political change desired by Chairman Mao or his successors and may have broad support among the populace.

Current assessments indicate that the great leap forward and cultural revolution had less adverse effect on economic performance than earlier thought. The economy as a whole appears recovered and even the intellectual and academic casualties of the cultural revolution are being rehabilitated. However, as Western perspectives have often varied from overly negative to overly positive assessments it is well not to project uncritically into the future the apparent, current economic vitality to impressive future performance in the PRC.

From these hearings certain recommendations may be made for improvement in our China policy in my view:

First. A reassessment is past due of all U.S. programs for Asian countries, including military and economic assistance, based on the changing nature of the "China threat." The still currently applied view of the "China threat," carried over from an era when U.S. Asian policy was based on the interrelated concepts of isolation and containment of mainland China, somewhat changed by the new detente with China. Although our policy of isolation has been largely discarded with the admission of the People's Republic of China to the United Nations and the establishment of a form of de facto recognition by visits of U.S. leaders to the People's Republic of China, the structure of the containment policy is still intact—starting with the "forward defense" of Indochina on the Asian mainland. The withdrawal of all U.S. forces from the Asian mainland will modify the United States and the China power position in Asia. For those reasons a thoroughgoing reassessment of our Asian strategy and programs of foreign military aid is needed.

Second. Further steps toward bringing the People's Republic of China into the world community might be taken through fairer and more equitable trade relations. China was put on the same footing in its trading relations with the United States as the Soviet Union prior to President Nixon's visit. Although most-favored-nation treatment, Export-Import Bank credits, and a variety of other trade and financial arrangements designed to facilitate trade are being considered with the Soviet Union, in my view it is too soon to consider similar trade relaxation seriously for the People's Republic of China. A large volume of trade is not likely in the near future, but other positive benefits may follow in improving relations between the United States and China. Specific recommendations by Mr. BOGGS in his letter to the committee chairman, included in the hearings, calls for, first, a commercial commission similar to that being set up to handle Soviet-American commercial relations; second, negotiations on frozen Chinese assets and U.S. private claims.

Third. A substantial increase in mutually beneficial, scientific, and cultural exchanges, and access—with a minimum of restrictions—of the media of each country to reporting sources within the other country should be explored. Perhaps a formal exchange agreement such as the one we have with the Soviet Union would be deemed mutually beneficial.

Fourth. Encouragement of better understanding of China is of vital importance. At a time when our comprehension of political and economic development in China is demonstrably incomplete and United States-Chinese relations are in flux, improved scholarship is essential to facilitate an informed national debate on China policy in the United States. Steps in this direction would include more bilingual training through the National Defense Education Act and more social science research support via the National Science Foundation and private founda-

tions. While the U.S. Government is still spending billions on policies for "containing the China threat," we should do more to assist us in understanding China better.

SHUT DOWN REFORM SCHOOLS?

Mr. KENNEDY. Mr. President, the time has now come to pursue another course of action regarding correction and punishment for juvenile delinquents. Surely, one of the most beneficial safeguards against crime is to have a strong constructive rehabilitation program that reforms rather than punishes; that accepts rather than rejects; a system that is designed for treating the cause rather than responding to the symptoms. It is time to recognize that the greatest danger our society faces is to turn our backs on those that need us the most—our youth. Sid Ross and Herb Kupferberg wrote "Shut Down Reform Schools" for Parade, the Sunday magazine supplement. Their article appeared in the Washington Post on September 17, 1972, and comes at a time when crime in every State in our Nation is on the rise; the recidivism rate continues to climb; prisons and reform schools are overcrowded and the tax burden on each citizen grows heavier each year. It ought to be clearly understood by all, that society is not doing the right thing in addressing the problems of delinquency.

Dr. Jerome Miller, Massachusetts Commissioner of Youth Services, clearly understands this, as he graphically describes how reform schools have served as the perpetuator of crime. I am inclined to agree with Dr. Miller that correction institutions should follow a "firm but fair" policy when correcting youthful offenders. Penalties would probably be far more effective if the offender realizes that the punishment is fair and warranted. The effectiveness of his new approach can be measured by the recidivism rate of past offenders placed in group homes, instead of in the old-fashioned institutional settings. Dr. Miller has cut the recidivism rate by two-thirds.

It is past time for correction institutions to follow a course of action that will allow for offenders to become productive members of our society.

Dr. Miller has received the praise and approval of many experts in the field of correction. Massachusetts is fortunate to have a man of his talent concentrating on this serious social problem. This presentation in Parade deserves the attention of the Senate. I ask unanimous consent that it be printed in the RECORD.

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

SHUT DOWN REFORM SCHOOLS?—MASSACHUSETTS HAS, AND HERE IS WHAT IS HAPPENING

(By Sid Ross and Herbert Kupferberg)

BOSTON, MASS.—If Jerome Miller had his way, every reform school in the United States would be closed down tomorrow.

Who's Jerome Miller? He's a 40-year-old Ph.D. out of Minnesota who has been Commissioner of Youth Services for the Commonwealth of Massachusetts since October, 1969. In his three years in office, he has abolished the Bay State's system of training schools for youthful offenders. And he says the U.S. won't solve its juvenile delinquency program until all the other states do the same.

"Reform schools are no damn good," he says. "They neither reform nor rehabilitate. The longer you lock up a kid in them, the less likely he is to make it when he gets out. They don't protect society. They're useless, they're futile, they're rotten."

Dr. Miller has replaced Massachusetts' training school system with a network of halfway houses, group shelters, foster homes, forestry work, special counseling services, and community action programs. Of 2000 boys and girls who would otherwise be behind bars, only 100 hard-core, violent cases are still under confinement, being treated in special psychiatric care facilities.

Miller, who has had to defend his reforms against a spate of Massachusetts critics, cites killer Charles Manson as a classic example of the failure of training schools. Manson spent some of his adolescent years in a juvenile institution. Says Miller: "The lockup, maximum-security training school escalates the potentiality toward violence."

AMATEURS INTO PROS

Miller also cites the 60–80 percent rate of recidivism—or backsliding to criminal ways—among youths who have spent time in reform school. He agrees with the thesis that about all a reform school teaches "is how to make an amateur car thief a professional."

He charges that such standard reformatory punishments as taking away children's clothes, putting them in isolation, and making them scrub the floor with a toothbrush, are not only degrading but self-defeating. "These things don't change the kids, and they don't contribute to law and order," he says. "All they do is make a kid a thing, not a human being."

To get young offenders out of reformatories, Miller is ready to take the risk that they may commit crimes, even serious crimes, although so far there have been no major incidents involving youngsters in his program. "If any of our kids goes too far, we whisk him off the street," he says. "We feel that there's less peril and more potential in keeping him outside and working with him rather than locking him up for a time and dumping him out again—over and over again."

"FIRM BUT FAIR"

The youthful offenders whom Miller has "sprung" from such solidly established Massachusetts penal institutions as Bridgewater, Shirley, Roslindale, Oakdale, Lancaster, and Lyman haven't simply been turned loose onto the streets. Miller, a psychiatric social worker who got his degree from Catholic University in Washington, D.C., and worked with U.S. Army stockade prisoners in England and later in the Ohio correctional system, says he opposes complete permissiveness and favors "firm but fair" limits when a child gets into trouble.

Instead of forcing such youngsters into the institutional lockstep, he is placing many of them in approximately 100 "halfway houses" or "group homes" throughout the state. These are run by private organizations and agencies ranging from religious groups to a Black Muslim unit. They get their funds from Miller's Department of Youth Services—which he says is far less costly than paying for penal institutions.

PUNISHMENT SYSTEM

Group homes still maintain a certain amount of discipline and punishment, but Miller has found that residents are much more amenable to correction than they would be in reform schools. "Meting out penalties for wrongdoing is the role of the family," he explains, "and the group home is a type of family. If punishment is called for, it's given out by your own."

Parade visited a typical group home, the Libra Halfway House in Cambridge. Libra, which is for boys only, has a set of strictly enforced regulations, including rules against liquor and drugs. Among its residents are black and white youths. Some have jobs, some attend school, other are involved in counseling and other rehabilitation programs. All are on parole, and must check in every night. Violations of rules are punished with loss of privileges, confinement to the building, and the like.

Libra's atmosphere is fairly homelike, with girlfriends allowed to visit. After dinner boys and girls alike sit around the kitchen table and talk.

"This is one of the things I like here," says a 17-year-old boy. "My girl can visit me like it was my own home. Well, it is my home, really, I've been here two months and I'm getting straightened out. I was in Shirley twice and Roslindale a few times. You were a nothing there. There was fights and stealing and punishment; it was like animals. I used to be bitter, but not now. I know I'll make it okay. Here you don't fool around—you'd be hurting yourself."

WANTS HER BABY

At the Kennedy House for Girls in Jamaica Plain, an old frame dwelling set back from the street, an unmarried 16-year-old mother holds her baby in her arms and says: "My big thing was running away from home. Then boys, I got pregnant. I want to keep my baby now—he's all I got—but my family is against it. I don't know what I want out of life, or what'll happen to me. But here they talk to you, they're straight with you, they understand you, and they've got a lot of patience."

Among the most visible of the rehabilitation projects instituted under Miller's let-them-out approach is an East Boston ice-cream parlor which is manned by 15 youngsters with delinquency records. Under the auspices of a non-profit enterprise called Community Aftercare Program (CAP), the young parolees and others are paid $1.75 an hour, 20 hours a week. "No one thinks of stealing," remarks a 15-year-old girl named Lynda, "because we'd be stealing from each other."

"It sure is great," adds 15-year-old Billy, originally picked up for car theft. "It's the first time I ever got paid for working, or that anybody trusted me with money."

The CAP ice-cream parlor is being bankrolled by a 21-year-old Harvard senior named Tom Wolfe, who laid out $5,000 of his own money. A number of college Youth Advocate Volunteers have enrolled in another one of Miller's programs, usually working as "big brothers" to delinquents on a one-to-one basis.

SUPPORT FROM GOVERNOR

Miller has received solid backing from Governor Francis Sargent, who appointed him to head the State's new Department of Youth Services following a series of scandals in the 1960's at several training schools, then run by the Youth Services Board. "I told the Governor exactly what I wanted to do when he was considering me for Commissioner," says Miller. "I told him I wanted to move away from punitive institutions to child care models. We want to be advocates for children, not jailers. We want to help them right in their own communities."

Miller also has the support of juvenile corrections experts throughout the country, many of whom would like to see their own States shut down their reform schools, too. Milton G. Rector, executive director of the National Council on Crime and Delinquency, calls the decision to abolish the Massachusetts institutions "a courageous step in the right direction."

Although Miller is convinced he's on the right track, his reforms have also run into a barrage of opposition. His critics range from detention guards whose jobs are in jeopardy, to legislators who favor sterner

methods of dealing with delinquents. He's been denounced as "permissive," "soft-headed," and "a bleeding heart," and accused of "subverting the juvenile justice system" and "endangering public safety."

After heading up a legislative investigation of the DYS, State Representative Robert J. McGinn declared: "I think Miller is well-qualified and his ideas are good, but he's moving far too fast. There's not enough screening of the homes to which kids are sent, and there's not enough screening of the kids themselves before they're sent back into society."

State Senator Francis X. McCann, chairman of a special committee on state corrections, accuses Miller of making "a farce out of justice in Massachusetts" and recently advised him to "get on his bike and pedal back to Ohio."

COMMUNITIES OBJECT

Opposition has spilled out of the legislature into local communities, some of which are up in arms against the idea of halfway houses operating in their areas. In Malden last January an angry crowd at a meeting expressed such stiff resistance to having even carefully screened, non-chronic offenders in a house operated by a group called Adolescent Counseling in Development (ACID) that the project had to be shelved. It's still in limbo.

Dr. Miller, a rumpled, boyish-looking man who's married to a psychiatric nurse and operates out of a tiny, cluttered office in downtown Boston, is admittedly impatient and scornful of his critics. He's especially irritated by the argument that he's moving "too fast," and that he should have phased out the institutions gradually rather than clamping them shut practically at once.

"You almost have to force the community to do its job," he says. "There'll never be real progress without turmoil. You've got to move fast. You just can't change, or modify the reform schools. Any reforms you make will get watered down and trickle away. The training schools are the backbone of the old system and have to be abolished. They're going the way of the almshouse."

Miller points to a recidivism rate in the group homes of only 18–20 percent—about a third of the reform-school rate—as evidence that the new approach is working.

SMASH OLD CELLS

A year after Miller took charge, he held a symbolic ceremony at Shirley Industrial School to signify his drastic changeover. On a dark and rainy winter night, 10 youngsters, at a signal from the new DYS chief, swung sledgehammers into the walls and bars of solitary confinement cells in which each had spent punishment time. They left the place a shambles.

In much the same way, Jerome Miller has made a shambles of the century-old delinquency reform structure of Massachusetts. In its place he has erected something he thinks will serve better and last longer—a system in which young delinquents are treated not as hopeless criminals but as erring humans who can win back their place in society.

THE HARTFORD PROCESS: MODEL FOR RECONSTRUCTING THE CITY

Mr. HUMPHREY. Mr. President, the September 1972 issue of the Mortgage Banker details the story of city building efforts in Hartford, Conn.—a story which may be the prototype for reconstructing American cities. The Hartford process represents the best of community oriented efforts to mold the diverse elements of any city into a team—a team that works together for both physical and social renewal.

The original concept for the Hartford process came from the American City Corp., a subsidiary of the Rouse Co., Inc., the builders of Columbia, Md. The Hartford process, as envisioned by Rouse's American City Corp., is unique—because it forces a city to face up to the totality of its environment. The process, as the article states—

Treats the job of physical renewal as only one element of an all-encompassing effort that includes basic social change.

Mr. President, I have met with Mr. Rouse and the developers behind the American City Corp. They have, I believe, a sound and progressive format for building new towns or as in the case of Hartford, building new towns in town.

The Hartford process succeeds precisely because the community is involved, the community makes decisions, and the community organizes itself to move directly from planning to actual development.

Mr. President, I urge Senators to examine this article. I ask unanimous consent that the story of the Hartford process, entitled "Old Wine in New Bottles: A Formula for Success in Regional Renewal Efforts," be printed in the RECORD.

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

OLD WINE IN NEW BOTTLES: A FORMULA FOR SUCCESS IN REGIONAL RENEWAL EFFORTS

(By Trevvett Matthews)

Hartford, Connecticut may soon become known as the place where the urban-suburban problem was faced head-on! By keeping their eyes on the ball marked $$$, Hartford businessmen and the planners they have attracted to the 300-year-old city have a fighting chance of saving the urban way of life in the United States.

But it takes more than money or the desire to improve an area. Courage is a key ingredient. It was the courage of corporate chiefs that provided $3.4 million to bring into being a program that—even if it falls flat on its face—will influence American thinking on how to deal with most urban-suburban problems. Other municipalities have already come to take a look, before even a single nail has been driven to implement the regional renewal program.

The ambitious effort being made in Hartford may ultimately reduce the emphasis on conventional brick and mortar aspects of building and put a stronger spotlight on such things as education, transportation, tax structure, and job opportunities.

The Hartford undertaking is unique in that it treats the job of physical renewal as only one element of an all-encompassing effort that includes basic social change. Hartford has drawn heavily on the experience of Columbia, Maryland. Basic to the Hartford effort is the Columbia axiom that social change must accompany physical building. As James Rouse, developer of Columbia, Maryland and owner of The Rouse Co., Inc., whose subsidiary, American City Corp., was hired to research the potential problems in the Hartford renewal, says, "The Hartford 'Process' marks the first time in the history of the country that a city has faced up to the totality of its environment."

Not only in scope of thinking, but in physical and political extent, the Hartford effort is unique. Its 765 square miles cover a sixth of the state and include 29 local governments. This regional development/redevelopment undertaking is unique in a third way: its political powerlessness. As stated in what amounts to a prospectus for local citizens: "The power of both corporations . . . is strictly limited. First neither can condemn land. Second, neither can act outside the legal framework of local government. . . ." Further, they do not "usurp the powers of existing agencies public or private. . . ."

These disclaimers, and others in the 148-page booklet called "An Open Letter to the Citizens of Hartford," make clear that the approach is mostly carrot and very little stick as far as communities and even individual neighborhoods are concerned. Attending public meetings in Hartford reinforces this point. Officers of the Greater Hartford Process, Inc., which is known locally simply as Process, do not receive automatic support from political leaders. Although some elected officials, including the mayor of Hartford, serve as directors, Process must sell its concepts and each specific program it proposes.

Process has a subsidiary, Greater Hartford Community Development Corp., which is known as DevCo. It is the operating arm that must translate into physical reality the ideas that come from Process. Among other things, DevCo is a developer in the conventional sense. But it has a special partner, Process, which seeks to set its goals.

Process, says one planner, "determines the general feasibility, including the financial ramifications for the town involved, and proposes a program to DevCo." DevCo, says an official, has the job of finding money to do the things suggested by "27 dreamers over at Process." The fact that the two are united, both in practical and ideological ways, is possibly the key to the Hartford effort.

Almost as important is the realism with which political facts of life are faced. No illusion exists about the powers and permanence of the 29 governments of the region. Among the disclaimers published by Process is the statement that "it does not represent an effort to establish a regional government." What it seeks is "a coherent approach to the overall needs of our region." The ability of Process to face both political and economic reality without any wishful thinking is reason enough to call it a success even at this early stage. What it does in the next 25 years remains to be seen.

Patrick Cusick, president of Dev-Co, gives the following as a general timetable: Five years will establish Process as a way of doing things, five to 15 years will see substantial accomplishment, and it will take ten to 25 years for the full yield of the effort to be realized. "We haven't invented the wheel, but we do believe we have Mark I of an example of how regional problems should be confronted," says Mr. Cusick.

Process put out its "Open Letter" prospectus in April and is just beginning to implement its programs. Indeed, one of the important steps in the Process timetable is the soliciting of community opinion that may result in modifying its proposals.

This emphasis on public exposure at an early stage is basic to the reasoning that produced Process, and is counted on to provide popular and political support for proposals in their final form. Arthur J. Lumsden, president of the Chamber of Commerce, said, almost a year before Process became an independent entity, that its founders would provide money for public forums "to press the minds of the people of the Greater Hartford region right up against the proposals—to make sure that dissent and disagreement are brought up at the beginning, at the earliest possible time, and thus avoid guerrilla warfare later on."

Hartford's worst physical, social, and economic conditions are in the northern part of the city, which covers half its area, contains 40 percent of its population, and 75 percent of its commercial and office space. It is here that Process is making its first effort, called Phase I. Tentatively, a Phase II is planned

for the southern half of the city, but this and plans for other parts of the region are not firm.

One reason that Process picked the blighted northern part of Hartford as a starting place was that conditions there harmed the whole city. But Process also wanted to show what it could do. The reasoning was that "programs successful in improving conditions for the poorest portion of the region stand the greatest chance of affecting the region as a whole."

DevCo has entered a joint venture with a local association, South Arsenal Neighborhood Development Corp. (SAND) to undertake the first part of the Phase I effort. SAND, formed in 1967, lacked the financial capacity to be a developer on its own. The joint venture has assured state and city tax abatement. It expects to break ground early next spring. SAND, according to Dick Chase, DevCo manager of the project, will receive a third of the profits from the development, instead of the 10 percent normally given to community developers.

The Phase I program, of which South Arsenal is part, is the largest rebuilding program yet proposed for an American city—a $780 million effort. Its 20-year schedule calls for rehabilitating 10,000 dwellings and construction of 6,500 new units, plus an extensive list of amenities. The economic model of Phase I calls for $580 million of private investment (about $320 million more than present trends would produce) plus $200 million of public money from a bond issue. The model calls for the city to realize, via an increased tax base plus state and federal grants, some $124 million more than the $200 million it invests.

The word "model" is used throughout the Process Open Letter, but not until it has been explained that "this kind of model is not a three-dimensional thing, like a model airplane or a model of a building. . . . A model is a representation in words, numbers, and physical plans of the economic, social, and physical aspects of a community."

What will be the second push is not yet disclosed, but financing is already assured for a new community. Reportedly, much of the land has been acquired. Indicative of the expected stress is the fact that Robert P. Tyler, the DevCo vice president who raised this money, says that he has other lenders waiting in line if any current investors cancel out. "This is purely crap-shooting, just as assembling land always is, but there are some differences," says Mr. Tyler. "I have a negative balance sheet, can give no participation, and no guarantees, implicit or explicit." Basically, his money is obtained at a cost geared to prime.

DevCo, although it is legally a nonprofit corporation, expects to report profits. Profits will go to Process, which is a nonprofit corporation that can receive tax-free contributions. Mr. Tyler expects it to be eight or nine years before DevCo can flow dollars through to Process. He notes that the local housing market is about 6,000 units a year, and that DevCo must get 16 percent of that market—a high target for any developer. But he is encouraged by the influx of capital to Hartford, normally a heavy exporter of capital. Coming from a mortgage man who "knows where the bodies are," this augurs well for Process.

The impetus that led to formation of Process came from the business community with a big assist from Mr. Lumsden. This group persevered in the face of obstacles. In 1964, an outside researcher told Hartford leaders that a majority of the 650,000 people in the region preferred the status quo. He said that "no more than tenuous support of regional planning" could be expected from the Capital Region Planning Agency representatives.

Regional thinking has not been a historical trait in what is termed with local pride as "town meeting country." For instance, there has been a Metropolitan District Commission since the early thirties, but it never exercised all its limited authority in utility functions. A series of 1964 meetings on metropolitan cooperation and development published conclusions more filled with hope than substantive reason for optimism.

During the fifties and sixties, a number of Hartford projects were successful, most notably Constitution Plaza, but social problems were not being solved as fast as they developed. Mr. Lumsden recalls that he had the chief executives of Aetna, Connecticut General, and Travelers (later joined by men from United Aircraft and the Hartford Insurance Group), held conversations with urban experts for more than a year before concluding that:

Current actions, even if expanded enough to build a new city, would still leave most of the same problems.

Government at all levels had been unsuccessful and was trying to pass a "hot potato" to the business community, which would also fail if it attempted the job alone.

Suburban sprawl was more insidious than the center city ghetto, and the entire region would have to be treated as a single entity.

No better way could be found to make enemies than to challenge existing government jurisdictions, agencies, and civic organizations. Hence, any action must seek their cooperation.

In April 1969, this group formed the Greater Hartford Corporation, a managing and community development corporation whose primary function is to collect money from 30 contributors. It was through this corporation that the $3.4 million out-of-pocket contribution was made to create Process.

Funds from the Greater Hartford Corp. were used to hire the American City Corp., a subsidiary of The Rouse Company, for a six-month research project in 1969. The findings convinced the Hartford group that a way could be found to solve community problems, and a 22-month, $3-million contract was signed with American City. This resulted in the formation of Process in January 1971. Once the business group decided on the nonprofit approach, it became apparent that broader representation was needed. Although Greater Hartford Corporation remains an organization of corporate contributors, Process attempts to cover the local spectrum. The board includes politicians, labor leaders, and spokeswomen for such neighborhood groups as the Poor People's Federation. In April 1972, the American City contract ended and Process was cut loose to operate on its own.

The $3.4-million gift to Process, and another $1.7-million loan of seed money to DevCo, are only the beginnings of financial support that Hartford business expects to provide for regional renewal. Until DevCo is profitable, the corporations will have to support Process. An additional $7.7 million is budgeted through 1979. This will induce additional investment from foundations and federal agencies. These funds are expected to total $10.5 million during the 1972–79 period.

Several factors contributed to the success of this hefty job of fund raising. Money to get Process off the ground, claim local observers, was obtained because of the cohesiveness of the business community, the unusual strength of the Chamber of Commerce under Mr. Lumsden, and the investment experience of the life insurance companies who were familiar with the snowballing effect often produced in areas where real estate values are declining. Once the leadership made clear which way it was headed, there was not a great deal of trouble in gaining an adequate following.

The business community has not stood in the way of the planners, headed by Peter Libassi, president of Process. The 148-page prospectus for the future of the region tells the aims of the corporation and how it will function.

There are eight guiding principles for Process:

1. Bring the essential parties to the table. Local governments operate in a limited area and if they are to cooperate to their mutual interest, they must be aware of what is beyond their borders. Instead of the traditional ignorance, when one city department might not be aware of what the other is doing, Process seeks to bring together all parties from the public and private sectors. For this reason its board is as diverse as possible.

2. Set forth a believable image of a region that works. This means finding common goals and developing the political support necessary to reach these goals.

3. Unite planning and development with a commitment to carry out the plans. This makes necessary a financially stable DevCo as the operating arm of Process. The lack of a link between planners and practical developers has often doomed good ideas to die on the shelf, buried in the report of a study group.

4. Recognize the inseparability of social, economic, and physical planning and development. Citing the "all systems" thinking used in the moon exploration, Process planners say that on earth "we haven't yet acted as though we understand how one system impinges on another." For instance, infant mortality is not just a question of medical care, but is influenced by such things as an apartment with poor heat, or a father who is always last to be hired and first to be fired.

5. Use physical development as the opportunity for positive social change. When a new school is to be built, there is an opportunity to build a school different from what has gone before.

6. Work at a large enough scale. Isolated projects use up time, money, and civic energy without significantly improving the quality of life. A good system of health care is dependent on more than one community or neighborhood. Transportation problems cannot be solved on a local basis. These are a few of the areas demanding regional attention.

7. Create and capture values. Increases in land value are captured by developers and town governments when land is planned and developed. Similarly, investment to improve social and economic systems can make an area more attractive to private investment, and thus raise land values.

8. Establish a continuing process. Planning cannot be effective on a one-time basis; it must generate a way of thinking that causes a community to engage in a continuing self-examination. This way, the community will face up to decisions rather than let questions be decided by default.

Almost half of the 148-page report of Process is used to describe "Redesigning the Fundamental Systems." These are what it calls the "life support systems" that permit urban and suburban communities to exist. These systems, it says, "have developed in response to constant crisis, offering too little and too late."

Again with reference to NASA work, Process notes that little effort has been made to plan social systems that will produce specific results, such as reforming a criminal or eliminating illiteracy. The effort has always been toward improving an existing penal system or an existing school system. High technology organizations such as NASA, it notes, have used the method of specifying the performance of the finished product, while allowing individual creativity in the details. It is this technique that Process hopes to emulate.

Among the grandiose, almost utopian aims of Process are: basic revision of Connecticut taxes, including the politically hot issue of imposing an income tax; radical reorganiza-

tion of police departments, to make them less paramilitary and more extensions of the average citizen's desire for peaceful surroundings; establishment of at least two prepaid medical plans, which, among other things, would reward doctors for keeping people healthy; complementing the rigid structure of the educational system with a learning system that would be flexible and broad enough to include three-year-olds and the elderly; and development of a correctional system that would focus on rehabilitation and make obsolete the prison system that emphasizes physical retention of offenders.

Process, by definition, cannot be completely successful in attaining the end results it envisions. Any progress it makes is likely to produce new, more difficult goals. But it is likely to be a success compared with conventional renewal efforts, and it may attain a measure of success in unexpected areas.

To paraphrase Bob Tyler, the mortgage man whose pencil must be sharp enough to convince investors to gamble on the financial success of the undertaking: This is the first time outside academia that cost benefiting has been done for social services. Which will yield more, a dollar spent on educating the underprivileged, or a dollar spent on food to help the brain of a tiny infant develop to its full potential? The Hartford Process will not answer such questions for all time, but it is dealing with them on a real time, real money basis.

WILBUR COHEN'S GOALS FOR OLDER AMERICANS

Mr. CHURCH. Mr. President, this month's 25th conference on aging of the Institute of Gerontology at the University of Michigan-Wayne State University was memorable in many respects, but one of its outstanding events was an address by Wilbur J. Cohen.

Mr. Cohen is now dean of the school of education at the University of Michigan and cochairman of the Institute of Gerontology. He is also a former Secretary of Health, Education, and Welfare and one of the most effective architects of our social security system.

For his topic at the anniversary conference, Dean Cohen chose to forecast what the next 25 years may bring in the way of security and satisfaction for older Americans.

His immediate goal is the elimination of poverty among older Americans, primarily through improvements to the social security system. But Dean Cohen also sees the need for other actions, including adjustments in our practices and attitudes toward work patterns throughout the average lifetime. He asks us to share his belief that, while human beings continue to make mistakes, they also continue "to try to uncover the secrets and mysteries of the universe in which the greater the risks, the greater are the opportunities."

Mr. President, Dean Cohen's address is significant and challenging. I ask unanimous consent that it be printed in the RECORD.

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

TOWARD A NATIONAL POLICY ON THE AGING: THE NEXT 25 YEARS

(By Wilbur J. Cohen)

Twenty-five years from now, when we will meet here again, the issues and problems facing the aged of our nation are likely to be both very different but at the same time very much the same in some respects as today. There will be many changes, but these changes will bring new problems which our children and our grandchildren will have to resolve. We can make the resolution of these issues a little easier for them by what we do in the next few years, but many of the changes that will occur will also result in new and perplexing dilemmas, while at the same time offering interesting challenges for innovative and creative new programs.

The fundamental factor which in my opinion will result in many changes will be the continued economic growth of our economy. I believe there are reasonable grounds to believe that our economic growth during the next twenty-five years will be not less than the economic growth which has occurred during the past years.

Our economic growth over this period has averaged 3 to 4.5 per year. With the many scientific and technical developments which are on the drawing board at the present time, I believe that our economic growth will continue to be even more favorable than it has been in the past.[1]

This economic growth will make it possible for us to share the growing affluence throughout our society so that poverty will be eliminated. As a first step in that direction, poverty can, should, and will be eliminated among our senior citizens within the next five to ten years. We have taken significant steps in this direction by the Congress increasing social security benefits over 50% in the past 3 years.

A monumental step forward was taken this year when on the initiative of chairman WILBUR D. MILLS and Senator FRANK CHURCH Congress adopted a 20% increase in social security. This will result in about 1.9 million persons being removed from the poverty rolls, of whom about 1.5 million are 65 and over.[2]

There are, however, some three to four million persons aged 65 and over who are still in the poverty group. I believe that an additional number of these can be removed from poverty by an immediate increase in widows' benefits under social security from 82½% of the primary benefit to 100% of the primary benefit.

Such a provision was incorporated in H.R. 1 which passed the House of Representatives last year and the Senate Finance Committee has also approved this recommendation. It is my hope, therefore, that this proposal will be adopted by the full Senate and the Congress this year, thus taking another important step in removing additional aged persons from the poverty group. About 3.8 million persons would receive immediately increased benefits from adoption of this provision.

The Congress recently adopted a provision which provides for the automatic increase in social security benefits related to the rise in the cost of living. There is merit in this proposal. However, it must be recognized that any increase in social security benefits related to the increase in the cost of living only places the beneficiary in the same relative position he was in previously. It does not provide for a real increase in benefits. Therefore, we need to have some other provision which will make it possible for the aged to share in the economic growth and affluence of our society. The automatic cost-of-living provision does not do this.

I believe, therefore, that we must make other changes in the social security system to reflect the growing and dynamic character of the American economy. I propose, therefore, that the method of determining the average earnings for benefit for purposes in social security, which is now essentially a lifetime or career average, be basically modified so that the earnings computation will be based on the most recent period of earnings which is most favorable to the individual.

Federal civilian employees now have their average earnings determined on their best consecutive three-year average, while the military have their benefits determined on their highest rank and pay. I hope, therefore, that the Congress will consider taking steps to treat individuals contributing to social security on approximately the same basis as Federal civilian and military personnel.

A first step along these lines could be taken by adding additional dropout years to the five years of dropout which are now authorized by Federal law. We could therefore proceed to initially have social security benefits based on the best fifteen years of earnings in the immediate future, then by 1975 go to the best ten years, and, as our resources increase, subsequently to the best five years, then to three years, and eventually to the best single year.

I believe we can reach this goal before twenty-five years from now, but I hope the Congress will start on this road this year by enacting an additional dropout year for each 15 years of coverage such as is contained in H.R. 1 as passed by the House of Representatives.

Another—and in some ways even more important step—is for benefits after retirement to be increased in relation to increased productivity and earnings in the general economy. Let us assume that after a person retires prices rise approximately 1% to 1.5% per year on the average.

On the other hand, let us assume that earnings increase about 4% a year which, in my opinion, is a reasonable prospect in the kind of dynamic and growing economy I envision in the United States during the coming twenty-five years. If benefits are only increased in relation to the cost of living, then the retired aged person will fall further and further behind in his relative status with other members of the population.

This would not only be inequitable but, in my opinion, would be undesirable, tragic and immoral. The aged should share equitably in the development of the economy just as children, mothers, and all others in our economy should. The way to handle this problem is, therefore, to increase the individual's retirement benefit by approximately the same increase which takes place in earnings, thus putting the social security system on a dynamic basis to match the dynamic character of our economy.

Several countries have already incorporated this general principle into their social security program by one way or another. I believe this is an important new step that must be taken to make our social security system a meaningful one for those who retire.

The problems to be solved, however, during the next two or three decades are not as simple as they may seem to some who advocate very simplistic notions about retirement planning. With the growing affluence and productivity that I have indicated I see ahead of us, there is also likely to be a demand for earlier retirement and, at the same time, medical and scientific miracles will extend the lifespan so that many more individuals will have a longer period of time in retirement than before.

This will result in a more costly program as far as both social security and private retirement plans are concerned. We must do a great deal more thinking of how to balance the adequacy of the amount of payments while a person is in retirement with the total amount of payments that or she will get over their retirement lifetime.

It is for this reason that I am one of those who strongly favors continuation of a retirement test for some period of an individual's retirement. It is erroneous to argue that there

Footnotes at end of article.

should be no retirement test because an individual has "paid for" his benefits.

The fact of the matter is that no age group of persons have yet paid fully for their retirement benefits. If general revenue contributions are included to finance the cost of the social security program, there may never come a time when any age group has fully paid for their benefits. In any case, at the present time the actuarial calculations for the contributions that are being paid presently and in the future all assume a continuation of a retirement test so that no group of people are being unfairly dealt with from a financial point of view even though you may read articles and statements to the contrary.

Another objection to a retirement test is that it prevents individuals who wish to continue work from doing so. This argument has some merit but usually only with regard to a very small number of people. Most aged people are physically unable to work and most older individuals do not wish to work. There are, however, two groups of people who wish to work.

The first are professional people such as lawyers, architects, physicians, engineers, professors and other self-employed people who are, by and large, in the upper-income group and can continue to earn substantial sums of money even when they work less than full time.

The other group consists of aged persons with very low incomes who wish to work part time to supplement their inadequate income or, like the professional person, who wish to continue to do some work in order to have a feeling of satisfaction and contact with other people.

The social security law at the present time is a combination of a retirement test for individuals under age 72 and an annuity for people aged 72 and over. A proper allocation of financial responsibility seems to me to indicate lowering the age at which the annuity begins from 72 to 70, providing for both men and women to be eligible for social security benefits at age 60, with a retirement test from age 60 to 70 set at present prices of $200 per month instead of the $140 in the present law.[3]

This amount should then periodically be increased in relation to changes in earnings levels just as other benefits should be adjusted upward as earnings levels increase. Approximately 2 million persons would receive increased benefits by these changes.

Individuals who work past the age of 65 also should have their benefits re-computed annually and an increment of at least 1% should be added to their benefits for each year after 65 in which they work and do not draw any benefits. This provision in H.R. 1 would result in increased benefits for 5 million persons immediately.

I believe that it would be unwise to eliminate the retirement test at this time or in the near future or to so liberalize it that all, or practically all, people who continue to work after age 60, 62, or 65 would receive their full wages plus their full benefits. This would be an unwise use of limited funds since the only people who would benefit would be those who could work and find jobs while the millions of other aged persons—comprising some 90 to 95% of the aged—would get nothing additional from the billions of dollars of increased expenditures.[4] We will do much better in the immediate future to put as much of our available funds at those points where they will meet the greatest social need, rather than to add to our cost by providing the funds to those who are most able to work, have the highest incomes and who least need the additional benefits.

There are presently about two million persons aged 65 and over who are receiving State welfare benefits with the aid of Federal funds. In addition, there are approximately 1.2 million disabled and blind individuals under the age of 65 who are in substantially the same dependent position as retired aged persons on welfare. I strongly favor taking this entire group of about 3 million individuals and providing for payments to them directly from the Federal government.

The Federal government should finance the cost of payments to this group entirely out of general revenues and the program should be administered by the Federal government through the Social Security Administration on a uniform, nationwide basis, with simplified eligibility conditions. I believe that the amount of the payment at present prices should be not less than $150 per month for a single individual and $225 a month for a couple.[5]

For the time being, in any State which makes payments to an individual of a larger amount, they should be required by Congress to supplement the Federal payment for this transitional group of beneficiaries. As the Social Security program is improved, there will be fewer and fewer individuals who will have to apply for such Federal benefits and in the course of time this program can be eliminated or superseded by the Social Security program covering all aged persons with a basic minimum payment.

Looking forward to the future, I see the Social Security program financed in part by contributions out of the general revenues supplementing the employer and employee contributions. In general, I favor a reasonably adequate minimum benefit with the Federal government paying out of general revenues the cost of any such benefits which are above what the formula in the law would produce for the person who would normally contribute for a full 40 years of his or her working lifetime.

To illustrate what I mean, let us assume that an individual would normally receive about 40% of his earnings as his benefit and if he had a wife who had not worked at all that she would receive an additional 20%, thus making a total they would receive together of about 60% of their earnings.

If the minimum payment were to produce for a particular individual 80% of his prior earnings, then the difference between the 60% he would have received and the 80% would be paid out of Federal general revenues. There are a number of different ways in which this same result can be achieved. I have tried to illustrate the principle in a general way without necessarily indicating the exact financial method by which the cost to Federal general revenues would be computed.

Another change in the program which seems to me desirable would be to provide for a partial refund of contributions to employees and self-employed persons with very low incomes. To illustrate, assume that an individual with a family was earning less than whatever the poverty level was for him and his family at a given moment of time.

The individual would pay his social security contribution as he does now but at the end of the year he could file for a refund of a portion of his social security contribution. Thus to illustrate the principle, if he had earned $2000 in the year, and the social security contribution was 5%, he would have paid a contribution of $100. When he filed for the refund he could get such proportion of this $100 back as Congress determines. I would recommend that he not get a full refund so that he would continue to pay some small amount toward his social security so that his benefits would continue to be a statutory benefit as a matter of contributory right without an income test.

While as we work toward further improvements in social security for the aged during the next twenty-five years, we must also recognize that we must deal more fairly and adequately with many people under the age of 65 who are deserving of our understanding, compassion, and protection.

There are some twenty million individuals under the age of 65 today who have incomes below the poverty line. Well over half of these individuals are children under the age of 18. We must provide a reasonably decent income to these families with children so that they will grow up to become responsible citizens whose work and efforts will produce the goods and services that will make it possible for the generations ahead of them to retire with adequate retirement benefits.

It is in the interest of the aged to be generous in meeting the needs of our children and grandchildren. This makes good economic sense and good morality. We cannot look upon one group as the competitor or enemy of the other without unfortunate results which will be detrimental to them both and to our society as a whole. While I believe that our body politic is now ready to make a commitment to provide national income insurance to the aged, disabled, widows, and orphans, I believe that this is just a first step to such a national income guarantee program for the working poor, and particularly for families with children.

After all, the social security program is an income guarantee program to the aged, the disabled and to widows and orphans. Such a national income guarantee program has worked successfully and has been administered wisely and effectively by the Social Security Administration. The social security offices throughout the United States provide a quality of service to individuals who apply for benefits that is outstanding.

The personnel of these offices are well trained. Most of the checks come to the beneficiaries on time. Moreover, the entire system is administered very efficiently, with the total administrative cost for old age and survivors benefits being equivalent to only 1.5% of the contributions—a figure which is neither equalled nor challenged by private enterprise.

As I look forward to the years ahead I see, however, the possibility of making the system even more efficient and less costly by eliminating the monthly distribution of millions of checks to the individual mailboxes of the recipients.

I see no reason why, with our present computors, a social security check or the national income guarantee check could not be deposited in the individual account of the beneficiary in the bank, credit union, or building and loan association of his or her choice with the social security number being used as the identifying control. In this way we would eliminate lost and stolen checks and the occasional mailbag which is misplaced at the post office. The printing and mailing of individual checks would be avoided.

Social security probably can never provide adequate income to all beneficaries. Individual savings through home ownership is a very important element in the economic security for the aged. There should be more different kinds of housing to suit the changing needs of older persons.

Some older people wish to move out of their houses into apartments so they do not have the responsibility for caring for the lawn, washing the windows, removing snow, and similar obligations. Some wish to move to warmer climates. We should establish a wide variety of housing arrangements to meet the different life-styles and requirements of older persons.

We must especially provide alternative arrangements to minimize the pressure to put older persons in nursing homes. Many older persons can be kept in their own homes and apartments if appropriate health, homemaking, nutrition and related services are available. In England, far fewer persons are placed in nursing homes because they make

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Footnotes at end of article.

these kinds of services available. If they can do this, why can't we?

Private pension plans exist which supplement social security. These private plans have grown very rapidly but they still provide benefits to only a small proportion of the present aged. They will undoubtedly increase during the next 25 years. There are, however, very serious problems in the private plans. As in the case of the closure of the Studebaker Company, there is no real assurance that every promise can or will be kept. Many plans do not have full vesting of benefits or full reserves to pay off all commitments. New Federal legislation is urgently required to make private plans meet basic standards of security, adequacy and fairness.

One of the high priorities in the immediate future is to provide a decent and reasonable income to the young children and middle-aged families whose incomes are still below the poverty line. It is for this reason that I strongly favor at this time passage of Senator Ribicoff's amendment to H.R. 1 which would establish a payment level of $3,000 to a family of four without any other income. This is roughly equivalent to approximately three-fourths of the poverty level for that size family. Senator Ribicoff proposes to reach the poverty level within about four or five years, which by 1975 or 1976 would probably be in the neighborhood of $4,500 for a family of four, assuming a reasonably moderate increase in prices and earnings in the immediate future.

To provide all of the roughly twenty-five million people in the United States with income below the poverty lines with sufficient income to bring them up to the poverty level would cost about 10 billion dollars a year. This is roughly equivalent to about 1% of our gross national product at the present time. However, the problem is not as simple as just providing the income which will bring an individual or family up to the poverty line because it is desirable to provide an incentive to the individual who goes out to work to keep some of the earnings from his work.

If the incentive feature is set at a point where an individual can keep anywhere from ⅓ to ⅔ of the earnings from his work, it will obviously probably cost closer to 25 billion dollars a year to accomplish the combined effect of eliminating poverty and providing a work incentive. Because of the costs involved, it probably would be more acceptable to the Congress and to the American people to establish the initial payment level at somewhat less than the poverty level, but with a work incentive feature, and then progressively improve these two provisions as our gross national product and affluence improves.

We have discussed some important steps to improve the conditions for our aged, disabled, blind, widows and orphans and those who are families with children and where the breadwinner is working but not earning enough to bring him or her up to the poverty level. But, at the same time, we must be realistic and understanding of the needs of the men and women who work hard every day, earn their living, pay taxes, and who are not on welfare nor are likely to be on welfare during their working lives.

Some of the increased earnings due to increased productivity must clearly go to these individuals for they are the backbone of our productivity. They are not only the tax payers, but they are also the voters and the articulate consumers. As I look ahead, I see that the increasing productivity and earnings benefit them in the following ways: (1) the weekly hours of work may be reduced from 40 to 37½; however, some individuals may prefer to have the 40-hour week but work a four-day work week. Others will prefer to take their increases in longer vacations. (2) Looking ahead still further, I see the possibility of individuals receiving a full sixteen weeks of time off for each five years that they work.

This will enable any individuals to go back to school for a semester or term and learn new skills, prepare for a "second career," develop new ideas or prepare more effectively for retirement. This will result in a still further increase and expansion in community college which will have a wide-range of courses available to people in their home communities at little or no cost in special fees. This will make an opportunity for many more teachers in the community colleges.

I also see the prospect of average total family income increasing based upon more women and wives working. As more women go to work, there will be an increased demand for early childhood education and day care of young children, not only for those children aged three to five, but even for children younger than age three. Here again, this will provide tremendous opportunities for teachers in early childhood education, administrators of day care centers, and the evaluation and research of many different possibilities for different kinds of work with young children.

While this development may have profound effects upon the family, the likelihood of continued expansion of family planning services is likely to reduce the number of very large families and result in the more adequate spacing of children. The combined impact we cannot adequately foresee at the present time.

In addition to these possible changes affecting the middle-income families, I see certain changes occurring in the tax laws which will also benefit the middle-income family. At the present time the middle-income family whose income is entirely or largely from earned income may pay more in Federal income taxes proportionate to his income than a very high-income family whose income is received from capital gains or other sources where the taxes are either lower or non-existent.

For the middle-income person to be dealt with fairly, it will be necessary to change our tax laws so that money earned by men and women will not result in higher relative taxes than money earned by money in terms of speculative investment. Thus, for those who really believe in the work ethic, as I do, a necessary change is in our tax laws so that money earned by work is not unduly penalized as it is today.

Another necessary change which I believe will occur is the reduction in the residential property tax as a method of financing elementary and secondary education. This tax bears particularly heavy on older people who are living on fixed retirement incomes. The first step would be to eliminate practically all residential property tax on aged persons with incomes below $6000 per person and then find ways to further reduce the property tax for all persons.

One step to accomplish this objective would be for the Federal government to pay at least 35% of the total cost of all elementary and secondary education out of Federal general revenues so as to relieve the States and localities of a very large portion of the residential property tax. At the present time the Federal government is providing for about only six percent of the total cost of elementary and secondary education in the United States. We need to improve our elementary and secondary education system but we cannot do so if we are going to continue to depend so strongly on the residential property tax as a method of financing it.

There is no question in my mind but that 25 years from now we should have practically eliminated the residential property tax for financing education and have found a more equitable and progressive method of meeting the educational needs of our future generations.

I do not think that it will take 25 years to find a better way to finance and handle health services in this nation. I believe that within the next five years we will have a national health insurance plan which will cover everybody from the time they are born until the time they die. It will cover the rich and the poor, the city person and the farmer. It will provide for a comprehensive scope of benefits that will bring the magic of the medical miracles to the millions of our people.

There is already general agreement that we need some kind of a national system which will insure everyone against health costs. But, in addition, there is also general agreement that we must develop a more effective delivery system which will actually bring medical care to people when and where they need it in relation to their medical need.

Today many persons receive very valuable and costly health services for medical care which is not properly related to their medical need. On the other hand, there are millions of people in the inner city who cannot get a physician when they really need one. Some 20 to 30% of the individuals who are in a hospital on a given day would not need to be there if we had a wider range of services and facilities that would meet their needs. The maldistribution of our medical services at the present time is tragic, wasteful and unnecessary.

One way in which not only a larger quantity of medical services could be provided but also more effectively and efficiently would be to have physicians, nurses, and other health personnel organized in groups. This kind of program, called "group practice" or a "health maintenance organization" would enable the health personnel to work as a team rather than as a fragmented and disorganized piece-work system such as exists in most places in the country at the present time.

Naturally, this will require a major shift in attitude both with regard to the providers of services as well as the consumers of services. Medical care and health services are becoming so complex that it is no longer possible for one individual to know all there is to know about all the diseases, disabilities, drugs and the therapy that is possible or to be aware of all the diagnostic skills that are available or the preventive measures that can reduce sickness, disability and premature death.

Most physicans are still leery of working together in groups, as are most patients. But a whole new health education program must be undertaken if we are to be able to bring medical care to people who need it, to control the mounting costs, and to meet the health and medical needs of our fellow citizens.

All this will not be an easy task. Most physicians are very conservative, independent, and deeply concerned about their professional status, their incomes, and their freedom. One of the larger tasks of the coming decade is how to retain the freedom of the individual practitioner, enable him to make his diagnosis and treatment without interference but at the same time make him accountable, provide him with a reasonable income in relation to his years of training, experience and ability, and at the same time control rising prices, give the patient and consumer of medical care a larger voice in policy decisions of health without interfering with the medical decisions of the practitioner. This is obviously a very big order, but one in which I feel from past experience can be solved, provided that physicians will begin to cooperate with nonphysicians in the examination of ways to deal with these problems.

I hope that physicians will have learned something from the Medicare experience. If they continue to stay on the outside look-

ing in on medical economics problems instead of getting on the inside looking out and use some of their talents and find solutions to our problems rather than finding only objections to proposed solutions, we may be able to enter into an era of cooperation. This may avoid socialized medicine and regimentation which both the physicians as well as myself so strongly disapprove.

The advent of national health insurance for everyone should help to reduce still further infant and maternal mortality, increase the availability of family planning services, and thus have some further impact increasing the life expectancy of persons even at some of the upper ages. If this does occur during the next 25 years, it is most likely that many individuals who live somewhat longer will have more chronic ailments and this will necessitate re-examining many of our present arrangements.

In the first place, it argues strongly for the inclusion of prescription drugs under the Medicare system so that the small number of older persons who have a very heavy cost for prescription drugs will have a large portion of this heavy cost met by the social security program. Such action requires great care because there is an inevitable human tendency for people to over-use drugs in an effort to find some relief from a disability.

It will not only require a more basic health education program concerning drugs, but a greater degree of vigilance on the part of the Food and Drug Administration over ineffective drugs and require adequate labeling and information so that not only the patient but the physician and the pharmacist have a better idea of what the risks and counter indications really are.

In order that the consumer may be more intelligent in this regard, we need a national compendium of drugs which is approved by the Food and Drug Administration and we need to encourage the use of generic drugs in order to keep the prices of prescription drugs as low as is economically and socially desirable.

There are other difficult problems that we must face in the years ahead. With new drugs, new information, new devices, new surgical skills, it will probably be possible to keep many people alive who would have died earlier years ago. The whole problem of how to deal with terminal illness remains one of the most difficult and complex issues of our time. We do not wish to have the physicians play God but, on the other hand, we must find some way that individuals can die in dignity that respects not only their own wishes but the wishes of those they leave behind. I do not know the answer to this problem, but I venture to suggest that each of us will be working on this problem and in the future we may be putting into our will or informing our children or physician of how we wish to be treated when that inevitable moment comes for each of us.

This brings up the important question of providing the services to older people which they need. Money alone does not produce the necessary personal services to people when and where they need them. There must be an organized effort to provide the social services in the community, the neighborhood or the housing project which are necessary. Individuals must be trained to perform these services.

The present effort in Congress to use a meat-axe approach to limit social services is a step in the wrong direction. While some reasonable limitations are necessary to assure proper and efficient use of limited funds, the aged, blind and disabled should not have services curtailed. A new approach is necessary to provide the services required.

So the next 25 years will bring many new problems and a continuation of many old problems. The challenge for all of us will still be there. I do not look ahead with a feeling of doom and gloom. There is great opportunity for men and women who wish to work hard, to use their brains and their hands to fashion new and better ways to deal with human problems.

I believe there will be more opportunities for people in the future than there have been in the past. I think that new avenues of ideas and life styles will be opening up which will free the human spirit. I see the possibility of new ideas that were thought impossible when I was a boy. I see human beings continuing to make mistakes but continue to try to uncover the secrets and mysteries of the universe in which the greater the risks, the greater are the opportunities. I think the atomic bomb may possibly bring us freedom from large-scale war. We may then be able to concentrate on dealing more effectively with our pressing domestic social needs and with re-ordering our priorities at home and abroad.

For each tragedy and for each anxiety there is also a great accomplishment on the part of mankind. We witnessed just a short time ago for the first time a case of one man winning seven gold medals in the Olympics.

At the same time we saw the use of naked raw force that was as savage and uncivilized as you might imagine. Perhaps in the next 25 years we will be able to redress the imbalance by concentrating more on man's accomplishments than upon his tragedies. I hope you will join with me in returning 25 years hence to see whether mankind can do better than I have set forth.

FOOTNOTES

[1] For the 60 years 1910–69, the average annual compounded rate of growth in the national product was 3.1 percent; for the period 1960–69 it was 4.5 percent. An annual average growth rate for the future between 4 and 4.5 percent, therefore, seems feasible. On the other hand, prices during the period 1960–69 went up an average of about 2.5 percent. Over a 50-year period, 1920–69, prices went up less than 2 percent on the average. Thus, productivity has been increasing faster than prices and hence, the standard of living has improved. *Statistical Abstract of the United States, 1970*, pp. 313 and 344.

[2] There were about 4.7 million persons age 65 and over with incomes below the poverty level in 1970. The poverty threshold in 1970 was: $1,852 for a single aged person and $2,328 for a couple. Source: *Characteristics of the Low-Income Population, 1970*, U.S. Dept. of Commerce,, Bureau of the Census, Series P–60, No. 81, Nov, 1971, pp. 3 and 20.

[3] I would recommend that individuals who are disabled for employment in their regular occupation receive full benefits at age 60 or age 55.

[4] In 1969 there were 17.9 million persons aged 65 and over eligible for benefits. Some 8.3 million were age 72 or over and were not affected by the retirement test. About 6.6 million persons had no earnings at all, and 1.2 million had earnings of $1400 a year or less. Thus, a total of 16.1 million of the aged, or about 90% of the aged, were not affected by the retirement test. About 1.4 million persons, or 8 percent, were earning amounts which resulted in the loss of some or all their benefits. Some 400,000 were close to the limit which may have been due to their limiting their earnings to conform to the test. Source: *The Stake of Today's Workers in Retirement Security*, Senate Committee on Aging, April 1970, p. 20. The figures come from the Social Security Administration.

[5] At this payment level some 5 to 6 million persons might be eligible for benefits.

THE COOPER-MUSKIE AMENDMENT TO THE FEDERAL-AID HIGHWAY ACT OF 1972

Mr. COOPER. Mr. President, on Tuesday the Senate adopted the Cooper-Muskie amendment to S. 3939, the Federal-Aid Highway Act of 1972, by a vote of 48 to 26, and then approved the bill, 77 to 0. There was a limitation on debate, and as time was short, I take this opportunity to say that the vote on the amendment was testimony not only to the merits of the proposal, but also to the personal dedication and unfailing efforts of the Secretary of Transportation, Mr. Volpe, on its behalf.

Earlier in the session, the Secretary submitted to Congress legislation to allow metropolitan areas to use highway funds for mass transit. Although certain features of the administration's proposal failed to receive widespread acceptance, the Secretary has continued actively to support and promote the idea of allowing greater flexibility to cities in planning and carrying out transportation programs. Great credit is due Secretary Volpe for his part in the passage of this measure to provide more balanced transportation to cities.

I ask unanimous consent to have printed in the RECORD a letter I received from the National League of Cities/U.S. Conference of Mayors, supporting the Cooper-Muskie amendment.

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

SEPTEMBER 19, 1972.

HON. JOHN SHERMAN COOPER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR COOPER: The National League of Cities and the United States Conference of Mayors wish to express strong support for Amendment No. 1512 to S. 3939, the Federal-Aid Highway Act of 1972, to allow Urban System funds to be used for fixed rail and bus public mass transportation systems. Adoption of this amendment will signal the firm commitment of the Federal Government to a balanced transportation system responsive to the needs and priorities of local governments. Furthermore, by allowing only Urban System funds to be used for rail, bus, and highway transportation systems, funds would not be withdrawn from already planned and much-needed highway projects on the Primary and Secondary systems. This amendment would therefore be a positive step forward to allow cities to determine not freeways versus rail transit, but how much of each, as determined by the elected local decision-makers.

We would expect continued reliance to be placed upon general revenues to support the bulk of public mass transportation programs. A strengthened Urban Mass Transportation Assistance Act, as contained in S. 3939, coupled with opportunities for urban areas to use Urban System Trust Fund monies for either highway or public mass transportation systems, as proposed in Amendment No. 1512, would give urban areas the opportunity to integrate planning and flexible program funding so as to provide the means for a balanced urban and national transportation system.

The National League of Cities and the U. S. Conference of Mayors urge support be given by all Senators to Amendment No. 1512 to S. 3939.

Sincerely,

ALLEN E. PRITCHARD, Jr.,
Executive Vice President, National League of Cities.
JOHN J. GUNTHER,
Executive Director, U. S. Conference of Mayors.

THE ASCS PUBLIC ACCESS PROGRAM

Mr. BELLMON. Mr. President, the New York Times of September 7, contains a story reporting on the excellent features of the Department of Agriculture's new public access program. The public access program was authorized by the Agriculture Act of 1969 and is now being tested on a pilot basis on 150 counties in 10 States. USDA provided $1,500,000 for the initial pilot program.

The thrust of the program is simple: The Department of Agriculture, operating through the Agricultural Stabilization and Conservation Service, contracts to pay farmers a nominal fee if those farmers will open their lands to the public for fishing, hunting, hiking or other forms of recreation.

I bring the New York Times article to the attention of the Senate, because it reports on the apparent success and widespread acceptance of the pilot program on the part of both the farmer and the recreationist. The article further supports my belief that the public access program is one of the wisest public recreation and environmental improvement programs enacted in recent years by the Congress. I feel it deserves the support of Congress for expansion to a much larger scale.

Mr. President, there are many reasons why the public access program represents a good investment of public funds.

We are all well aware of the surging demand for recreational space and recreational opportunities close to population centers. This has resulted in serious overcrowding of available recreation areas. Both State and Federal Governments have responded to the demand by purchasing large amounts of land for hunting and fishing, parks and other public uses. These lands are maintained at heavy expense and cease to provide local tax revenues. In spite of the large purchases and the great amount of money spent, Government is still not able to keep pace with the demand for public use areas.

The fact is, there will never be enough money in the Treasury to buy all the land needed for public recreation—especially for uses such as hunting and hiking which require large acreages. In the future, as in the past, we must still depend upon privately owned lands to provide the majority of the recreational opportunities, especially in the eastern one-half of the country where only a small percentage of the land is in the public domain.

In the recent past, hunters and fishermen had little difficulty obtaining access to private lands. In more recent times, due to increased pressure on available lands, access has been greatly restricted by private landowners. In many areas of the country it is virtually impossible to find a farm or ranch that is not posted with "no tresspassing" signs. Landowners who allow public access sometimes find their lands overrun by the number of urban residents looking for a place for recreation. For their own protection these landowners are forced to close their lands. Access to private lands has declined in direct proportion to the increase in demand, and one result is increasing tension and misunderstanding between rural and urban dwellers.

Mr. President, the public access program has great potential for reversing these trends—for once again opening private lands to recreationists and for greatly improving relations between farmers and urban dwellers.

In the current pilot program, the Agriculture Department has completed agreements which will open more than 1¼ million acres of private farm lands to the public. That will convert to several million man-days of additional recreational opportunities for our citizens.

In addition, 365 farm ponds and small lakes on private farms were opened to public fishing last spring, and preliminary reports indicate that use has been phenomenally high. For example, the New York Times article refers to one pond in the State of Indiana which was used by more than 1,300 persons during the summer. The cost to the Federal Government for making this fishing pond available to the public was only $150—or about 11 cents per fishing day.

The economics of the public access program represents one of the strongest arguments in its behalf, and one of the major reasons why the program should be expanded.

A number of studies have been conducted by the Department of Wildlife Conservation in my own State of Oklahoma to determine the cost of buying and managing lands for public recreation. On one such area, which had the highest rate of usage in the State, the cost of buying the land when spread over 25 years amounted to $5.48 per acre per year. The annual cost of operating and managing the land amounted to $2.01 per acre. This brought the total cost for each man-day of hunting to nearly $13.

Land prices have risen greatly over the last 25 years. Using current land values and current interest rates the annual cost to the Government of owning and managing are roughly double.

Under the public access pilot program, 1,278,570 acres have been opened to the public at a total cost of $1,355,682. This is an average annual cost of $1.06 per acre. That is about one-half of what it costs the Government to manage an acre of land that it already owns and less than 10 percent of what it costs the Government to purchase and manage public access lands.

It is easy to see that the Government and the public get far more benefit from each tax dollar spent under the public access program than when the money is spent for outright acquisition of public use areas. Even the poorest farmlands sell for upwards of $200 an acre at the present time.

The annual interest cost to the Government on a $200 purchase price, figured at the current borrowing rate of 6¾ percent, amounts to $13.50. To this must be added an annual management fee of at least $1 per year, and an annual tax loss to local governments of about $1.50 per acre.

This brings the total cost, not including capital outlay, to $16 an acre per year for land owned and managed by the Government compared to just over $1 an acre under the public access program.

Mr. President, the public access program is one under which everyone benefits.

It allows the Federal Government to provide far more benefits to the public for every recreation dollar spent at much smaller outlays from the Federal Treasury.

The public realizes far more recreational opportunity in a great many more conveniently located places and is required to pay far less in taxes for the opportunity.

The farmer realizes an additional income from his land which helps bolster the sagging rural economy, and far less land will be taken out of agricultural production and off local tax rolls to be set aside solely for recreation.

The total environment will benefit, because the public access program has incentives for farmers to improve wildlife habitat on their lands.

Many of these advantages of the public access program were recently pointed out in an article in the Daily Oklahoman by Glenn Titus, a widely known wildlife management specialist and outdoor writer. I ask unanimous consent that the article by Mr. Titus and the New York Times article which I mentioned previously be printed in the RECORD at the conclusion of my remarks.

Mr. President, I urge Senators—particularly those from the 10 States where the public access pilot program is being conducted—Colorado, Indiana, Iowa, Louisiana, Michigan, North Dakota, Oklahoma, Oregon, Pennsylvania, and South Carolina—to become familiar with the program, to study the wisdom of the program, and to support expansion to a nationwide program at the earliest possible time.

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

[From the Daily Oklahoman, July 27, 1972]

PUBLIC ACCESS PROGRAM

(By Glenn Titus)

An opportunity to reverse the trend of fewer places to hunt, fish and just enjoy the outdoors is being offered to the urban and suburban dwellers of Oklahoma by the federal "Open Acres Program."

This is a pilot program under national farm legislation and operated by the Oklahoma office of the Agriculture Stabilization and Conservation Service.

Bascially the federal government pays the landowner a fee, on a per acre basis, to let people use his land for recreation. Also the rate per acre is higher if the land has good cover for wildlife and thus, provides an incentive for landowners to improve wildlife habitat on their holdings.

This program isn't one that was hatched out on the banks of the Potomac, but got its start right here in Oklahoma.

When Sen. Henry Bellmon (R-Okla.) explained the Open Acres Program at the National Quail Symposium in Stillwater last spring, he credited the late Wendell Bever, a former state wildlife director, with the original idea.

However, it was the Senator himself who devoted time toward getting various state and federal agencies to develop the plan and then he had to fight to get the program through Congress and put into operation by the agriculture department.

I would guess there have been about six

years of effort, by a number of folks, into getting Open Acres operating on an experimental basis.

On several occasions I have heard the Senator state his reasons for supporting the Open Acres idea. He has said that the demand for recreational land will not be denied.

Thus, the two alternatives to meet the demand of recreation seekers are: one, to buy more public land near population centers or two, provide the recreation on private land with a cash income to landowners.

Bellmon is both an ardent hunter as well as a rancher and understands the need for recreational land. Yet, typical of many landowners, he believes that with a few exceptions private land should be kept in private ownership.

Thus, the Open Acres Program has been created as an attempt to provide space for recreation and at the same time keeps the ownership of the land in private hands.

How well the program works is up to us who use this land for our outdoor recreation.

If we respect the land and its owner, be careful of our litter, take the time to stop by and get acquainted with our host and show our appreciation, there is little doubt that the plan can be a success.

Should we tolerate any slobs, be they masquerading as hunters, fishermen or picnickers, abusing these privileges, then we can except the program to fold.

True, our tax money is paying for these privileges, but not near enough for any landowner to put up with many ill-mannered litterbugs.

[From the New York Times, Sept. 7, 1972]

UNITED STATES PROMOTING EXCURSIONS DOWN ON FARM

(By Seth S. King)

STROUD, OKLA., September 1.—Claud Earp squatted happily on the damp, manure-spotched bank of his farm pond, watching Mrs. Thelma Newnam and her married daughter pull little bluegill from the murky water.

"Fishermen know that some of the best fishing you're going to get in Oklahoma is in farm ponds," Mr. Earp explained. "So we're getting somebody out here most every day. Most of 'em, like those ladies there, do real good, too."

Mr. Earp is one of more than 160 Oklahoma farmers who, in return for an Agriculture Department payment, are opening their land, with few restrictions, and no charge, to fishermen, hunters, or townspeople who might want to hike around their farms.

It is part of a pilot program to test the feasibility of paying farmers to allow anyone who wishes to escape from his community for a few hours' free access to the countryside.

IN 50 COUNTIES

Since early spring, when the program began, scores of these recreational farms in 50 counties in Colorado, Indiana, Iowa, Louisiana, Michigan, North Dakota, Oklahoma, Oregon, Pennsylvania and South Carolina have opened their gates.

The Agriculture Department has set aside $1.5-million to finance the program this year. It is expected to be continued, and still on an experimental basis, next year. If it is judged a success, the department may ask Congress to provide funds to expand the program throughout the nation.

Opening his property to the public is about the only action a participating farmer has to take, besides posting signs along his fences. These signs, supplied by the local Agricultural Stabilization and Conservation Service, state that hunting or fishing or both are permitted without charge on the farm. The sign includes two lines of type reading "discrimination on the basis of race, color, or national origin is prohibited."

The farmer does not have to place any special improvements on his property. He may open all or part of his land to the visitors. He may also request them to stay away from his buildings and he may set rules on fires and overnight camping if he chooses.

The annual fee paid to the farmer is set by local agriculture officials and is based on the estimated value of the recreational possibilities on the farm and how much land, when hunting is permitted, is available to hunters. Payments may range from as low as $100 to more than $1,000 a farm.

Charles W. Smith, whose farm is within a few miles' drive of Indianapolis, has been paid $150 for permitting people to fish in his three-acre pond and $150 more to allow squirrel and quail hunters to shoot on his property this fall.

Since fishing weather became good at the beginning of the summer, more than 1,300 fishermen have tried the Smith pond. Many of them came from Indianapolis. Some came from as far away as Michigan, California and Arizona.

"They sure don't bother anything and most of 'em clean up pretty good afterwards," Mr. Smith said. "I stocked the pond myself about six years ago and there's some real dandy channel cat and bluegill in there. The word is getting around, and I figure they'll be out bigger than ever until the weather gets too cold."

"NEIGHBORS" A BIT

Mr. Smith's pond is only a few yards away from his house and barn, but he said the visiting fishermen had not bothered him in the least.

"I go down and neighbor a bit with them," he said. "I've found most of them real nice folks. They were real nice about everything. Why, I even get some Cherokee Indians that come out often, catch their fish and cook 'em right on the bank and sometimes they stay all night. I don't care, because they always clean up pretty good after."

The local agriculture officers have publicized the program through newspapers, and each office of the stabilization service has lists of participating farms and directions on how to reach them.

Mr. Earp of Oklahoma, who says he has been told that he is a distant relative of the legendary Wyatt Earp, the Dodge City deputy, said he had not bothered to restrict visitors in any way.

Five of his man-made farm ponds, well-stocked with fish donated by the state wildlife department, are open to fishermen, and hunters can roam over 700 acres of his pastureland in search of dove, quail and, later in the year, deer.

"There's been a few real good parties thrown here this summer," he told a visitor. "But they're paying for old beer cans these days, and the kids come out and pick up what's left, so I don't have any problems."

Mr. Earp said that, at first, he had been worried that somebody pretending to fish might steal some of his beef cattle.

"Well, I figure now that having people around the pond so much is going to help stop that," he said. "Last year, somebody stole four good calves. I haven't been bothered this year. Besides, I'll get somewhere near $1,000 for the hunting and fishing contract. Go a good way toward paying my property tax, I'll tell you."

Oklahoma's turtledove season opened last week and the hunters were moving in on Mr. Earp's farm to the north of Stroud and on Marion Wright's dairy farm to the west, in central Oklahoma.

Mr. Wright has opened 425 acres to hunters for the dove, quail and deer seasons that will run through December.

"I sure hope none of those users will be silly enough to shoot toward my cows, but it's a risk I'll take," Mr. Wright said. "I suppose there could be some people come in here you wouldn't want on your farm. And there's always some city people that slip in to hunt anyway without asking you. But usually a good sportsman will come by to see if it's all right to hunt. This way, they won't have to bother because the signs are up and they know they can go in."

Mr. Wright said the $850 he expected to receive for participating in the pilot program had been an attractive incentive.

Including the Earp and Wright farms, there are now 36 farms open for hunting under the program here in Lincoln County, most of them about an hour's drive from either Tulsa or Oklahoma City. There are 41 more farms in Pawnee County, west of Tulsa, open to hunters.

"The big hunters, with good resources, usually have farms lined up for shooting long beforehand," said Gerald Briscoe, the Lincoln County stabilization service director. "It's the old boy that has a couple of kids or grandkids and who just wants to spend an afternoon out with them that this program really helps."

ADDRESS BY SENATOR MUSKIE BEFORE INTERNATIONAL CITY MANAGEMENT ASSOCIATION

Mr. ERVIN. Mr. President, on Monday the distinguished junior Senator from Maine (Mr. MUSKIE) spoke at the opening conference of the International City Management Association in Minneapolis.

In that speech, Senator MUSKIE urged these local government leaders to join in a drive to make Government at all levels "an open process" by adopting measures that would "systematically disclose actions taken and arguments held behind closed doors or sealed away in inaccessible files."

The Senator further warned:

To many citizens, government at all levels has become a cold, impersonal and unresponsive force, too remote to fight, too complex to change, too powerful to ignore. What should be open to their participation seems closed to their concerns.

The Senator from Maine in that speech has hit upon an issue that must be of the utmost concern to all of us. If our democratic process is to remain strong, the people of this country must know what Government is doing and participate in Government decisions.

I ask unanimous consent that the remarks of Senator MUSKIE to the International City Management Association be printed in the RECORD.

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

ADDRESS BY SENATOR EDMUND S. MUSKIE TO THE INTERNATIONAL CITY MANAGEMENT ASSOCIATION, MINNEAPOLIS, MINN., SEPT. 18, 1972

I am anxious to talk today about a trend in our lives that bothers me a great deal, the tendency of government to escape the control of men. In a recent *New York Times* article on the same subject, President Nixon's chief speechwriter, William Safire, told of an occasion when the President was assured that a pending problem had been referred to "the appropriate mechanism" perhaps, in this Administration, that is exactly what happened, but even Mr. Safire felt the phrase was unfortunate.

The description, however, reflects a depressing truth about the way Americans see their

government. To many citizens, government at all levels has become a cold, impersonal and unresponsive force, too remote to fight, too complex to change, too powerful to ignore. What should be open to their participation seems closed to their concerns.

This is especially true in Washington, of course, and in the giant metropolitan areas where bigness, almost by itself, defeats the community instinct. Coming from a small city myself, as do many of you, I have greater faith in the harmony such towns can provide. But even in many of them, there is a growing alienation of the individual from his society.

Government, at most levels, is becoming as mechanical and frustrating as a computer-ruled corporation. Both seem to be machines whose errors, whether they are minor overcharges or major policy mistakes, are equally frustrating to combat. People who are numbers, instead of personalities, to their bankers, their city planners and their Federal tax collectors lose not only their own identity but their social reality. Statistics cannot generate compassion. Ciphers cannot effect change.

Instead, the temptation grows for the machine to manipulate the faceless mass. Anonymity breeds anomie; first, the individual loses his bearings and his standards; then society drifts after him into powerlessness and insecurity.

I am not a Jeremiah. I do not see decline and doom as imminent or inevitable. America remains strong and anxious to find better answers, to correct injustice, to improve the quality of a civilization that is already the most vigorous the world has seen.

Our size and the size of our problems compel the search for solutions on a national scale. Yet the American genius has always been seen in the guarantees we offered individuals to act and experiment. Our basic goals are easy to state—secure and rewarding work, decent housing, safe neighborhoods, quality schools, clean air and water, adequate health care, full recreational opportunities—but the goals are becoming increasingly hard to reconcile with each other and with the requirement of meeting them for 210 million people at once.

A good job is too often made the excuse for a dirty stream. Sound homes for one group may entail the destruction of a hiking trail. More money for a police force may require a cut in education budgets.

These are familiar problems of choosing among competing priorities. You do it every day in your cities. I do it in the Senate. All of us are under pressure from different interested groups and groups of interests claiming exclusive consideration for their views. And all of us, in the end, have to answer to ourselves for our decisions.

* * * * *

What worries me is not the clash of pressures. We can cope with them, or we should not be trying to govern. Instead, I am disturbed by a silence in the midst of tumult, by an unheard voice, an unregistered opinion. I do not hear—and I suspect you do not either—as often as I should or would wish to from the unincorporated American, the single and singular citizen whose life we are shaping.

* * * * *

Let me give you a concrete example. The Senate Government Operations Committee spent some 30 hours in Executive session in July and August before it favorably reported a bill to establish a Consumer Protection Agency. The legislation is fairly controversial, but it has received little public notice. As a member of the committee, but neither a sponsor nor avowed opponent of the bill, I have received 101 letters or telegrams soliciting my vote one way or another.

One letter was from the Consumer Federation of America, one telegram was from Common Cause. With seven other organizations, they supported a strong bill. Ninety-one other pieces of correspondence, as well as a personal visit to my office by the representative of a manufacturer in Maine, was generated by opposition to the Act—from the Sun Oil Company, Scott Paper, Reynolds Metals, The Teamsters Union, The National Association of Manufacturers, The Farm Bureau, Governor Wallace of Alabama and a Maine newspaper publisher who happens to be my brother-in-law.

Only one letter came from a housewife, the consumer for whose protection, in theory, the legislation had been drafted. She supported the bill, and so, as it happened, did I, but if any of the Senators who hoped they were acting on behalf of American shoppers had had to rely on the voice of those whose interests seemed to be at issue, the Consumer Protection Agency would be a dead letter.

* * * * *

Or at a level nearer your immediate concerns, there is one situation uncovered by my Subcommittee on Intergovernmental Relations in the field of property tax assessment. In one city we found the largest taxpayer—U.S. Steel—could easily prevent even the mayor from examing the company's financial and tax records. Across the country we have found, by contrast, that individual homeowners have no easy way of determining whether the assessments on their property are fair or are in line with other values in their neighborhood.

The process that often makes it possible for giant companies to negotiate their tax bills in relative secrecy simultaneously baffles the householder who might well have grounds to appeal an arbitrary assessment. In both situations, equity is sacrificed, and the average man's feeling of powerlessness is aggravated.

* * * * *

This imbalance between citizen involvement and special interest representation in decision-making shows up over and over again. In another Senate Committee, we recently finished the first round of a hard fight over reallocating the revenues of the highway trust fund to the needs of urban mass transit.

I believe the federal highway program needs significant redirection. As it works now, it encourages urban sprawl and wasteful land use. It abets congestion in our cities and automobile exhaust pollution in our air. It compounds the social and economic handicaps on those who cannot afford or cannot drive cars, and it ignores the possibility that an energy shortage may force us . . . perhaps sooner than we imagine . . . to consider restricting private automobile use.

Many Americans . . . many of my colleagues in Congress . . . share this concern, and I am hopeful that we can amend the bill in the Senate to free an $800 million portion of the fund for use by the cities for whatever mass transportation programs they wish to advance. We would be blind to continue a system that makes Federal funds for highway construction available at rates up to nine dollars for each local dollar spent, but restricts Federal aid to mass transit to a maximum of two dollars for every one dollar of local funds.

No matter how this issue is decided in this section of Congress, however, the fact remains that very few Americans will participate in this decision, even though almost all of us will be affected by its outcome. The corporations who build roads and sell steel and concrete for them will participate in the debate. The trucking companies whose economic interest is intimately involved in the outcome will bring their influence to bear. I hope some city officials for whom freeways—at a local cost this year of over three billion dollars—have lost their charm will also make themselves heard.

But the worker who must invest in a second car to get from his home to his job will probably not register any opinion. The elderly woman who must depend on the kindness of friends to take her shopping or to a doctor will probably not express her views to the Congress or the Department of Transportation. The ghetto child walled off from the rest of his city by a maze of highways and an inefficient network of public transportation will not go on record in this decision.

* * * * *

Land use policy is another significant issue now before the Senate. Some of us are seeking new policy directions to help cities readjust property taxation systems so that taxes falling heavily on buildings and lightly on land do not accelerate blight in the urban centers but assist renovation and revival of communities that must again become the focus of men's best energies and the setting for our highest opportunities.

Again, though, I worry that the decision will be made and shared and understood by so very few people. And every crucial choice that is made in such a way—by a limited number of knowledgeable or self-interested people without the full expression of public sentiment—diminishes the strength of democracy.

* * * * *

Our strength is diminished when high government officials participate in negotiations to sell wheat to the Soviet Union and then take their inside knowledge to jobs with companies profiting from the export agreements. The Democratic process is eroded when officials of a conglomerate can obtain sanction for their merger ambitions in back-door deals with the Justice Department. And citizen influence on government becomes a fraud when we can only learn from stolen documents the truth about key policy decisions and the men who make them in secret.

Why is participation so limited? Partially, of course, because people are understandably preoccupied with managing their private lives. But, we risk making apathy a virtue when we discourage people from taking a civic role. We can and do discourage them by treating attempts at intervention as nuisances, by bucking complaints as fast as possible to the next man's desk, by managing paper and not men and women.

Above all, a government that arrogates all wisdom to itself, a system that puts a premium on keeping its doings confidential naturally rebuffs outside interference, no matter how potentially helpful. It is easier and faster to say, "I can't be bothered" than to seek citizen involvement, but it is more than ever necessary to solicit such participation. Without it, we will build even thicker walls around our government and shut out the light and heat of reality.

* * * * *

I do not have any easy solution to the problem I have posed—how to reverse the trend toward government by elites and by experts; how to involve the people more closely in guiding their own destiny. But it seems to me both ironic and dangerous that we can put millions of people into instant touch with a moonwalk or a massacre in Munich, and yet hamper them from communicating effectively with each other and with those they elect to govern them.

* * * * *

To begin with, we must adopt one basic and, I admit, inconvenient principle: government has to be an open process. I do not mean only that our political parties have to have wider representation of minority views than they do even now or that there is a magic formula for alloting places of power according to age, sex, race, economic status or residential or ethnic background.

Rather, I believe we must systematically disclose actions taken and arguments held behind closed doors or sealed away in inaccessible files. Decisions which seem com-

plex or sophisticated cannot, for that reason, be referred to "appropriate mechanisms." They and their likely effects have to be exposed and explained as broadly as possible.

* * * * *

The Senate took one step in that direction last week when it passed a bill developed by Senator Lee Metcalf in my Subcommittee to open to the public the meetings of government advisory committees. Until now, these committees have been serving as secretive conduits for special interest influence on major government decisions.

Let us see, though, what open government ought to mean closer to home—at the local level. The Revenue Sharing Act the Senate adopted last Tuesday carries language requiring city, county and state officials to publish in their local newspapers regular reports on how funds received have been used and are to be used.

In theory, these will be the same reports as those sent to the Secretary of Treasury. In fact, I would hope you would see these reports not as columns of dry statistics embedded in conventional jargon, but as opportunities to inform and involve your neighbors in your decisions. If you choose, the reports can be occasions for real discussion of local priorities.

Whether through a televised city council meeting at which citizens are encouraged to present their own suggestions . . . and criticisms . . . for appropriate spending programs or at a series of smaller sessions—neighborhood town meetings, perhaps—I believe you must do everything possible to make the taxpayer feel responsible for the way his tax dollars are spent. I know this means more time spent suffering bores gladly, but the Federal Government is making you and other local officials a grant of trust.

The Congress has rejected the argument that separating tax collecting from spending would merely encourage waste at the local level. It is up to you to prove that our decision was sound.

Your response must be one of carrying the trust a step farther . . . to the people from whom the revenue to be shared came in the first place. You have to tell them what you are doing, why you are doing it and what your actions will mean to their lives. Instead of waiting to be petitioned or invaded by frustrated and angry citizens, our city councils—and city managers—have to make the effort of going where the people are, of soliciting their constructive participation in the workings of their government.

* * * * *

I fully realize that this consultation cannot be effective unless, as your task force on management criteria recommends, we put Federal grants on a more reliable and less restrictive footing. I am well aware of the frustration that comes from seeing an imaginative local program wither away because funding disappears or from losing an opportunity for action because money that is promised does not come when it is needed.

Revenue sharing is part of the answer. Additionally, I am happy to tell you that my Intergovernmental Cooperation Act of 1972 was approved by the Senate last Thursday. It is still to be considered by the House, but I am hopeful of its passage there and of a smoother-running system of Federal grants to local governments in the future.

* * * * *

Earlier, I spoke of the need to improve property tax administration. My proposals for reform and relief in this crucial area of local finance are not likely to be acted on at this session. But the momentum built in this area will not, I feel sure, die with the election campaign.

I advocate . . . and I hope you will consider the idea favorably . . . a system of direct Federal help to the elderly poor with their property tax bills. But my proposal is tied to a reform that would assure each taxpayer's receiving a clear explanation, with his tax bill, of how his property was assessed, how his assessment fits with that of similar property in his neighborhood, and how major taxpayers in his city are being assessed.

Disclosure is the key feature of the system. The change would require more frequent studies of the relationship between assessed and real values than most local appraisal authorities now conduct. I think the Federal Government must be prepared to assist in those studies, with necessary financing at the beginning, with its own, impartial experts when needed, with the property value information its agencies regularly collect and with its own appraisals of complex industrial sites for which no real market value exists. It is essential that governments which rely heavily on property taxation take great pains to insure that the tax burden is not only fairly shared but also is seen to be equitable.

Before loading you down with advice, of course, the Congress must act to put its own house in order and on public view. Our floor debates obviously need to be more informative and inclusive. Too many of our *real* decisions are taken in Executive Committee session, contrary to the requirement that we involve those we represent.

We must change our rules to make it harder for committees to transact the public business in secret. If we are going to close our committee room doors, we should at least have to explain why we are doing so, not assume, as we almost automatically do, that our performance at the negotiating table cannot be improved by outside judgments.

* * * * *

Finally and, in fact, crucial to dismantling government by machine, the Executive Branch must set the pace toward disclosure. It is bad enough when large interests have easier access to the White House than ordinary citizens; confidence is destroyed when the normal bureaucratic preference for secretive efficiency overrides all consideration of public participation.

We can legislate greater openness in government, and I intend to press for the fundamental reform set out in my Truth-In-Government Act, the institution of an independent board to review all Federal decisions on classification. Until now, we have left the Executive Branch alone to police this area, and, to quote Nikita Khrushchev, the result has been like "setting the goat to guard the cabbage patch." Between June 1967 and July 1971, the government investigated 2,433 instances of violations in the area of national security classification. 2,504 people were punished with anything from a reprimand to a loss of pay.

Every one of those individuals was penalized for failing to protect the secrecy of information in one way or another. In only two cases were there investigations of people who disregarded the decree that "over-classification shall be scrupulously avoided." And in neither of those cases were any administrative penalties assessed.

We must set these priorities right. We must give dominant weight to the people's right to know.

Since 1965 we have been working with the Freedom of Information Act. But it has not had a happy history, because, by itself, it could not explicitly reverse the built-in psychological pressure for big government to use its size as a hiding place for error, a camouflage for soullessness.

* * * * *

Only good and open administration and constant public scrutiny can make government responsive to all its constituents, instead of just the privileged and expert few. As we are men ruled by human laws, not automatons operating in a mechanized vacuum, we are certain to make errors in attempting to build ourselves a stronger and fairer society. What we may lose in efficiency, however, I feel we will gain through a more responsive democratic process. Opening up our conduct of office should also mean closing out a future of alienation and discord.

I began this talk by quoting with approval from a Republican writer. I want to end with a citation from a more familiar and comfortable source . . . myself.

A book I wrote this year called "Journeys" has this appropriate passage: ". . . we tend to forget that the strength of the country depends heavily on the social and economic health of thousands of communities, where the lessons of mutual confidence and cooperation are learned or forgotten. These are the laboratories where experiments in national policy are tried, and where successes or failures are enjoyed or suffered. These are the places where such concepts as equality and justice are tested to see if they have meaning in the classrooms and the job markets, on the streets, and in the courthouses. If democracy doesn't work in the community, it won't work at our national conventions or in our national capital, and if our communities are not whole, then the United States cannot fulfill its national responsibilities at home or abroad."

DR. WOLFGANG FRIEDMANN

Mr. JAVITS. Mr. President, I was shocked to read of the death of Prof. Wolfgang Friedmann, distinguished professor of international law at Columbia University. Dr. Friedmann was brutally murdered after being robbed several blocks from the Columbia campus. His murder shows again why we must seek in every way to deal with the random lawlessness and brutality that exists in so many of our great cities today. It is indeed tragic that Dr. Friedmann, who worked so long and hard for international peace, could not find ultimate peace himself in the United States. His distinguished scholarship in the field of international law is a great landmark for the role of law in the world. I extend my deepest sympathy to Mrs. Friedmann sons.

I ask unanimous consent that the front page story about Dr. Friedmann, published in the New York Times today, be printed in the RECORD.

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

PROFESSOR SLAIN IN MUGGING HERE—DR. FRIEDMANN IS STABBED NEAR COLUMBIA CAMPUS

(By Emanuel Perlmutter)

Dr. Wolfgang G. Friedmann, professor of international law and director of international legal research at Columbia University, was robbed and stabbed to death yesterday afternoon three blocks from the campus.

The police, responding to an anonymous phone call, found the body of the 65-year-old scholar and refugee from Nazi Germany in front of Public School 36 on Amsterdam Avenue between 122d and 123d Streets. His gray shirt and blue blazer sport jacket were bloody. His wallet was missing, and his attaché case was lying at his side.

Witnesses told detectives they had seen three youths between 15 and 17 years old wrest a wallet from Dr. Friedmann's pocket. They said that his assailants had tried to seize his wrist watch and that the professor had resisted. A struggle ensued in which he was stabbed near the heart and then the youths fled, the witnesses said.

Mayor Lindsay issued a statement last night in which he expressed outrage at the crime and announced that he had directed Police Comimssioner Patrick V. Murphy to start a round-the-clock hunt for the assailants.

Dr. Friedmann once before was attacked, but he was successful in fighting off his assailants. In 1956, he was walking through Riverside Park on his way home from classes when two youths attacked him. One punched him in the eye, but the professor fought back, punching and wrestling with the two youths and throwing one to the ground. Then his attackers fled.

Last night three youths picked up by police at the scene of the crime were taken to the West 126th Street Police Station for questioning. The police would not say whether the youths were being questioned as witnesses or suspects.

Dr. Friedmann, who was born in Berlin on Jan. 25, 1907, fled Germany after the Nazis came to power. In World War II he served with the political intelligence department of the British Foreign Office and with the Allied Military Government from 1944 to 1947.

He was the author of numerous works on international law, legal aspects of foreign investment, world politics, social change and finance. His home was in North Salem, N.Y.

Deputy Chief Inspector Jules Sachson arrived at the scene at 5 p.m. to take charge of the investigation. There was only one stab wound in the body, which was taken to the Bellevue Hospital morgue at 6:30 p.m. for autopsy.

It was the second assault against a faculty member of Columbia in the last two months. On July 25, Henry S. Coleman, dean of Columbia College, was shot and seriously wounded in his office by a former student who was seeking readmission following his dismissal for bad grades. The student is still being sought.

Dr. William McGill, president of Columbia University, said: "I was shocked and saddened by the death of Professor Friedmann. It produces feelings beyond expression. He was not just an eminent scholar of international law. He was my friend and colleague."

And Michael I. Sovern, dean of the Columbia Law School, said "I grieve for him, for us, and for a world that violently carries off its men of peace." He said that the time and place for a memorial service to Dr. Friedmann would be announced shortly.

WAS JUDGE IN GERMANY

David Kern, a Columbia student and a friend of one of Dr. Friedmann's four sons, recalled last night that the slain scholar frequently spoke about the days when he had been a judge in Germany before the war.

According to Mr. Kern, Dr. Friedmann told him that Nazi stormtroopers would sometimes come into his court demanding sterner penalties for accused criminals. Dr. Friedmann would tell the Nazis to get out of his court, Mr. Kern said.

In a brief news conference held last night at the scene, Detective Capt. Martin Kost said that the police had conducted an intensive search in the area but had found no weapon. He said that nobody had gone to Dr. Friedmann's aid during the assault.

In his statement last night, the Mayor said that he had spoken to the professor's widow May, to convey his "deepest and most heartfelt sympathy" to her and her four sons, Anthony, John, Peter and Martin Friedmann. He said he had also expressed shock to Dr. McGill.

"I have assured Mrs. Friedmann and President McGill that no effort will be spared to apprehend those responsible," Mr. Lindsay said.

"I call on all citizens who have any information pertaining to the murder to help the police in this highest priority investigation. Anyone with information should call 663–9500 or 663–9501."

Dr. Friedmann obtained his law degree from the University of Berlin in 1930. He received graduate law degrees later from the University of London and the University of Melbourne and was admitted as barrister-at-law in Middle Temple, London.

In addition to Columbia, he had been on the law faculties of the University of Toronto and the University of Melbourne. He delivered the Carnegie Lectures at The Hague in 1959 and was a visiting professor at the University of Paris in 1969.

His best known books were "Law and a Changing Society," published in 1959 and "Changing Structure of International Law," published in 1964.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. All time for morning business having expired, morning business is closed.

OLDER WORKER COMMUNITY SERVICE EMPLOYMENT ACT

The PRESIDING OFFICER (Mr. MONDALE). Under the previous order, the Chair lays before the Senate S. 555, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 555) to authorize the establishment of an older worker community service program.

The Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Public Welfare with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Older American Community Service Employment Act".

OLDER AMERICAN COMMUNITY SERVICE EMPLOYMENT PROGRAM

SEC. 2. (a) In order to foster and promote useful part-time work opportunities in community service activities for unemployed low-income persons who are fifty-five years old or older and who have poor employment prospects, the Secretary of Labor (hereinafter referred to as the "Secretary") is authorized to establish an older American community service employment program (hereinafter referred to as the "program").

(b) In order to carry out the provisions of this Act, the Secretary is authorized—

(1) to enter into agreements with public or private nonprofit agencies or organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or Indian tribes on Federal or State reservations in order to further the purposes and goals of the program. Such agreements may include provisions for the payment of costs, as provided in subsection (c), of projects developed by such organizations and agencies in cooperation with the Secretary in order to make the program effective or to supplement it. No payments shall be made by the Secretary toward the cost of any project established or administered by any such organization or agency unless he determines that such project—

(A) will provide employment only for eligible individuals, except for necessary technical, administrative, and supervisory personnel, but such personnel shall, to the fullest extent possible, be recruited from among eligible individuals;

(B) will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities;

(C) will employ eligible individuals in services related to publicly owned and operated facilities and projects, or projects sponsored by organizations exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954 (other than political parties), except projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship;

(D) will contribute to the general welfare of the community;

(E) will provide employment for eligible individuals whose opportunities for other suitable public or private paid employment are poor;

(F) will result in an increase in employment opportunities for eligible individuals, and will not result in the displacement of employed workers or impair existing contracts;

(G) will utilize methods of recruitment and selection (including, but not limited to, listing of job vacancies with the employment agency operated by any State or political subdivision thereof) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the project;

(H) will include such training as may be necessary to make the most effective use of the skills and talents of those individuals who are participating, and will provide for the payment of the reasonable expenses of individuals being trained, including a reasonable subsistence allowance;

(I) will assure that safe and healthy conditions of work will be provided, and will assure that persons employed in public service jobs assisted under this Act shall be paid wages which shall not be lower than whichever is the highest of (i) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938, if section 6(a)(1) of such Act applied to the participant and if he were not exempt under section 13 thereof, (ii) the State or local minimum wage for the most nearly comparable covered employment, or (iii) the prevailing rates of pay for persons employed in similar public occupations by the same employer;

(J) will be established or administered with the advice of persons competent in the field of service in which employment is being provided, and of persons who are knowledgeable with regard to the needs of older persons;

(K) will authorize pay for necessary transportation costs of eligible individuals which may be incurred in employment in any project funded under this Act in accordance with regulations promulgated by the Secretary; and

(L) will assure that to the extent feasible such projects will serve the needs of minority, Indian, and limited English-speaking eligible individuals in proportion to their numbers in the State.

(2) to make, issue, and amend such regulations as may be necessary to effectively carry out the provisions of this Act.

(c)(1) The Secretary is authorized to pay not to exceed 90 per centum of the cost of any project which is the subject of an agreement entered into under subsection (b), except that the Secretary is authorized to pay all of the costs of any such project which is (A) an emergency or disaster project or (B) a project located in an economically depressed area as determined in consultation with the Secretary of Commerce and the Director of the Office of Economic Opportunity.

(2) The non-Federal share shall be in cash or in kind. In determining the amount of the non-Federal share, the Secretary is authorized to attribute fair market value to services and facilities contributed from non-Federal sources.

ADMINISTRATION

SEC. 3. (a) In order to effectively carry out the purposes of this Act, the Secretary is authorized to consult with agencies of States and their political subdivisions with regard to—

(1) the localities in which community service projects of the type authorized by this Act are most needed;

(2) consideration of the employment situation and the types of skills possessed by available local individuals who are eligible to participate; and

(3) potential projects and the number and percentage of eligible individuals in the local population.

(b)(1) The Secretary is authorized and directed to require agencies and organizations administering community service projects assisted under this Act to coordinate their activities with agencies and organizations conducting related manpower programs receiving assistance under other authorities such as the Economic Opportunity Act of 1964, the Manpower Development and Training Act of 1962, and the Emergency Employment Act of 1971. In carrying out the provisions of this paragraph, the Secretary is authorized to make necessary arrangements to include projects assisted under this Act within a common agreement and a common application with projects assisted under other authorities such as the Economic Opportunity Act of 1964, the Manpower Development and Training Act of 1962, and the Emergency Employment Act of 1971.

(2) The Secretary is authorized to make whatever arrangements that are necessary to carry out the programs assisted under this Act as part of any general manpower legislation hereafter enacted, except that appropriations for programs assisted under this Act may not be expended for programs assisted under that Act.

(c) In carrying out the provisions of this Act, the Secretary is authorized to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement, and on a similar basis to cooperate with other public and private agencies, and instrumentalities in the use of services, equipment, and facilities.

(d) The Secretary shall establish criteria designed to assure equitable participation in the administration of community service projects by agencies and organizations eligible for payment under section 2(b).

(e) Payments under this Act may be made in advance or by way of reimbursement and in such installments as the Secretary may determine.

(f) The Secretary shall not delegate his functions and duties under this Act to any other department or agency of Government.

PARTICIPANTS NOT FEDERAL EMPLOYEES

SEC. 4. (a) Eligible individuals who are employed in any project funded under this Act shall not be considered to be Federal employees as a result of such employment and shall not be subject to the provisions of part III of title 5, United States Code.

(b) No contract shall be entered into under this Act with a contractor who is, or whose employees are, under State law, exempted from operation of the State workmen's compensation law, generally applicable to employees, unless the contractor shall undertake to provide either through insurance by a recognized carrier, or by self insurance, as allowed by State law, that the persons employed under the contract, shall enjoy workmen's compensation coverage equal to that provided by law for covered employment. The Secretary must establish standards for severance benefits, in lieu of unemployment insurance coverage, for eligible individuals who have participated in qualifying programs and who have become unemployed.

INTERAGENCY COOPERATION

SEC. 5. The Secretary shall consult and cooperate with the Office of Economic Opportunity, the Administration on Aging, the Department of Health, Education, and Welfare, and any other related Federal agency administering related programs, with a view to achieving optimal coordination with such other programs and shall promote the coordination of projects under this Act with other public and private programs or projects of a similar nature. Such Federal agencies shall cooperate with the Secretary in disseminating information about the availability of assistance under this Act and in promoting the identification and interests of individuals eligible for employment in projects funded under this Act.

EQUITABLE DISTRIBUTION OF ASSISTANCE

SEC. 6. (a)(1) From the sums appropriated for any fiscal year under section 8 there shall be initially allotted for projects within each State an amount which bears the same ratio to such sum as the population aged fifty-five or over in such State bears to the population aged fifty-five or over in all States, except that (A) no State shall be allotted less than one-half of 1 per centum of the sum appropriated for the fiscal year for which the determination is made; and (B) Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands shall each be allotted an amount equal to one-fourth of 1 per centum of the sum appropriated for the fiscal year for which the determination is made. For the purpose of the exception contained in this paragraph, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(2) The number of persons aged fifty-five or over in any State and for all States shall be determined by the Secretary on the basis of the most satisfactory data available to him.

(b) The amount allotted for projects within any State under subsection (a) for any fiscal year which the Secretary determines will not be required for that year shall be reallotted, from time to time and on such dates during such year as the Secretary may fix, to projects within other States in proportion to the original allotments to projects within such States under subsection (a) for that year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates that projects within such State need and will be able to use for such year; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount reallotted to a State under this subsection during a year shall be deemed part of its allotment under subsection (a) for that year.

(c) The amount apportioned for projects within each State under subsection (a) shall be apportioned among areas within each such State in an equitable manner, taking into consideration the proportion which eligible persons in each such area bears to such total number of such persons, respectively, in that State.

DEFINITIONS

SEC. 7. As used in this Act—

(a) "State" means any of the several States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands;

(b) "eligible individual" means an individual who is fifty-five years old or older, who has a low income, and who has or would have difficulty in securing employment;

(c) "community service" means social, health, welfare, educational, library, recreational, and other similar services; conservation, maintenance or restoration of natural resources; community betterment or beautification; antipollution and environmental quality efforts; economic development; and such other services which are essential and necessary to the community as the Secretary, by regulation, may prescribe.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There are hereby authorized to be appropriated $100,000,000 for the fiscal year ending June 30, 1973, and $150,000,000 for fiscal year ending June 30, 1974.

The PRESIDING OFFICER. Debate on the bill and amendments thereto is limited to 10 minutes to a side.

Mr. MANSFIELD. Mr. President, how does the time limitation read?

The PRESIDING OFFICER. Ten minutes to a side.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I be allowed to suggest the absence of a quorum without the time being taken out of either side, in the hope that the distinguished Senator from Massachusetts (Mr. KENNEDY), the manager of the bill, and the distinguished Senator from Colorado (Mr. DOMINICK), who is interested in this bill, will be in the Chamber shortly.

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

Mr. MANSFIELD. 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. KENNEDY. 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. KENNEDY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. TUNNEY). The Senator will state it.

Mr. KENNEDY. Do I understand correctly that the pending order of business is S. 555?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. And that there is a time limitation——

The PRESIDING OFFICER. Ten minutes to a side on the bill.

Mr. KENNEDY. I thank the Chair.

Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 10 minutes.

Mr. KENNEDY. Mr. President, I rise to speak in favor of S. 555, the Older Americans Service Employment Act which was unanimously approved by the Senate Labor and Public Welfare Committee.

This bill will provide $250 million over the next 2 years and is expected to create some 100,000 job opportunities for older workers.

The history to this legislation extends back to the 91st Congress when I introduced on March 18, 1970, S. 3604. Hearings were held and the major portion of the bill was incorporated in the comprehensive manpower bill which was later vetoed by the President.

At the outset of the 92d Congress, I reintroduced this legislation, again with a bipartisan list of cosponsors. Hearings

were held and now that bill is before the Senate.

The urgency of action on this bill is clear. For during the past several years of rising unemployment, the impact on older workers has been particularly grim. From January 1969 to September 1971, unemployment for persons 45 and older jumped from 596,000 to 1,527,000, a 77-percent hike. And the large bulk of that increase fell on those individuals 55 and older.

What is perhaps even more of an indication of our failure to show a national sensitivity to the needs of these older workers is the recent reports from the Bureau of the Census. They show that some 6.8 million persons aged 55 and older are living in poverty, 25 percent of the Nation's 25.9 million poor. The impact of unemployed and poor older workers on the social service system of the Nation is increasing as a result with some 2.9 million Americans over 55 receiving public assistance. And the lack of income heightens the difficulties faced by older Americans in providing for their basic needs. The result of the lack of income and the absence of a meaningful role to play in society combine to propel older persons prematurely into custodial care institutions.

While the existing network of job opportunities for older workers in the private economy has been shrunk by the decline of our economy, the public service opportunities sponsored by Government have filled the gap.

The Emergency Employment Act of 1971 was the major Federal effort to provide public employment opportunities to our citizens. Yet the older worker, despite representing 25 percent of the poor, has received only 6 percent of the available EEA job opportunities, according to the Department of Labor. The Labor Department's administration of this program unfortunately has continued the past pattern of neglect for these older workers.

The most successful Federal effort in providing job opportunities to older Americans has been the economic opportunity pilot program, Operation Mainstream.

With Operation Mainstream support, the National Council of Senior Citizens has operated the senior aides project; National Farmers Union has directed the green thumb and green light projects; the National Council on Aging has funded senior community service projects, and the ARRT-NRTA has administered the senior community service aides project.

All of these projects have met with enormous success, success documented in evaluations carried out under Labor Department contract and success documented in testimony before the Senate Aging Subcommittee.

The projects on the whole have provided part-time work for older Americans, usually 4 hours a day, 5 days a week with an average wage of $2.15 per hour. In addition to the importance of the added income provided by these programs, older men and women have discovered a second vocation, a second career, a second opportunity to contribute to the life of the Nation.

Yet, despite the evident success of these programs, the total number of slots anticipated for fiscal year 1973 remains at under 30,000 even with the increased appropriations voted by the Congress.

When the magnitude of the need is measured at over a half million unemployed older workers and 6.8 million poor older persons, then the present level of job opportunities directed toward our older workers is negligible.

For that reason, the Older Americans Community Service Employment Act is vital to the needs of the Nation's older Americans. It is for that reason that every major group representing older Americans has testified in favor of this legislation and has sent telegrams and letters affirming their support for the early approval of this legislation.

For this bill represents a beginning step to meet the employment needs of older workers, providing 100,000 additional job opportunities in the next 2 years.

Unfortunately, despite the unanimous approval of elderly persons, of the AFL-CIO, and of State and national senior citizen groups, the administration has opposed this legislation.

Its objection to this program was the same as its objection to the nutrition for the elderly program which signed into law this spring. It is termed a categorical program and therefore not in keeping with the administration's general philosophy.

However, no administration witness could guarantee the committee that if this categorical program was not passed, that a single dollar more would be spent next year to provide additional job opportunities for older Americans.

And the opposition of the administration also is surprising since it conflicts with the President's own statement to the White House Conference on Aging last December. There the President said:

> Some of the best service programs for older Americans are those which give older Americans a chance to serve. Thousands of older Americans have found that their work in hospitals and churches, in parks and in schools gives them a new sense of pride and purpose even as it contributes to the lives of others.
>
> Federal programs to provide such opportunities have proven remarkably successful at the demonstration level. But now we must move beyond this demonstration phase and establish these programs on a broader, national basis.

Yet, despite the President's rhetoric, the administration consistently has opposed this bill which in fact would do exactly what the President applauded, namely, the establishment of these pilot programs on a broader national basis.

I wrote the Secretary of Labor, along with other Senators, to inquire whether the administration now supported this bill following the President's statement. However, we have never received an answer to that letter.

Despite the formal administration objection, the overwhelming evidence in support of the bill resulted in its unanimous passage by the Senate Aging Subcommittee and by the Senate Labor and Public Welfare Committee.

The bill does the following:

First, it seeks to convert the Operation Mainstream pilot programs into permanent nationwide programs.

Second, it would authorize the Secretary of Labor to enter into agreement with nonprofit private organizations and State or local governments to pay up to 90 percent of the cost of community service employment projects for low-income persons 55 and older who have or would have difficulty in locating employment. Also, 100 percent Federal funding would be authorized in economically depressed areas.

Third, it would authorize the Secretary of Labor to consult with State and local governmental units with regard to localities where community service projects are most needed, employment situation and types of skills processed by eligible individuals, and the number of eligible individuals in the local population.

Fourth, it would authorize the Secretary to encourage agencies administering community service projects to coordinate activities with agencies conducting existing programs of a related nature under the Economic Opportunity or Emergency Employment Act.

Fifth, it would require the Secretary to establish criteria designed to achieve equitable distribution of assistance among States and between urban and rural areas.

Finally, it would authorize $100 million for fiscal year 1972 and $150 million for fiscal year 1973.

Thus, this bill would create a focus for the advocacy of manpower training and job opportunities for the older workers within the Department of Labor. It would establish the authority for the creation of a nationwide, permanent program aimed at providing job opportunities for these workers in areas where they can best contribute to the life of the Nation, in hospitals, in schools, in libraries, and in other public service agencies.

I believe that this measure is part of the process of change in our concern for our older citizens that the Congress is stimulating. It is reflected in the nutrition for the elderly program passed this year and it is reflected in the 20-percent hike in social security payments passed this year. Passage of this legislation will continue that process, emphasizing as it does the critically important element of providing jobs for elder workers, jobs which benefit the entire society.

I urge the Senate to approve this bill.

Mr. President, I reserve the remainder of my time.

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER (Mr. TUNNEY). The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, I support the Older American Community Service Employment Act, which would authorize $100 million for fiscal year 1973 and $150 million for fiscal year 1974, to provide public service employment opportunities to low-income persons 55 years and older.

The conditions of unemployment and job scarcity which affect many of our citizens are particularly harsh in their effect on older persons; most vulnerable to technological change and subject as well to age discrimination, the older worker is often at a disadvantage in competing for existing jobs in the labor market.

As a result, there are approximately 6 million persons aged 55 and older living in poverty—representing more than 20 percent of the Nation's 25.9 million poor; in fact 2.9 million Americans 55 or older are public assistance recipients.

Existing public service employment and work experience programs have not been adequate to meet the employment needs of such persons.

The Emergency Employment Act of 1971, the principal legislative source for public service jobs, has brought only limited benefits to older persons. The Department of Labor reports that of the 177,528 persons employed under the act as of July 31, 1972, 9,596, or less than 6 percent, were 55 years or older and the Department estimates that the same approximate number of employment opportunities for older persons will be available in fiscal 1973.

Operation Mainstream, conducted under the Economic Opportunity Act of 1964, which provides work experience for older persons, is projected at a level of 29,800 opportunities for fiscal 1973.

Accordingly, it may be estimated that for fiscal 1973 an aggregate of approximately 40,000 public service employment and work experience opportunities will be available for older persons, a number less than 1 percent of the more than 6 million persons in that age group living in poverty.

The Older American Community Service Employment Act provides an authorization for the creation of an additional 40,000 jobs in fiscal year 1973 and for 60,000 jobs in fiscal year 1974, in public service areas of crucial importance to older persons as well as to others, such as health, transportation, housing, rural development, and environmental action.

The administration opposes this legislation on the basis that it would establish a new "categorical" manpower program and urges that the needs of older workers be met by the States, counties, and cities through comprehensive manpower reform legislation, such as is proposed by the administration in S. 1243, the Manpower Revenue Sharing Act of 1971; they suggest also that current programs are adequate and that S. 555 would be duplicative.

The basic position is set forth in a letter dated April 25, 1972, from Secretary of Labor, James Hodgson, to Chairman EAGLETON, and in similar reports from other agencies, all printed in the committee report, beginning at page 9.

As I indicated in my supplemental views, joined in by Senator BEALL, the ranking minority member of the Subcommittee on Aging, the administration's position is not without merit and it was my hope that there might be some prospect for consideration of comprehensive manpower training reform before consideration of this bill so that we might reconsider the latter in light of the total fabric of proposed new efforts.

However, since my views were written, the majority and minority leaders have made known their understanding that with few exceptions bills not reported by last Friday will not be considered in this Congress.

This had deadened the hope of consideration of manpower reform and thus necessitated the passage of this measure as a separate program.

However, fortunately, we anticipated that possibility and, in deference to the the Department of Labor have included in this bill very strong provisions dealing with coordination with existing programs and permitting the Secretary to lock this program into any subsequently enacted comprehensive manpower reform measure.

These provisions, which I authored, are set forth in paragraphs (1) and (2) of subsection 3(b) of the bill on page 14; they read as follows:

(b)(1) The Secretary is authorized and directed to require agencies and organizations administering community service projects assisted under this Act to coordinate their activities with agencies and organizations conducting related manpower programs receiving assistance under other authorities such as the Economic Opportunity Act of 1964, the Manpower Development and Training Act of 1962, and the Emergency Employment Act of 1971. In carrying out the provisions of this paragraph, the Secretary is authorized to make necessary arrangements to include projects assisted under this Act within a common agreement and a common application with projects assisted under other authorities such as the Economic Opportunity Act of 1964, the Manpower Development and Training Act of 1962, and the Emergency Employment Act of 1971.

(2) The Secretary is authorized to make whatever arrangements that are necessary to carry out the programs assisted under this Act as part of any general manpower legislation hereafter enacted, except that appropriations for programs assisted under this Act may not be expended for programs assisted under that Act.

It should be noted also that with respect to coordination with other programs affecting the aging, the committee bill contains in section 5—at page 17 of the committee bill—a direction that the Secretary of Labor consult and cooperate with the Office of Economic Opportunity, the Administration on Aging, the Department of Health, Education, and Welfare, and other agencies to achieve "optimal coordination" with other programs.

Mr. President, it is clear then that we have sought to meet the administration's basic concern with respect to proliferation, first by indicating our desire to have the bill considered in connection with manpower reform and, since that has failed, by falling back on strong authority to achieve administrative coordination and integration.

This leaves, of course, the administration's suggestion that the proposal programs is duplicative of existing programs.

This viewpoint is expressed in the letter from the Office of Management and Budget dated April 14, 1972 to chairman of the Committee on Labor and Public Welfare, Senator WILLIAMS, printed at page 10 of the committee report.

The letter from OMB's Assistant Director for Legislative Reference, Wilfred H. Rommel, states:

S. 555 . . . would also duplicate activities currently carried out by the Department of Labor under existing legislative authorities. These include the recently expanded Mainstream projects which provide employment opportunities for older workers. In addition, under the Emergency Employment Act, State and local governments are providing thousands of meaningful employment opportunities for older workers.

Mr. President, the bill would duplicate to some extent activities now conducted under existing programs, but it is a necessary duplication for it appears that we have reached the saturation point in both of the existing programs.

Operation Mainstream is only a pilot program and has been maintained at about the same level of opportunities over recent years; the administration's request for fiscal year 1973 would create 5,000 more jobs than in fiscal 1972, but that hardly suggests an intent to make it a comprehensive program to meet the needs of the group.

Similarly, as I noted, the Emergency Employment Act is not designed principally for older persons and the decisions with respect to the age of participants are left basically to the States, counties, and cities; based upon the fiscal 1972 experience, it can hardly be relied upon.

As I noted earlier, together these sources will provide only 40,000 opportunities in fiscal 1973.

In contrast, the interim recommendations of the 1971 White House Conference on Aging—noting that present manpower programs fail to take adequate account of the unemployment problems of older people—recommends the creation of 1 million full and part-time jobs for older persons.

Mr. President, this bill, which would roughly double the opportunities in the current fiscal year, represents an intention to go beyond the existing pilot program and general funds to deal more adequately with the employment needs of older persons.

I urge adoption of the committee bill to deal with the needs of this group which has earned the Nation's continued attention and concern.

Mr. President, I ask unanimous consent that there be inserted in the RECORD at this point a letter dated September 12, 1972, from Assistant Secretary Malcolm Lovell to me in response to my letter of August 18, 1972, also to be inserted, regarding the Department's efforts for jobs for older persons to date.

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

U.S. SENATE,
COMMITTEE ON LABOR
AND PUBLIC WELFARE,
Washington, D.C., August 18, 1972.

HON. MALCOLM R. LOVELL, JR.,
Assistant Secretary for Manpower,
U.S. Department of Labor,
Washington, D.C.

DEAR MR. LOVELL: I would appreciate very much receiving a statement estimating the

number of public service employment opportunities which will be funded during fiscal year 1973 for low-income persons who are fifty-five years or older.

Please include breakdowns by program, in terms of opportunities, funds available, and age; in the latter case it will be sufficient to indicate the number who are between fifty-five and sixty-five years of age, and those who are older.

If projections are unavailable, would you please provide estimates on the basis of the most recent experience.

Sincerely,

JACOB K. JAVITS.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY
FOR MANPOWER,
Washington, D.C., September 12, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: Thank you for your letter of August 18, 1972, in which you request information concerning the number of public service employment opportunities for persons who are 55 years or older.

The Public Employment Program, under the Emergency Employment Act of 1971, has had the following experience:

Of 177,528 persons employed as of July 31, 1972, five percent, or 8,716, were between 55 and 64 years of age. Those who were 65 years of age or over numbered 880. The total number of older participants, therefore, is 9,596. This trend has been fairly constant since the inception of the Public Employment Program. In view of the fact that the seasonally adjusted national unemployment rate for persons 55 years and older was 3.4 in July and has also remained stable during the year, we are satisfied that the Public Employment Program is more than fulfilling the needs of older workers within the parameters of the legislation.

We have no projections available for 1973. However, anticipating a similar utilization of older workers, we can expect the same approximate number of employment opportunities next year. This would involve expenditures of approximately $70 million in fiscal year 1973.

Thank you for your interest in our efforts to ameliorate the condition of unemployed or underemployed older persons.

Sincerely,

MALCOLM R. LOVELL, Jr.,
Assistant Secretary for Manpower.

Mr. DOMINICK. Mr. President, would the Senator yield me 2 minutes?

Mr. JAVITS. I yield 2 minutes to the Senator from Colorado.

Mr. DOMINICK. Mr. President, I just want to say that I think the Senator from New York has done a very excellent job in trying to coordinate this program with the existing manpower programs. It was his initiative in which I willingly joined to get this coordination put together.

I must say that one of the problems we have, of course, insofar as jobs for older people are concerned, is the automatic deduction they get, after they have earned a certain amount, from their otherwise deserved social security checks.

For many years I have been urging that we raise that limitation, knowing full well that to every dollar we raise it, to that degree we have a further drain on the social security fund. Nevertheless, it does not seem right to me to say if a person is going to take a job, the money he has put in social security should be reduced. I am hopeful we can have some debate on this point later on, if and when the social security bill comes to the floor of the Senate.

In the meantime, Mr. President, I point out this is apparently a noncontroversial bill. The Senator from Massachusetts and the Senator from New York know full well that I am not loathe to raise objections, either in committee or on the floor of the Senate, to any bill. We have agreed here unanimously to report the bill and to have 10 minutes of debate on a side on the bill, and then it seems to me we could move forward with a voice vote on the bill and go to other work in the Senate.

I thank the Senator from New York.

Mr. KENNEDY. Mr. President, I yield 2 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

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

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 10, line 18, after the word "Reservations" "or other Federally recognized" Indian tribal groups.

Mr. BELLMON. Mr. President, the purpose of the amendment is very simple. The language in the bill limits the measure to Indian tribes on Federal or State reservations. We have about 110,000 Indians, more than any other State, and we have no reservations. So the language in the bill, in my opinion, would eliminate or make this measure unavailable to those Indians.

The purpose of the amendment is to include them in the same way as Indians on reservations are covered.

I believe the author of the bill is in agreement with the amendment.

Mr. KENNEDY. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, this subject did come up during the course of the deliberations of the committee. We thought the other language in the section would provide the opportunity for nonreservation Indians to take advantage of the bill. I think this language spells that out and clarifies it.

It is my intention, and I hope it is the intention of other members of the committee, to agree that those groups should be included. I think it is worthy and I have no objection.

I welcome the comments of the Senator from New York.

Mr. JAVITS. Mr. President, the Senator from Colorado (Mr. DOMINICK) and I have no objection. We will be glad to see the amendment agreed to.

Mr. DOMINICK. Mr. President, will the Senator from Oklahoma yield to me for 1 minute for a question?

Mr. BELLMON. I am glad to yield to the Senator if I have time remaining.

Mr. DOMINICK. I did not hear the clerk read the amendment, but I understand that this goes along with the wording adopted in the higher education bill at the Senator's request.

Mr. BELLMON. The Senator from Colorado is correct. The problem is that language which specifies Indian tribes on Federal or State reservations eliminates the 100,000 or more Indians we have.

Mr. DOMINICK. I congratulate the Senator for bringing up this point and preserving the rights of the people in his State.

The PRESIDING OFFICER. Is all time yielded back?

Mr. BELLMON. I yield back the remainder of my time.

Mr. KENNEDY. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. KENNEDY. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I am prepared to yield back the remainder of my time. Then, I will ask for the yeas and nays on this measure, even though we are at the point now where there is virtual unanimity in the Senate in support of this program. However, this has not been the case either on this program or on nutrition for the elderly program, or several other elderly programs as far as the administration is concerned.

I think the elderly people of this Nation have been the forgotten minority. I find, in my visits to my State and in contacts with various representatives who have done such a good job in developing this legislation that they somehow have in their minds that we in Washington are not concerned or interested in their well-being; that we do not think programs directed to them are important or significant. Tragically, that has been their experience in the past, even under the Emergency Employment Act where elderly persons who make up 25 percent of the population living in poverty, are receiving only 6 percent of EEA jobs.

It is important that this body be aware of what they are voting on, and that this does not pass through as a matter of lesser significance and importance. So I am going to ask for the yeas and nays. I hope that the members of this body would feel that this matter, even if it has uniform support among Senators, is sufficiently important to come here from their offices and indicate their position on this important matter.

Finally, the administration failed to support this program, just as they did not support the nutrition program, right up to the end. I feel it is important that they understand that we are very serious about providing assistance to the elderly and that we will continue to press them further and continue to press Members to take positions on this subject.

For these reasons, I will ask for the yeas and nays.

I yield 1 minute to the Senator from Utah.

Mr. MOSS. Mr. President, I thank the Senator from Massachusetts.

I commend the Senator from Massachusetts for his sponsorship and leadership in bringing this bill to the Senate. I have spent more than 12 years on the Special Committee on Aging and I wish to associate myself with the remarks made by the Senator concerning our actions toward our elderly citizens. We have limited them. We have not provided opportunities to enable them to participate in society as full members. In fact, they should be the most honored members of our society, and certainly not forgotten members.

What this bill purports to do and will do for them certainly increases the state of humanity of our elderly citizens. I wish to support the bill fully and I hope we can have a unanimous rollcall vote indicating that the Senate is solidly behind the bill.

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

The PRESIDING OFFICER. All time has expired.

Mr. JAVITS. Mr. President, I have 2 minutes remaining. I yield 1 minute to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. HUMPHREY. Mr. President, I join the Senator from Massachusetts, the Senator from Utah, the Senator from New York, and other Senators in supporting this bill. Good work has been done for older Americans in this session. The Senator from Massachusetts has been in the forefront of this effort. I have been privileged on other occasions to join him in support of his efforts. I am pleased he has asked for a rollcall vote.

Older Americans, among whom there is a larger share of poverty than in any other group, deserve care and attention and the consideration of this Congress more than any other group. This bill will do much to be of help. I join in the effort to get the bill passed.

Mr. JAVITS. Mr. President, I ask unanimous consent, rather than putting in an amendment, which is artificial, that each side have an additional 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. MANSFIELD. Mr. President, reserving the right to object, I would suggest that 5 minutes of that time be allocated to the Senator from Colorado.

Mr. JAVITS. That is my purpose.

The PRESIDING OFFICER. Is there objection to the request for additional time? Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I yield 5 minutes to the Senator from Colorado (Mr. DOMINICK).

Mr. DOMINICK. I thank the Senator from New York.

Mr. President, I take this opportunity only to bring up again the colloquy which I had yesterday, which is found on pages 31617 to 31618 of the RECORD, a colloquy between the distinguished majority leader (Mr. MANSFIELD), the distinguished assistant majority leader (Mr. ROBERT C. BYRD), the distinguished Senator from Rhode Island (Mr. PASTORE), and myself, in which all of us agreed that rollcall votes on noncontroversial matters were a total waste of time, that they did not accomplish a thing, and, I might add, that under the Senate practices and procedures which were agreed to by the joint leadership in January of 1971, at the suggestions of Senators CRANSTON, HUGHES, SAXBE, and SCHWEIKER, one of the things suggested was greater restraint on asking for rollcall votes on one-sided matters. There is nothing more one-sided than this particular bill. I have already said I was in favor of the bill. So has the Senator from New York (Mr. JAVITS). So has every other Senator who has gotten up and spoken on it.

What in the world do we need a rollcall vote for? All we do is embarrass every Senator who is not here. We interrupt committee meetings. We interrupt meetings Senators are having in their offices. We go back and forth like yo-yos from the Senate Office Buildings to the Capitol. But we are doing that just so someone, when he goes back home, can say, "Look what I did. I got a bill through by a vote of 76 to 0"—or whatever happens to be the number of Senators present at the time of voting.

Mr. AIKEN. I just heard the Senator from Colorado mention '76. Is the Senator referring to 1776 or 1976? I think much of our difficulty in getting our work done rests with the spirit of 1976. The spirit of 1976 is already too rampant in this body.

Mr. DOMINICK. I would certainly hope, when we have a noncontroversial matter, which we do have in this bill, that we could pass it by a voice vote and go on with our business. Yesterday I listed the number of votes taken in the past sessions. As a matter of fact, I have a list of those votes in my pocket.

In 1963, which session lasted, I believe, until December of that year, we had a total of 229 votes. In 1964 we had a total of 312. This year, to date, we have had over 430 votes—over twice as many on matters where there is agreement. Over and over and over again there have been no votes in the negative.

Of course, Senators can do it by rollcall. They could force this procedure, I suppose, somehow, but I am going to insist that we do it under the rules if we are going to do it at all. I suppose we have to have a quorum. Then we have to have one-fifth of that quorum. Then we have to have one-fifth of that quorum raise their hands. I am going to ask Senators on this side not to raise their hands. I suppose eventually we will get a quorum.

It is idiotic for the Senate to take time on rollcall votes on matters which are noncontroversial. This is a good bill; a fine bill, and it will put everybody on record, and everybody who does not happen to be here today, for one reason or another, will be embarrassed.

I might add that what I am doing, among other things, is probably helping the Democratic candidate for President, who has been present only 25 percent of the time the last 2 years. The fewer the rollcalls, the less his voting record will go down on the average.

It seems to me we have gone far enough in this. I say again that if it is insisted on, I am going to insist upon the rule.

Mr. ROBERT C. BYRD. Mr. President, what rule is the Senator going to insist on?

Mr. DOMINICK. That we have one-fifth of the Senators who previously voted or a quorum here, and in fact that they raise their hands for a yea-and-nay vote.

Mr. ROBERT C. BYRD. The Senator has the right to do that.

Mr. MOSS. Mr. President, I would like to have 1 minute.

Mr. MANSFIELD. Mr President, I would like to suggest the absence of a quorum, because we do not have 11 Members of the Senate present, and the yeas and nays are evidently going to be asked for

Mr. KENNEDY. Mr. President, I think there is time remaining to me.

Mr. MOSS. Mr. President, does the Senator have any time remaining?

The PRESIDING OFFICER. The Senator from Massachusetts has 5 minutes.

Mr. KENNEDY. I yield 2 minutes to the Senator from Utah.

Mr. MOSS. Mr. President, I listened to the Senator from Colorado with some interest. I think we should have a rollcall vote, and I would like to have a rollcall vote, but the point he made is one I tried to make on Friday last in the Senate, urging that a unanimous-consent agreement several days in advance of the rollcall votes to be held on subsequent bills that had not even been called up be vacated, because I suggested they might be unanimous, or nearly unanimous, in their passage. As the facts proved, they were, when we voted on them some 3 days later.

Unfortunately for me, I had committed myself to a speech before the American Mining Congress in San Francisco. On being absent that 1 day when it was necessary for me to make that speech, there were 10 rollcall votes on the floor of the Senate, and there were no close ones in the whole batch. But I think, having put our hand to the plough and said this is how we are going to run the Senate, we should not turn around now and go back. I want a rollcall vote on this one.

Mr. KENNEDY. Mr. President, I yield myself 2 minutes.

It is interesting to hear about the uniformity and unanimity in support of this legislation, because the administration has fought this legislation. All one has to do is review the record and the letter from Elliot Richardson to the chairman of the committee, Mr. Harrison Williams, on September 6, 1971:

> We would therefore recommend that S. 555 not be favorably considered.

On April 14, from Mr. Rommel, Assistant Secretary for Legislative Reference:

> We recommend against enactment of S. 555.

They have opposed it all the way along the line.

If there are some Members on that side who do not want to follow the administration, which has taken a strong position in opposition to this legislation, that is fine; but when we have a substantial element of the administration which is opposed to it, just as it once opposed the nutrition for the elderly program, then

I think we should have a record vote of how we stand. I think the older people ought to know where we all stand on this matter. I think it is interesting that this point is being made against a program for elderly people. It is not made against some other program, but it is made against a program for elderly people.

Mr. DOMINICK. Come on, now. The Senator from Massachusetts knows the point is not being made against elderly people. It is made against the procedure of the Senate.

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

Mr. KENNEDY. I yield.

Mr. PASTORE. Then when it is all over and we have passed this legislation they will embrace it and take credit for the bill we passed. They advocated a 5-percent increase in social security. We made it 20 percent. To listen to them on the stump, one would think they did it. After we pass it, they embrace it. They did the same thing on social security, on health, and on education, and it is about time that the American people began to understand just who is for the people and who has been opposing this program.

Mr. MANSFIELD. Mr. President, in an attempt to bring this to a head, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered.

The yeas and nays were ordered.

Mr. DOMINICK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Colorado will state it.

Mr. DOMINICK. As I understand it, Senators requesting the yeas and nays must constitute one-fifth of the number of Senators who were here on the preceding vote. Is that correct?

Mr. ROBERT C. BYRD. If the preceding vote is on the same day. It does not go back to the previous day.

Mr. DOMINICK. I did not ask the assistant majority leader. I asked the Chair.

The PRESIDING OFFICER. There has not been a vote today. The yeas and nays are ordered by one-fifth of a presumptive quorum, which is 51.

Mr. DOMINICK. And not by one-fifth of the number who were present on the preceding vote?

The PRESIDING OFFICER. Not on the preceding day, no.

Mr. DOMINICK. I thank the Chair.

Mr. PERCY. Mr. President, I am most pleased today to support and cosponsor S. 555, the Older Americans Community Service Employment Act. This legislation, very similar to title III of S. 1580 that I introduced, will help fund programs to provide jobs for low-income persons 55 years or older who have difficulty in securing employment. They would be employed in community service projects.

The sum of $100 million is authorized for fiscal year 1973 and $150 million for fiscal year 1974 of which my State of Illinois would receive $4,500,000 in fiscal year 1973 and $6,750,000 in fiscal year 1974.

The unemployment problems of older workers are especially acute. A report issued by the Senate Special Committee on Aging projects that if current labor force participation trends continue, one out of six men now in the 55 to 59 age category will no longer be in the work force by the time he reaches age 65.

Ten years ago this ratio was only one in eight. And the committee suggests that if major policy changes are not made, this problem will intensify during the 1970's.

Unemployment hangs like a black cloud over the entire Nation, but it most seriously threatens the middle-aged and older worker. It is much easier for the younger worker to increase his job opportunities simply because he is more mobile than the older person.

More often than not, older persons are tied down to a given location because of home mortgages and children in school. Older people cannot readily cancel debts and say goodbye to friends and ties of long standing to take jobs in other cities. Thus their job market is somewhat more restricted than that of the younger worker, who can more easily relocate to another city where employment prospects are better.

In addition to his reduced mobility, the older worker must cope with age discrimination in employment. One study has revealed that more than half of all private employers in States without age discrimination legislation in 1965 admitted to making use of age limits in hiring practices.

The effects of unemployment on the younger worker can be discouraging. The effects on the older worker can be tragic.

The community senior service program established by this bill for older workers seeks not only to help older workers, but also to utilize their talents and contributions to make improvements in our clinics, hospitals, schools, day-care centers, libraries, and in our environment.

What a small investment we are making for a magnificent potential achievement both for older people, to put them to work and make them feel important in what they are doing, and for the communities which will benefit from what these older workers will contribute.

I heartily endorse this piece of legislation.

Mr. BEALL. Mr. President, one of the truely alarming problems confronting our Nation today is the fact that, according to the 1970 census, there are almost 7 million older Americans living in poverty. As the ranking Republican member of the Aging Subcommittee, the plight of older Americans is of special concern to me. I, for one, hold out Nation's senior citizens in a position of great respect because these Americans have toiled long and hard on our Nations farms, in its factories, in its armed services, et cetera, to build our country. In their own way, each has made a significant contribution to our Nation's well being. Through their efforts, our Nation has reached unprecedented heights of economic prosperity, met the challenge of foreign aggressors who would threaten the peace, and create for all Americans a society dedicated to the full realization of the goals of our Nations forefathers.

In enacting S. 555, the Senate is seeking to meet one of the pressing problems facing those Americans 55 years of age and over. Many older Americans find the opportunities to them severely limited. Our youthful population abounds with highly trained talent in numerous fields. Many older Americans find themselves automated out of a job, "encouraged" to retire at an early age, or simply untrained and unskilled to meet the demands of our changing economy. But these factors should not and must not be allowed to deny our Nation the benefits of their practical experience, their skills and their judgment. For that reason, the Aging Subcommittee and subsequently, the full Labor and Public Welfare Committee have considered and favorably reported the Older American Community Service Act which is designed to provide meaningful employment opportunities for tens of thousands of our Nation's older Americans.

Under the provisions of this legislation, the Department of Labor will administer programs designed to provide community service jobs for low-income older Americans 55 years of age and older. These jobs would be in the fields of education, social service, recreational services, conservation, environmental restoration, economic development, et cetera. The legislation is structured in such a way as to draw upon the experiences of numerous pilot and demonstration projects conducted by the Department of Labor under the operation mainstream program. In addition, we have found that there are often six or eight or more applicants per job opportunity in each of these pilot projects. This clearly demonstrates that our older Americans sincerely want to remain active, contributing members of our society. The enthusiasm shown by older Americans for existing programs such as senior aids, senior community projects, Green Thumb, as well as the Foster Grandparents and RSVP programs, which are administered by the Action Agency, is most encouraging. Although the latter are primarily volunteer programs, they still serve to highlight the desire of our senior citizens to remain active, vital, contributing members of their community.

Mr. President, needless to say there are some areas of concern with regard to this legislation. Early in our deliberations on this bill, there was some question as to whether programs created within the framework of S. 555 would compete with the activities and programs of the Action Agency. It is my understanding, and I would hope that the distinguished senior Senator from Massachusetts would correct me if I am wrong, that it is the intention of this legislation to create employment programs within the Department of Labor that would in no way conflict with or create jurisdictional controversies with the programs administered by the Action Agency. A second concern revolved around the Department of Labor's belief that all categorical grant programs are inconsistent with the Department's desire to establish and administer integrated manpower programs. It is my understanding, Mr. President, that the amendment added by the distinguished Senator from New

York, the ranking minority member of the Labor and Public Welfare Committee, granted the Secretary broad power to coordinate the programs established by S. 555 with existing manpower programs as well as with those contained in any comprehensive manpower legislation which might subsequently be enacted by Congress. It would appear to me that the flexibility granted to the Secretary by this amendment should preclude the establishment of competing or overlapping programs within the Department of Labor and thus fulfill the Department's desire to run a coherent manpower program.

Mr. President, with these concerns largely removed, I think it is incumbent upon the Senate to act favorably on this legislation so that it may be referred to the House of Representatives for action by the other body.

Mr. CHURCH. Mr. President, I strongly support the enactment of the Older American Community Service Employment Act, a measure which I have cosponsored with the Senator from Massachusetts (Mr. KENNEDY).

A major purpose of S. 555 is to convert the successful mainstream pilot projects—such as green thumb, senior aides, senior community service projects, and senior community service aides—into permanent ongoing national programs.

We do not need any more proof that these demonstration projects will work. What is needed now is a genuine national effort to take advantage of the wealth of talent with which the elderly are so richly endowed.

Yet, in our work-oriented society today, far too many older Americans are relegated to lead empty and frustrated lives.

For most of these individuals, inactivity is one of their greatest enemies. As a consequence, many want to work to remain more active in their later years. Others simply must work to supplement inadequate retirement income.

And the Older Americans Community Service Employment Act can provide the framework and wherewithal for establishing a long overdue national senior service corps.

It would do this by providing new employment opportunities in needed community service activities—in antipollution programs, hospitals, libraries, schools, and elsewhere—for low-income persons 55 or older.

Serving in their communities can be a most rewarding experience for older Americans. For others, it can offer a new career. And for the cities and rural areas, it can provide an effective means of delivering urgently needed public services.

But there is also another added dividend. Community service employment can also help thousands of elderly persons help themselves out of poverty while helping others.

Over a 2-year period, it would provide 100,000 jobs for low-income persons 55 or older.

This is particularly significant because there are now 541,000 persons 55 or older who are unemployed, nearly 72 percent above the level in January 1969. And this figure—depressing as it is—probably only reflects the tip of the iceberg. It does not, for example, include the labor force "dropouts," those who have given up the active search for employment.

Denial of employment opportunities for older Americans represents a senseless and wasteful use of our human resources. No nation can ever hope to achieve its full potential if some of its most experienced citizens are not allowed to participate.

We have much more to gain, it seems to me, by drawing upon the ready reservoir of talent of older Americans to render needed and useful services in our communities and rural areas.

Mr. President, I urge the adoption of S. 555, the Older American Community Service Employment Act.

Mr. BENTSEN. Mr. President, I am a cosponsor and strong supporter of S. 555.

Of all the problems besetting older Americans, none is more serious than the absence of adequate employment opportunities. Somehow, in our youth-oriented culture, we have developed the idea that a man or woman over 45 is no longer a good employment risk.

Let me say that I have no prejudice against younger workers, but I believe our attitude toward middle-aged and older workers is nothing short of a national scandal.

During the last 2 or 3 years, older workers have suffered severe losses in employment. From January 1969 to September 1971, unemployment for persons 45 and over jumped 77 percent. Many of these people find themselves in a no-man's land—too young to retire, too old to hire—and they usually remain unemployed for longer periods than their young counterparts.

Part of the problem results from subtle or direct age discrimination in employment, and I have introduced a measure which successfully passed the Senate broadening the scope of our Age Discrimination in Employment Act.

But we have to do more than stop discrimination. We have to target some funds directly on creating job opportunities for older workers. That is what S. 555 would seek to do.

This bill would expand upon our successful programs under Operation Mainstream in the Labor Department by allocating $100 million the first fiscal year to enable the Department to give more emphasis to hiring older workers for community service activities. I might note, Mr. President, that only yesterday I urged the Labor Department to continue and expand the Green Thumb and Green Light programs, which provide work for elderly, poverty stricken Americans.

In a letter to Secretary Hodgson, I noted:

> Of the 1.8 million Texans who are over 55 years of age, more than 800,000 of them are under the poverty level. Green Thumb and Green Light offer them a chance to get a job. It is not a handout or welfare, but an opportunity for these 800,000 forgotten Texans to work on meaningful projects in the areas of beautification, conservation, and recreation.

Mr. President, I am pleased to see that S. 555, if fully funded, would channel some $4,150,000 into Texas in fiscal 1973 for these and similarly directed programs. That is a major step forward.

I commend Senator EAGLETON for his work in bringing this measure to a vote and I urge its enactment by the Senate.

PROMOTING THE VITAL ROLE OF OLDER AMERICANS IN COMMUNITY SERVICE

Mr. HUMPHREY. Mr. President, I strongly support the Older Americans Community Service Act, S. 555, and urge its passage today by the Senate. This vital legislation, which I joined in sponsoring, clearly recognizes the major role that older Americans can and should take in helping to carry out the social services that are of crucial importance to our communities.

Building upon the success of the Operation Mainstream pilot program that I was privileged to have a direct role in fostering, this legislation will establish an Older Worker Community Service employment program in the Department of Labor with a 2-year authorization of $250 million. Under this program, persons over age 55 who have had difficulty in securing employment can be employed by public or private nonprofit agencies in social, health, educational, recreational, and conservation and neighborhood improvement services that are essential to the community. Project operators will be required to pay either the Federal, State, or local minimum wage or the prevailing wage for similar public occupations, whichever is higher. The Federal Government will pay 90 percent of the costs of establishing and operating these projects, and the full cost of a project located in a disaster area or economically depressed area.

The Older Americans Community Service Employment Act establishes a national commitment that I have long urged upon Congress: That there must be a firm Federal policy against discrimination in employment on the basis of age, and in support of the right of every older citizen to continue utilizing his or her education, experience, and skills in meaningful work at a fair wage. Everything possible must be done to maintain the direct involvement of older Americans in the life of our Nation and its communities. That is why last year I fought for the doubling of appropriations, to a level of $100 million, for community service projects under the Older Americans Act, such as Foster Grandparents, RSVP, Green Thumb, and Senior Aides. And to further these objectives, I introduced the Older Workers Conservation Corps Act earlier this year, to provide for a major expansion of opportunities for older Americans to obtain paid jobs of great importance to our communities and States.

It is profoundly wrong that there should be 6 million persons aged 55 and older living in poverty in America today. It is unconscionable that our federally assisted manpower programs, as presently administered, should fail to take adequate account of the unemployment problems of older people.

Under the Older Americans Community Service Employment Act, some 100,000 additional jobs can be created for older persons in work of vital importance to our cities and towns. Mr. President, I

believe that a decent respect for human dignity demands that this legislation be enacted.

Mr. KENNEDY. I yield back whatever time I have left.

The PRESIDING OFFICER. All time has expired.

Mr. JAVITS. Mr. President, I think I have several minutes left.

The PRESIDING OFFICER. The Chair informs the Senator from New York that all time has expired.

The question is on agreeing to the committee amendment in the nature of a substitute, as amended. All in favor say "aye."

Mr. KENNEDY. Mr. President, the yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays were ordered on passage, not on the committee amendment.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill (S. 555) was read the third time.

The PRESIDING OFFICER (Mr. (TUNNEY). The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. McGOVERN), the Senator from New Hampshire (Mr. McINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Indiana (Mr. BAYH), the Senator from Indiana (Mr. HARTKE), the Senator from North Carolina (Mr. JORDAN), and the Senator from Wyoming (Mr. McGEE) are absent on official business.

I further announce that, if present and voting, the Senator from New Jersey (Mr. WILLIAMS), the Senator from New Hampshire (Mr. McINTYRE), and the Senator from South Dakota (Mr. McGOVERN) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senators from Tennessee (Mr. BAKER and Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Florida (Mr. GURNEY), the Senator from Iowa (Mr. MILLER) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) is absent on official committee business on the west coast and also celebrating a wedding anniversary.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senators from Ohio (Mr. SAXBE and Mr. TAFT) and the Senator from Vermont (Mr. STAFFORD) are absent on official business to attend the Interparliamentary Union meetings.

The Senator from Maryland (Mr. BEALL) is detained on official business at the White House.

If present and voting, the Senator from Colorado (Mr. ALLOTT), the Senator from Maryland (Mr. BEALL), the Senator from New York (Mr. BUCKLEY), the Senator from Iowa (Mr. MILLER), the Senator from Vermont (Mr. STAFFORD), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 77, nays 0, as follows:

[No. 463 Leg.]

YEAS—77

Aiken	Edwards	Mondale
Allen	Ervin	Montoya
Anderson	Fannin	Moss
Bellmon	Fong	Nelson
Bennett	Fulbright	Packwood
Bentsen	Gambrell	Pastore
Bible	Gravel	Pearson
Boggs	Griffin	Pell
Brooke	Hansen	Percy
Burdick	Harris	Proxmire
Byrd,	Hart	Randolph
Harry F., Jr.	Hatfield	Ribicoff
Byrd, Robert C.	Hollings	Roth
Cannon	Hruska	Schweiker
Case	Hughes	Scott
Chiles	Humphrey	Smith
Church	Inouye	Spong
Cook	Jackson	Stennis
Cooper	Javits	Stevens
Cotton	Jordan, Idaho	Stevenson
Cranston	Kennedy	Symington
Curtis	Long	Talmadge
Dole	Magnuson	Thurmond
Dominick	Mansfield	Tunney
Eagleton	Mathias	Weicker
Eastland	McClellan	Young

NAYS—0

NOT VOTING—23

Allott	Hartke	Muskie
Baker	Jordan, N.C.	Saxbe
Bayh	McGee	Sparkman
Beall	McGovern	Stafford
Brock	McIntyre	Taft
Buckley	Metcalf	Tower
Goldwater	Miller	Williams
Gurney	Mundt	

So the bill (S. 555) was passed, as follows:

S. 555

An act to authorize the establishment of an older worker community service program

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 American Community Service Employment Act".

OLDER AMERICAN COMMUNITY SERVICE EMPLOYMENT PROGRAM

SEC. 2. (a) In order to foster and promote useful part-time work opportunities in community service activities for unemployed low-income persons who are fifty-five years old or older and who have poor employment prospects, the Secretary of Labor (hereinafter referred to as the "Secretary") is authorized to establish an older American community service employment program (hereinafter referred to as the "program").

(b) In order to carry out the provisions of this Act, the Secretary is authorized—

(1) to enter into agreements with public or private nonprofit agencies or organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or Indian tribes on Federal or State reservations or other federally recognized Indian tribal groups in order to further the purposes and goals of the program. Such agreements may include provisions for the payment of costs, as provided in subsection (c), of projects developed by such organizations and agencies in cooperation with the Secretary in order to make the program effective or to supplement it. No payments shall be made by the Secretary toward the cost of any project established or administered by any such organization or agency unless he determines that such project—

(A) will provide employment only for eligible individuals, except for necessary technical, administrative, and supervisory personnel, but such personnel shall, to the fullest extent possible, be recruited from among eligible individuals;

(B) will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities;

(C) will employ eligible individuals in services related to publicly owned and operated facilities and projects, or projects sponsored by organizations exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954 (other than political parties), except projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship;

(D) will contribute to the general welfare of the community;

(E) will provide employment for eligible individuals whose opportunities for other suitable public or private paid employment are poor;

(F) will result in an increase in employment opportunities for eligible individuals, and will not result in the displacement of employed workers or impair existing contracts;

(G) will utilize methods of recruitment and selection (including, but not limited to, listing of job vacancies with the employment agency operated by any State or political subdivision thereof) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the project;

(H) will include such training as may be necessary to make the most effective use of the skills and talents of those individuals who are participating, and will provide for the payment of the reasonable expenses of individuals being trained, including a reasonable subsistence allowance;

(I) will assure that safe and healthy conditions of work will be provided, and will assure that persons employed in public service jobs assisted under this Act shall be paid wages which shall not be lower than whichever is the highest of (i) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938, if section 6(a)(1) of such Act applied to the participant and if he were not exempt under section 13 thereof, (ii) the State or local minimum wage for the most nearly comparable covered employment, or (iii) the prevailing rates of pay for persons employed in similar public occupations by the same employer;

(J) will be established or administered with the advice of persons competent in the field of service in which employment is being provided, and of persons who are knowldgeable with regard to the needs of older persons;

(K) will authorize pay for necessary transportation costs of eligible individuals which may be incurred in employment in any project funded under this Act in accordance with regulations promulgated by the Secretary; and

(L) will assure that to the extent feasible such projects will serve the needs of minority, Indian, and limited English-speaking eligible individuals in proportion to their numbers in the State.

(2) to make, issue, and amend such regulations as may be necessary to effectively carry out the provisions of this Act.

(c)(1) The Secretary is authorized to pay not to exceed 90 per centum of the cost of any project which is the subject of an agreement entered into under subsection (b),

except that the Secretary is authorized to pay all of the costs of any such project which is (A) an emergency or disaster project or (B) a project located in an economically depressed area as determined in consultation with the Secretary of Commerce and the Director of the Office of Economic Opportunity.

(2) The non-Federal share shall be in cash or in kind. In determining the amount of the non-Federal share, the Secretary is authorized to attribute fair market value to services and facilities contributed from non-Federal sources.

ADMINISTRATION

SEC. 3. (a) In order to effectively carry out the purposes of this Act, the Secretary is authorized to consult with agencies of States and their political subdivisions with regard to—

(1) the localities in which community service projects of the type authorized by this Act are most needed;

(2) consideration of the employment situation and the types of skills possessed by available local individuals who are eligible to participate; and

(3) potential projects and the number and percentage of eligible individuals in the local population.

(b)(1) The Secretary is authorized and directed to require agencies and organizations administering community service projects assisted under this Act to coordinate their activities with agencies and organizations conducting related manpower programs receiving assistance under other authorities such as the Economic Opportunity Act of 1964, the Manpower Development and Training Act of 1962, and the Emergency Employment Act of 1971. In carrying out the provisions of this paragraph, the Secretary is authorized to make necessary arrangements to include projects assisted under this Act within a common agreement and a common application with projects assisted under other authorities such as the Economic Opportunity Act of 1964, the Manpower Development and Training Act of 1962, and the Emergency Employment Act of 1971.

(2) The Secretary is authorized to make whatever arrangements that are necessary to carry out the programs assisted under this Act as part of any general manpower legislation hereafter enacted, except that appropriations for programs assisted under this Act may not be expended for programs assisted under that Act.

(c) In carrying out the provisions of this Act, the Secretary is authorized to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement, and on a similar basis to cooperate with other public and private agencies, and instrumentalities in the use of services, equipment, and facilities.

(d) The Secretary shall establish criteria designed to assure equitable participation in the administration of community service projects by agencies and organizations eligible for payment under section 2(b).

(e) Payments under this Act may be made in advance or by way of reimbursement and in such installments as the Secretary may determine.

(f) The Secretary shall not delegate his functions and duties under this Act to any other department or agency of Government.

PARTICIPANTS NOT FEDERAL EMPLOYEES

SEC. 4. (a) Eligible individuals who are employed in any project funded under this Act shall not be considered to be Federal employees as a result of such employment and shall not be subject to the provisions of part III of title 5, United States Code.

(b) No contract shall be entered into under this Act with a contractor who is, or whose employees are, under State law, exempted from operation of the State workmen's compensation law, generally applicable to employees, unless the contractor shall undertake to provide either through insurance by a recognized carrier, or by self insurance, as allowed by State law, that the persons employed under the contract, shall enjoy workmen's compensation coverage equal to that provided by law for covered employment. The Secretary must establish standards for severance benefits, in lieu of unemployment insurance coverage, for eligible individuals who have participated in qualifying programs and who have become unemployed.

INTERAGENCY COOPERATION

SEC. 5. The Secretary shall consult and cooperate with the Office of Economic Opportunity, the Administration on Aging, the Department of Health, Education, and Welfare, and any other related Federal agency administering related programs, with a view to achieving optimal coordination with such other programs and shall promote the coordination of projects under this Act with other public and private programs or projects of a similar nature. Such Federal agencies shall cooperate with the Secretary in disseminating information about the availability of assistance under this Act and in promoting the identification and interests of individuals eligible for employment in projects funded under this Act.

EQUITABLE DISTRIBUTION OF ASSISTANCE

SEC. 6. (a)(1) From the sums appropriated for any fiscal year under section 8 there shall be initially allotted for projects within each State an amount which bears the same ratio to such sum as the population aged fifty-five or over in such State bears to the population aged fifty-five or over in all States, except that (A) no State shall be allotted less than one-half of 1 per centum of the sum appropriated for the fiscal year for which the determination is made; and (B) Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands shall each be allotted an amount equal to one-fourth of 1 per centum of the sum appropriated for the fiscal year for which the determination is made. For the purpose of the exception contained in this paragraph, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(2) The number of persons aged fifty-five or over in any State and for all States shall be determined by the Secretary on the basis of the most satisfactory data available to him.

(b) The amount allotted for projects within any State under subsection (a) for any fiscal year which the Secretary determines will not be required for that year shall be reallotted, from time to time and on such dates during such year as the Secretary may fix, to projects within other States in proportion to the original allotments to projects within such States under subsection (a) for that year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates that projects within such State need and will be able to use for such year; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount reallotted to a State under this subsection during a year shall be deemed part of its allotment under subsection (a) for that year.

(c) The amount apportioned for projects within each State under subsection (a) shall be apportioned among areas within each such State in an equitable manner, taking into consideration the proportion which eligible persons in each such area bears to such total number of such persons, respectively, in that State.

DEFINITIONS

SEC. 7. As used in this Act—

(a) "State" means any of the several States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands;

(b) "eligible individual" means an individual who is fifty-five years old or older, who has a low income, and who has or would have difficulty in securing employment;

(c) "community service" means social, health, welfare, educational, library, recreational, and other similar services; conservation, maintenance or restoration of natural resources; community betterment or beautification, antipollution and environmental quality efforts; economic development; and such other services which are essential and necessary to the community as the Secretary, by regulation, may prescribe.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There are hereby authorized to be appropriated $100,000,000 for the fiscal year ending June 30, 1973, and $150,000,000 for fiscal year ending June 30, 1974.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, informed the Senate that the Speaker had appointed Mr. ECKHARDT and Mr. WARE as additional managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill (S. 976) to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, and for other purposes.

The message announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4383) to authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 15927) to amend the Railroad Retirement Act of 1937 to provide a temporary 20 per centum increase in annuities, and for other purposes.

The message further announced that the House had disagreed to the amendments of the Senate to the joint resolution (H.J. Res. 984) to amend the joint resolution providing the U.S. participation in the International Bureau for the Protection of Industrial Property; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. FRASER, Mr. FASCELL, and Mr. GROSS were appointed managers on the part of the House at the conference.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that on September 19, 1972, the President had approved and signed the act (S. 3323) to amend the Public Health

Service Act to enlarge the authority of the National Heart and Lung Institute in order to advance the national attack against diseases of the heart and blood vessels, the lungs, and blood, and for other purposes.

THE PROPOSED NEW WILDERNESS AREAS—A MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER (Mr. GRAVEL) laid before the Senate the following message from the President of the United States, which was referred to the Committee on Interior and Insular Affairs:

To the Congress of the United States:

Everywhere in America, we seek the horizons where escape is free and where despair can never catch up. We sense that our wilderness, more than a concept, is an experience, where we may find something of ourselves and of our world that we might never have known to exist.

Wide-winged birds soaring over remote treetops can set our dreams in new directions. Serrated cliffs can tell us about our geological past. Mountain flowers beside woodland trails can teach us vital lessons about our ecological relationships. Sea winds blowing across lonely beaches can refresh us for new accomplishments.

It is a prime objective of government to balance the use of land sensibly to ensure that the world of nature is preserved along with the world of man.

"A wilderness . . ." according to the epochal Wilderness Act of 1964, "is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." Within the National Wilderness Preservation System established by this act, the first 9.1 million acres of our country were set aside, to be conserved, unimpaired, in their natural state.

Today, I am proposing to the Congress 16 new wilderness areas which, if approved, would add 3.5 million acres to our wilderness system. This is the largest single incremental increase in the system since passage of the act.

Five would be located in our National Wildlife Refuge Areas. They are the Brigantine National Wildlife Refuge in New Jersey, the Blackbeard Island National Wildlife Refuge in Georgia, the Chassahowitzka National Wildlife Refuge in Florida, and the Lostwood National Wildlife Refuge and the Chase Lake National Wildlife Refuge in North Dakota. A sixth area, administered by the National Park Service, would be within the Cumberland Gap National Historical Park on the borders of Tennessee, Virginia, and Kentucky. These six additions would add 40,257 acres to the Wilderness Preservation System.

In the Western States, in units administered by the National Park Service, my proposals today would designate as wilderness 2,016,181 acres in Yellowstone National Park, 512,870 in the Grand Canyon complex, 646,700 acres in Yosemite National Park, and 115,807 acres in Grand Teton National Park.

I further propose for inclusion in our National Wilderness Preservation System an additional 216,519 acres in some of the most beautiful regions of our country. These would include designated areas in the Great Sand Dunes National Monument in Colorado, the Theodore Roosevelt National Memorial Park in North Dakota, the Badlands National Monument in South Dakota, the Guadalupe Mountains National Park in Texas, the Carlsbad Caverns National Park in New Mexico and the Haleakala National Park in Hawaii.

The 1964 Wilderness Act further directed the Secretaries of Agriculture and of the Interior to review federally owned lands which they administer and to report to the President, who transmits to the Congress their and his recommendations for those areas which qualify as wilderness as defined by the act. This wilderness review process, to be conducted in three phases, was to be completed by 1974.

Beginning in 1969, I accelerated this program, and on April 28, 1971, I forwarded to the Congress 14 new wilderness proposals which, when enacted, would substantially increase the acreage added since passage of the Wilderness Act. I warned that we would need a redoubled effort by the Departments of Agriculture and the Interior in completing the review process and prompt action on these proposals by the Congress.

On February 8, 1972, I transmitted a second package of 18 new wilderness proposals to the Congress, which, if enacted, would designate 1.3 million additional acres as wilderness. At that time I reported that the September, 1974 statutory deadline for reviews could and would be met. I also pointed out that the majority of the wilderness areas recommended to date had involved western lands. Therefore, I directed the Secretaries of Agriculture and Interior to accelerate the identification of areas in the Eastern United States having wilderness potential.

The Congress has now received 78 wilderness proposals which would add 5.8 million acres to the original 9.1 million acres designated by the Congress.

To date, however, the Congress has acted on only 35 proposals, approving 1.7 million acres for inclusion in the system. This leaves pending 43 wilderness proposals encompassing 4.1 million acres.

I now urge the Congress—in this centennial year of our National Park System—to act quickly in favor of these new proposals as well as the ones already pending.

I am aware of the commercial opportunities in potential wilderness areas such as mining, lumbering, and recreational development. I believe we must achieve a sensible land use balance—America can have economic growth *and* the unspoiled nature of the wilderness.

Increasingly, in fact, the preservation of these areas has become a major goal of all Americans. The process of developing wilderness proposals is now exemplifying public participation and cooperation with the governmental process. Commercial and conservation groups—and individuals from all over the country—have, through public hearings and direct contact with Government agencies, done much more than is generally realized to contribute to the wilderness program.

I believe the value of this cooperative effort between the public and their government officials is reflected in the wilderness proposals I am proud to submit today. This is an excellent example of the responsive way in which our government is meant to work.

The first man on earth, according to the scriptures was placed in a natural garden, and he was charged "to dress it and keep it." Our own great naturalist John Murir said that our "whole continent was a garden and . . . seemed to be favored above all the other wild parks and gardens of the globe."

The addition of these new areas to our national wilderness system will help to keep it that way.

RICHARD M. NIXON.

THE WHITE HOUSE, *September 21, 1972.*

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer (Mr. GRAVEL) laid before the Senate a message from the President of the United States submitting the nomination of Lt. Gen. Paul K. Carlton, major general, Regular Air Force, U.S. Air Force, to be assigned to a position of importance and responsibility designated by the President, in the grade of general while so serving, which was referred to the Committee on Armed Services.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent to be recognized, regardless of the next order of business and the time limitation attached thereto.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the following noncontroversial items on the Calendar: Calendar No. 1071, Calendar No. 1080, Calendar No. 1121, and Calendar No. 1123.

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

JUDGMENT IN FAVOR OF THE HAVASUPAI TRIBE OF INDIANS

The bill (H.R. 9032) to provide for the disposition of funds appropriated to pay a judgment in favor of the Havasupai Tribe of Indians in Indian Claims Commission docket numbered 91, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

NATIONAL INSTITUTE OF AGING

The Senate proceeded to consider the bill (H.R. 14424) to amend the Public Health Service Act to provide for the establishment of a National Institute of Aging and for other purposes.

Mr. MANSFIELD. I move that all after the enacting clause be stricken and that

there be substituted therefor the text of S. 887 as reported with an amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The amendment of the committee was to strike out all after the enacting clause and insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Research on Aging Act of 1972".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. The Congress hereby finds and declares—

(1) that the study of the aging process, the one biological condition common to all, has not received research support commensurate with its effects on the lives of every individual;

(2) that, in addition to the physical infirmities resulting from advanced age, the economic, social, and psychological factors associated with aging operate to exclude millions of older Americans from the full life and the place in our society to which their years of service and experience entitle them;

(3) that recent research efforts point the way toward alleviation of the problems of old age by extending the healthy middle years of life;

(4) that there is no American institution that has undertaken, or is now capable of undertaking, comprehensive systematic and intensive studies of the biomedical and behavioral aspects of aging and the related training of necessary personnel;

(5) that the establishment of a National Institute on Aging within the National Institutes of Health will meet the need for such an institution.

SEC. 3. Title IV of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART G—NATIONAL INSTITUTE ON AGING

"ESTABLISHMENT OF NATIONAL INSTITUTE ON AGING

"SEC. 461. The Secretary shall establish in the Public Health Service an institute to be known as the National Institute on Aging (hereinafter in this part referred to as the 'Institute') for the conduct and support of biomedical, social, and behavioral research and training relating to the aging process and the diseases and other special problems and needs of the aged.

"ESTABLISHMENT OF ADVISORY COUNCIL

"SEC. 462. (a) There is established in the Institute a National Advisory Council on Research on Aging to be composed of sixteen members, as follows:

"(1) The Secretary, the Director of the National Institutes of Health, the chief medical officer of the Veterans' Administration (or his designee), and a medical officer designated by the Secretary of Defense shall be ex officio members of the Council.

"(2) Twelve members appointed by the Secretary. Each of the appointed members of the Council shall be leaders in the fields of fundamental sciences, medical sciences, behavioral and social sciences, or public affairs. Six of the appointed members shall be selected from among the leading medical or scientific authorities who are skilled in the sciences relating to gerontology; three of the appointed members shall be selected from the leading authorities who are skilled in aspects of the social or behavioral sciences relating to aging; and three of the appointed members shall be selected from the general public.

"(b)(1) Each appointed member of the Council shall be appointd for a term of four years, except that—

"(A) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

"(B) of the members first appointed after the effective date of this section, three shall be appointed for a term of four years, three shall be appointed for a term of three years, three shall be appointed for a term of two years, and three shall be appointed for a term of one year, as designated by the Secretary at the time of appointment.

Appointed members may serve after the expiration of their terms until their successors have taken office.

"(2) A vacancy in the Council shall not affect its activities, and twelve members of the Council shall constitute a quorum.

"(3) Upon appointment of the Council it shall assume all of the functions, powers, and duties relating to research on aging of the National Advisory Child Health and Human Development Council established pursuant to section 443(a), and all of the functions, powers, and duties of the National Advisory Health Council, or its successors, under section 301 with respect to research or training projects relating to aging.

"(4) Members of the Council who are not officers or employees of the United States shall receive for each day they are engaged in the performance of the functions of the Council compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703, title 5, United States Code, for persons in the Government service employed intermittently.

"(c) The Chairman of the Council shall be appointed by the Secretary from among the members of the Council and shall serve as Chairman for a term of two years.

"(d) The Director of the Institute shall (1) designate a member of the staff of the Institute to act as executive secretary of the Council, and (2) make available to the Council such staff, information, and other assistance as it may require to carry out its functions.

"(e) The Council shall meet at the call of the Director of the Institute or of the Chairman, but not less often than four times a year.

"FUNCTIONS

"SEC. 463. (a) The Secretary shall, through the Institute, carry out the purposes of section 301 with respect to research, investigations, experiments, demonstrations, and studies related to the aging process and the diseases and other special problems and needs of the aged, except that the Director of the National Institutes of Health shall determine the area in which and the extent to which he will carry out such activities in furtherance of the purposes of section 301 through the Institute or another institute established by or under other provisions of this Act, or both of them, when both such institutes have functions with respect to the same subject matter, and shall be responsible for coordinating such activities so as to avoid unproductive and unnecessary overlap and duplication of such functions. The Secretary may also provide training and instruction and establish traineeships and fellowships, in the Institute and elsewhere, in matters relating to study and investigation of the aging process and the diseases and other special problems and needs of the aged. The Secretary may provide trainees and fellows participating such training and instruction or in such traineeships and fellowships with stipends and allowances (including travel and subsistence expenses) as he deems necesary, and, in addition, provide for such training, instruction, and traineeships and for such fellowships through grants to public or other nonprofit institutions. In carrying out his health manpower training responsibilities under the Public Health Service Act or any other Act, the Secretary shall take appropriate steps to insure the education and training of adequate numbers of allied health, nursing, and paramedical personnel in the field of health care for the aged.

"(b) The Secretary shall, through the Institute, conduct scientific studies to measure the impact on the biological, medical, and psychological aspects of aging of all programs and activities assisted or conducted by departments and agencies of the Federal Government designed to meet the needs of the aging.

"(c) The Secretary, through the Institute, shall carry out public information and education programs designed to disseminate as widely as possible the findings of Institute sponsored and other relevant aging research and studies, and other information about the process of aging which may assist elderly and near-elderly persons in dealing with, and all Americans in understanding, the problems and processes associated with growing older.

"SEC. 464. (a) The Secretary, in consultation with the Institute (acting through the Council) and such other appropriate advisory bodies as he may establish, shall within one year after the effective date of this section develop a plan for an aging research program designed to coordinate and promote research into the biological, medical, psychological, social, educational, and economic aspects of aging. Such program shall be carried out, as to research involving the functions of the Institute, primarily through the Institute, and as to other research shall be carried out through any other institute established by or under other provisions of this Act or through any appropriate agency or other organizational unit within the Department of Health, Education, and Welfare.

"(b) The plan required by subsection (a) of this section shall be transmitted to the Congress and the President and shall set forth the staffing and funding requirements to carry out the program contained therein."

Mr. CHURCH. Mr. President, I urge the adoption of S. 887, the Research on Aging Act.

Today the low priority assigned to aging research constitutes one of the most serious problems in the field of gerontology.

Yet, we know far too little about the aging process, even though it accounts for a substantial proportion of cost of medical care.

For example, about 80 percent of all persons 65 or older suffer from some form of chronic condition. More importantly, many of these conditions, which are associated with advancing age, are the end product of a process begun several years earlier—when these individuals were in their forties or early fifties.

As a nation, we now recognize the importance and need for continuing research, but unfortunately not in the field of aging. Many businesses and governmental units earmark 5 percent of their available funds for research. But aging research at the National Institutes of Health represents only about one-tenth of 1 percent of Federal expenditures in health programs for the elderly.

There are, however, numerous compelling reasons to reverse this shortsighted commitment for aging research.

Health care costs, for instance, can be reduced because of aging research. With this body of knowledge, greater emphasis can be placed upon preventive medicine, instead of waiting to treat disease after it reaches a serious or crisis stage.

Moreover, research can help more people live better for longer periods of time. Such efforts can, of course, contribute to more years of useful, healthy living.

Finally, in terms of sheer numbers we, as a Nation, should be concerned with the aging process. Today there are nearly 21 million persons 65 or older, almost seven times as many at the turn of the century. It is estimated that perhaps 45 to 50 million persons will have reached their 65th birthday during the next 30 years.

Important but still unanswered questions about growing old present powerful reasons for developing an expanded, coordinated research program on aging. And, S. 887 represents a sound and sensible approach to provide the essential commitment for a systematic approach in the field of aging. First, S. 887 would establish a National Institute on Aging to conduct and support biomedical, social, and behavioral research and training related to the aging process. The new institute would also concentrate on diseases and other special problems of the elderly.

Second, the bill establishes a National Advisory Council on Aging to monitor programs conducted by the Institute.

Third, S. 887 directs the Secretary of Health, Education, and Welfare to prepare a comprehensive aging and research plan within 1 year, along with a statement of the staffing and funding requirements necessary to implement the plan.

A National Institute on Aging, I am pleased to say, had the strong and enthusiastic support of the White House Conference on Aging.

All Americans—the young as well as the old—have a vital stake in understanding and learning to cope with the inevitable aging process.

For these reasons, I strongly support enactment of S. 887, a bill which I cosponsored with the Senator from Missouri (Mr. EAGLETON).

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 14424) was read a third time and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that S. 887 be indefinitely postponed.

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

The title was amended, so as to read: "A bill to amend the Public Health Service Act to provide for the establishment of a National Institute on Aging."

NATIONAL DRUG ABUSE PREVENTION WEEK

The joint resolution (S.J. Res. 236) to authorize and request the President to proclaim the week beginning October 15, 1972, as "National Drug Abuse Prevention Week" was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to heighten the awareness of the people of the United States with regard to the national threat of drug abuse, and to provide an opportunity for a period of special emphasis on this problem, the President is authorized and requested to issue a proclamation designating the week beginning October 15, 1972, as "National Drug Abuse Prevention Week", and calling upon the people of the United States and interested groups and organizations to observe such period with appropriate ceremonies and activities.

PACIFIC TROPICAL BOTANICAL GARDEN

The bill (H.R. 9135) to amend the Act of August 19, 1964, to remove the limitation on the maximum number of members of the board of trustees of the Pacific Tropical Botanical Garden was considered, ordered to a third reading, read the third time, and passed.

PROGRAM

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. Mr. President, I rise to inquire as to the order of business for the rest of the day and the rest of the week.

Mr. MANSFIELD. Mr. President, as the Senator is aware, the distinguished Senator from Nevada is prepared to take up a measure having to do with the unlawful seizure of airplanes.

Following that, the Senate will proceed to the consideration of S. 3970, a bill to establish a Council of Consumer Advisers in the Executive Office of the President, which I understand is quite controversial.

Tomorrow morning, it is the desire of the leadership that the Senate proceed to the consideration of Calendar No. 1127, H.R. 16029, an act to amend the Foreign Assistance Act of 1961, and put that on the first track.

It is anticipated that we will be in session on Saturday this week.

We hope that early next week it will be possible to take up H.R. 1, welfare reform, a bill which, I understand, will be on the calendar next Monday.

We also hope to consider Calendar No. 1107, S. 630, with respect to the future regulation of surface mining operations.

We have, of course, the debt ceiling to consider, a continuing resolution very likely, and five appropriation bills, as well as the Equal Educational Opportunity Act.

Those are the major items at the present time, which would indicate to the Senate that we face a heavy schedule. We will be in session this coming Saturday in an attempt to face our responsibilities.

Mr. SCOTT. I thank the distinguished majority leader. I should like to raise another point, not really under the control of the leadership. But the fact that we are meeting earlier and earlier in order to get our business done and to adjourn is being, to a degree, subverted—and I use that word in a nice sense—by the large number of special orders that we are getting in the morning, in which I have been participating.

These special orders are being used, if I may say so, for daily political forays in which donkeys behave like donkeys and elephants behave like elephants. The public is not really enlightened, nor is the public paying much attention to it. I realize that we cannot control that, but I should like to point to what I think is the futility of what we are doing. Charges are made in one direction and replies are made in another. We are not convincing each other of anything. We are not doing anything except delaying the ultimate adjournment of the Senate.

I say this for the record, because it is being said privately by Senators on both sides of the aisle who are not participating in this rather unholy exercise. I suggest we find some means by which we can enter into an interim agreement, or a treaty of nonpolitical violence here. [Laughter.]

Mr. PASTORE. Mr. President, if the Senator from Pennsylvania will yield, I think the best way to illustrate that is to say that we came in today at 9 a.m. but we did not take a vote until 11:30 a.m. It strikes me——

Mr. DOMINICK. Mr. President, may we have order in the Senate so that we may hear the Senator from Rhode Island. I cannot hear the Senator from Rhode Island for the first time in my life. [Laughter.]

Mr. PASTORE. Well, Mr. President, I think I can accommodate my good friend from Colorado.

Mr. President, I do not see why we cannot have these speeches made at 6 p.m. at night and let us do our work during the waking hours of the day, rather than having to do the serious work in the sleeping hours and doing the other work in the waking hours. Maybe we should reverse it.

Mr. SCOTT. The Senator is quite correct.

Mr. DOMINICK. Mr. President, will the distinguished Senator from Pennsylvania yield me 1 minute?

Mr. SCOTT. The Senator from Montana has the floor.

Mr. MANSFIELD. I am delighted to yield to the Senator from Colorado.

Mr. DOMINICK. Mr. President, I want to say to Senators who are now in the Chamber that we just finished having a rollcall vote of 77 to 0. Despite my colloquy with the Senator from Montana and the Senator from Rhode Island yesterday, there was still a rollcall vote at the request of the Senator from Massachusetts (Mr. KENNEDY) on a bill which was totally noncontroversial and which no one voted against.

Now, having had a 77 to 0 vote on this, and feeling as strongly as I do that we are wasting a whale of a lot of time by voting on noncontroversial measures with yea and nay votes, I will now ask the Parliamentarian and the Presiding Officer, who seem to be shifting seats here, whether it is not true that, at this point, in order to get a rollcall vote, it

requires one-fifth of those who just voted on the previous measure?

The PRESIDING OFFICER (Mr. GRAVEL). Under Senate procedure, a demand for the yeas and nays is a constitutional privilege and a quorum is always presumed to be present. Such a demand for the yeas and nays must be seconded by at least one-fifth of the presumptive quorum, a minimum of 11 with the present Membership of 100, and based on the last rollcall. The demand should be put when requested.

Mr. DOMINICK. In other words, based on the last rollcall vote, then, we would have to have more than 11 on the next demand; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DOMINICK. I want to make it clear on this point, from my point of view, that if there is any controversy on an amendment to any bill, I have no objection whatever to having a rollcall vote, whether only two or three Senators are involved who happen not to like the bill and want to be recorded against it. I do not see why they should not have that right. But this total waste of time in going forward with so many rollcall votes and embarrassing everyone who is not able to be here, wasting the time of Senators in having to go back and forth from their offices or committee rooms to the Chamber in order to vote, seems to me to be totally out of line.

I have said so before, I asked that there not be a rollcall vote, but there was one now, which is proper under the Senate rules, by a vote of 77 to 0. But we have now disrupted, to my personal knowledge, two committees, and many meetings which are going on, and we are wasting a whale of a lot of time. I hope we will not do it any more.

Mr. ALLEN. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. ALLEN. I want to commend the distinguished majority leader for his statement with regard to the placement of the Equal Educational Opportunities bill, which is the so-called antibusing legislation, on the list.

The Senator from Alabama recalls that the distinguished majority leader has stated he will give at least 24 hours' notice before the bill is called up.

Therefore, would the Senator from Alabama be correct in assuming that the distinguished majority leader will yet give us 24 hours' notice, or does this notice he has just given mean that it may be called up in the order as listed by the distinguished majority leader?

Mr. MANSFIELD. May I say that I will do my best to give 24 hours' notice, but I am sure that the Senator from Alabama will understand that notices of this nature in part are also notices of intent with no time specified.

Mr. ALLEN. I thank the distinguished majority leader. The Senator from Alabama did not require 24 hours notice—that much notice to me. The Senator from Alabama is glad to learn that this may constitute notice that would abridge the 24-hour notice or statement the distinguished majority leader made heretofore. So it may be anticipated, then, that this bill may come up for consideration by the Senate the early part of next week.

Mr. MANSFIELD. Or the latter part, or the following week, depending on circumstances.

Mr. ALLEN. The latter part of this week?

Mr. MANSFIELD. The latter part of next week, or the week following. It depends on circumstances. The Senator from Alabama will have to allow me some flexibility.

Mr. ALLEN. Yes, but the distinguished majority leader did state the order that he now plans to follow.

Mr. MANSFIELD. Not necessarily the order in which they would come up, but I stated the schedule of bills that would have to be considered, in my opinion.

Mr. ALLEN. In that order?

Mr. MANSFIELD. Not necessarily in that order.

Mr. ALLEN. Yes. I thank the distinguished majority leader for this clarification.

ANTIHIJACKING ACT OF 1972

The PRESIDING OFFICER (Mr. GRAVEL). Under the previous order, the Chair now lays before the Senate Calendar No. 961, S. 2280, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 2280) to amend sections 101 and 902 of the Federal Aviation Act of 1958, as amended, to implement the Convention for the Suppression of Unlawful Seizure of Aircraft, and for other purposes.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce with amendments on page 1, line 4, strike out "1971" and insert "1972"; on page 3, line 21, after the word "for", strike out "any term of years or for life, if the death penalty is not imposed" and insert "not less than twenty years, if the death penalty is not imposed"; on page 4, line 8, after the word "act", strike out the comma and insert a period; after line 8, insert:

"(3) This subsection shall only be applicable if the place of takeoff or the place of actual landing of the aircraft on board which the offense as defined in paragraph 2 of this subsection is committed is situated outside the territory of the State of registration of that aircraft.

After line 13, insert:

"(4) For purposes of this subsection an aircraft is considered to be in flight from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over responsibility for the aircraft and for the persons and property aboard."

After line 23, strike out:

(d) By amending that portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "Sec. 902. Criminal Penalties." by striking out the following items:

"(n) Investigations by Federal Bureau of Investigation.

"(o) Interference with aircraft accident investigation.";

and by inserting the following items in place thereof.

"(n) Aircraft Piracy Outside Special Aircraft Jurisdiction of the United States.

"(o) Investigations by Federal Bureau of Investigation.

"(p) Interference with aircraft accident investigation.".

SEC. 4. The amendments contained in this Act shall become effective one day after fulfillment of the following conditions:

(a) the entry into force for the United States of the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague, Netherlands, December 16, 1970; and

(b) the publication in the Federal Register by or on behalf of the Secretary of State of a notice referring to this Act and stating that the Convention has entered, or will enter, into force for the United States on a date specified in that notice.

On page 5, after line 15, insert a new section, as follows:

SEC. 4. (a) Title XI of the Federal Aviation Act of 1958 is amended by adding a new section 1114 as follows:

"SUSPENSION OF AIR SERVICES

"SEC. 1114. (a) Whenever the President determines that a foreign nation is acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft, he may, without notice or hearing and for as long as he determines necessary to assure the security of aircraft against unlawful seizure, suspend (1) the right of any air carrier and foreign air carrier to engage in foreign air transportation, and any persons to operate aircraft in foreign air commerce, to and from that foreign nation, and (2) the right of any foreign air carrier to engage in foreign air transportation, and any foreign person to operate aircraft in foreign air commerce, between the United States and any foreign nation which maintains air service between itself and that foreign nation. Notwithstanding section 1102 of this Act, the President's authority to suspend rights in this manner shall be deemed to be a condition to any certificate of public convenience and necessity or foreign air carrier or foreign aircraft permit issued by the Civil Aeronautics Board and any air carrier operating certificate or foreign air carrier operating specification issued by the Secretary of Transportation.

"(b) It shall be unlawful for any air carrier or foreign air carrier to engage in foreign air transportation, or any person to operate aircraft in foreign air commerce, in violation of the suspension of rights by the President under this section.".

(b) Title XI of the Federal Aviation Act of 1958 is amended by adding a new section 1115 as follows:

"SECURITY STANDARDS IN FOREIGN AIR TRANSPORTATION

"SEC. 1115. (a) Not later than 30 days after the date of enactment of this Act the Secretary of State shall notify each nation with which the United States has a bilateral air transport agreement or, in the absence of such agreement, each nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to section 402 of the Federal Aviation Act of 1958, of the provisions of subsection (b) of this section.

"(b) In any case where the Secretary of Transportation, after consultation with the competent aeronautical authorities of a foreign nation with which the United States has a bilateral air transport agreement and

in accordance with the provisions of that agreement or, in the absence of such agreement, of a nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to such section 402, finds that such nation does not effectively maintain and administer security measures relating to transportation of persons or property or mail in foreign air transportation that are equal to or above the minimum standards which are established pursuant to the Convention on International Civil Aviation, or prior to a date when such standards are adopted and enter into force pursuant to such Convention, the specifications and practices set out in Appendix A to Resolution A17–10 of the 17th Assembly of the International Civil Aviation Organization, he shall notify that nation of such finding and the steps considered necessary to bring the security measures of that nation to standards at least equal to the minimum standards of such Convention or such specifications and practices of such Resolution. In the event of failure of that nation to take such steps, the Secretary of Transportation, with the approval of the Secretary of State, may withhold, revoke, or impose conditions on the operating authority of the airline or airlines of that nation."

On page 8, after line 12, insert a new section, as follows:

SEC. 5. Section 901(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)) is amended by inserting the words "or section 1114" before the words "of this Act" when those words first appear in this section.

After line 16, insert a new section, as follows:

SEC. 6. Section 1007(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1487(a)) is amended by inserting the words "or, in the case of a violation of section 1114 of this Act, the Attorney General," after the words "duly authorized agents,".

And, after line 21, insert a new section, as follows:

SEC. 7. That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading

"Sec. 902. Criminal penalties.",

is amended by striking out the following items:

"(n) Investigations by Federal Bureau of Investigation.

"(o) Interference with aircraft accident investigation.";

and by inserting the following items in place thereof:

"(n) Aircraft piracy outside special aircraft jurisdictions of the United States.

"(o) Investigations by Federal Bureau of Investigation.

"(p) Interference with aircraft accident investigation.";

and that portion which appears under the heading

"TITLE XI—MISCELLANEOUS"

is amended by adding at the end thereof the following:

"Sec. 1114. Suspension of air services.
"Sec. 1115. Security standards in foreign air transportation.".

So as to make the bill read:

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 "Anti-Hijacking Act of 1972".

SEC. 2. Section 101(32) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(32)), is amended to read as follows:

"(32) The term 'special aircraft jurisdiction of the United States' includes—

"(a) civil aircraft of the United States;

"(b) aircraft of the national defense forces of the United States;

"(c) any other aircraft within the United States;

"(d) any other aircraft outside the United States—

"(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or

"(ii) having 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

"(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States;

while that aircraft is in flight, which is from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard."

SEC. 3. Section 902 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472), is amended as follows:

(a) By striking out the words "violence and" in subsection (i)(2) thereof, and by inserting the words "violence, or by any other form of intimidation, and" in place thereof;

(b) By redesignating subsections (n) and (o) thereof as "(o)" and "(p)", respectively, and by adding the following new subsection:

"Aircraft Piracy Outside Special Aircraft Jurisdiction of the United States

"(n)(1) Whoever aboard an aircraft in flight outside the special aircraft jurisdiction of the United States commits 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, and is afterward found in the United States shall be punished—

"(A) by death if the verdict of the jury shall so recommend, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion shall so order; or

"(B) by imprisonment for not less than twenty years, if the death penalty is not imposed.

"(2) A person commits 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft when, while aboard an aircraft in flight, he—

"(A) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

"(B) is an accomplice of a person who performs or attempts to perform any such act.

"(3) This subsection shall only be applicable if the place of takeoff or the place of actual landing of the aircraft on board which the offense as defined in paragraph 2 of this subsection is committed is situated outside the territory of the State of registration of that aircraft.

"(4) For purposes of this subsection an aircraft is considered to be in flight from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over responsibility for the aircraft and for the persons and property aboard."

(c) By amending redesignated subsection (o) thereof by striking out the reference "(m)", and by inserting the reference "(n)" in place thereof; and

SEC. 4. (a) Title XI of the Federal Aviation Act of 1958 is amended by adding a new section 1114 as follows:

"SUSPENSION OF AIR SERVICES

"SEC. 1114. (a) Whenever the President determines that a foreign nation is acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft, he may, without notice or hearing and for as long as he determines necessary to assure the security of aircraft against unlawful seizure, suspend (1) the right of any air carrier and foreign air carrier to engage in foreign air transportation, and any persons to operate aircraft in foreign air commerce, to and from that foreign nation, and (2) the right of any foreign air carrier to engage in foreign air transportation, and any foreign person to operate aircraft in foreign air commerce, between the United States and any foreign nation which maintains air service between itself and that foreign nation. Notwithstanding section 1102 of this Act, the President's authority to suspend rights in this manner shall be deemed to be a condition to any certificate of public convenience and necessity or foreign air carrier or foreign aircraft permit issued by the Civil Aeronautics Board and any air carrier operating certificate or foreign air carrier operating specification issued by the Secretary of Transportation.

"(b) It shall be unlawful for any air carrier or foreign air carrier to engage in foreign air transportation, or any person to operate aircraft in foreign air commerce, in violation of the suspension of rights by the President under this section.".

(b) Title XI of the Federal Aviation Act of 1958 is amended by adding a new section 1115 as follows:

"SECURITY STANDARDS IN FOREIGN AIR TRANSPORTATION

"SEC. 115. (a) Not later than 30 days after the date of enactment of this Act the Secretary of State shall notify each nation with which the United States has a bilateral air transport agreement or, in the absence of such agreement, each nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to section 402 of the Federal Aviation Act of 1958, of the provisions of subsection (b) of this section.

"(b) In any case where the Secretary of Transportation, after consultation with the competent aeronautical authorities of a foreign nation with which the United States has a bilateral air transport agreement and in accordance with the provisions of that agreement or, in the absence of such agreement, of a nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to such section 402, finds that such nation does not effectively maintain and administer security measures relating to transportation of persons or property or mail in foreign air transportation that are equal to or above the minimum standards which are established pursuant to the Convention on International Civil Aviation or, prior to a date when such standards are adopted and enter into force pursuant to such Convention, the specifications and practices set out in Appendix A to Resolution A17–10 of the 17th Assembly of the International Civil Aviation Organization, he shall notify that nation of such finding and the steps considered necessary to bring the security measures of that nation to standards at least equal to the minimum standards of such Convention or such specifications and practices of such Resolution. In the event of failure of that nation to take such steps, the Secretary of Transportation, with the approval of the Secretary of State, may withhold, revoke, or impose conditions on the operating authority of the airline or airlines of that nation."

SEC. 5. Section 901(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)) is amended by inserting the words "or section 1114" before the words "of this Act" when those words first appear in this section.

SEC. 6. Section 1007(a) of the Federal Avia-

tion Act of 1958 (49 U.S.C. 1487(a)) is amended by inserting the words "or, in the case of a violation of section 1114 of this Act, the Attorney General," after the words "duly authorized agents,".

SEC. 7. That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading

"Sec. 902. Criminal penalties.",

is amended by striking out the following items:

"(n) Investigations by Federal Bureau of Investigation.

"(o) Interference with aircraft accident investigation.";

and by inserting the following items in place thereof:

"(n) Aircraft piracy outside special aircraft jurisdiction of the United States.

"(o) Investigations by Federal Bureau of Investigation.

"(p) Interference with aircraft accident investigation.";

and that portion which appears under the heading

"TITLE XI—MISCELLANEOUS"

is amended by adding at the end thereof the following:

"Sec. 1114. Suspension of air services.
"Sec. 1115. Security standards in foreign air transportation.".

Mr. CANNON. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. SCOTT. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SCOTT. Mr. President, will the Chair announce the number of Senators who held their hands up?

The PRESIDING OFFICER. It is not customary to announce the number of those who held up their hands.

Mr. SCOTT. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SCOTT. Mr. President, is a sufficient number one-fifth of the 77 who voted on the last rollcall?

The PRESIDING OFFICER. Under the precedents, that is left up to the judgment of the Chair. Of course, under the practices, it is one-fifth of the number who voted on the last rollcall recently taken.

It is the judgment of the Chair that there was a sufficient number of Senators, based on precedents and practices of the Senate, who raised their hands to order the yeas and nays.

Mr. SCOTT. Mr. President, I thank the Presiding Officer.

Mr. CANNON. Mr. President, I ask unanimous consent that Robert Ginther, majority counsel, and John Kirtland, minority counsel, be permitted the privilege of the poor during the debate on the bill

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

Mr. HRUSKA. Mr. President, will the Senator yield briefly?

Mr. CANNON. I yield.

Mr. HRUSKA. Mr. President, I ask unanimous consent that Malcolm Hawk, a member of the staff of the Judiciary Committee who worked on this legislation, be given the privilege of the floor during the consideration of both of these bills.

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

Mr. CANNON. Mr. President, S. 2280 is designed to provide the legislation necessary for the United States to implement the Convention for the Suppression of Unlawful Seizure of Aircraft—the Antihijacking Convention—to which the United States is a party, and which came into effect on October 14, 1971.

In addition, the bill is designed to provide the President authority to suspend air service to any foreign nation which he determines is encouraging aircraft hijacking by acting in a manner inconsistent with the Hague Treaty and to suspend foreign air carrier service between the United States and any nation which continues to provide for or accept air service from any nation which the President has determined is encouraging hijacking.

Finally, the bill provides the Secretary of Transportation authority to withhold, revoke or limit the operating authority of any foreign air carrier whose government does not effectively maintain and administer security measures equal to or above the minimum standards established pursuant to the Convention on International Civil Aviation.

In addition, Mr. President, I plan to offer an amendment on behalf of the Commerce Committee to S. 2280 containing additional provisions dealing with the menace of air piracy and criminal violence against air transportation. This amendment was developed by the committee following the reporting of S. 2280 but should be considered with it as part of a total legislative program.

Briefly, the amendment will require the FAA Administrator to issue regulations, as soon as practicable, requiring for at least the next 12 months, that all passengers and their carry-on property carried in air transportation involving large aircraft be screened by weapon detecting devices, operated by employees of air carriers, before the passengers and their baggage are boarded. The amendments authorize the Administrator to acquire and furnish metal detector devices for this purpose with funds from the airport and airway trust fund. The devices will remain U.S. property.

Mr. COTTON. Mr. President, the Senator from New Hampshire has an inquiry to make of the manager of the bill. I am a little confused concerning the time limitation on this bill.

There was no real controversy over the original bill, S. 2280, as it was reported on August 4 (Calendar Order No. 961). It could have been disposed of, at any time.

But, then the committee filed an amendment (No. 1557). I am not going to oppose the committee amendment. However, there is some question about it. I have a letter from the Secretary of Transportation, and I wish to make a brief statement concerning it.

However, somewhere along the line a time limitation of 1 hour was agreed to on the bill, S. 2280. I do not know by whom that was done. I did not have an opportunity to be heard on that. But, I want to be sure that I have an opportunity to get some material in the RECORD.

Quite frankly, I do not understand why, after the committee's amendment (No. 1557) was reported, there was this time limitation.

Mr. SCHWEIKER. Mr. President, I am responsible for the time limitation of 1 hour. The reason is very easy to explain. An agreement was entered into in the RECORD on the basis of 20 minutes for amendments. The committee amendments were printed. I did not know what we could or could not amend. My amendment would amend the committee amendment and not the bill.

I want to assure the Senator from New Hampshire——

Mr. COTTON. I am not concerned at the moment about the amendment. But, I am interested in the 1-hour time limitation on the bill—30 minutes to a side. Certainly, in view of this time agreement, the Senator from Nevada, chairman of the Aviation Subcommittee, acted very properly as he did.

I simply want to be sure I will have 5 or 10 minutes.

Mr. MANSFIELD. Mr. President, if the Senator will yield, the Senator from New Hampshire can be assured that he will have the time he needs.

Mr. SCHWEIKER. Mr. President, I will be glad to give him some of my time. I may not use all of it.

Mr. CANNON. Mr. President, under terms of the new committee proposal, the Administrator of the FAA will also be required to establish an air transportation security force of sufficient size to provide a law enforcement presence and capability at airports in the United States adequate to insure the safety of passengers from violence and air piracy. The officers of such force will have the authority to: First, detain and search any person seeking to travel in air transportation to ascertain whether such person is carrying, unlawfully, a dangerous weapon, explosive, or other destructive substance; second, search or inspect property destined for or in air transportation to determine whether it unlawfully contains any dangerous weapon, explosive, or other destructive substance; third, arrest any person whom he has reasonable cause to believe has violated or has attempted to violate Federal statutes relating to crimes against aircraft or against air transportation; and fourth, and to carry firearms.

In addition, the Administrator is empowered to designate and deputize state and local law enforcement officials to exercise the authority described above.

The amendments require that the FAA Administrator prescribe regulations requiring that airlines refuse to transport persons not consenting to a search of their person or property to determine whether dangerous weapons, explosive or other destructive substances are being carried unlawfully. Further, the amendment provides that an agreement for carriage of persons or property in air transportation shall be deemed to include an implied consent to search persons and search and inspect property to determine if dangerous weapons, and so forth, are being carried unlawfully.

The amendment will also broaden section 902(1) of the Federal Aviation Act relating to "carrying weapons aboard aircraft" by making it a Federal crime to carry aboard or have carried aboard or placed aboard an aircraft in air transportation a concealed explosive or other destructive substance. Further the amendment provides that if concealed weapons, and so forth, are carried aboard or placed aboard aircraft with reckless disregard for the safety of human life, the penalty for such violation of law is not more than 5 years' imprisonment or a fine of not more than $5,000. The prohibition against concealed carriage of weapons, explosives, or destructive substances does not apply to law enforcement officers acting within their official capacities and the Administrator is authorized, by regulation, to exempt other persons from such prohibition at his discretion.

I will discuss the committee amendment I have just described in more detail in a few moments.

PROVISIONS OF THE BILL

Section 2 of the bill expands the definition of "special aircraft jurisdiction of the United States" in section 101(32) of the Federal Aviation Act of 1958 to include: First, aircraft having "an offense" as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and second, other aircraft leased without a crew to a lessee who has his principal place of business in the United States. The bill provides a new definition of when an aircraft is in flight as follows:

* * * from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard.

Section 3 of the bill amends section 902 of the Federal Aviation Act by establishing U.S. legal jurisdiction over persons having committed an offense under the Hague Treaty who are found in the United States but who are alleged to have committed the offense outside the "Special Aircraft Jurisdiction of the United States." In such instances, if convicted, the offender is subject to the death penalty if recommended by a jury; or by imprisonment of not less than 20 years.

Under the terms of section 3 of this bill, a person commits "an offense" as defined in the Hague Convention when he "unlawfully, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of, that aircraft or attempts to perform any such act or is an accomplice of a person who performs or attempts to perform any such act." Section 3 contains a qualifying provision, however, which exempts purely domestic hijackings or hijackings beginning and ending within one nation from the provisions of subsection (b) of section 3.

Section 4(a) of the bill authorizes the President to make a determination whether any foreign nation, whether a signatory of the Hague Convention or not, is acting in a manner inconsistent with the provisions of the Hague Convention by encouraging hijacking; if that determination is affirmative, the President is authorized to suspend the operating authority of any U.S. and foreign air carrier for provision of air transportation service to that foreign nation. Further, the amendment permits the President to suspend the rights of any foreign carrier operating in the United States whose government maintains air service between itself and the offending foreign nation. Section 4 makes it unlawful to engage in foreign air transportation in violation of the suspension of rights by the President. Section 5 of S. 2280 provides for civil penalties of $1,000 per violation. Section 6 of the bill provides the Attorney General with the authority to enforce the provisions of section 4(a).

Section 4(b) of S. 2280 provides the Secretary of Transportation authority, subject to the approval of the Secretary of State, to withhold, revoke, or impose conditions on the operating authority of an airline of any nation which does not maintain and administer effective security measures relating to foreign air transportation. In order to avoid U.S. action under this subsection, foreign nations must maintain such security standards that are equal to or above the minimum standards which are established pursuant to the Convention on International Civil Aviation or, prior to a date when such standards are adopted and entered into force pursuant to such Convention, the specifications and practices set out in Appendix A to Resolution A17–10 of the 17th Assembly of the International Civil Aviation Organization. If the Secretary finds any nation not adhering to such security standards, or ones of equal value, then he must notify that nation of such finding and the steps considered necessary to bring the security measure of that nation to standards at least equal to the minimum standards of such convention or such specifications and practices of such resolution.

Section 4(b) also requires the Secretary to notify all nations who are parties to bilateral air transport agreements with the United States and all nations whose airlines hold foreign air carrier permits of the United States of the provisions of this subsection within 30 days of the enactment date of this act.

COMMITTEE AMENDMENTS TO S. 2280

The committee has added four substantive amendments together with numerous technical and drafting amendments to S. 2280. The substantive amendments are explained below:

First. S. 2280 originally prescribed criminal penalties, for offenders of the Hague Convention committing unlawful acts outside the special aircraft jurisdiction of the United States but who are found within the United States, of death or imprisonment for any term of years if the death penalty is not imposed. The committee amendment provides for a minimum penalty of not less than 20 years in prison for such offenses.

Second. The committee has amended section 3(b) of the bill to provide that the new criminal provisions of the bill, section 902(n), relating to offenses against the Hague Convention committed outside the special aircraft jurisdiction of the United States, be applicable only to offenses occurring aboard international flights. The amendment will preclude the interpretation that the provision in the bill establishing the offense of hijacking outside the special aircraft jurisdiction of the United States applies to a hijacker of a purely domestic flight within a foreign country. The amendment conforms the provision to article 3, section 3, of the convention which states that the convention applies only if the place of takeoff or the place of actual landing of the aircraft is situated outside the territory of the state of registration of the aircraft. The amendment also incorporates into the new universal jurisdiction provision the definition of the term "in flight" as it is used in the convention.

Third. The committee has adopted an amendment to S. 2280, adding a new section 1114 to the Federal Aviation Act of 1958. The amendment authorizes the President to make a determination whether any foreign nation, whether a signatory to the Hague Convention or not, is acting in a manner inconsistent with the provisions of the Hague Convention by encouraging hijacking; if that determination is affirmative, the President is authorized to suspend the operating authority of any U.S. and foreign air carrier for provision of air transportation service to that foreign nation. Further, the amendment permits the President to suspend the rights of any foreign carrier operating in the United States whose government maintains air service between itself and the offending foreign nation.

The amendment makes it unlawful to engage in foreign air transportation in violation of the suspension of rights by the President.

It further provides civil offenses against the Federal Aviation Act.

Finally, the Attorney General of the United States is given the authority to enforce the provisions of the amendment.

Fourth. Finally, the committee has added, by amendment to S. 2280, a new section 1115 to the Federal Aviation Act of 1958, which provides the Secretary of Transportation authority, subject to the approval of the Secretary of State, to withhold, revoke, or impose conditions on the operating authority of an airline of any nation which does not maintain and administer effective security measures relating to foreign air transportation. In order to avoid U.S. action under this subsection, foreign nations must maintain such security standards that are equal to or above the minimum standards which are established pursuant to the Convention on International Civil Aviation or, prior to a date when such standards are adopted and entered into force pursuant to such convention, the specifications and practices set out in appendix A to resolution A17–10 of the 17th Assembly of the International Civil Aviation Organization. If the Secretary finds any nation not adhering to such

security standards, or ones of equal value, then he must notify that nation of such finding and the steps considered necessary to bring the security measures of that nation to standards at least equal to the minimum standards of such convention or such specifications and practices of such resolution.

The amendment also requires the Secretary to notify all nations who are parties to bilateral air transport agreements with the United States and all nations whose airlines hold foreign air carrier permits of the United States of the provisions of this section within 30 days of the enactment date of this act.

S. 2280 was submitted by the Department of Transportation and is designed to implement, for the United States, the Convention for the Suppression of Unlawful Seizure of Aircraft—sometimes referred to as the Hijacking or Hague Convention.

The Hijacking Convention was signed by the United States and 49 other countries at The Hague on December 16, 1970. The convention was designed to strengthen substantially the Tokyo Convention which applies to the commission of crimes aboard aircraft. The Tokyo Convention provides that in the case of aircraft in flight in international air transportation the law of the state of the flag of the aircraft applies to events occurring aboard that aircraft. That convention gives certain powers and responsibilities to the commander of an aircraft with respect to crimes committed aboard his aircraft. In the case of a hijacked aircraft, contracting states are obliged to restore control of the aircraft to its lawful commander, to permit the passengers and crew to continue their journey as soon as practical, and to return the aircraft and its cargo to the lawful possessors.

However, the Tokyo Convention does not oblige any state to establish jurisdiction over hijacking or to extradite or submit to prosecution hijackers in its custody. It is this gap in the international legal system which the Convention for the Suppression of Unlawful Seizure of Aircraft closes.

The Hijacking Convention obligates its parties to establish jurisdiction to punish hijacking—"the offense"—and any other act of violence against passengers or crew committed in connection with the offense when first, the offense is committed on board an aircraft registered in that State, second, the aircraft on board which the offense is committed lands in that State with the hijacker on board; and third, the aircraft on board which the offense is commented is leased without crew to a lessee whose principal place of business, or permanent residence, is in that State. In addition, each contracting State is required, regardless of where the offense is committed, to establish jurisdiction to prosecute any hijacker found within its borders whom it does not extradite.

Current law already enables the United States to implement, in many respects, the Hijacking Convention. In 1961, Congress added to title IX of the Federal Aviation Act a number of provisions dealing with the commission of crimes aboard aircraft. These included provisions proscribing aircraft piracy, interference with the performance of the duties of a flight crewmember, and a number of crimes of violence such as murder and manslaughter.

In 1970, following the ratification of the Tokyo Convention, a number of amendments were made to those provisions to fulfill our responsibility to implement that Convention.

Previous to the enactment of these amendments, most of the criminal provisions of title IX applied to acts committed aboard aircraft in flight "in air commerce." The 1970 amendments extended and clarified Federal jurisdiction over these crimes by establishing the "special aircraft jurisdiction of the United States" to include while in flight:

First. All civil aircraft of the United States;

Second. All aircraft of the U.S. national defense forces; and

Third. All other aircraft within the United States, or outside the United States if the aircraft has its next scheduled destination or last point of departure in the United States, provided that the plane next actually lands in the United States.

In order to implement effectively the Hijacking Convention, additional amendments to these provisions are required, and this is the purpose of S. 2280.

First, the definition of the special aircraft jurisdiction of the United States is amended to include: any aircraft outside the United States aboard which the offense of air piracy is committed, if the aircraft lands in the United States with the offender still aboard, and any aircraft, no matter what its registration, leased without crew to an operator who has his principal place of business in the United States or who is a permanent resident of the United States.

Second, in order to satisfy article 4, paragraph 2 of the convention, the bill includes a special provision establishing jurisdiction over the offense of hijacking when it occurs anywhere outside the special aircraft jurisdiction of the United States but the alleged offender is later found in the United States. This is the so-called universal jurisdiction provision which makes hijackers outlaws wherever they are found.

The bill establishes a separate substantive offense to cover this situation, carrying its own penalty provision.

The penalty provisions are identical to those applying to crimes committed within the "special aircraft jurisdiction of the United States."

The administration proposal would have provided a penalty of death or imprisonment for any term of years, or for life, whereas under our existing law and under the terms of the bill as it relates to the extension of the "special aircraft jurisdiction of the United States," the offense of aircraft piracy is punishable by death or by imprisonment for not less than 20 years, or for life. In speaking to its proposal the administration testified:

> Thus, the maximum penalty is the same for both provisions; only the minimum penalty is different. It should be noted, however, that the existing domestic law on air piracy provides for lesser included offenses such as interference with flight crew members, which is punishable by imprisonment for any term of years; the same minimum penalty we recommend for the "international" offenses. Consequently, the penalty structure for a "domestic" offender is in practice no different from that which would be applied by the proposed legislation to implement the universal jurisdiction provision of the Convention, since in some domestic cases the offender may be prosecuted for a lesser included offense rather than air piracy because of lack of evidence, extenuating circumstances, or other reasons.

We believe it would be an unfortunate precedent to provide a lesser penalty applicable to a hijacker who is a fugitive from the jurisdiction of another nation and happens to be found in the United States as opposed to the more stringent minimum penalty applicable to a hijacker who is within the aircraft jurisdiction of the United States. If we wish to impress upon the world community that hijacking is a crime against international civil aviation, we must not differentiate between the penalty structure applicable to other nations' hijackers as compared to that of U.S. hijackers. They must both be subject to the same severe penalties.

The explanation given in the testimony of the U.S. Department of Transportation for making such differentiation of penalties is not persuasive. If, in a particular case, it would not be appropriate for the United States to prosecute as a hijacker a fugitive who happened to be found in the United States, or if, in a particular circumstance, it would appear that a minimum penalty of 20 years for such fugitive would be inappropriate, the United States has the option under the Hijacking Convention and domestic law to extradite the alleged offender to another State which has jurisdiction. Therefore, because of the extradition option available to the United States, there is no need to differentiate between penalties applicable to the domestic offender and the fugitive offender. Each should be subject to the same severe minimum and maximum penalties now in effect under domestic law.

We believe that part of the reason for the alarming increase in hijacking has been the failure of the U.S. court system to impose stiff penalties on those convicted of hijacking and, concurrently, the failure of the U.S. Government to fully prosecute those apprehended and tried for hijacking. In some instances the Department of Justice accepts pleas of guilty to a lesser crime than hijacking. The result is often minimal sentences.

The committee believes that each hijacking offender must be prosecuted to the fullest extent of the law and that the judiciary must impose stern sentences on those convicted. If more examples of swift and stringent punishment were publicized to the public, the incidence of hijacking would undoubtedly decrease.

U.S.-IMPOSED SANCTIONS AGAINST NATIONS WHICH ENCOURAGE HIJACKING

One of the major reasons international political hijacking continues unabated is the widely known fact that certain nations encourage or condone air piracy by refusing to punish or extradite hijackers who seek sanctuary in their territory.

Such nations refuse to abide by the

provisions of the Hague Convention and apparently still believe that aircraft piracy is a legitimate expression of political or social dissent or an acceptable means of fleeing to political asylum.

The United States, in attempting to deal with this situation, has been seeking multilateral accords among states. For example, in June the Council of the International Civil Aviation Organization—ICAO—endorsed a U.S. resolution dealing with this situation. The resolution called for maximum compliance with the physical security standards previously proposed by the United States. It also directed ICAO's legal committee urgently to resume work on the drafting of an international convention directed toward the enforcement, by joint international action, of certain obligations contained in the Hague Convention. Such work resumed in Washington on September 4 but ended without agreement. The U.S. position was strongly opposed.

While the committee is sympathetic with the administration's efforts to reach multilateral agreement on the sanctuary problem, we are not convinced that those efforts will meet with early success.

The committee believes that while the United States should continue to seek agreement among nations, more direct action aimed at the problem is also necessary and desirable. Therefore, we have provided the President explicit statutory authority in section 4 of the bill to suspend air service between the United States and any foreign nation he determines is not acting consistently with the provisions of the Hague Convention and, further, to suspend foreign air carrier service between the United States and any other nation which continues to maintain air service between itself and a nation which the President has determined is not living up to its international responsibilities under the Hague Convention. This legislation does, in fact, provide for a unilaterally imposed U.S. air transport boycott of both a primary and secondary character.

In testifying on this matter on June 28, 1972, the Department of State made the following observations:

It would impose upon the President the duty to utilize possible denial of access by foreign air carriers to the United States as a unilateral means of enforcing international adherence to the standards of the Hague Convention. We wholeheartedly support the proposition that a state which fails to discharge its responsibilities to civil aviation should face the possibility of exclusion from the benefits of the aviation system. However, we do not consider it appropriate or fair for the United States to bear the entire burden of adjudicating this problem and enforcing the remedy. Indeed, were the United States to signal its willingness to "police" Hague obligations unilaterally, many states, now favorably disposed toward playing their role in the enforcement process, might contentedly sit back, waiting for us to do it all.

Moreover, as a practical matter, the application of S. 2280 as a unilateral measure might do substantial harm to U.S. interests, without necessarily influencing those states whose conduct might pose a threat to our carriers and passengers. Some of our most difficult problems have arisen in states which have no direct air connections with the United States. These would not be affected by the primary boycott provisions of 1113 [1114] (a) (1). In addition, while our air services to other states might be terminated, it would be at great cost to the United States. Also, it might have only questionable impact were the target state's conformity to Hague principles a disputed issue. Moreover, we were to attempt to utilize the provisions of 1113 [1114] (a) (2), this might have little if any effect in cases where other states providing air connections to the target country did not serve the United States. These practical considerations, once again, illustrate the fact that only an international effort focusing the political weight of international opinion as well as the economic weight of service suspension can provide a successful approach to the problem.

In general terms the committee is in agreement with the observations of the State Department. However, we believe that current circumstances warrant a case-by-case evaluation of each hijacking incident in which The Hague convention would be involved. Certainly the new Presidential authority contained in the bill will be helpful as a bargaining tool for the United States in seeking to convince other nations to deal responsibly with hijackers seeking sanctuary in their territory. Simply the threat of U.S. imposed air transportation boycotts should have a salutary effect on nations which might be reluctant to abide by The Hague Convention provisions.

Furthermore, the committee believes that in certain instances the President should impose air transport boycotts of both a primary and secondary character against nations which continue to completely ignore their international obligations. Such a U.S. boycott would point out to the world that this Nation is willing to take the most stringent measures at its command to demonstrate its disfavor toward nations whose attitude jeopardizes the lives of millions of innocent citizens of the world who rely on air transportation to meet their economic and social needs.

While the imposition of such a boycott would obviously have far-reaching diplomatic and economic repercussions and ramifications, international air piracy is such an extreme threat to the world's air transport system that the United States must be willing to take extreme measures to censure nations which continue to condone or encourage such criminal activity.

We expect the President to exercise caution in exercising this new authority and to take into account the myriad factors which would be involved in any U.S. imposed air transport boycott. Obviously there will be instances, despite some nation's failure to live up to the terms of the Hague Convention, in which U.S. action imposing a boycott would not be wise. However, in our view there will be occasions when the imposition of such a boycott, either primary or secondary, will further the interests of the United States, its citizens, and all nations of the world who live by international law and want to preserve the security and safety of the international air transport system.

SECURITY IN FOREIGN TRANSPORTATION

The committee believes that additional measures are also needed to protect American nationals traveling on foreign air carriers. Recently 16 Americans were killed in one terrorist incident at Lod International Airport near Tel Aviv after debarking from an Air France flight. Reports at the time indicated that lax security had been a factor in enabling terrorists to conceal weapons in uninspected luggage.

Section (4) (b) of S. 2280 would permit the Secretary of Transportation, with the approval of the Secretary of State to restrict, limit, or revoke the operating authority of foreign air carriers when, after appropriate consultations, foreign nations or their carriers fail to afford necessary security safeguards to the traveling public. This provision does not require the executive to undertake a worldwide survey of foreign security procedures, but the United States would be prepared to act in cases where the safety of American passengers is at issue.

The procedures outlined in section 4(b) parallel those governing safety under our most recent bilateral air transport agreements. The interim international standards of ICAO resolution A17–10, which are to govern until more definitive standards are approved by ICAO, were proposed by the United States at the 17th Extraordinary Assembly of ICAO in June 1970 and have been drawn together in ICAO's Security Manual for the Prevention of Unlawful Acts against Civil Aviation, Doc. 8973, Restricted (1971). Appendix A to resolution A17–10 sets forth in detail those minimum standards of air security to which section 4(b) refers.

In acting to encourage interim international safety standards to protect U.S. citizens in foreign air transportation, the committee has followed a precedent established by Public Law 89–777, 80 Stat. 1356. The Congress, in that instance, prohibited certain foreign and domestic vessels from departing U.S. ports if those vessels did not comply with standards set forth in the International Convention for the Safety of Life at Sea, 1960, as modified by the amendments proposed by the 13th session of the Maritime Safety Committee of the Intergovernmental Maritime Consultative Organization contained in annexes I through IV of the "Note Verbale" of the Secretary General of the organization dated May 17, 1966, No. A1/C/3.07 (NV.1).

The committee has recommended providing the administration with authority to impose U.S. sanctions against the airlines of foreign nations who do not observe interim international standards of air security much as Congress in 1966 mandated sanctions against foreign-flag international safety standards for the safety of life at sea.

The committee recognizes the urgency of adopting effective security measures providing for adequate screening of passengers prior to boarding aircraft. Permanent international air security standards are being developed in ICAO's technical bodies at this time, and work on the final standards should be completed within 12 to 18 months. The interim measures set forth as appendix A to ICAO Resolution A17–10, however, should be implemented by all concerned States immediately. The committee has

concluded that the Executive should have authority to withhold, revoke, or impose conditions on the operating rights of the airline or airlines of a country which fails to effectively maintain and administer security standards that are equal to or above the minimum standards promulgated in appendix A to Resolution A17–10. When permanent standards are established, pursuant to the Convention on International Civil Aviation, the committee believes those standards should be implemented worldwide. Comparable sanctions should be available to the Executive in the event that a foreign country fails to comply with the permanent standards of the convention, when such standards become effective.

The committee, in recommending section 4(b), has carefully avoided the temptation to mandate U.S. security standards as minimum standards for foreign air carriers. The United States does not necessarily prescribe the best methods or procedures for preventing air piracy, or other unlawful acts against civil aviation. The committee has concluded that American citizens should be protected by air security standards at least equivalent to official international standards promulgated by ICAO, and section 4(b) is an effort to secure that minimum degree of protection.

Mr. President, I ask unanimous consent that the Senate agree en bloc to the committee amendments to S. 2280 as reported.

The PRESIDING OFFICER. Will the Senator please repeat his request?

Mr. CANNON. Mr. President, I ask unanimous consent that the Senate agree en bloc to the committee amendments to S. 2280 as reported.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CANNON. If the committee amendments are agreed to en bloc, would it still be possible to amend them?

The PRESIDING OFFICER. No; it would foreclose any additional amendment to the committee amendments, unless the Senator makes that a part of the request.

Mr. CANNON. Mr. President, there is some confusion. I am talking about committee amendments en bloc as reported, we have not had the new committee amendment called up.

Mr. MOSS. Mr. President, could the request be made that they be considered original text and subject to amendment?

The PRESIDING OFFICER. If the Senator made such a request and it was agreed to, the bill and the committee amendments would be subject to amendment.

Does the Senator from Nevada wish to include in his request that the bill be considered as original text for the purpose of amendment?

Mr. CANNON. Mr. President, the request pertains to the committee amendments to the bill as reported.

The PRESIDING OFFICER. The Chair understands that.

Mr. CANNON. And the committee proposes to offer another amendment to the bill as a committee amendment, which Senator SCHWEIKER desires to amend.

Mr. SCHWEIKER. Mr. President, I withdraw my objection.

Mr. MOSS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. MOSS. I shall be glad to yield to the chairman, but I think we simply need the words that the committee amendments be considered as original text.

The PRESIDING OFFICER. Is that the request?

Mr. CANNON. There is no objection.

The PRESIDING OFFICER. Does the Senator object?

Mr. CANNON. No.

Mr. MAGNUSON. Mr. President, I want to ask the chairman of the Subcommittee on Aviation to permit me to make an observation. All of us know this is a very serious problem——

The PRESIDING OFFICER. Before the Senator continues, is there objection to having the bill, as thus amended, considered as original text for the purpose of further amendments? The Chair hears none and it is so ordered.

Mr. MAGNUSON. As I pointed out in our committee report, air piracy is one of the serious problems that concerns everyone in the Nation and people all over the world. The situation does not seem to get any better. The Committee on Commerce all year has considered how to attack the problem. Many ways have been suggested, some extreme, others milder. We have tried to prepare, in the committee, a total program with the help of the Senator from New Hampshire and the Senator from Nevada. It will be a major step forward in helping to solve the problem.

When the United States has sought agreements in the international field, on the sanctuary problem we have met with some rebuffs. I ask the chairman of the subcommittee if that is not correct.

Mr. CANNON. We have indeed.

Mr. MAGNUSON. We have had difficulty with other nations in working out new agreements. We have heard from many people and many airline pilots, not only domestic pilots, but pilots from foreign airlines, whose lives are in danger daily because of this problem.

I want to say that unless certain nations sit down with the United States and Canada and work out agreements on the sanctuary problem, and do it pretty soon, the airline pilots themselves are going to take matters into their hands. That would be an unfortunate way to do it. The way to do it is to work it out in international agreement, but if it is not worked out, I would not blame the pilots. There is going to be an airline pilot rebuff to those nations, if they do not do something about it.

This proposal is a step forward. The two bills, S. 2280 and S. 2567 with their amendments, are movement in the right direction. They may not be a complete answer. We do not know the techniques yet for a complete answer, but we know we have to take the leadership not only in this Nation but in the world to do something about this problem.

The patience of the airline pilots and the crews is getting down to the ragged edge. They are the ones who run the risk of being shot or killed every time airplanes take off. They are getting pretty angry. I think it is France and perhaps some other nations that are dilly-dallying about coming to some agreement.

This problem is occurring every day all over the world. I think we should approach it in the best way we know how, within our jurisdiction and capability, hoping it may point up to something that can be done, particularly in the international field.

Mr. PEARSON. Mr. President, I yield myself 6 minutes.

Mr. President, the Convention for the Suppression of Unlawful Seizure of Aircraft, commonly called the Hague Antihijacking Convention, was signed by the United States and 49 other countries at The Hague on December 16, 1970. The Convention was submitted to the Senate on April 15, 1971, and reported favorably by the Committee on Foreign Relations in August of that year. The Senate consented to the resolution of ratification on September 8, 1971, by a vote of 53 to 0.

The Hague Convention complements, and strengthens substantially, the Tokyo Convention which applies to the commission of crimes aboard aircraft. While the Tokyo Convention obligated signatory states to restore hijacked aircraft to the control of their lawful commanders, the Hague Convention obligates its parties to establish jurisdiction over hijackers and agree to extradite or submit to prosecution those offenders in custody.

Mr. President, the legislation before the Senate would implement the Hague Convention by extending the special aircraft jurisdiction of the United States to include any aircraft outside the United States, aboard which the offense of air piracy is committed, if the aircraft lands in the United States with the offender still aboard; and any aircraft leased without crew to an operator who has his principal place of business in the United States or who is a permanent resident of the United States.

The legislation reported by the committee also would implement the "universal jurisdiction" provision of the Hague Convention by establishing U.S. jurisdiction over the offense of air piracy when it occurs outside the special aircraft jurisdiction of the United States, but the alleged offender is subsequently found in the United States. This provision brands an air pirate as an outlaw in all signatory states. It forces him to seek safe haven beyond the borders of the parties to the Convention.

Mr. President, sections 2 and 3 of the committee bill would conform U.S. domestic law to the terms of the Hague Convention. The enactment of these provisions, in substance, is an obligation of the United States under international law. I would urge all Senators to lend their support in this endeavor.

It cannot be asserted that the Hague Convention will eliminate safe havens, or lead to the prosecution of all hijackers. Less than half the nations of the world community are signatories to the Convention. Nevertheless, this initiative is a

substantial beginning toward the goal of universal jurisdiction over the offense. Piracy on the high seas was eliminated when the offenders no longer had the security of a refuge from justice. Air piracy can be defeated in the same manner.

Mr. President, the committee recognizes that international air piracy continues to be a menace because some nations, as a matter of policy, condone hijacking by refusing to extradite or punish offenders who seek sanctuary in their territories.

The committee, in response to this situation, has recommended the authorization of certain U.S.-imposed sanctions against those nations which encourage hijacking. This authorization is contained in section 4(a) of the pending bill, and I want to comment on my understanding of this provision.

Section 4(a) gives the President discretionary power to suspend air service between the United States and a country which acts inconsistently with obligations set out in the Hijacking Convention. It also covers secondary boycotts.

In testifying on this matter, the administration stated that the most effective boycott measures are those taken pursuant to joint international action, rather than unilaterally. In this regard a U.S. resolution was introduced in the Council of the International Civil Aviation Organization last June calling for the immediate convening of a special subcommittee to prepare an international convention which would set up the multilateral procedures for boycott action.

The Council adopted this resolution and the subcommittee was invited by the United States to meet in Washington. It met at the State Department during the first 2 weeks of September. It is my understanding that the subcommittee met with considerable success and that a complete text of a convention, while not formally approved by the subcommittee, has been referred to the Legal Committee with a recommendation that the subcommittee work be studied as soon as possible. I think this is good progress. If the Legal Committee meets shortly, a diplomatic conference could be held by next summer to formally adopt a convention.

The fundamental purpose of section 4(a), as I would understand it, is to enable the President to cut off air services between the United States and a country which does not punish hijackers, in action taken in concert with other countries. Pending formal adoption of a convention on boycotts, this multilateral action would be taken pursuant to a resolution on this subject introduced by the United States 2 years ago and passed by the ICAO Council on October 1, 1970.

The purpose of section 4(a) is not to get the United States way out in front taking unilateral action. The United States cannot, alone, stand as "policeman of the world." Aviation states are to act together to isolate countries which do not take strict measures against hijackers. Boycotts must be joint to have impact in the usual case.

The committee's report, on pages 18 and 19, indicates general agreement with this analysis. It is expected that the Presidential discretionary power would be used sparingly, in urgent circumstances, where it would have clear effectiveness. And it would only be in rare cases that the President could be expected to exercise this power as a unilateral U.S. measure—this would require, as the report notes, use of extreme caution, taking into account the myriad factors involved in any U.S.-imposed air transport boycott.

Mr. President, all Americans were shocked and saddened when 16 U.S. citizens were killed in one terrorist incident at Lod International Airport near Tel Aviv after debarking from an Air France flight. There were reports at the time that lax security had been a factor in enabling terrorists to conceal weapons in their luggage.

In response to the demand for improved security standards to prevent air piracy, terrorist attacks, and extortion plots against civil aviation, the 17th Extraordinary Assembly of the International Civil Aviation Organization in June, 1970, adopted resolution A17–10, setting forth minimum standards for the protection of aircraft on the ground and in the processing of passengers, crew, mail, and freight. These minimum security standards were proposed to the assembly by the U.S. representative, and are comparable to part 107 of the Federal air regulations as promulgated by the Federal Aviation Administration. Airport operators throughout the United States are implementing security programs pursuant to these new regulations at this time.

Under international law, ICAO member-states are obligated to implement comparable programs of physical security. The committee is of the view that U.S. citizens traveling abroad deserve the minimum degree of protection afforded by the terms of ICAO resolution A17–10. Therefore, the committee has recommended extending to the Executive the authority to withhold, revoke, impose conditions upon the operating rights of the airline or airlines of a country which fails to effectively maintain and administer security standards that are equal to or above the minimum standards of the ICAO resolution.

This provision is contained in section 4(b) of the committee bill. Although the standards of resolution A17–10 are of an interim nature, they are nevertheless binding upon all member-states. The sanction against the airlines of countries which fail to comply with minimum physical security standards are, of course, discretionary and flexible to provide an appropriate response by the United States.

Under section 4(b), the Secretary of Transportation and the Secretary of State are not required to undertake a worldwide review of airport security. But the Executive is empowered to initiate limited sanctions against countries which fail to afford U.S. citizens traveling abroad the minimum degree of security to which international law entitles them.

As author of section 4(b), I am gratified that it has earned the support of the administration as a practical, workable unilateral initiative to promote better worldwide airport security.

Mr. President, every responsible citizen of the world community is committed to the demise of unlawful attacks on civil aviation. The elimination of air piracy must be considered a priority of the international community. The legislation before the Senate today fulfills the obligations of the United States under the Hague Convention; and additionally, it provides the executive branch with certain powers the committee believes necessary to facilitate U.S. leadership in combating air piracy.

I support the committee bill, and respectfully urge its passage by the Senate.

I yield 5 minutes to the distinguished Senator from New Hampshire (Mr. COTTON).

Mr. COTTON. I thank the Senator. I have an appointment off the floor and for that reason I wanted to begin as soon as I could.

Mr. President, by letter dated yesterday, September 20, Secretary of Transportation Volpe expressed to me several concerns which his Department has with regard to the bill S. 2280 now being considered and the Commerce Committee amendment No. 1557 to be considered later. The majority of Secretary Volpe's comments dealt with his Department's concern over the provisions of the Commerce Committee amendment No. 1557, which was ordered reported by the committee on September 13 and which provides, in part, for the establishment of an air transportation security program and an air transportation security force to be administered by the Administrator of the Federal Aviation Administration.

I share some of the concerns expressed by Secretary Volpe in his letter of September 20; others, I do not. I take this position in recognition also of the status of a companion bill to S. 2280 in the House of Representatives. It is my understanding that a House companion bill, H.R. 16191, has been introduced which is identical to the provisions of S. 2280 as originally reported by our Committee on Commerce. H.R. 16191, however, does not contain the provisions of the Commerce Committee amendment. I further understand that no hearings thus far have been held on this companion measure H.R. 16191, so that as a practical matter the likelihood of the other body taking final action on S. 2280, including the Commerce Committee amendment is at this point in time somewhat remote. But, even if the House was able to act, I believe that we might have an opportunity in conference to consider the differences raised by Secretary of Transportation Volpe in his letter of September 20.

Therefore, I am not going to offer the amendments suggested by the Secretary of Transportation, but I do wish to ask unanimous consent to insert in my remarks the full text of his letter of September 20.

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

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 20, 1972.
Hon. NORRIS COTTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR COTTON: We have had the opportunity to review S. 2280 as reported by your Committee on August 4, 1972, and also the proposed Committee Amendments to S. 2280 contained in the Committee Print of September 13, 1972, and would like to provide you our views thereon.

S. 2280 and the proposed Committee Amendments contain a broad-sweeping program attacking the aircraft hijacking problem. The Department appreciates the attempt of the Committee to come to grip with the often frustrating problem of stopping persons who would commit acts of violence and piracy against our air transportation system, and we believe that a number of the provisions would be helpful in strengthening the attack against hijackers. However, some of the provisions are inappropriate in our view and, as indicated in the discussion below, should be omitted from the bill.

S. 2280 AS REPORTED BY THE COMMITTEE

As to S. 2280 as reported on August 4, 1972, the Department fully supports sections 2 and 3 which contain amendments to the Federal Aviation Act adjusting our law to the provisions of the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague convention). That Convention, which obligates contracting States to establish jurisdiction over hijacking and to extradite or submit to prosecution hijackers in its custody, was signed by the United States on December 16, 1970. Last September the Senate gave its consent to ratification of the Convention and the Convention entered into force. With respect to the United States, the last formal step necessary now to fulfill our obligations under the Convention is to enact sections 2 and 3 of S. 2280. Therefore, we urge Senate approval of those sections.

Section 4(a) of S. 2280 as reported by the Committee empowers the President to suspend air service to and from any foreign nation he determines is acting in a manner inconsistent with the Hague Convention. It also permits him to suspend the right of any foreign air carrier to engage in foreign air transportation between the United States and any foreign nation which maintains air service between itself and a second foreign nation acting in a manner inconsistent with the Convention. The Department recognizes the need to eliminate "safe havens" around the world for hijackers, but we believe the way to attack this problem is through multilateral, rather than unilateral, action. A primary boycott implemented on a unilateral basis cannot be effective in a case where the United States does not provide air service to the offending country. In a case where we do provide service to such a country, it would be of limited value if the offending country could look to the continued provision of air service to its territory by other countries. A secondary boycott implemented in such a situation still might not remedy the situation if the offending nation were served by countries that do not serve the United States. Finally, even if the offending nation did rely upon service by nations which also served the United States, a secondary boycott on our part could very well result in our damaging our friends and allies to a greater extent than the offending country.

In view of the above, the Department recommends against adoption of the secondary boycott provision in section 4(a). We agree that a primary boycott provision might be appropriate, but only if it is understood that whatever action taken must be in concert with other nations. The attached amendments contain language which would accomplish these purposes.

COMMITTEE AMENDMENTS TO S. 2280

There are two aspects of the Committee Amendments to S. 2280 which the Department strongly opposes. We are in total disagreement with that portion of new section 24 which deals with the establishment of an air transportation security force. Our basic reasons are as follows:

1. The acceptance of a permanent Federal role in the law enforcement phase of civil aviation security is an intrusion of Federal personnel into State and local jurisdictions and responsibilities;

2. Local communities must begin to assume greater responsibility for providing police protection for their citizens;

3. The creation of a special air transportation security force limits the flexibility of the Executive Branch by reducing the options available to it for developing an effective civil aviation security program on a partnership basis with State and local government units;

4. Most airports have already made arrangements for their own security and police protection specifically for the aviation security program;

5. The Federal Government does not provide similar services to other transportation modes; for example, railroad police are employees of the railroads;

6. Existing Federal law enforcement agencies are trained to deal with the Federal aspects of the air transportation security program;

7. The creation of a new law enforcement agency is unwarranted in view of the number of such agencies already in existence; and

8. The Department of Transportation (including the Federal Aviation Administration) is a safety oriented agency, *not* a law enforcement agency.

Therefore, we recommend the deletion from the bill, as outlined in the attached amendments, of provisions of new sections 22, 24, and 27 dealing with the establishment of a security force.

The second aspect of the Committee Amendments to which the Department is firmly opposed is the vesting of responsibilities under the bill in the FAA Administrator rather than the Secretary of Transportation.

The President has assigned primary responsibility for civil aviation security to the Secretary of Transportation, with directions to coordinate and consult with other Cabinet officers and executive agency heads. In addition, in order to insure effective management of the Department's operations, it is important that all statutory responsibilities of the Department be vested in the Secretary. Therefore, I urge that any new authority provided by the bill specifically be placed under the direction of the Secretary of Transportation. In that event I would, of course, delegate appropriate operational responsibility to the Federal Aviation Administration, the agency which now has the principal responsibility for administering our program. Again, the attached amendments indicate the changes needed to vest the authority in the Secretary.

The Committee Amendments add a new section 23 to S. 2280 which would require the screening by weapon-detection devices of all passengers and property intended to be carried in the aircraft cabin in air transportation or intrastate air transportation. It also requires the Government to furnish for the use of the carriers sufficient devices necessary for the purpose of conducting such screening. The Department has no objection to these amendments as they relate to the screening of passengers by weapon-detection devices. However, equipment is not now available nor is it expected to be available in the near future in sufficient quantities to inspect property intended to be carried in the aircraft cabin. The weapon-detection devices used for screening passengers are not intended to perform a dual function and are of little value when used on baggage or packages.

The Department also has no objection to the Committee Amendment to S. 2280 (new section 25) which provides for the promulgation of regulations requiring the air carriers to refuse transportation to (1) any person who does not consent to a search of his person to determine whether he is carrying a dangerous weapon, explosive, or other dangerous substance, or (2) any property of any person who does not consent to a search or inspection of such property to determine whether it contains a dangerous weapon, explosive, or other dangerous substance. Existing Federal Aviation Regulations require basically these same things, but the amendments are desirable to further strengthen regulatory action.

The Committee Amendments add a new section 26 to S. 2280 which provides heavier penalties for carrying weapons aboard aircraft. The Department supports these amendments. Where the action is willful and taken without regard for the safety of human life, we believe it appropriate that the suspect be charged with a felony rather than a misdemeanor as is the case under existing law. The enactment of such a provision should serve as a deterrent to such reckless and unsafe acts.

In conclusion, we appreciate the action of the Committee in reporting legislation implementing the Hague Convention and we recognize that many other provisions proposed by the Committee could make a positive contribution to the existing program for thwarting hijackers. We are strongly opposed, however, to (1) the formation in the Department of the new enforcement agency outlined in the Committee Amendments; (2) the placement by statute in the FAA Administrator rather than the Secretary of Transportation of the authority proposed in the Committee Amendments; and (3) the secondary boycott provision in S. 2280 as reported by the Committee.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report to the Committee.

Sincerely,

JOHN A. VOLPE.

Mr. COTTON. Mr. President, as I just stated, I do not share some of the points that Secretary Volpe has in mind. I do feel, however, that one objection—and I would like to read his reasons—is valid. If I did not believe that we might have a chance to cope with it in the committee of conference, if we reach that point, I would be constrained to offer his amendment on that point.

I will read just an excerpt of his letter which states his opinion on the point:

We are in total disagreement with that portion of new section 24 which deals with the establishment of an air transportation security force. Our basic reasons are as follows:

This is the position of his department.

1. The acceptance of a permanent Federal role in the law enforcement phase of civil aviation security is an intrusion of Federal personnel into State and local jurisdictions and responsibilities;

2. Local communities must begin to assume greater responsibility for providing police protection for their citizens;

I would interpolate that, of course, this is referring to the fact that this force would be operating, not on board planes but at airports, dealing with the public before they board the planes.

3. The creation of a special air transportation security force limits the flexibility of the Executive Branch by reducing the options available to it for developing an effective civil aviation security program on a partnership basis with State and local government units;

4. Most airports have already made arrangements for their own security and police protection specifically for the aviation security program;

5. The Federal Government does not provide similar services to other transportation modes; for example, railroad police are employees of the railroads;

6. Existing Federal law enforcement agencies are trained to deal with the Federal aspects of the air transportation security program;

7. The creation of a new law enforcement agency is unwarranted in view of the number of such agencies already in existence; and

8. The Department of Transportation (including the Federal Aviation Administration) is a safety-oriented agency, *not* a law enforcement agency.

To make a long story short, the objection of the Department of Transportation is the fundamental one of the dangers of Federal police. It also recaps the efforts of the Department in training and securing the cooperation of State and local police in dealing with the problem on the ground before passengers enter the aircraft.

Based upon my understanding—and I hope if I am incorrect that the distinguished Senator from Nevada, chairman of the Aviation Subcommittee, will correct me——

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

Mr. PEARSON. I yield the Senator 2 additional minutes.

Mr. COTTON. It is my understanding that this bill, even with the committee amendment No. 1557, will not make it impossible, in cases of remote regional airports where no planes remain overnight, and where there may be but two or three flights a day and the planes land for 15 minutes to take on passengers, for the FFA to make arrangements with the State to train State or local police to screen passengers and remain at the airport there until the plane takes off. Am I correct?

Mr. CANNON. Mr. President, the Senator is correct. We recognize that a total Federal law enforcement presence at all airports in the United States is an economic impracticability, and would be an unwarranted expenditure of Government funds. We believe the Administrator should, in appropriate circumstances, delegate the security force functions and the enforcement authority to local law enforcement officials, provided they are adequately trained, as the Senator has pointed out, and we would expect the Administrator to do just that.

Mr. COTTON. I thank the Senator. That is very reassuring to me, for the reasons which I have stated. Thus, although attention need not now be paid to the position of the Department of Transportation. I think that when we get to conference there will probably be enough differences so that some attention can be given to this question. I, therefore, shall not delay action on this bill by trying to amend the committee amendment (No. 1557), which I think has some merit.

Mr. CANNON. Mr. President, as my distinguished colleague knows, the position of the Department of Transportation was made known to us when we held the hearings on S. 3815, and the committee did not agree with the Department. The committee decided against them, and that is the reason why we reported out the amendments as we have.

We are aware of the fact that the Secretary of Transportation does not want to lose any of his present authority or have us delegate authority to anyone other than him in this field. But we came to a different conclusion, and it is covered in our committee amendment.

Mr. COTTON. That is entirely true, and I would say to my distinguished friend from Nevada——

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. PEARSON. I yield the Senator as much additional time as he may desire.

Mr. COTTON. I was at the committee meeting, and I do agree that the objections were raised.

The original bill, until the committee amendment (No. 1557) was filed, did not result in objection by the Department. I am not in complete sympathy with some of the objections of the Department set forth in this letter. But, I do feel that the letter should go into the RECORD. I also feel that we should consider carefully the matter of the creation of a Federal police force.

Mr. MOSS. Mr. President, will the Senator from Nevada yield?

Mr. CANNON. Mr. President, I have not completed my statement. I knew that the Senator from New Hampshire had other matters. I would like to continue. I want to call up amendment No. 1557 to this bill, which was approved unanimously by the committee in executive session last week. However, the amendment at the desk is incorrectly printed, and I shall send forward a corrected copy.

Mr. MOSS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MOSS. I sought recognition when the bill was opened to amendment, and I believe the Chair had recognized me, but, assuming that the manager of the bill wanted to go back on the bill, I permitted him to proceed. I, too, am under tremendous pressure, because I have to sit on a conference, and would like to present my amendment, if I may.

The PRESIDING OFFICER. Is that acceptable to the Chairman?

Mr. CANNON. The rest of my statement relates to the bill and the committee amendments. I have no objection; if the Senator wants to bring up his amendment now, I am willing to let him bring it up, and withhold consideration of the committee amendments. I felt that before other amendments were called up, we ought to have the entire bill as amended by the committee before us, but if the Senator wishes to proceed I have no objection.

Mr. MOSS. I do appreciate that, Mr. President, if the Senator will permit me to go ahead. I support the committee amendment, and I shall support it when it is presented. But if it has to go as an amendment, if I could present mine now I would like to do so.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. PEARSON. Mr. President, will the Senator yield for a question?

Mr. MOSS. I yield for a question.

Mr. PEARSON. Does the Senator's amendment refer to the bill as originally reported, or does it amend the committee amendments? Because we have to have those reported if the Senator's amendment were to amend the committee amendments.

Mr. MOSS. No; it amends the bill as originally reported. I do not think it is necessary to have the committee amendments in for mine to be considered.

AMENDMENT NO. 1552

I call up my amendment No. 1552, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At the end of the bill insert a new section as follows:

SEC. 8. The last sentence of section 403 (b) of the Federal Aviation Act of 1958 is amended by inserting after "ministers of religion" the following: "or individuals who are twenty-one years of age or younger or sixty-five years of age or older".

Mr. MOSS. Mr. President, I ask unanimous consent that my assistant, Mr. Val Halamandaris, be accorded the privilege of the floor during the consideration of this measure.

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

Mr. MOSS. In addition to the cosponsors shown on the amendment, I ask unanimous consent that the names of Mr. KENNEDY, Mr. ROTH, Mr. SAXBE, Mr. INOUYE, and Mr. GRIFFIN be added as cosponsors.

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

Mr. MOSS. My proposal would amend another section of the Federal Aviation Act of 1958—section 403(b) to authorize those airlines so wishing to offer reduced fares for individuals 21 years of age or younger or 65 years of age or older.

The effect of this amendment is to allow the airlines to institute reduced fares for senior citizens and to continue the present youth fares on a standby basis only.

I believe there are compelling reasons for offering such fare reductions particularly since it is now clear that the Civil Aeronautics Board will overrule youth fare.

Several airlines expressed the wish to see youth fare continued but on a standby basis only. Standby youth fares allow the airlines to pick up additional revenue where they would ordinarily have an empty space. Youth fares on a standby basis were an overwhelming financial success. Senator MONTOYA pointed out recently that in 1968, 5 million young people used youth fare saving themselves $112 million but at the same time the airlines still made

a profit of $21 million on youth fare in 1968.

Youth fare should continue to be offered in recognition of the modest incomes of younger Americans and to foster the flying habit. In this, the day of the jumbo jets, there will be more and more space available on our airlines which now fly year in and year out at less than 50-percent full. Our under-21 population traveling on a standby basis would be more than glad to help fill some of those empty seats.

In short, I offer this amendment to save youth fare on the knowledge from spokesmen from our major airlines who indicated to my staff positive knowledge that youth fares will be overruled by the Board. This finding is logical since there is nothing in the 1958 Federal Aviation Act which expressly authorizes such deductions. If youth fare is to be continued, the Congress must act.

A similar case can be made for reduced fares for senior citizens—perhaps an even stronger case. Once again there is nothing in the Federal Aviation Act authorizing senior citizens' fares which have been consistently blocked by the CAB on the basis of their possible discrimination against other age groups. My amendment would authorize those airlines which so desire to offer a senior citizens' fare but like youth fare it will be on a space-available or standby basis only.

Once again there are compelling reasons. First, the average load factor on the airlines is less than 50 percent for the fourth year in a row—airlines are flying less than half full.

Second, senior citizens are precisely the group that could make use of the airlines during "offpeak" hours when travel is the lightest.

Third, senior citizens make up only 5 percent of all airline passengers but 10 percent of our population.

Fourth, senior citizens do not fly because they cannot afford to do so.

Fifth, when fares are reduced the senior citizens will take advantage of the reductions.

Examples: The Chicago and New York experiments with mass transit have been most successful. In the first year after fare reductions the Mayor's Office on Aging in New York announced a 27-percent increase in ridership.

The success of Hawaiian and Aloha Airlines.—The only airlines the CAB has offered to allow reduced fares for senior citizens since 1965 are Aloha and Hawaiian Airlines. Since instituting the fares in 1968 Hawaiian has experienced a 38-percent increase in overall passengers but a 400-percent increase in senior citizen passengers. I want to emphasize that these fare reductions are offered on a "standby" only basis like my current proposal. At the same time Hawaiian has seen senior citizen standby revenues increase by more than 400-percent since 1968.

Let me now address the question of the suitability of "standby" fares for senior citizens directly. First, I offer the success of Hawaiian Airlines—the only ongoing experiment on reduced fares as an example of "senior citizens standby" fares at work.

Second, I would point out that the White House Conference on Aging considered the question and delegates from each of our States and asked the Congress to institute reduced fares on a space available basis.

Third, the inconvenience of waiting in an airline terminal is offset by the inconvenience of traveling long hours in a bus.

Fourth, if senior citizen fares are to be successful, fares must be reduced as much as possible. Deep reductions in fares are not possible or economically feasible on a positive space basis.

I believe that this proposal is an important step in correcting the way that this society treats its elderly. We sometimes forget that almost one out of four seniors lives in poverty, that medicare still only covers 42 percent of their health needs and that 6 million seniors live in substandard housing. This amendment today is really a test of the way our society will treat its older citizens in the future. I hope the amendment is adopted.

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

Mr. MOSS. I am happy to yield to the chairman of the committee and then I will yield to the Senator from Illinois.

Mr. MAGNUSON. Let us be realistic about this. S. 2280 is a hijacking bill. We have discussed it many times in committee meetings. There was no mention of this amendment there, for the simple reason that this was a hijacking bill and your amendment regarding air fares did not belong there.

Also in the committee we approved a bill which is on the calendar, Calendar No. 1102, S. 1665, which deals precisely with this subject. It is on the calendar.

I would hope that all of us who are in sympathy with your amendment would put an amendment on a bill that has a chance to get passed in the House. If this amendment is put on the hijacking bill and then goes to conference, I am afraid your amendment will jeopardize it.

I do not know why the Senator wants to add this on this bill when there is a bill on the calendar that is going to be brought up in the next 4 or 5 days that deals with the subject.

Mr. MOSS. I think the way to get it passed on the House side is to put it on this bill, and that is exactly the reason.

Mr. MAGNUSON. I doubt that. I think S. 1655 would pass very simply on the House side. There is no objection to it.

I just think this is in the wrong place. I know the idea is that you put it on a hijacking bill, which is urgent. We have gone through this in committee over the years. The CAB approve reduced fares now if they wish. This bill gives them specific authority. We have a bill on the calendar that deals with the subject.

Mr. MOSS. The CAB is doing exactly the opposite.

My time is very limited, and I have agreed to yield to the Senator from Illinois and the Senator from Minnesota.

Mr. MAGNUSON. I will use some of my own time.

We have no objection to what the Senators are trying to do, but this is supposed to be a hijacking bill and there is a bill on the calendar that is going to be brought up dealing with reduced air fares. We have had hearings on it. It is on the same subject. I am sure the Senators would have the unanimous endorsement of the Committee on Commerce for all these amendments on the bill which is going to be brought up in the next 2 or 3 days.

I do not know why we jump the gun on a hijacking bill.

Mr. PERCY. Mr. President if the Senator will yield——

Mr. MAGNUSON. I understand some of this, too. Your proposal is politically popular. I understand that. The Senator from Washington will have to vote "present," on your amendment I think. The Senator from Rhode Island will have to vote "present." The Senator from New Hampshire will have to vote "present." We cannot vote to reduce fares for ourselves. Every Senator who is over 65 will have to vote "present."

Mr. PERCY. I shall vote for it.

Mr. MAGNUSON. The Senator from Illinois is less than 65.

Mr. PERCY. But I hope I will not have to wait around so long for this legislation to come to fruition that I will have to vote "present."

Mr. MAGNUSON. How long will the Senator wait around, when the committee has approved a bill on this subject? It is on the Calendar. The hijacking bill received higher priority because we have an emergency situation.

Mr. PERCY. On February 28, 1969, I introduced a bill identical to this bill, S. 1179, and I had 38 cosponsors in the Senate.

Mr. MAGNUSON. This is on my time. Let me finish.

Mr. PERCY. There were 38 cosponsors, and yet the elderly have still been waiting this long.

Mr. MAGNUSON. I am one of the older people. I am waiting, too. But I would like to consider these separate matters in order. Your idea is not new. One would think that somebody just discovered this idea last night or woke up with it. We have discussed these matters.

I was the first one to propose that the clergy be allowed discount air fares.

Also, it is a matter for the CAB to consider. These are nice things to do, and we are all for them, but I hate to see them added on to a hijacking bill, a safety matter. This is an emergency. We are trying to get the measure to the House. A hijacking might take place today. I have talked with the Policy Committee, and the other bill S. 1655 will come up, and it deals exactly with the subject.

When this bill comes up on the floor, it will be hard for any of us to vote against it, because we all believe in doing something like this. This is part of our effort to make things better for the people who are over 65, and I appreciate it. I am over 65, and I hope I will be a recipient of some of these special benefits.

But is the age going to be 65, 60, or 75? I do not want to be hijacked, whether I am on a reduced fare or a regular fare. [Laughter.]

This is what we are trying to do here today on this matter.

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

Mr. MAGNUSON. I yield.

Mr. CANNON. The CAB has testified on this subject and they say that the airlines have the authority now, if they desire, to put into effect reduced fares for youth and reduced fares for the elderly. But the airlines, apparently, have been reluctant to put elderly fares into effect because they are losing so much money. If they do, they will do it at the expense of the full-fare-paying passenger.

I agree with my colleague that this is not the place for this particular amendment. I am a cosponsor of one of these bills to provide reduced fares for the elderly. So I am sympathetic to it, but I am more sympathetic to those people who are getting hijacked. I believe that our main effort today should be to get a hijacking bill through so that we can get it through the House and put it into effect and get at this problem of international air piracy if we can possibly do so.

I do not think this is the place to consider reduced fares for the elderly or for youth or for ministers or for anyone else, but that when we have some other vehicle, we can do that. There is one on the calendar now, S. 1655, which deals with reduced fares for certain survivors of deceased longtime airline employees. That would be a logical place for this. It is on the calendar and we have assurance that it will be called up.

Mr. MOSS. Mr. President, I am glad now to yield first to the distinguished Senator from Illinois (Mr. PERCY) and then to the distinguished Senator from Minnesota (Mr. HUMPHREY).

Mr. PERCY. Mr. President, I appreciate it. I should like to reaffirm that I am solidly behind the pending bill. I would not do anything to interfere with it. If I thought for a moment that passage of that bill, by adoption of this amendment, would preclude us from stopping hijacking, certainly I would not be the principal cosponsor of this amendment and neither would the Senator from Utah have offered it. But we have waited all these years for consideration of this amendment. We do have a very serious situation. The airlines are probably reluctant to move ahead, although the Hawaiian airlines in doing so, have met with dramatic success, so much so, that I do not believe we need to test the idea any more. They had a 300-percent increase in airline fares after they provided for reduced fares.

But there is a problem involving the legality of the youth fares. It has been in the courts. It has been challenged by middle-aged groups who say it is discriminatory. The courts ordered the Board to render a decision. It was to have rendered that decision by July 1, 1972. July 1 has come and gone and there has been no decision yet. It is hanging in limbo. Someone must make a decision.

I think this is a policy which is both the right and the obligation of Congress to consider. We are not setting the rates. We are only providing for it in law, for such rates to be offered. It is permissive language. It is not obligatory. We are not establishing what the rate will be. The basic rate is set by the CAB in accordance with existing law.

All we are saying is that what is sauce for the goose is good for the gander. If it is good for young people, then put it into law and say that it is the policy of the Congress and take away the ambiguity and the potential court cases. And, if it is good for youth on a standby basis, it should be good for older Americans, 65 and more, on a standby basis.

I cannot imagine that this would apply to the distinguished Senator from Washington (Mr. MAGNUSON). I would imagine that he would not want to go out on a standby basis and take a chance on getting to Seattle. His time is precious. He has an active and vigorous job here. Time is money in his case. But for the elderly person who has retired, and who would not be able to take a trip otherwise, they would not mind sitting down in an air-conditioned airport waiting room, awaiting their chance to get on one of the airplanes, the average of which is only 50-percent loaded, anyway, and in some cases only 10-, 15- or 20-percent loaded. The added revenue for the airlines might even take away the necessity to subsidize some of the short-haul lines, because we subsidize them now. Certainly some of them would be used by the elderly to fill presently empty seats.

Mr. MAGNUSON. Mr. President, the Senator knew how to run a large company and he did it very well. But to run an airline is a different proposition. They have to at least just break even or they will come up here and get a subsidy. The Senator is arguing about the merits of his amendment. Let us not talk about that. We are in agreement about it. Let us talk about how we will get it done. I happen to think it would be better on another bill than on this one. I am afraid that in conference with the House, we would have some trouble with it and then we would be set back. I am talking about that, not about the merits. I have heard testimony on that for years. I understand it. All of us in the committee do. But what we are trying to say is, how do we get it done in the best possible way, and this is what we want to do.

Mr. PERCY. This is the reason it is so difficult when we talk about the retirement of people and the groups who represent them. The White House Conference has recommended it. We have had legislation on it, and many hearings.

It is time to say: When will we ever say that the condition of the elderly in America is an emergency, because, after all, they are getting older every single day? How long are they going to have to wait to take the trip that they might take if they could get a reduced fare on a standby basis and wait for the first available seat?

We all agree on the merits. I would leave to my distinguished colleague the strategy as to how this should be handled in committee. If he wants to offer this amendment, I am a cosponsor, and proud to be one. The question should be directed, perhaps, to the principal sponsor now of the amendment.

Mr. MAGNUSON. A week or 10 days is not going to make that much difference.

Mr. MOSS. Mr. President, I have already checked this with the House. We will not have any trouble, the House says, if we can get the amendment over there.

Mr. HUMPHREY. Mr. President, the point is clear. There is no real assurance that S. 1655, to which reference has been made, will be brought up in the Senate or that it can be passed in the House. But the pending bill is in this forum now, and it will be passed in the House. The amendments would not encumber it or impair it in any way. Actually, it would not affect passage of the hijacking bill. It is one way we can obtain a saving of time. It needs to be done under the Federal Aviation Act. The hijacking bill, obviously, is of critical importance, and I commend the chairman, the subcommittee chairman, and the members of the committee for this good legislation.

But the other amendment—and I have one I wish to offer for the handicapped—these are things that can be added to the bill without in any way impeding its progress because we have the positive assurance from the other Members in the other body in a similar committee that it will not impede the progress of the hijacking legislation.

Mr. MAGNUSON. I hope that this debate has not created the implication that any of us are against this amendment. We are all for this proposition. We were just thinking about a better way to do it. In a week or so when we get the other bill up we may do it there. If we are going to insist on doing it here, that is all right with me. I think we could make a try and maybe if it should get into trouble in conference with the House, we still have the other bill to fall back on.

Mr. HUMPHREY. That is correct. That is what I was hoping the chairman would do.

There is no implication in my remarks as to any criticism of the chairman, or the subcommittee chairman, or any of the members of the committee to proceed to this legislation. No one is more generous, more compassionate, or more considerate of the elderly or the sick, the needy, and the handicapped than the Senators who have just addressed themselves to this amendment.

Mr. PASTORE. Mr. President, I think there is a great deal to be said on both sides, but it is my information that the House will be reluctant to pass on any measures after next Monday. While it is true that in 5 or 6 days we may bring up the other bill, the fact still remains that I would hope this amendment is accepted, and I believe if it is pursued it will be accepted, by the membership of the Senate at least, and that the distinguished Senator from Nevada (Mr. CANNON), who is a fine manager of any bill, would agree to take it to conference. The worst that can happen to it is, if the House is against it, we may have to take a double risk. That risk is that the word is already out that the Rules Committee in the House will not consider any new legislation after next Monday. So if we send over a bill that has little to do with the matter before us, as brought up by the Senator from Utah, then I am

afraid we will not get this kind of relief this session.

I realize what the problem of the Senator from Nevada is. I only say to him as a matter of pragmatism that if this comes to a vote, there is no question that the sympathy is on the side of those in favor of the amendment. I would hope under the circumstances that the Senator would take it to conference and see what can be done about it.

Mr. CANNON. Mr. President, I yield myself 1 minute.

Mr. President, I would say that this is a very attractive proposition. However, I want to explain to the Senators what we are up against. In the first place, we have an emergency hijacking bill before us. Everyone is in sympathy with the plight of the elderly, the young people, the ministers of religion, and survivors. However, we will soon have an amendment to put in a provision to cover the plight of the handicapped. I would not be surprised if someone would offer an amendment to include everyone else left out.

The bill would provide reduced airline fares to everyone. I think the airlines would be glad to do that if they could still make a profit. However, I can assure my colleagues that we will not stop with the elderly and the young, because as the distinguished Senator from Minnesota has already said, he has another amendment that he is ready to offer which includes the handicapped.

Mr. HUMPHREY. The severely handicapped.

Mr. CANNON. It would include the blind and the crippled.

Mr. HUMPHREY. And those who have to travel with a companion for the purpose of safety.

Mr. CANNON. This bill, which is an emergency bill to stop international hijacking, is going to be made to look absurd, I believe, to the people of this country if it ends up being a reduced airline fare bill rather than a hijacking bill, as it was intended. I would certainly urge my colleagues not to press their amendments.

Mr. MOSS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. NELSON). The Senator from Utah has 1 minute remaining.

Mr. MOSS. Mr. President, in that 1 minute, may I say first of all that there need be no concern about the profit that we take away from the airlines. As a matter of fact, it is a bill that applies only to flying empty seats and filling those seats with people who will at least pay half fare.

Under the CAB rulings at present, the airlines cannot reduce fares to elderly people. They did try it with the students for awhile, and a ruling is coming down which says that it cannot apply to young people.

This measure provides that an airline may offer a reduced airline fare to the elderly and young on a standby basis, space-available basis. If a plane is going to take off from a terminal and it has 12 or 14 empty seats, and there happen to be waiting in that airport terminal elderly people who want to get on, they could get on for half fare.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. HUMPHREY. Mr. President, I would like to offer an amendment to the pending amendment.

The PRESIDING OFFICER. That amendment is not in order until all time has expired. There are 6 minutes remaining on the pending amendment.

Mr. CANNON. Mr. President, I yield back my remaining 6 minutes.

Mr. HUMPHREY. Mr. President, I offer an amendment to the pending amendment for the purpose of discussing it with the chairman.

My amendment would make the amendment of the Senator from Utah read as follows:

At the end of the bill insert a new section as follows:

SEC. 8. The last sentence of section 403(b) of the Federal Aviation Act of 1958 is amended by inserting after "ministers of religion" the following: "or individuals who are twenty-one years of age or younger or sixty-five years of age or older, or handicapped persons and persons traveling with and attending such handicapped persons when the handicapped person requires such attendance. As used in this section, the term "handicapped person" means the blind and other persons who are physically or mentally handicapped, as further defined by regulations of the Civil Aeronautics Board.

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

Mr. HUMPHREY. I yield.

Mr. PASTORE. Does that mean on a standby basis.

Mr. HUMPHREY. The Senator is correct. It means on a standby basis.

The PRESIDING OFFICER. Will the Senator from Minnesota send his amendment to the desk.

Mr. CANNON. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 1 minute.

Mr. CANNON. Mr President, I say for the benefit of my colleagues that there is not one thing in the act that limits youth fares to "on a standby basis." So, we are getting ourselves into a very precarious position. And I think that we will never get a hijacking bill through if we encumber it with amendment such as this.

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

Mr. HUMPHREY. Mr. President, I yield to the Senator from Utah.

Mr. MOSS. Mr. President, I will read from the statute, the CAB statute, section 403(b). The last sentence reads:

Any air carrier or foreign air carrier, under such terms and conditions as the Board may prescribe, may grant reduced-rate transportation to ministers of religion on a space-available basis.

Then the amendment would go in on a space available basis. That is what we are talking about, on a space-available basis.

Mr. HUMPHREY. Mr. President, I say most respectfully that I had intended originally to offer this on a regular reserved space basis. However, it seems to me in the light of the dialog and discussion had here that it might be better to keep it on the space-available basis. Surely this would not impair the revenue of the airlines. It would increase the revenue of the airlines. It does not take up reserved space. It does authorize the CAB to make whatever judgment and regulations may be necessary.

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

Mr. HUMPHREY. I yield.

Mr. PASTORE. Mr. President, I realize the noble motivation of the Senator from Minnesota. However, personally I would hate to see a blind person or a person in a wheelchair waiting in a terminal for a seat to become available in order to take advantage of this attractive offer of a reduced rate.

I would hope that independently we would be able to make some reduced rates available on a reserved space basis.

I am a little fearful as to whether we are doing a justice or an injustice, a kindness or an unkindness to these individuals.

I would not want to see a blind person with a seeing eye dog, and a person who is paralyzed, or something of the sort being accompanied by someone else and waiting in a terminal for a seat to become available.

Mr. HUMPHREY. Mr. President, the amendment at the desk is on a reserved space basis. I thought, to expedite the matter, that since we had discussed the space-available section under the present law, it would be well to include it at this point.

I think it would be a sound change. Let me say that I am perfectly willing to withdraw this amendment and bring it up on its own on a reserved space basis for the handicapped, because I want to see the amendment of the Senator from Utah adopted without any trouble at all.

Therefore, Mr. President, I withdraw this amendment and yield back my time in the hopes that we can pass the amendment offered by the Senator from Utah.

The PRESIDING OFFICER. The amendment is withdrawn.

REDUCED AIR FARES

Mr. PERCY. Mr. President, I am pleased to be the principal cosponsor of this amendment to authorize the airlines to offer reduced fares on a space-available basis for senior citizens and for individuals age 21 or younger. I introduced such legislation (S. 1179) in the 91st Congress, and I am even more convinced of the need at the present time.

I am aware that this proposal is controversial in some circles—all the more reason for the Congress to act to clear the air.

As you know, the current controversy started in the early 1960's when the Civil Aeronautics Board allowed airlines to offer reduced fares for youth, absent express statutory authority. These fares were challenged in court by a group of middle-aged individuals who asserted: First, that there was no statutory basis for the youth discounts; and second, that the reduced fares for youth constituted "unlawful discrimination" prohibited by the Federal Aviation Act of 1958.

The fifth circuit in 1968 asked the

Board to reevaluate "youth fare" in light of these assertions which seemed valid to the court.

The CAB then launched an investigation into its powers to offer youth fares. In 1969 the Board issued its preliminary finding that youth fare was not discriminatory and the inquiry continued. The inquiry continued through 1970 and 1971, and despite promises that the Board's decision would be forthcoming by July 1, 1972, no decision has been issued. The Board's decision is important because reduced fares for senior citizens on the airlines have been consistently blocked by the Board pending the outcome of the youth fare investigation. The Board has ruled that if youth fare is discriminatory and thus prohibited, then senior citizens' fares would be similarly prohibited.

All of this background should be seen in the light of current rumors that the CAB plans to strike down youth fares but that the CAB is waiting for Congress to adjourn before announcing its decision.

All I can say is that this bureaucratic tangle could be avoided if the Congress had enacted my bill in the 91st Congress. We have essentially a policy question before us: Should the Congress authorize reduced rate transportation for our youth and older Americans?

I answer the question with a forceful "Yes."

Millions of elderly citizens today feel cut off from society. The extended family concept is gone. Grandmother and granddad do not live with the family anymore. Great distances commonly separate families. Younger and middle-aged Americans can afford to fly. In fact, some businessmen fly first class and charge it off as a business expense. But senior citizens cannot afford to fly.

Even with the recent 20-percent social security increase, almost one out of four older Americans has income placing him below the poverty line. Most were never poor until they retired.

Six million Americans live in substandard housing. Medicare only covers 42 percent of their health needs.

The legislation before us allows us a rare opportunity to express our interest in the elderly and to do so at a low cost to the Federal purse—in fact we will be fostering more efficient use of the airlines. This proposal may even increase airline revenues.

I am sure that everyone knows airline load factors for the past several years have been less than 50 percent, meaning that the airlines are flying at less than half full. This means that many flights starting at off hours have a much smaller load factor than this. Senior citizens are the group who could make use of the airlines during times when load factors are lowest. Since such fares will be offered on a standby basis, the airlines will be receiving revenues where they ordinarily would be losing money because of empty seats.

I want to emphasize again that reduced fares will result in increased ridership. The elderly make up only 5 percent of airline passengers at the present time. More would fly if costs were lowered. As proof I offer the success of Chicago's reduced fare program on mass transit. The city of New York has had a similar experience—in fact, New York enjoyed a 27-percent increase in ridership by the elderly in the first year following its offering of reduced fares on the mass transit system during nonpeak hours.

My last and most concrete example relates to the success of Hawaiian Airlines, which has offered reduced fares for senior citizens since 1968. The Hawaiian example also serves to focus attention on the standby issue. Hawaiian has shown a 38-percent increase in passengers since 1968. In that same time period, when it offered reduced fares for senior citizens on a standby basis, the number of passengers 65 years of age and older has increased 300 percent. Senior citizen standby revenues have also increased more than fourfold since the first year. This is the only ongoing experiment in reduced fares that we have and we can learn from it.

With regard to the question of the appropriateness of standby to senior citizens, I too, have heard the elderly tell me that a few hours in an air conditioned generally attractive airline terminal are no real inconvenience compared to a much longer trip on other modes of interstate transportation. The White House Conference on Aging did, in fact, call upon the Congress to grant reduced fares on a space-available basis. Last, I think the success of Hawaiian's standby senior citizen fare is most convincing.

As for youth fare, I understand that as long as it was strictly on a standby basis that it was an overwhelming success. For this reason, youth fare should be continued on a space-available basis in partial recognition of the limited incomes of our young people and to foster the flying habit. Moreover, there are several airlines interested in continuing to offer reduced fares for youth and new fares for senior citizens. There are compelling reasons why they should be allowed to do so. I hope the amendment will be agreed to.

Following are questions about this amendment that could be raised together with my answers to such questions:

1. If the Congress acts to offer reduced fares for youth or senior citizens on the airlines isn't this shifting rate making from the CAB to the Congress?

No. The amendment has nothing to do with rate setting, it is a simple question of policy. The Congress has full power to authorize reduced rate transportation for any group if it provides a "rational basis" for treating this group differently from the rest of society. The CAB would still set the rates and fare structure after considering economic and transportation factors.

2. Would the reduced fare proposal compel or require airlines to institute special rates?

No. The amendment is permissive. It would authorize reduced rate transportation. Airlines could institute such fares or not as they chose.

3. Aren't there plenty of promotional fares now to encourage people to fly more and to fly during the Tuesday through Thursday slack period?

True, there are a great many promotional fares and some airlines have used them to take passengers away from each other rather than to attract new passengers into the marketplace. However, airline load factors over the last four years still averaged less than 50 percent—this means our airlines continue to fly half empty. Further, senior citizens don't fly now (they make up about 5% of airline passengers) because they can't afford it. If reduced fares were offered a great many more seniors would fly. In this instance promotional fares would work the way they are supposed to—by attracting new people into the marketplace.

With regard to "youth fare" the principal problem is caused by so-called "student fares" or fares which offer a guaranteed seat. Under these circumstances there is no incentive for the youth to pay full fare. Under the old system, some would rather have a guaranteed seat and pay more than go through the hassle of "stand-by".

4. In authorizing reduced fares for senior citizens on a space available basis won't this mean that the elderly will be flying "stand-by" and is "stand-by" really suitable for senior citizens?

First, in this society we paternalistically tend to think of anybody over 65 as helpless and incompetent. This simply isn't true. Age 65 is young today with more and more people living into their 70's and 80's. Second, the recent White House Conference on Aging—experts on aging and almost 5,000 senior citizen delegates considered this question and asked for reduced rate transportation "on a space available basis". Third, in terms of the inconvenience, seniors can plan their time to use the airlines when they are least busy. With load factors of less than 50 percent overall, their chances of getting a standby flight are very good. Further, the possible inconvenience of waiting at the airline terminal for several hours to catch a 2 hour nonstop flight to Chicago does not compare to the strain of a 16 to 18 hour trip to Chicago by bus. Fourth, in recognition of their low incomes, if senior citizens are to be encouraged to fly the fares must be cut as deep as possible. Fare cuts of 40 to 50 percent would not be economically feasible on a positive space (guaranteed seat) basis. Last, Hawaiian Airlines, which has "stand-by" senior citizen fares, has shown great success. From 1968 to 1971 total air passengers have increased 38%. Senior citizens fares started in 1968 and over the same period passengers aged 65 and over increased 400%. Senior citizen stand-by revenues over the period increased by more than 400%.

5. Discount fares are designed to stimulate travel by people who do not ordinarily fly. Won't the effect of senior citizens discounts be self-diversion of scheduled passengers from full to discount fares with an accompanying loss to the airlines?

First, few senior citizens now fly. According to best data they constitute 5 percent or less of airline passengers. Those who are wealthy enough to fly would continue to do so and pay full fares, particularly if the alternative was a fare reduction accompanied by the necessity of flying "stand-by". The "stand-by" fares on the other hand would attract new passengers who could under no circumstances afford full fare.

6. Won't these fare reductions for senior citizens result in losses to the airlines and won't the airlines have to come to the government for subsidy money?

Under the current proposal which authorizes reduced fares on a stand-by basis the airlines are receiving revenue where they would have had an empty seat. It would be very difficult to see how the airlines could lose money. No subsidy is contained with the current proposal. However, Local Service Carriers, Air West, North Central Airlines, etc.—those that serve certain areas of the country over shorthauls—currently do receive Federal subsidy. Some people argue that if the reduced fare proposal on a "stand-by" basis reached its true potential

that these subsidies can actually be reduced. Local service carriers have a load factor of 43 percent—they are flying 57 percent empty.

7. Isn't the CAB conducting an investigation on the subject of promotional fares—primarily "youth fares" which are allegedly discriminatory? Won't this decision have an impact on proposals for reduced fares for senior citizens? If so, why is the Congress intervening?

Yes, the CAB has had youth fare under investigation since 1967 when the Fifth Circuit asked it to take another look at youth fare and the possibility of its being discriminating against other age groups. The CAB issued a preliminary ruling in 1969 that the fare was not discriminatory but the investigation continued. In July of 1971 hearings on reduced fare proposals before the Aviation Subcommittee of the Commerce Committee were postponed because the CAB was not ready to issue its decision. On June 14, 1972, the General Counsel of the CAB promised a decision by the first week of July, noting that the decision was complete and was in final clearing. The decision is important because of CAB's ruling that if youth fares are discriminatory and prohibited, then senior citizen fares would be similarly prohibited. The Congress has waited and waited for the Board to act. The first week in September, the Staff of the Senate Committee on Aging heard from one airline spokesman that it was common knowledge in the trade that the Board's decision would strike down "youth fare" and that airlines were preparing to cope with the consequences. The staff polled 10 of the major airlines whose spokesmen 9 out of 10 stated that they had positive knowledge that the Board would strike down youth fare.

It appears clear the board will overrule youth and senior citizen fares, and if they are to be continued the Congress must act. Even if the Board should do a 180 degree turnabout, youth fare or reduced fares for senior citizens could be challenged again in court since they are not expressly authorized under the statute. Clearly, Congress should act and keep faith with the White House Conference on Aging who made this proposal one of their priority resolutions.

8. Rather than give special treatment to selected groups, shouldn't fares be dropped as low as possible for all members of the traveling public?

In offering "stand-by" fare reductions, the airlines are picking up extra revenue from what would be empty seats. This hardly constitutes "special treatment". Further, anyone who thinks that elimination of "youth" fare will result in lower fares for all airline passengers is naive. Some airlines are asking for fare increases. Further, the most important cost factor in air travel is: How full is the aircraft? Charter airlines achieve economies by spreading costs over a full aircraft, 146 people in the case of a Boeing 707 and 362 seats on a 747. With airline load factors averaging at less than 50 percent, the airlines are spreading their costs over 73 or 181 people, depending on the size of aircraft. "Stand-by fares result in fuller aircraft and reduced operating costs. According to Senator Montoya, whose staff researched the proposal, 5 million youths used "youth fare" in 1968, saving themselves $112 million, but at the same time, the airlines still made $21 million profit on youth fare in the same year.

9. Don't reduced fares for the youth and for senior citizens discriminate against members of the traveling public not falling within these age groups?

On its face, a reduced fare for senior citizens or the youth does discriminate against other age groups. However, Congress every day passes legislation which designates a particular beneficiary class. Such legislation can be challenged in the Courts under the "Equal Protection" clause of the Constitution. The current role in Constitutional law is that if the Congress provides a "rational basis" for treating one group differently from another or the rest of society, then the legislation is allowed to stand.

Once again, the current proposal is offered on a "stand-by" basis and so the discrimination against other age groups is slight. However, there is a rational basis for treating senior citizens and the youth differently from the rest of America. The argument can be made on social policy issues which are reserved to the Congress and on the transportation and economic factors that are the province of the CAB.

"Youth fare" on a stand-by basis can be defended because of its financial success as related previously. It is in part a recognition of the limited incomes of the 21 and under population and the fare reduction serves to increase the number of passengers from this age group and to foster in them the flying habit.

The "youth fare" proposal got into trouble when some airlines offered a reserved seat at a reduced rate. Some offered fare reductions to students and not to individuals 21 and under generally. The question of discrimination is much stronger here and there is no incentive for the youth to fly at full fare. These positive space fares should not be continued.

Reduced fares for senior citizens should be implemented because there is empty space on airlines at present; senior citizens are precisely the group that could plan to use the flights when travel is lightest; senior citizens constitute only 5 percent of airline passengers and don't fly because they can't afford it. Accordingly, a reduction in fares will mean an increase in ridership. Examples: New York reduced buses and subways 50 percent for senior citizens during off-peak hours and ridership increased 26.7%. Chicago's experiment showed similar results with their mass transit system. Over 50 cities now offer such reductions. Further, Hawaiian Airlines which has the only on-going program of reduced fares for senior citizens has shown a growth rate of 32 percent for all passengers between 1968 and 1971. Reduced fares for senior citizens on a stand-by basis were instituted in 1968 and during this same time period, 1968–1971, Hawaiian experienced a 400 percent increase in over 65 passengers and a 400 percent increase in senior citizen stand-by revenues.

Arguing the social policy questions, one out of four senior citizens has an income placing him below the poverty line; Medicare covers only 42 percent of his health needs, and 6 million senior citizens or 30 percent live in substandard housing. The enactment of reduced fares proposals would be an important psychological victory for the elderly—many of whom feel lost and forgotten in society.

Last, many middle aged people who cry "discrimination" are businessmen who claim air travel as a business expense and write it off on their income tax. All of us age. In some sense we may be the victims of fare discrimination today but the beneficiaries tomorrow.

10. Is legislation necessary to grant reduced fares for the elderly and for the youth?

Youth fare was being allowed by the CAB absent statutory authority which occasioned the whole "youth" fare controversy. Congress should act to clear the air and prevent additional suits which will surely result if the CAB allows youth and senior citizen fare (current information is to the contrary).

11. Are there any other reasons why senior citizens should be reduced fares?

The elderly today have the feeling of being cut off from society—of forced isolation. The extended family concept is gone—grandmother and grandfather no longer live with the family in our society. Parents often live hundreds or thousands of miles from their loved ones and the only feasible way to travel is by air. Yet, few seniors can afford to do so. Younger and middle-aged American fly but older Americans take the bus. Traveling by bus over great distances is a great inconvenience and very taxing physically. Medical assistance for the needs of the elderly would be more available if air travel was feasible.

12. Since the offered legislation is only "permissive", would the airlines offer reduced fares for senior citizens?

No airline would be required to offer the fare which would be strictly "stand-by" but some would. Najeeb Halaby, President of Pan American Airways recently stated. "Why not fill those empty flights with oldsters as well? They are seeking a bargain and are willing to contract 3 to 6 months in advance."

13. Wouldn't reduced fares for senior citizens mean a lot of trouble for the airlines, particularly if the handicapped elderly, the sick and the disabled flooded the airports?

The airlines can and have required medical evidence that an individual is competent to fly or that he be accompanied by a responsible person. These same requirements could be made applicable to the senior citizen fare.

14. What types of senior citizens discounts exist at the present time?

Discounts on prescriptions and other products of drug stores, are offered in a great many cities. Some banks offer free checking accounts or other banking services. San Francisco, Chicago and Minneapolis-St. Paul have discounts on meals in restaurants outside regular meal hours. Entertainment such as movies and ballgames also is reduced in some cities. More than 50 cities offer reduced rates on mass transit.

15. Under the present law what groups are authorized to receive reduced rate transportation on the airlines?

Armed forces, those blind and disabled as a result of an airline accident, families of airline employees and ministers of religion on a space available basis.

Youth fare and other promotional fares have been allowed by the Board under its general authority "to promote adequate economical and efficient service by air carriers at reasonable charges without unjust discrimination. . . ."

Mr. GRIFFIN. Mr. President, as a cosponsor of the amendment offered by the distinguished Senator from Utah (Mr. Moss), I strongly hope that the Senate will approve this proposal authorizing reduced air fares for persons over 65 years of age on a space available basis. This amendment is similar to a bill I introduced last year.

Mr. President, it is an unfortunate fact of life that many of our senior citizens are virtually imprisoned because economical transportation is not available. For example, in 1970 only 1 million of our 20 million senior citizens crossed a State line.

Furthermore, persons over 65 account for only 5 percent of all airline passengers. Certainly, Congress can and should do something to correct this inequitable situation.

To my knowledge, the only reduced rates for the elderly currently offered by any airline, railroad, or bus line are those offered by the two Hawaiian airlines. These rates are on a space available basis.

In the absence of specific congressional authority, several courts, as well as the CAB, have raised questions as to whether reduced fares for certain classes of people, such as youth fares and family fares are unjustly discriminatory of the Federal Aviation Act.

In fact, the CAB has had under inves-

tigation since 1970 the question of the legality of discount fares.

However, much less concern has been raised with respect to standby fares for youth and military. At the outset of the committee hearings on this legislation, the distinguished chairman of the Senate Aviation Subcommittee, Mr. CANNON, noted that the CAB had informally advised the Committee that there is no legal barrier to airlines offering reduced rates for the elderly on a space available basis. This conclusion was echoed by the president of the Air Transport Association, Mr. Stuart Tipton.

Unfortunately, the airlines have not chosen to extend standby fares for youth and military personnel to senior citizens. In his testimony before the subcommittee, Mr. Tipton opposed reduced rates for the elderly on a space available basis on the grounds such rates "would not be suitable for the elderly."

Apparently there is a communication gap between the airlines and senior citizens in light of the following colloquy during the subcommittee hearings between the chairman and the representative of the American Association of Retired Persons:

Senator CANNON. Do you think that this is going to create a lot of problems if reduced rate transportation is made available on a stand-by basis in view of the fact that many of the elderly are not in too good health and would have difficulty sitting out a period of time, perhaps through several airline schedules at a departure time?

Mr. GILBERT. I can understand your idea. But let's consider this: Assume that somebody has a sick, or dying son out in the Midwest, and they want to make a hurried call. Even with a full hour's stand-by or three or four hours stand-by, it is a lot easier and a lot more reasonable for them to get out there by air than by bus or some other mode of transportation that might be available, or that they might better afford.

So, I believe although you are a hundred percent right, that waiting on a stand-by basis might produce a small problem, I think in the overall picture, it would be less of a problem that they are facing today trying to get out there under the strain that they are under with some degree of speed.

If there is any problem of rate discrimination it is at present where the elderly must pay the same fares as everyone else, despite their dependence on often inadequate fixed incomes. Until our senior citizens are provided with adequate retirement income, including increased social security payments and better private pension security, they should not be denied basic services, such as transportation, which is available to the rest of society.

The importance of transportation for the elderly was emphasized by the 1971 White House Conference on Aging. In its report the conference stated that—

The transportation needs of the elderly cannot wait for more studies. Immediate action is needed.

One of the specific recommendations of the White House conference dealt with reduced fares. The conference proposal is quite similar to the provisions of this amendment and reads as follows:

Appropriate legislation at all levels of government should provide that the elderly and handicapped be allowed to travel at half fares or less on a space available basis on all modes of public transportation.

I wholeheartedly concur in this recommendation.

The effectiveness of reduced fares for the elderly has been demonstrated by the increased ridership on New York subways, where such fares have been introduced.

Many airlines are operating at far less than capacity on many routes and particularly during the week. Offering reduced fares on a space-available basis should not impose any undue economic burden on transportation systems. At the same time, the availability of space on many carriers during certain nonpeak periods provides a fair and reasonable opportunity for the elderly to travel across the country as well as overseas.

Mr. President, there is widespread support in Congress for this legislation, and I have received hundreds of letters from constituents in support of my bill, S. 2055. I am confident the Senate will approve this amendment.

Mr. ROTH. Mr. President, I am extremely happy to have this opportunity to support the amendment proposed by the distinguished Senator from Utah. Many Senators and Representatives have talked about this problem for quite some time, and I personally believe that it is time we took some affirmative action. I welcome the opportunity to do so.

As I understand it, the Senator's amendment would have the effect of authorizing airlines to offer reduced fares to senior citizens on a standby basis. In this respect, it is identical to bills which I have introduced: S. 2061 and, while I was a Member of the Lower House, H.R. 17606. I introduced those bills and support this amendment for a variety of reasons.

First, I would point out that the elderly seem to be one of the few classes of persons today who are unable to take advantage of one or more of the special fares, packages, or other deals offered by the airline industry.

Young people can, of course, fly at half price on a standby basis; businessmen or businesswomen whose spouses accompany them are eligible for reduced fares; young and middle-aged couples can take advantage of liberal charter arrangements; and persons with certain occupations—servicemen and ministers, for instance—are able to fly at reduced fares. The elderly, however, are foreclosed from the vast majority of these opportunities. They are not young enough to fly youth fare. They are not rich enough to take advantage of the charter arrangements. And, since they are retired, they are unable to take advantage of the business or occupational benefits.

This vital neglect of our senior citizens is aggravated by the simple fact that for most elderly persons flying is the only reasonable mode of transportation available to them. As a practical matter, the limited retirement income of senior citizens prevents many of them from purchasing automobiles. Even of those financially able to purchase and maintain automobiles many often cannot afford the type of auto which is new enough or comfortable enough for extended trips. I think it is important to remember that the discomfort which is merely an inconvenience to younger people may be a hazard to the elderly. Moreover, the cost of lodging, meals, and gasoline on an extended trip frequently exceeds the cost of round-trip airfare so the same financial problems which prevent our senior citizens from flying can also preclude driving.

Many of these same handicaps prevent senior citizens from utilizing train or bus service. While I think the major bus lines should be commended for their efforts to make transportation available to the elderly at a reasonable cost, any of us who have taken extended trips on buses know that they, too, can be extremely tiring. Trains, although somewhat more comfortable than buses, are unfortunately quite expensive; indeed, the cost of train fare often equals or exceeds the cost of air fare. In addition, both trains and buses require days to cover distances that can be covered in hours by aircraft.

In short, Mr. President, the same considerations which make air travel either a convenience or a luxury for most Americans, make air travel a necessity for older Americans. And while America seems willing to, in effect, subsidize convenience or luxury for some, we appear unwilling to accord the same treatment to those who need it most.

As a practical matter, the standard air fares listed by commercial airlines and established by the Federal Government are a barrier to only one group in this country: the elderly. An enormous number of people are able, through one means or another, to travel at reduced rates; an equally large number are able to travel at practically no cost because the fares are either deductible or compensable. But senior citizens cannot deduct the cost of air fare or be compensated for the cost of air fare or reduce the cost of air fare. Like it or not, if they want to fly, they must do so at full and complete cost; and if they want to travel, they must fly.

Mr. President, I am not asking that senior citizens be accorded special treatment. I am asking that we accord them the same treatment which, in one form or another, we accord the vast majority of other Americans. The Congress, the Federal Government, and the airlines have hedged on this problem for more than 2 years, and it is time to stop talking and start acting. The equities in this case are clear and simple; and all we must do to correct this wrong is vote yes on the amendment before us.

Mr. FONG. Mr. President, because of the great success of senior citizen discount air fares in my State of Hawaii for the past 5 years and because of the great good to and the need of most senior citizens to have discount air fares, I strongly support and am happy to cosponsor amendment No. 1552 to the pending antihijacking bill, S. 2280, and I rise to urge Senators to support this amendment.

As the ranking Republican member of the Special Committee on Aging, I am most concerned about insuring the continuation of discount air fares for

Hawaii's senior citizens and to expand the coverage to senior citizens nationwide. I am especially concerned that the senior citizens of Hawaii do not lose their privilege of receiving discount air fares, a privilege they have had since 1967.

The pending amendment would give airlines the right to grant discount fares—on a standby basis only—to senior citizens 65 years of age or older and to youths 21 years or younger.

Specifically, it would allow airlines to extend the same rights to senior citizens and youths, as they now extend to ministers of religion, by amending the last sentence of section 403(b) of the Federal Aviation Act of 1958.

Scheduled flights are often not filled. By allowing a discount to the old and the young on a standby basis—when a place is not filled—will increase the passage loads of our airlines and will give them added revenue which they so badly need. This will afford our elder and younger citizens a greater opportunity to visit friends, family, and old and new places which cannot but help to benefit our economy.

Because I have been informed that the Civil Aeronautics Board is about to announce a finding that youth fares are discriminatory, it is imperative that Congress take the initiative to guarantee that this finding will not imperil the right of airlines to voluntarily give standby discount rates to senior citizens and young people, if they so desire.

Since the success of senior citizen discount rates has already been proven in Hawaii, I strongly urge Senators to extend this opportunity to other senior citizens throughout the Nation by voting for this amendment which would extend discount air fares to youths and senior citizens.

Mr. TUNNEY. Mr. President, I am pleased to cosponsor this important amendment offered by Senator Moss. I firmly believe that the option should be given to the airlines to offer reduced fares for youth and senior citizens. It is long past time for a policy decision to be made on this issue. The Congress should now take the initiative. The question must be settled.

The success of the youth fare program is evident. By selling seats to young people on a space-available basis, the number of passengers is increased, thereby increasing revenues for the airline companies. At the same time, the young travelers are able to make trips whose cost would otherwise have been prohibitive.

Mr. President, I believe it is even more important that we now provide the opportunity for airlines to offer the same program for our senior citizens. Older people frequently have very meager incomes, rendering travel by plane either impractical or impossible. The rigors of other, slower modes of transportation discourage seniors from making trips of more than a few hundred miles. Yet at this point in their lives, many senior citizens are eager to travel to new places, and they have the time to make such pleasure trips at their leisure. Many of them have never been on airplanes, and they would welcome the chance to experience the thrill of flying. By opening a standby system of air travel to our older citizens, we will encourage them to make their dreams come true.

I strongly urge my colleagues to support this amendment to S. 2280. It is yet another way in which we may remind our senior citizens that we welcome their participation in society and wish to assure that they too benefit from the social and technological advances which they have helped to create.

Mr. MONTOYA. Mr. President, I rise in support of the amendment from the distinguished Senator from Utah (Mr. Moss).

Earlier this year, I was privileged to join in sponsorship of this proposal contained in Senator Moss' bill S. 1808. The Senator from Utah is to be commended for his energetic efforts on behalf of our elderly citizens who, more than anyone else, feel the brunt of the ever-increasing cost of living.

This amendment is but one of the many steps taken by the Senator to alleviate the economic plight of the elderly citizens.

I had the privilege of testifying on behalf of this proposal when it was considered by the Senate Committee on Aging. My interest and support has still not diminished.

I still strongly believe that airlines should be given the authority to grant reduced-rate transportation to all persons 65 years of age or older on a space-available basis.

America's elderly citizens are suffocating under the threat of increased social isolation. This isolation is largely due to the inadequacies of transportation servics in this country.

In December 1970, the Senate Committee issued a report entitled "Older Americans and Transportation: A Crisis in Mobility." At that time, the committee stressed the inadequacies of transportation services for the elderly.

The Committee on Aging further determined that these inadequacies:

> . . . are intensifying many other difficult problems faced by the elderly in the United States today. Low-income individuals are hardest-hit, but so are those with fair-sized retirement incomes. Transportation is the life line to services they do not need until they become old. Without mobility, they are denied much else.

Although this report dealt primarily with the inadequacies of surface transportation, I believe it is equally important to examine the needs of our senior citizens with respect to air travel.

Leaders in the transportation field believe that America needs a balanced transportation system which will serve the needs of all citizens. I think we all recognize this to be true, and if we do, we must ensure that the elderly have ready access to all components of this balanced system, including air transportation.

The fact is that most of our senior citizens live on fixed incomes during this inflationary time. Therefore, the only way we can guarantee equal access to air transportation for our senior citizens is to allow them to fly at reduced rates on a standby basis.

There are other reasons, however, why our senior citizens should be encouraged to travel by air. In our highly mobile society, friends and relatives may live thousands of miles away. Every year, approximately 6.6 percent of our people move from one county to another. During the period 1968–69, 23 million Americans changed residences. Of those who changed, 3.6 million moved to a different State; 6.3 million moved to another county within the same State. As children grow up, leave home, and marry, they often move great distances from home. As their families increase, cost of air fare prevents them from visiting their parents.

S. 1808 would make it much easier for senior citizens to visit their married children and grandchildren, which would reduce the growing sense of isolation and despair many of them now feel.

Surface travel over long distances puts a great deal of stress on the elderly, especially if they are driving. Undoubtedly, many of our senior citizens do not even attempt to make long, overland trips for this very reason. Those who do so place undue strain on their health. Lowering the financial barriers to air travel would help alleviate this problem as well.

I urge all the Members to join Senator Moss in his effort to lessen the economic burden of our senior citizens.

The question is on agreeing to the amendment of the Senator from Utah.

Mr. MOSS. Mr. President I ask for the yeas and nays.

Mr. President, I withdraw that request.

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

The amendment was agreed to.

Mr. MOSS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HUMPHREY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HUMPHREY. Mr. President, I send to the desk an amendment on behalf of myself and the Senator from Utah (Mr. Moss).

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

> On page 9, after line 6, insert the following new section:
>
> SEC. 8. (a) Section 403(b) of the Federal Aviation Act of 1958 is amended (1) by inserting after "persons in connection with such accident;" the following: "handicapped persons and persons traveling with and attending such handicapped persons when the handicapped person requires such attendance;", and (2) by inserting at the end thereof the following: "As used in this section the term 'handicapped persons' means the blind and other persons who are physically or mentally handicapped, as further defined by regulations of the Board."

THE RIGHT OF HANDICAPPED AND OLDER AMERICANS TO TRAVEL

Mr. HUMPHREY. Mr. President, the amendment I am offering today to S. 2280, addresses one of the most critical problems confronting handicapped persons as well as the elderly: The prohibitive policies and costs that can work to deny their right to travel.

My amendment, based upon a bill, S.

1554, which I introduced earlier this year on behalf of both handicapped and elderly persons, would amend section 403(b) of the Federal Aviation Act of 1958 to authorize free or reduced-rate transportation to handicapped persons. Specifically, it would permit fare discounts on regular airline reservation tickets, to the blind, the physically and mentally handicapped, and persons traveling in their attendance, as further defined by regulations of the Civil Aeronautics Board—an authorization already applied to railroads and buslines under existing law.

I believe it is profoundly wrong that a disabled veteran, confined to a wheelchair, should be required to pay double fare to have an attendant on an airline flight. And it is wrong that an elderly couple should be denied the opportunity to visit their grandchildren because of the cost of air travel.

My amendment, in company with the amendment by Senator Moss authorizing a similar fare reduction on a space-available basis to youth and to persons aged 65 and older—an amendment which I have been privileged to cosponsor and which has recently been passed—provide for the most comprehensive and equitable approach to solving these problems, and I urge its adoption.

Mr. President, I also add as a cosponsor of the amendment the distinguished Senator from Rhode Island.

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

Mr. HUMPHREY. I yield.

Mr. STEVENSON. Mr. President, I came to the Chamber intending to offer an identical amendment as the amendment which has just been reported. I ask that the Senator add my name as a cosponsor of the amendment.

Mr. HUMPHREY. I am very honored to do so. The Senator from Illinois told me of his intention.

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

Mr. HUMPHREY. I yield.

Mr. MAGNUSON. Does the amendment state on a reserved basis?

Mr. HUMPHREY. It would apply to the section of the law that is on a reserve basis. There is no doubt about the problem brought up by the Senator from Rhode Island.

Mr. MAGNUSON. We are talking about people who make a reservation.

Mr. HUMPHREY. That is correct.

Mr. MAGNUSON. Not reserved on the plane.

Mr. HUMPHREY. No; those making reservations.

Mr. MAGNUSON. Those who make definite reservations.

Mr. HUMPHREY. Yes.

Mr. MAGNUSON. I ask that my name be added as a cosponsor.

Mr. HUMPHREY. I thank the Senator.

The Senator from Delaware (Mr. ROTH) also wishes to be added as a cosponsor.

Mr. President, I ask unanimous consent that the names of the Senators mentioned may be added as cosponsors of the amendment.

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

Mr. STEVENSON. Mr. President, the first point to be emphasized in regard to this amendment is that it is entirely permissive. It only permits commercial airlines to grant these free or reduced fares. It does not mandate them to do so.

Second, this amendment merely grants the airlines the same authority which is presently available to bus companies and railroads under the Interstate Commerce Act and Amtrak's authorizing legislation. Before Amtrak was formed, virtually every railroad granted such reduced fares to the blind. Amtrak has continued the preexisting policies of the railroads in regard to the blind.

The situation is different with the airlines. Because of controversy over youth fares, group fares, and other promotional fares, the airlines are wary of moving without specific statutory authority. The CAB has been in the throes of deciding whether such reduced promotional fares are allowable under present law and the matter is far from settled.

The Congress could act now to authorize concessions for the blind and the severely handicapped. Such action would encourage and permit greater travel by the blind and the severely handicappped without prejudicing any existing right of the carriers to grant fare concessions.

This amendment is designed to enable people to travel who have difficulty traveling alone and are discouraged by the high cost of traveling with a companion. From the airlines point of view, there is potentially a greater demand for travel and a smaller demand upon airlines personnel. If a handicapped person is to travel by airline, it is in the interest of the airline to encourage an attendant to travel with the handicapped person. In many cases the attendant makes travel possible—and in all cases the attendant relieves stewardesses and other personnel of the attention required by the severely handicapped.

The amendment has not attempted to define "severely handicapped persons" beyond indicating the blind and those physically and mentally handicapped who must travel with an attendant. Further terms and conditions would be set by the CAB.

I might add that this amendment contemplates that these potential reduced fares would apply on a reserved-seat basis. Simply offering the reductions on a space-available basis would not be in the interests of the handicapped. Indeed, it would seem cruel and counterproductive—to lure the handicapped and in some cases an attendant to the airport perhaps for hours, and perhaps never to get a ticket.

I reemphasize that this amendment is entirely permissive. Filling empty seats on an airplane is the name of the game. If those empty seats can be filled with a severely handicapped person and an attendant—even if filled at less than two full fares—then the airlines cannot but gain. Whether such gains, from the offering of these reduced fares to the handicapped and their attendants is offset by the loss of revenue from full-fare passengers who would be displaced, is a competitive economic decision that the airlines will have to make. This amendment merely provides the option.

This amendment would encourage the handicapped to travel. Travel has of course many purposes—to visit friends and relatives, to engage in business, to vacation, just to get away from it all. But travel is too often denied to the handicapped because he needs an attendant—either on the plane or after he gets to his destination—and the cost of two fares is prohibitive.

For all of these reasons, I urge the Senate to act favorably on this amendment.

Mr. HUMPHREY. Mr. President, I yield back the remainder of my time if the chairman is ready to yield back his time.

Mr. CANNON. Mr. President, I yield back the remainder of our time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 1557

Mr. CANNON. Mr. President, I call up my amendment No. 1557, which, as I said earlier, is printed incorrectly. I have sent a corrected copy to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. CANNON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

1. On page 1 between lines 2 and 3 insert the following:

"TITLE I—ANTI-HIJACKING ACT OF 1972"

2. On page 1, line 3, strike out "That this Act" and insert in lieu thereof "SECTION 1. This title".

3. On page 9 after line 6 insert the following:

"TITLE II—AIR TRANSPORTATION SECURITY ACT OF 1972

"SEC. 21. This title may be cited as the "Air Transportation Security Act of 1972".

"SEC. 22. The Congress hereby finds and declares that—

"(1) the United States air tranportation system which is vital to the citizens of the United States is threatened by acts of criminal violence and air piracy;

"(2) the United States air transportation system continues to be vulnerable to violence and air piracy because of inadequate security and a continuing failure to properly identify and arrest persons attempting to violate Federal law relating to crimes against air transportation;

"(3) the United States Government has the primary responsibility to guarantee and insure safety to the millions of passengers who use air transportation and intrastate air transportation and to enforce the laws of the United States relating to air transportation security; and

"(4) the United States Government must establish and maintain an air transportation security program and an air transportation security-law enforcement force under the direction of the Administrator of the Federal Aviation Administration in order to adequately assure the safety of passengers in air transportation.

"SEC. 23. (a) Title III of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:

"'SCREENING OF PASSENGERS IN AIR TRANSPORTATION

"'SEC. 315. (a) The Administrator shall as soon as practicable prescribe regulations requiring that all passengers and all property intended to be carried in the aircraft cabin in air transportation or intrastate air transportation be screened by weapon-detecting devices operated by employees of the air carrier, intrastate air carrier, or foreign air carrier prior to boarding the aircraft for such transportation. One year after the enactment of this section the Administrator may alter or amend such regulations, requiring a continuation of such screening by weapon-detecting devices only to the extent deemed necessary to assure security against acts of criminal violence and air piracy in air transportation and intrastate air transportation. The Administrator shall submit semiannual reports to the Congress concerning the effectiveness of this screening program and shall advise the Congress of any regulations or amendments thereto to be prescribed pursuant to this subsection, at least thirty days in advance of their effective date.

"'(b) The Administrator shall acquire and furnish for the use by air carriers, intrastate air carriers, and foreign air carriers at airports within the United States sufficient devices necessary for the purpose of subsection (a) of this section, which devices shall remain the property of the United States.

"'(c) The Administrator may exempt, from provisions of this section air transportation operations performed by air carriers operating pursuant to part 135, title 14 of the Code of Federal Regulations.'

"(b) Notwithstanding any other provision of law, there are authorized to be appropriated from the Airport and Airway Trust Fund established by the Airport and Airway Revenue Act of 1970 such amounts not to exceed $5.5 million to acquire the devices required by the amendment made by this section.

"SEC. 24. Title III of the Federal Aviation Act of 1958 is further amended by adding at the end thereof the following additional new section:

"'AIR TRANSPORTATION SECURITY FORCE

"'Powers and Responsibilities

"'SEC. 316. (a) The Administrator of the Federal Aviation Administration in administering the air transportation security program shall establish and maintain an air transportation security force of sufficient size to provide a law enforcement presence and capability at airports in the United States adequate to insure the safety from criminal violence and air piracy of persons traveling in air transportation or intrastate air transportation. He shall be empowered, and designate each employee of the force who shall be empowered, pursuant to this title, to—

"'(1) detain and search any person aboard, or any person attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation to determine whether such person is unlawfully carrying a dangerous weapon, explosive, or other destructive substance;

"'(2) search or inspect any property, at any airport, which is aboard, or which is intended to be placed aboard, any aircraft in, or intended for operation in, air transportation or intrastate air transportation to determine whether such property unlawfully contains any dangerous weapon, explosive, or other destructive substance;

"'(3) arrest any person whom he has reasonable cause to believe has (A) violated or has attempted to violate section 902 (i), (j), (k), (l), or (m) of the Federal Aviation Act of 1958, as amended, or (B) violated, or has attempted to violate, section 32, title 18, United States Code, relating to crimes against aircraft or aircraft facilities; and

"'(4) carry firearms when deemed by the Administrator to be necessary to carry out the provisions of this section,

and, at his discretion, he may designate and deputize State and local law enforcement personnel to exercise the authority conveyed in this subsection.

"'Training and Assistance

"'(b) In administering the air transportation security program, the Administrator may—

"'(1) provide training for State and local law enforcement personnel whose services may be made available by their employers to assist in carrying out the air transportation security program, and

"'(2) utilize the air transportation security force to furnish assistance to an airport operator, or any air carrier, intrastate air carrier, or foreign air carrier engaged in air transportation or intrastate air transportation to carry out the purposes of the air transportation security program.

"'OVERALL RESPONSIBILITY

"'(c) Except as otherwise expressly provided by law, the responsibility for the administration of the air transportation security program, and security force functions specifically set forth in this section, shall be vested exclusively in the Administrator of the Federal Aviation Administration and shall not be assigned or transferred to any other department or agency.'

"SEC. 25. Section 1111 of the Federal Aviation Act of 1958 is amended to read as follows:

"'AUTHORITY TO REFUSE TRANSPORTATION

"'(a) The Administrator shall, by regulation, require any air carrier, intrastate air carrier, or foreign air carrier to refuse to transport—

"'(1) any person who does not consent to a search of his person to determine whether he is unlawfully carrying a dangerous weapon, explosive, or other destructive substance, or

"'(2) any property of any person who does not consent to a search or inspection of such property to determine whether it unlawfully contains a dangerous weapon, explosive, or other destructive substance;

Subject to reasonable rules and regulations prescribed by the Administrator, any such carrier may also refuse transportation of a passenger or property when, in the opinion of the carrier, such transportation would or might be inimical to safety of flight.

"'(b) Any agreement for the carriage of persons or property in air transportation or intrastate air transportation by an air carrier, intrastate air carrier, or foreign air carrier for compensation or hire shall be deemed to include an agreement that such carriage shall be refused when consent to search persons or search or inspect such property for the purposes enumerated in subsection (a) of this section is not given.'

"SEC. 26. Section 902(1) of the Federal Aviation Act of 1958 is amended to read as follows:

"'Carrying Weapons Aboard Aircraft

"'(1)(1) Whoever, while aboard, or while attempting to board, any aircraft in or intended for operation in air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, explosive, or other destructive substance, or has placed, attempted to place, or attempted to have placed aboard such aircraft any property containing a concealed deadly or dangerous weapon, explosive, or other destructive substance, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"'(2) Whoever willfully and without regard for the safety of human life or with reckless disregard for the safety of human life, while aboard, or while attempting to board, any aircraft in or intended for operation in air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, explosive, or other destructive substance, or has placed, attempted to place, or attempted to have placed aboard such aircraft any property containing a concealed deadly or dangerous weapon, explosive, or other destructive substance shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"'(3) This subsection shall not apply to law enforcement officers of any municipal or State government, or the Federal Government, while acting within their official capacities and who are authorized or required within their official capacities to carry arms, or to persons who may be authorized, under regulations issued by the Administrator, to carry concealed deadly or dangerous weapons in air transportation or intrastate air transportation.'

"SEC. 27. To establish, administer, and maintain the air transportation security force provided in section 316 of the Federal Aviation Act of 1958, there is hereby authorized to be appropriated for fiscal year 1973 the sum of $35,000,000, and for each succeeding fiscal year such amounts, not to exceed $35,000,000, as are necessary to carry out the purpose of such section.

"SEC. 28. Section 101 of the Federal Aviation Act of 1958, as amended, is amended by adding after paragraph (21) the following:

"'(22) "Intrastate air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, solely to engage in intrastate air transportation.

"'(23) "Intrastate air transportation" means the carriage of persons or property as a common carrier for compensation or hire, by turbojet-powered aircraft capable of carrying thirty or more persons, wholly within the same State of the United States.'

and is further amended by redesignating paragraph (22) as paragraph (24) and redesignating the remaining paragraphs accordingly.

"SEC. 29. That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading

"'TITLE III—ORGANIZATION OF AGENCY AND POWERS AND DUTIES OF ADMINISTRATOR'

is amended by adding at the end thereof the following:

"'Sec. 315. Screening of passengers in air transportation.

"'Sec. 316. Air transportation security force.

"'(a) Powers and responsibilities.

"'(b) Training and assistance.

"'(c) Overall responsibility.'"

Mr. CANNON. Mr. President, the major failure of the U.S. antihijacking program to date has been the lack of an effective and thorough screening process designed to keep would-be hijackers and other criminals from boarding aircraft.

Up to now the airlines and the Government have relied upon the so-called "hijacker personality profile" to identify and search passengers thought to be suspicious. Generally, only those passengers conforming to behavioral traits contained in the profile have been subjected to screening by weapons-detecting devices or to personal search of the person or of carry-on possessions.

The so-called profile has undoubtedly been effective in identifying many would-be hijackers and other criminals, but has not been totally effective in safeguarding our air transportation system from attack. Unfortunately, the airline employee or agent has up to now been responsible for applying the profile to each individual passenger who is processed for boarding. Obviously, occasions have occurred in which, during the pressures of boarding, agents have inadvertently not applied the profile to all passengers.

The committee is of the view that the profile is only one tool in the effort to keep hijackers out of the air transportation system and that other more thorough measures must be taken immediately, utilizing technology presently available.

Mr. President, the amendment I am offering contains a requirement that all passengers and their carry-on possessions traveling in air transportation and intrastate transportation involving large aircraft be screened by weapons detecting devices prior to boarding aircraft. The provision is quite similar to that proposed by Senator SCHWEIKER in S. 3815.

Present technology has made it possible to inobtrusively screen passengers with metal-detecting devices in a rapid and accurate fashion and to determine if any passenger is carrying what could be a dangerous weapon. The committee amendment authorizes funding so as to provide for the purchase of an adequate number of weapon-detecting devices so that passengers on all flights involving large aircraft within the United States and their carry-on possessions may be screened.

The committee believes that, while the Government should purchase the weapon-detecting devices, the devices should be routinely operated by employees of the airlines who process and supervise the aircraft boarding procedures. Presently, the screening program I have described above is being done on a haphazard and spot basis—the amendment will make such screening a firm requirement.

During the process of passenger screening some passengers will activate the metal-detecting devices, thus raising the possibility that a dangerous weapon is being carried illegally. We believe that such passengers exhibiting a positive response on the metal detecting machinery should be thoroughly searched by law enforcement personnel on the scene prior to their boarding the aircraft. Other provisions of the bill will provide adequate Federal law enforcement capability at all airports so that passengers who elicit a positive response may be searched.

We believe that the actual physical search of a person is an odious process both to the passenger and to the person performing the search. We believe that it is not proper for such personal searches to be conducted by airline employees who after all are not law enforcement officers and are not trained in law enforcement or safety procedures.

Our amendment provides that at airports not requiring a Federal security force presence, local law enforcement officers, pursuant to an agreement with the Federal Aviation Administration, may be authorized to search and arrest passengers suspected of violating or attempting to violate statutes relating to air transportation.

The committee amendment also contains a provision which would require the airlines to refuse transportation to any person who does not consent to search or inspection of his person and property. This amendment will establish firm and explicit authority for air carriers to refuse to provide transportation to anyone refusing to consent to be searched and will serve to clarify a somewhat fuzzy area of law. The committee is concerned however that new provisions of law requiring search or screening of passengers engaging in air transportation be very narrowly applied to avoid any possible infringement on constitutionally protected freedoms.

The only purpose for which the general search or inspection of persons and their property shall be undertaken is to insure that dangerous weapons will not be unlawfully carried in air transportation or in intrastate air transportation.

The committee amendment requiring absolute screening of all passengers and their carry-on possessions will be effective for at least 1 year following the enactment of the amendment. After that time the Administrator of the Federal Aviation Administration is given discretionary authority to modify rules and regulations relating to passenger screening as conditions at the time warrant. It is conceivable that at some point in the future such precautions may become unwarranted if the new security program proposed in this amendment is effective and at that point universal screening may no longer be required.

The Administrator is also given discretionary authority to exempt from the universal screening requirement air transportation performed by air taxis or commuter air carriers operating small aircraft. The committee believes that this segment of air transportation has, up to now, not been a target for air piracy or other criminal action.

The other major facet of the committee's amendment is to strengthen, unify, and bring under single-agency direction the Government's current antihijacking enforcement capability.

Several years ago, with great publicity and fanfare, the Government announced the establishment of the sky marshal program. The concept of that program was to provide a Federal police presence aboard aircraft while in flight to apprehend or otherwise deter hijackers. Of course, now the results of that program are well known. It was not effective in halting the alarming increase in air piracy and was shown to be largely ineffective because of its lack of emphasis on keeping potential skyjackers off airplanes.

As my colleagues know well, the sky marshal program was quietly abandoned to be replaced by a Federal law enforcement presence on the ground to act to keep skyjackers from boarding aircraft. This force is made up of Government agents from the Department of Treasury and the Department of Justice assembled on an ad hoc basis several years ago to provide Federal law enforcement capability at many of the Nation's airports. Unfortunately, the committee has been informed that the administration is seeking to phase out the present force in the current fiscal year.

Mr. President, crimes against air transportation are Federal crimes and the situation today is so potentially catastrophic that we must increase rather than eliminate the Federal law enforcement presence at our Nation's airports. The administration has argued that the prevention of hijackings and other acts of violence in air transportation is primarily a responsibility of local government as far as law enforcement assistance is concerned. We strongly disagree and can find no reasonable argument for turning over the primary responsibility of enforcement of Federal laws to local authorities.

Accordingly, our amendment will draw together present Federal law enforcement personnel engaged in air transport security into a new Federal security force under the direction of the Federal Aviation Administrator who shall exercise sole responsibility for the establishment and direction of the air transportation security force. Presumably, personnel employed by other departments of the Government now working in air transport security will be transferred to the Federal Aviation Administration and become a part of the air transportation security force established by the provisions of the committee amendment.

The amendment has provided officers of the security force authority to search and inspect persons and cargo to determine if weapons, explosives or destructive substances are being illegally carried; to arrest persons attempting to illegally carry or have illegally carried weapons and to enforce other provisions of U.S. law relating to crimes against air transportation. Members of the security force will have no further police enumerated in the amendment and their sole responsibility is to protect the air transportation system from air piracy, criminal violence and other illegal acts directed toward it.

The committee feels strongly that the present security presence composed of U.S. officers is not as effective as should be because of a lack of central direction and coordination. Officials of the Federal Aviation Administration have told me that they have sometimes been ineffective in protecting the air transport system because of contradictory policies and directives from other Government agencies. Airport authorities have testified before the committee that the confusion regarding responsibility for air transport security at the Federal level has made it difficult to coordinate Federal policy with local security action.

Accordingly the committee strongly believes the air transportation security and law enforcement must be centrally directed and that the FAA Administrator—charged specifically under law with

maintaining a safe air transportation system—is the appropriate Federal official to whom this responsibility must be entrusted. Unnecessary intrusion and second guessing from Cabinet Departments and Cabinet Secretarys has already hampered the FAA's attempts to deal with air piracy.

The Department of Transportation, I am told, has often attempted to overrule the FAA on various security measures and proposals for more funding because of an attitude that skyjacking is a temporary threat to the air transport system and will go away. We find such an attitude deplorable. When Congress passed the Department of Transportation Act in 1966, it brought the FAA, in some respects, under the authority of the Secretary of Transportation. Wisely, however, certain specific safety functions of FAA were left entirely within the authority of the FAA Administrator with no review or control by the Secretary of Transportation.

The committee believes that this was wise policy in 1966 as it is now and accordingly believes that the air transport security program and law enforcement force must logically be the responsibility of the Administrator as they are entirely related to the concern for public safety.

We recognize that a total Federal presence at all airports in the United States is an economic impracticality and would be an unwarranted expenditure of Government funds. Therefore, we believe the Administrator should, in appropriate instances, delegate the security force functions and enforcement authority to local law enforcement officials provided they have adequate training. The committee specifically authorizes such a delegation of Federal authority and a deputization of local peace officers when circumstances warrant.

Finally, Mr. President, our amendment strengthens current provisions of law relating to the crime of carrying weapons aboard aircraft. The amendment modifies section 902(e) of the Federal Aviation Act relating to enforcement.

Presently, a violation of section 901(l) is only a misdemeanor. The misdemeanor penalty has been adequate in cases of persons who carry weapons such as unloaded pistols or knives aboard aircraft, but do so without any intent to use those weapons while on board. On the other hand, that penalty has not been adequate in cases where the nature of the weapon involved and/or surrounding circumstances indicate a very real danger that the weapon is intended for immediate use or that human life is imperiled. The proposed revision of the statute would provide a felony offense, punishable by up to 5 years' imprisonment or a fine of up to $5,000, or both, for the latter class of cases. It would retain the existing exemption for law enforcement officers and others authorized by the Secretary of Transportation to carry arms aboard aircraft, limiting the exemption, however, to the situations where those officials are acting within their official capacities. This limitation would guard against the unlikely, but possible, event of a law enforcement officer carrying or attempting to carry a deadly or dangerous weapon aboard an aircraft with no authority to do so.

Furthermore, the legislation would extend the coverage of the weapon section, which now applies only to U.S. air carriers, to foreign air carriers, thus enabling Federal prosecutions of individuals who carry concealed deadly or dangerous weapons aboard aircraft within the United States which are being operated by foreign air carriers.

In addition, the amendment also specificially makes it unlawful to carry or place for carriage a concealed explosive or other destructive substance with criminal sanctions provided identical to those provided for carriage of concealed dangerous weapons.

Mr. President, in conclusion, S. 2280 with the proposed committee amendments represents the most comprehensive attempt ever made to provide legislative machinery to deal with air piracy and criminal violence directed toward air transportation.

If enacted, this legislation will give the U.S. Government new methods, manpower, and financial authority to deal with threats to air transportation in a thorough and comprehensive fashion. The enactment of this bill will reflect congressional concern and action and will greatly add to the safety and well-being of millions of Americans who use the air transportation system.

Mr. President, I urge the Senate to unanimously approve S. 2280 and the committee amendment as here proposed.

Mr. PEARSON. Mr. President, I rise in support of the committee amendments to S. 2280, as reported by the Committee on Commerce.

The committee amendments direct the Administrator of the Federal Aviation Agency to promulgate regulations requiring that all passengers and all property to be carried aboard a flight originating in the United States be screened by weapon-detecting devices operated by employees of the air carrier.

The committee amendments further direct the FAA to acquire and furnish for the use by air carriers sufficient weapon detecting devices necessary to carry out the screening program. The devices will remain the property of the United States.

The committee amendments further authorize $35 million to be appropriated for fiscal year 1973 to establish, administer, and maintain an air transportation security force under the Administrator of the FAA. This security force would have the responsibility of maintaining a law enforcement presence and capability at U.S. airports to deter air piracy and protect the safety of air travelers. Mr. President, I do not deny that the establishment of such a force is an extraordinary response to a problem of law enforcement. Nevertheless, the threat to the safety of air travelers posed by air piracy transcends the problems associated with other law enforcement activities.

There must be established a force of highly trained specialists in air security, a force whose sole responsibility is to prevent criminal acts which jeopardize the lives of all those who travel by air. The cost of acquiring this security force will be modest, indeed, compared to the cost in human lives which one air tragedy could entail.

Mr. President, the committee amendments further establish criminal sanctions against those who conceal dangerous weapons, explosives, and other dangerous materials on their persons while aboard, or attempting to board an aircraft. These provisions are necessary, of course, to implement an effective program of air transportation security.

Mr. President, I urge the Senate to accept the committee amendments to the bill.

Mr. GRIFFIN. Mr. President, in the last 4 years aircraft hijackings have reached epidemic proportions and truly constitute an international crisis.

The use of aircraft for purposes of political blackmail is a threat to world peace, as evidenced by the recent Olympic tragedy in Munich and other hijackings in the Middle East. Strong and effective measures must be taken to prevent hijackings as well as to punish offenders swiftly and severely.

The pending bill provides the tools, which if rapidly implemented and vigorously enforced, will go a long way toward reversing the hijacking rate.

First, the bill would authorize the President to invoke a national air transportation boycott against nations which refuse to punish hijackers or extradite them. In addition, there is authority to impose secondary boycotts against the air service of third countries which refuse to invoke sanctions against the offending nation.

Now I realize that it may not be diplomatically expedient for any President to use such sanctions since he is not required to do so but I believe that a stiff backbone policy will promote worldwide respect and cooperation. Furthermore, as the committee report points out:

> Simply the threat of U.S. imposed air transportation boycotts should have a salutary effect on nations which might be reluctant to abide by the Hague Convention provisions.

Second, the bill would require the screening of all air passengers by weapon detection devices. Funds are authorized for the FAA to provide these devices to the airlines.

Third, the bill would provide authority to the FAA to require air carriers to refuse transport to any person who does not consent to a search for dangerous weapons. The safety of thousands of individuals requires this small infringement upon individual liberties.

Fourth, the bill provides stiff criminal penalties for the unlawful carrying of a concealed weapon aboard an aircraft where there is a willful and reckless disregard for the safety of human lives. The realities of travel at 35,000 feet dictate the necessity to deal harshly iwth all air-related crimes.

However, even with strong penalties, I am concerned over the reluctance of the judicial system to mete out severe punishment for hijackings and other related crimes. For instance, although Federal law authorizes the death penalty for persons convicted of air piracy, the threat of the death penalty or a long prison term appears to have had little effect on

reducing hijackings. Between 1961 and March of 1972, 135 hijackings occurred in the United States, most of which have occurred within the last 3 or 4 years.

Yet of the 33 individuals who have been brought to trial or have pled guilty since 1961 of hijacking offenses, not one has received the death penalty. Only one received life imprisonment and only two additional persons were sentenced to prison terms above the minimum 20-year term required by law. In this regard I fully concur in the following statement from the committee report:

The Committee believes that each hijacking offender must be prosecuted to the fullest extent of the law and that the Judiciary must impose stern sentences on those convicted. If more examples of swift and stringent punishment were publicized to the public, the incidences of hijacking would undoubtedly decrease.

Obviously, this legislation cannot solve a problem international in character. It does signify, however, the intention of the United States to take decisive action to eliminate one of the most dangerous of crimes. It is my hope that this legislation will be approved by an overwhelming vote.

Mr. BOGGS. Mr. President, I shall vote for the amendment to S. 2280 offered by the distinguished Senator from Nevada (Mr. CANNON) on behalf of the Commerce Committee, but not without reservations.

I applaud the provisions of the amendment relating to screening of all passengers and their carry-on luggage by weapon-detecting devices and the acquisition of metal detectors by the Federal Government to carry out this purpose. I introduced antihijacking legislation (S. 3871) not long ago which included similar proposals. I also support the provisions of the committee amendment raising penalties for carrying firearms or explosives aboard aircraft when this endangers the safety of passengers and crew. This proposal was also a part of my bill.

However, I proposed that responsibility for screening passengers with weapons detectors be placed with the Justice Department, specifically with the U.S. Marshal Service. I appreciate the consideration which the committee gave to my proposal.

However, the committee has decided that this responsibility should remain with airline employees assisted by State and local law enforcement personnel and a new air transportation security force under the direction of the Federal Aviation Administration. While I would like to have seen this responsibility transferred to Justice, I feel strongly that the urgency of the skyjacking problem requires that additional security measures be implemented as soon as possible.

Therefore, I shall vote for this amendment.

Mr. HART. Mr. President, will the Senator yield to me for a moment?

Mr. CANNON. May I ask for a vote on the committee amendment first?

The PRESIDING OFFICER. Will the Senator yield back the remainder of his time?

Mr. CANNON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CANNON. The Senator from Pennsylvania (Mr. SCHWEIKER), I understand, has an amendment to the committee amendment. I want to be sure he is not precluded.

The PRESIDING OFFICER. His amendment would be in order after all time is yielded back on the amendment of the Senator from Nevada.

Mr. CANNON. Mr. President, I yield 1 minute to the Senator from Michigan (Mr. HART) on the bill.

Mr. HART. Mr. President, over a period of time some of us here have sought to prevent the extension of the capital punishment sanction in Federal legislation. I rise to make the point that section 902(1) of the Federal Aviation Act as rewritten in the bill before us carries forward and incorporates the basic sanctions under the aviation piracy law, including death under certain conditions. I believe that under the recent Supreme Court decisions, basically the Furman decision, this provision is now unconstitutional.

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

The PRESIDING OFFICER. Is the Senator's amendment an amendment to the pending amendment of the Senator from Nevada?

Mr. SCHWEIKER. That is correct.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk read the amendment to the amendment, as follows:

On page 3, line 1, strike out "the enactment of this section" and insert in lieu thereof "the effective date of such regulations."

The PRESIDING OFFICER. Is this the amendment on which there is a limit of 1 hour?

Mr. SCHWEIKER. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SCHWEIKER. Mr. President, the pending committee amendments to S. 2880 include a provision which requires that the Administrator of the Federal Aviation Administration issue regulations, as soon as practicable, requiring for at least the next 12 months, that all passengers and their carry-on property carried in air transportation be screened by weapons-detecting devices, operated by employees of air carriers, before the passengers and their baggage are boarded. The amendments authorize the Administrator to acquire and furnish metal detector devices for this purpose with funds from the Airport and Airway Trust Fund. In addition, the committee has added a requirement for the FAA to provide Congress with semiannual reports about the effectiveness of the screening program.

The Senate is aware that on July 20, 1972, I introduced S. 3815, a bill which would mandate the Administrator of the FAA to publish regulations requiring that every passenger who boards a commercial aircraft be electronically screened prior to his enplaning. The bill is supported by the Airline Pilots Association and I ask that a letter from the association in support of mandatory screening be printed at this point in the RECORD.

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

AIR LINE PILOTS ASSOCIATION,
Washington, D.C., September 20, 1972.

Hon. RICHARD S. SCHWEIKER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SCHWEIKER: With the vote on antihijacking legislation approaching in the Senate, I again wish to emphasize our full support for your bill, S. 3815, requiring the screening of all passengers and carry-on baggage by adequate weapons detecting devices.

As I stated before the Senate Subcommittee on Aviation last month, such legislation will serve as a strong deterrent to the heinous crime of aerial piracy. We hope that sufficient funds can be authorized and appropriated to provide metal detection devices at every airport gate used in commercial aviation.

We respectfully urge the Senate to pass this and similar legislation for the mandatory, thorough screening of passengers and hand luggage.

Sincerely,

J. J. O'DONNELL, *President.*

Mr. SCHWEIKER. That bill was later introduced as an amendment intended to be offered to the Airways Development Act and I was pleased to have been joined on that amendment by Senators BOGGS, BIBLE, DOMINICK, HUGHES, HUMPHREY, WILLIAMS, EAGLETON, and RIBICOFF. On August 15, 1972, the Aviation Subcommittee of the Senate Commerce Committee held a hearing on the problem of aircraft hijacking and received testimony regarding the legislation which had been introduced on this problem which included my bill. During the hearing the Secretary of Transportation testified regarding my bill:

We agree with the objectives of this legislation. In fact, our current plans call for the establishment of detection capability for screening of all scheduled air carrier flights.

Mr. President, I ask that the full text of my testimony before the Aviation Subcommittee of the Senate Commerce Committee be printed at this point in the RECORD.

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

TESTIMONY OF SENATOR RICHARD S. SCHWEIKER BEFORE THE COMMERCE COMMITTEE, AUGUST 15, 1972

Mr. Chairman, I would like to thank the Committee for this opportunity to testify on the problem of aircraft hijacking, a problem which we have not yet solved. This is clearly a very important hearing, since there is a definite need for prompt action. I commend the Committee for its initiative and remain hopeful the Congress will be able to act this year on legislation designed to curtail the incidence of aircraft hijackings. As a matter of public policy the Congress should make it clear that the Nation's airways are secure for the travel of the American public and for the maintenance of commercial air traffic free from the death and destruction which a hijacker can cause.

The Committee is aware that I introduced S. 3815, a bill which would mandate the Administrator of the Federal Aviation Administration to publish regulations requiring that every passenger who boards a commercial aircraft be electronically screened

prior to his enplaning. I had intended to offer the bill as an amendment to the Airway Development Act and I was pleased to have been joined on that amendment by Senators Boggs, Bible, Dominick, Hughes, Humphrey, Williams, Ribicoff and Eagleton. The amendment was not offered due to the scheduling of these hearings.

Mr. Chairman, despite the efforts of the Federal Aviation Administration, and the use temporarily of "sky marshalls," we continue to witness the hijacking of passenger aircraft. The traveling public as well as the crews of the Nation's commercial aircraft continue to face the risk of being kidnapped and injured or killed, not to mention inconvenienced. We continue to be amazed at the ease with which hijackers can take control of an aircraft and demand and receive large sums of money. It is strange that hijackers are still able to take control of aircraft after the rules for air carriers ordered by the FAA. This year alone we have already witnessed more hijackings in the United States than in any previous year. To date there have been 156 hijackings in the United States, of which 96 were successful; 30 were incomplete, that is, the hijacker took control of the aircraft but then was overcome; and 30 were unsuccessful, wherein the hijacker failed to gain control of the flight.

In my judgment, the hijacking rules established by the FAA are not nearly strong enough. In addition, there is some serious question whether the airlines are in full compliance with the regulations promulgated by the federal government. Until recently the rules established by the FAA for the air carriers and airports have required them to establish security plans acceptable to the agency. The agency in most instances has not prescribed the specific procedure or outline of the required plan. This stems in part from a desire of the agency to permit the airlines to establish those procedures most compatible with their own operations. However, the difficulty has been that the airlines feel much of this security is the responsibility of the federal government. On the other hand, the federal government feels the responsibility in great measure falls upon the airlines. Thus, a stringent and effective security program as yet has not been established. Of the 73 hijackings involving regularly scheduled aircraft departing from U.S. Airports since October, 1969 (the date security measures were inaugurated), 42 have occurred after no security measures were employed. Fifteen hijackings involved the use of a profile, 3 involved the use of a "spot check," 10 hijackers boarded the aircraft by other than normal means, and only 3 occurred after the use of both a profile evaluation and electronic screening device. The recent $1 million ransom hijacking of a Delta Airlines DC 8 jet to Algeria caused the FAA to declare the hijacking situation an "emergency." The announcement by the agency of emergency procedures for physical search of all passengers who fit a "security profile" of hijacker characteristics is a step in the right direction, but does not go far enough. Congress must require mandatory screening of each and every passenger.

Electronic screening is a simple reliable method that allows all passengers to be electronically searched for weapons without inconvenience while walking through an aircraft boarding gate. This electronic device gives us the ability to eliminate the great majority of all hijackings by screening all passengers on all flights before they board their plane. Mandatory electronic screening will enable us to detect hijackers carrying weapons aboard aircraft whose characteristics do not fit the "security profile" currently in use.

Clearly, the most critical element in any security program is the screening of passengers prior to their embarkation. At present not every passenger is being screened. The various methods when employed by the airlines have failed to detect far too great a number of hijackers. As a result, men have boarded aircraft carrying the weapons for a successful hijacking. The majority of all hijackings, worldwide, have been undertaken with weapons detectable by electronic screening devices. A blatant example is the recent Philadelphia hijacking in which the hijacker carried a shotgun aboard the aircraft.

The need for a system which can rapidly and reliably detect the presence of concealed weapons on airline passengers is obvious. Research in the area of concealed weapons detection has produced a reliable cost-effective method by which concealed weapons can be detected without inconvenience to unarmed passengers. This is a very important finding since application of this new weapon detection technology, together with identification and current profile test procedures, could greatly reduce the number of attempted hijackings. Unfortunately, there has been a reluctance to believe that any electronic system could achieve the kind of performance needed.

In evaluating any security system, two considerations are paramount. The probability of detection should be high—90% or higher—and the cost of capturing potential hijackers should be low. In the case of airplane hijackers who appear very infrequently (less than one in one million passengers), it is critically important to organize a screening process which minimizes the requirement to interview suspects. Unless a system is characterized by a low false alarm rate, the cost of eliminating one potential hijacker will be very high. For example, any system which requires interviewing even 20% of the passengers to eliminate hijackers may be too costly.

It may be suggested—in view of the cost—that electronic screening is not really necessary to achieve a significant reduction in the number of hijackings. I strongly disagree. Although the security profile currently being used is assumed to be effective, it alone will probably never be adequate simply because it depends too much on individual performance. There is evidence that persons assigned the problem of identifying well-defined but very infrequent defects in objects have great difficulty in performing well if the frequency that they encounter defects falls outside the range of 1 to 20%. The frequency of appearance of a potential hijacker is well below this range. The profile test should not be abandoned. But I believe all passengers must also be screened by a weapon detector in order to prevent concealed weapons from being carried onboard commercial flights. By using both the profile and reliable weapon detection techniques, the probability of detection can be increased better than 95% with little or no increase in screening costs, since an attendant is required in either case.

It has been established that modern technology properly applied, can be effectively and economically used to screen airline passengers for concealed weapons without inconvenience to them, and without creating any harmful side effects to them or their possessions. The FAA has been investigating electronic screening devices, both active and passive, high-frequency and low-frequency. Although technical operating questions remain to be settled, it is clear these devices can significantly reduce the number of hijackings. Electronic screening represents the most efficient and least cumbersome means of improving the security of air travel without the need for elaborate security enforcement programs involving large numbers of federal, state and local law enforcement officials.

The Secretary of Transportation recently stated, "I firmly believe that the best place to catch an airplane hijacker is on the ground before he has an opportunity to jeopardize the lives of innocent people. The equipment of our airports with these devices will help achieve that goal, and therefore I feel it is proper expenditure of public funds." S. 3815 directs the Administrator of the FAA to acquire and furnish the necessary devices for the purpose of electronic screening of passengers.

We must insure that every person who boards an airplane can be assured that none of his fellow passengers is carrying the equipment necessary to hijack that aircraft. The way to do that, obviously, is to get tough. We have to mandate the use of known electronic equipment available for metal detection purposes. Until we do get tough and make it mandatory, we won't solve the airline hijacking problem. If we do get tough—we will stop air hijacking.

Mr. SCHWEIKER. Mr. President, I wholeheartedly support the committee amendment to the pending bill which is the result of the hearing I just mentioned. I am quite pleased that the committee included in its amendment the provisions of my bill which require that all passengers and their baggage be electronically screened prior to their boarding an aircraft. However, the committee added to this provision the authority for the Administrator of the FAA, 1 year after its enactment, to alter or amend such regulations requiring a continuation of such screening by weapon-detecting devices only to the extent deemed necessary to assure security against acts of criminal violence and air piracy in air transportation and interstate air transportation. It is my understanding that the committee feels that after 1 year of such required screening, it may not be necessary to continue such a program and, therefore, the Administrator is permitted to make such changes as he feels are in order.

There was testimony to support such action. I do not quarrel with the committee's view in this regard. I wish to point out, however, that this provision contains a technical difficulty. Specifically, the 1 year begins after the enactment of the legislation. Based on the information that has been made available to me and the committee, it will not be possible for the Department of Transportation to acquire the necessary equipment and publish the appropriate regulations allowing time for comment by interested parties, to permit the full implementation of such a program to last for 1 year before the Administrator is authorized to alter or amend them. Therefore, my amendment seeks to change the language of this provision by striking the words "the enactment of this section," and inserting in lieu thereof "the effective date of such regulations." If my amendment is adopted, the committee amendment will then read:

One year after the effective date of such regulations the Administrator may alter or amend such regulations, requiring a continuation of such screening by weapon detecting devices only to the extent deemed necessary to assure security against acts of criminal violence and air piracy in air transportation and interstate air transportation.

Thus, we will have a full year of experience in the mandatory screening of passengers and baggage boarding commercial airliners.

Mr. President, I have felt for some

time that the antihijacking rules established by the FAA have not been strong enough. In addition, I have felt that there has been some serious question as to whether the airlines have been in full compliance with the regulations promulgated by the Federal Government. Apparently, the airlines and the Federal Government have been quarreling as to whose specific responsibility is the security of the traveling public. The pending committee amendment resolves that issue, and clarifies the responsibility for the airlines and the Federal Government.

Clearly, the most critical element in any security program is the screening of passengers prior to their embarkation. At present, not every passenger is being screened. The various methods, when employed by the airlines, have failed to detect far too great a number of hijackers.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SCHWEIKER. I yield myself 3 additional minutes.

In a case in Philadelphia, a person actually smuggled a shotgun under his raincoat and got on an airplane. An obvious attempt like this, as well as the concealing of a small pistol, would be thwarted under the electronic screening processes now available.

As a result, men have boarded aircraft carrying the weapons for a successful hijacking. In fact, the majority of all hijackings, worldwide, have been undertaken with weapons detectable by electronic screening devices.

A blatant example is the Philadelphia hijacking just mentioned in which the hijacker carried a shotgun aboard the aircraft.

Mr. President, my amendment earlier was called to the attention of the committee for their review and consideration, and I am hopeful that it can be adopted today so that what, in my judgment, is a weakness in the committee amendment can be corrected.

I believe the bill will accomplish the intended purposes, which are exemplary and commendable, and for which I certainly commend the committee.

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

Mr. SCHWEIKER. I yield.

Mr. CANNON. First I want to thank the Senator for his kind remarks, and I want to say that I have examined his amendment. It is acceptable, and I am willing to accept it at this time.

Mr. SCHWEIKER. I thank the distinguished Senator from Nevada and the distinguished Senator from Kansas for their help and support, and I yield back the remainder of my time.

Mr. BOGGS. Mr. President, before the Senator yields back his time, will he yield me 1 minute?

Mr. SCHWEIKER. I am glad to yield to the Senator from Delaware.

Mr. BOGGS. I take this opportunity to commend the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Nevada (Mr. CANNON), and the Senator from Kansas (Mr. PEARSON) for the fine job they have done in offering and accepting this amendment to the legislation, because I think skijacking is a matter of the utmost urgency, and we must proceed as far as possible on it.

Again I thank the Senator from Pennsylvania, and ask permission to join with him as a cosponsor of the amendment.

Mr. SCHWEIKER. Mr. President, I ask unanimous consent that the name of the Senator from Delaware (Mr. BOGGS) may be added as a cosponsor of my amendment.

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

Mr. SCHWEIKER. Mr. President, I would like to add that the Senator from Delaware was one of the sponsors of my original bill. He has a bill of his own in this area, and has worked very hard on these matters. I commend his efforts, and thank him for his help and support.

I yield back the remainder of my time.

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

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Pennsylvania.

The amendment was agreed to.

Mr. CANNON. Mr. President, have the committee amendments been agreed to?

The PRESIDING OFFICER. The question recurs on agreeing to the amendment of the Senator from Nevada, as amended.

The amendment was agreed to.

Mr. CANNON. Mr. President, I call up an amendment which I have at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

At the end of the bill, add the following: The second sentence of section 403(b) of the Federal Aviation Act of 1958 is amended by inserting after "in the service of such air carrier or foreign air carrier;" the following: "widows, widowers, and minor children of employees who have died while employed by such air carrier or foreign air carrier after twenty-five or more years of such employment;".

Mr. CANNON. Mr. President, I yield myself 2 minutes.

I had not intended to offer this as an amendment until the other airline fare amendments were offered and voted on.

The amendment I am offering now is identical to language contained in S. 1655, which is already on the calendar. I feel that as long as we are getting into this question of reduced rates on a standby basis and reduced rates on a reserved basis, and the general problem of rates, we should consider this bill a part of it, since it is already on the calendar, and we have held hearings on it, determined that we would report it out, and had it ready for action.

So I hope the Senate will agree to the amendment I have just offered, which now covers the entire gamut of reduced fares. I think the only persons now left out who would not be eligible for reduced rate transportation are those people who are hale and hardy between the ages of 21 and 65.

I yield back the remainder of my time.

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

The amendment was agreed to.

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

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

Mr. LONG. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. HRUSKA. Mr. President, will the Senator yield me 2 minutes?

Mr. CANNON. I yield 2 minutes to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, I rise to commend the members of the Committee on Commerce for the work they have done on this bill.

It will be recalled that one day last week the Committee on the Judiciary called up for consideration the bill (S. 2567) which dealt with aircraft piracy amendments. The attention of our committee was called to the fact that there was some duplicatory treatment of piracy on aircraft contained in our bill and in the bill which is today before us.

The result was, as has already been explained, that three of the sections of the bill that originated in the Committee on the Judiciary were recommended for deletion by the Committee on Commerce, and then the substance of those three sections was treated at even greater length in the bill upon which we are about to vote, bringing about a splendid result.

Speaking at least for myself, I suggest that we are indebted to the surveillance of the chairman, the Senator from Nevada (Mr. CANNON), and to the members of his committee for the results thus obtained. Others, of course, participated in it, but someone had to spearhead it, and he did. I commend him for it, and urge that the bill be passed.

Mr. DOMINICK. Mr. President, will the Senator from Nevada yield for a few questions, or the Senator from Kansas?

Mr. PEARSON. Mr. President, I yield 5 minutes to the Senator from Colorado.

Mr. DOMINICK. Unfortunately, because of other commitments, I have not been able to be here during the debate, and the questions I ask may have been in part touched upon before. But I would like to ask the Senator from Nevada or the Senator from Kansas these questions.

Suppose, for example, someone is trying to get out of Cuba and takes over a private airplane by force, which, as I understand, is an offense under this measure. Do I understand that at that point, although he is trying to get out of an area and would ordinarily be considered a refugee, he would be subject to the death penalty upon arriving in this country?

Mr. CANNON. He could be subjected to the death penalty, or a penalty of not less than 20 years in prison, if he takes the aircraft, while in flight, by force, thus endangering the lives of other persons. If he just steals an aircraft, I think that is probably a different proposition.

Mr. DOMINICK. Well, when we talk about an aircraft, are we talking about a passenger aircraft? Suppose he takes

a freight aircraft, or suppose a U.S. citizen, let us say, has been seized by Hungarian authorities on a trip over there, and hijacks a plane and gets to Austria. Is he subject to 20 years in jail when he gets back here, or to the death penalty? If he is, I think that is a grave mistake.

Mr. CANNON. Mr. President, let me read the pertinent section:

"(n)(1) Whoever aboard an aircraft in flight outside the special aircraft jurisdiction of the United States commits 'an offense' as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, and is afterward found in the United States shall be punished—

"(A) by death if the verdict of the jury shall so recommend, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion shall so order; or

"(B) by imprisonment for not less than twenty years, if the death penalty is not imposed.

"(2) A person commits 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft when, while aboard an aircraft in flight, he—

"(A) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

"(B) is an accomplice of a person who performs or attempts to perform any such act.

Mr. DOMINICK. Could I ask the manager whether the committee did consider, as a part of the hearings, the problems I am talking about?

Suppose we had a U.S. citizen who was seized by the authorities in Hungary. It looked as though he was going to be incarcerated in a Communist jail for I do not know how long, and suddenly he sees a chance to get out of there, takes an airplane, and takes it into Austria by force. Are we going to say, when he gets back here, in an effort to escape from that kind of situation, that he is going to be executed or put in jail for 20 years?

Mr. CANNON. Mr. President, we are doing our best to discourage hijacking of aircraft, no matter where the hijacking is or how it may occur. We are trying to get other nations to agree with us in a similar course of action, because no matter how laudable his individual desires may be—and we have seen that in the case of hijackings from our own country to go to Cuba because someone thought he was a political prisoner and wanted to get out of the country to go to Cuba. In dealing with a situation of this kind, we have to put the shoe on both feet.

Mr. DOMINICK. Mr. President, as far as I am concerned, nobody has ever objected to their going to Cuba. I even offered a statement here on the Senate floor that we would even pay their way to go, if they wanted to go. We are not talking about that. I am talking about someone who is in a totally different capacity. This is the only thing about this bill that bothers me. Other than that, I think it is an excellent bill.

If an American citizen is traveling abroad and is seized by authorities and is to be shoved in jail and finds a way of getting out——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CANNON. I yield the Senator 5 additional minutes.

The PRESIDING OFFICER. The Senator from Nevada has no time remaining. The Senator from Kansas has time.

Mr. PEARSON. Mr. President, I yield the Senator 5 additional minutes.

Mr. DOMINICK. I thank the Senator from Kansas.

I am not trying to be difficult about this situation, and I can understand the complexity of it.

Let us take a four-passenger airplane. The Senator from Nevada flies, I fly, and the Senator from Kansas flies; we all have flown our own airplanes.

Suppose someone is in a Communist country and is seized and he finds an opportunity to get on a four-place plane while the pilot is onboard, while the plane is warming up, and he can get to Austria. The pilot was not going there in the first place, so the person has to display a gun or other weapon to the pilot. In addition, there is the problem of perhaps being shot by the border guards in the process. There are all those problems. But the fellow is going to do that, anyhow, if he wants to escape 20 years in a Communist prison.

My question is this: Why should we then go ahead and say that he ought to stay in jail or be shot by our own authorities? I just cannot see it. I wonder whether there is any kind of exception we could make that would be legitimate in this matter.

Mr. PEARSON. May I respond very briefly to the Senator?

Mr. DOMINICK. I yield.

Mr. PEARSON. Actually, this question was more or less resolved at the time the Senate considered the Hague Treaty, the antihijacking measure, and it was passed by the Senate. What we really did was to enter into an international agreement, in treaty form, with some 49 countries, I think, to outlaw hijacking. That would pertain to hijacking motivated by political reasons, whether or not it be someone in this country, which was the case in too many instances some years ago, in which they would commandeer an aircraft and go to Cuba, to Havana.

When we deal with hijacking and seek to implement it on an international basis—and that must be done—the whole solution to this problem is to wipe out any sanctuaries that the criminal may have.

As does the Senator from Nevada, I sympathize with the feelings of the Senator from Colorado, that those who want freedom from states that live under a totalitarian system ought to have some right and some means to accomplish that; and our Government has been most lenient, it seems to me, in accommodating and providing asylum for those who escape from Communist countries. But to do so in a criminal act, it seems to me, is to place in the balance the matter of safety in air transportation and to do it on an international basis, and I do not see any alternative that the Senator seeks.

Mr. CANNON. If the Senator will yield, I may say that, under the Hague Convention, we are bound now to either prosecute or to extradite hijackers found in our country.

Mr. DOMINICK. We are bound to prosecute or to do something. I can see why, perhaps, in order to make this thing viable we will have to do something; but to automatically provide as this bill does, when a man is trying to save his life, when he is going to be shot by the country he belongs to and is a citizen of, simply because he is trying to get out of a totalitarian area, seems to be going too far.

I wonder if we can, somehow or other, give some discretion here so that this does not happen.

I introduced a bill the other day, as Senators know, which was passed by the Senate, which provided for giving additional sentences to people who commit felonies with the use of a firearm. On the first offense, we made sentencing discretionary, at the suggestion of some Members of the Senate. I was glad to do it. My guess is that it will stay that way. But here it is not made discretionary. Under this bill, he is going to get 20 years in jail or he is going to be shot, even though the Supreme Court has said that is unconstitutional in some cases.

I really do not know what to do about it. I bring up this matter, because I think it is a problem. I think there will be a public outrage if we have an American citizen who is incarcerated or caught by one of the totalitarian countries and uses this method of escape. I think there will be public outrage if we conduct any kind of trial of that person, particularly if he does not hurt anybody.

Let us suppose he takes over a plane and does not hurt anybody; that all he has is a flashlight in his pocket, which the pilot thinks is a gun or something. He bluffs the pilot and is taken to Austria. Perhaps he even has the cooperation of one of the pilots and goes over. The fellow cannot admit that he was in collusion, because he will be shot by the Hungarians or the Rumanians, or whoever it may be.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. TUNNEY. Mr. President, will the Senator from Kansas yield me 1 minute?

Mr. PEARSON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Kansas has 8 minutes.

Mr. TUNNEY. Will the Senator yield me 1 minute?

Mr. PEARSON. I am glad to yield.

Mr. TUNNEY. Mr. President, the distinguished Senator from New York and I are cosponsors of an amendment. We desire to offer our amendment, so I am going to ask unanimous consent that we be permitted to offer our amendment at this time.

Mr. CANNON. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

Mr. JAVITS. Mr. President, will the Senator yield me 2 or 3 minutes?

Mr. PEARSON. I yield the Senator from New York 3 minutes.

Mr. JAVITS. Mr. President, the amendment we would offer to this bill can be offered to another bill. I think it is most unfortunate, that the manager of the bill should object, and I think he should know what the amendment contains. I do not know whether or not

he has it before him and is reading it. It will be offered, and it can only get more complicated if we have to offer it to another bill. I would hope very much, therefore, that the Senator might perhaps reconsider.

The purpose was to utilize the discretionary machinery, as this uses the word "may" throughout in this bill, with respect to aircraft, to apply also in the case of nations which aid or abet terrorism through extending weaponry or giving sanctuary or otherwise being an accomplice before or after the fact.

In view of the fact that it is a very serious problem, with explosive packages being mailed daily and with entire nations implicated, in view of the fact that this is a very mild sanction, in an effort to find the remedy which is contained in this bill, I would hope that at least the Senate would have an opportunity to express itself upon this subject.

As I say, if it is necessary to offer the amendment to another bill, it will be offered. It only complicates life around here if there are many objections to unanimous-consent requests, and so forth, because one feels, in a sense, that he is not being dealt with as he would hope to be dealt with in respect of a particular bill.

That is the amendment, and that is its purpose, and I suggest that to the manager of the bill accordingly.

Mr. CANNON. Mr. President, will someone yield me some time?

Mr. PEARSON. I yield.

Mr. CANNON. Mr. President, this matter raises an entirely new issue that was not considered by the committee. We held no hearings on this foreign-policy matter. We have no communication from the State Department as to their position on it. We are under a time limit, even if the amendment had been offered at the proper time.

I certainly have no objection to the amendment being offered to some other bill and to the amendment being considered fully and discussed; but, under the circumstances, as manager of this bill, I have to object to it being offered here and now.

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

Mr. PEARSON. I yield.

Mr. TUNNEY. Mr. President, I should like to ask the distingushed Senator from Nevada (Mr. CANNON) to reconsider. He knew this morning that this amendment might be offered. That message was communicated to his staff. The Senator from New York and I were inadvertently off the floor at the time of third reading. We had believed that pending legislation would be considered until at least 2 p.m. today, and that we would have until that time to offer our amendment. I believe that the Senate should have the opportunity to work its will on a most important amendment, one that deals with terrorism. It deals with countries that house and give aid and comfort to terrorists who are hijacking planes, including American planes. It provides the President with a remedy in those circumstances. It enables him to suspend air operations between the United States and such countries. The need for this amendment is urgent. The distinguished Senator from Nevada should have been put on notice by his staff this morning that this amendment might be offered.

Mr. CANNON. That is absolutely incorrect. I never heard of the amendment until it was handed to me within the past 10 minutes, after we had obtained third reading. That was the first I had any knowledge of it. I read the amendment very hurriedly. I dislike the implication that it obtained third reading knowing there would be another amendment offered. We have been on this bill for a number of hours now and a number of amendments have been offered. There was plenty of opportunity to add this amendment.

It has not been subjected to hearings. Every amendment offered this morning and accepted has been subjected to hearings by the committee. We have gone into the questions thoroughly. We did act and accept a number of amendments. We have not gone into this particular foreign policy matter that is raised by the amendment. We have had third reading and I object, Mr. President.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. WEICKER). The 1 minute of the Senator from Kansas has expired.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Who yields time for the parliamentary inquiry?

Mr. PEARSON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Kansas has 3 minutes remaining?

Mr. JAVITS. I wish only 1 minute.

Mr. PEARSON. I yield 1 minute to the Senator from New York for his parliamentary inquiry.

The PRESIDING OFFICER. The Senator from New York is recognized for 1 minute.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from New York will state it.

Mr. JAVITS. Is a motion to recommit the bill to report back forthwith with an amendment still in order after third reading?

The PRESIDING OFFICER. Yes. Such a motion would be in order any time up to passage.

Mr. JAVITS. Well, Mr. President, I move to recommit the bill to the Committee on——

Mr. PEARSON. Commerce.

Mr. JAVITS (continuing). Commerce, to report back forthwith with an amendment, as follows:

On page 6, line 1, after the word "aircraft," insert the following: "or if he determines that a foreign nation is used as a base of operations or training or as a sanctuary or which arms, aids, or abets in any way, terrorist organizations which knowingly use the illegal seizure of aircraft or the threat thereof as an instrument of policy."

On page 6, between lines 22 and 23, insert the following new section:

"(c) The President shall within 5 days of any action taken pursuant to this section, report fully to the Congress setting forth all the reasons which support the action taken."

Mr. President, I ask for the yeas and nays.

Several Senators addressed the Chair.

Mr. PEARSON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Two minutes remain to the Senator from Kansas.

Mr. PEARSON. Mr. President, I yield myself the 2 minutes. I hope that the——

The PRESIDING OFFICER (Mr. WEICKER). Would the distinguished Senator from Kansas please suspend? Would Senators please raise their hands to comply with the request for the yeas and nays?

There was not a sufficient second.

Several Senators addressed the Chair.

Mr. PEARSON. Mr. President, with the remaining 2 minutes, I would hope that the motion of the Senator from New York would not prevail. This is a very complicated subject, a matter that touches the hearts of every one of us who has any concern for his fellow man and who feels quite dreadful about the terror that is abroad in the world today, such as we witnessed at the Olympic games in Munich, at the airport in Tel Aviv, and all across this land. It is something that we should deal with.

But we have brought forth a bill today, almost on an emergency basis, dealing with another critical situation in this country and that is skyjacking or hijacking and extortion on an international basis. It is in line with a treaty that the Senate passed on some time ago. We have taken amendments here that deal with all sorts of rates for the youth and the elderly, and so forth; but I must say that I do hope the Senate will reject the motion of the Senator from New York. I respect his feelings on this matter. I am positive that the Senator from Nevada will call for hearings, and the Senator from Washington (Mr. MAGNUSON), the chairman of the committee, will expedite the matter so that we can deal with it in a few weeks from now.

Mr. DOMINICK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Who yields time for the parliamentary inquiry?

Mr. JAVITS. A parliamentary inquiry. How much time do I have?

The PRESIDING OFFICER. All time on the bill has now expired, but there are 20 minutes left on the motion of the Senator from New York, with 10 minutes to each side.

Who yields time?

Mr. JAVITS. I thank the Chair and I yield 1 minute to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 1 minute.

Mr. DOMINICK. Mr. President, if the motion of the Senator from New York and the Senator from California to recommit with instructions should be passed, in that event, would the bill be open to further amendment?

The PRESIDING OFFICER. If the motion of the Senators from New York and California is agreed to, the chairman would immediately report the bill to the Senate with the proposed amendment which would be before the Senate for immediate consideration, but the bill oth-

erwise would not be open to amendment since we have had the third reading of the bill.

Mr. DOMINICK. Then, Mr. President, I do not know what to do, then, because notwithstanding my feeling of great sympathy for the Senator's point of view, if I may say so, I also feel great sympathy for the people who may be incarcerated in a totalitarian country and, in trying to get out find that when they do, they will be punished by their own government. It makes no sense to me.

Mr. JAVITS. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 3 minutes.

Mr. JAVITS. Now, Mr. President, the only reason I made this motion is to demonstrate again what we all know in this Chamber, that we can get things done here if we know the rules.

I regret very much that it was necessary, but it was, because we really were—and I do not blame the Senator from Nevada at all, I take absolutely at face value what he said, that he did not know anything about this amendment—denied the opportunity to present an amendment which is key to our time and germane to this issue.

Now we have an opportunity to present it and we will discuss it and however the Senate works its will, that will be its will. But a vote on it we are entitled to with respect to this particular measure, and we shall now have one.

Mr. President, I now ask for the yeas and nays.

There was not a sufficient second.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from New York will state it.

Mr. JAVITS. How many Senators are necessary for a sufficient second?

The PRESIDING OFFICER. Sixteen Senators would comprise a sufficient second.

Mr. JAVITS. Mr. President, I again ask for the yeas and nays, as I believe there are 16 Senators now present.

The PRESIDING OFFICER. There is a sufficient second. The yeas and nays are ordered.

Mr. JAVITS. Mr. President, I will take another minute and then I shall yield to the Senator from California (Mr. TUNNEY).

What are we trying to do here? This is an entirely voluntary bill, giving power to the President that he may do this or he may do that with respect to the aircraft of this country and foreign countries, or countries which deal with those offending against the hijacking principles set forth in this bill.

What the Senator from California (Mr. TUNNEY) and I are trying to do is to apply the same permissiveness in terms of the President's authority, in order to show the deep feeling we have about the barbarism going on in the world today with respect to terrorism, with the absolute option in the hands of the President of the United States.

Why cannot we give him that authority with respect to aircraft?

It is as simple as that. At least it gives him some tool that he can use, instead of the absolute helplessness which we find ourselves in now with respect to terrorism, which may be visited on anyone in any country, at any time, no matter how high or how low.

For the simple reason of plain humanity, I believe that we should give the President this authority with respect to aircraft. That is all we are doing. At least, it will give him something to use as a handle to redress the situation. The bill before us is an appropriate means to carry that out.

Mr. PASTORE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Rhode Island will state it.

Mr. PASTORE. Is a unanimous-consent request in order to return the pending bill to its status before third reading by unanimous consent?

The PRESIDING OFFICER. The Senator is correct. By unanimous consent that would be in order and the third reading could be vacated.

Mr. PASTORE. Mr. President, I ask unanimous consent that we return the bill to its status before third reading.

Mr. CANNON. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. PASTORE. Is it open to a motion?

The PRESIDING OFFICER. It is not.

Mr. JAVITS. Mr. President, I yield 2 minutes to the Senator from California.

Mr. TUNNEY. Mr. President, I thank my friend, the senior Senator from New York.

I think the Senator from New York expressed our mutual feeling. I think the people of this country and throughout the world are outraged by the activities of terrorist gangs that are hijacking planes and that have proudly claimed credit for the massacre at the Lod Airport in Israel. They have enthusiastically and madly claimed credit for the massacre of the Israeli athletes in Munich.

This group of international outlaws to my mind must be curbed. One way in which we can curb them is to give the President authority to suspend air service between the United States and those countries that aid or harbor these international criminals.

It is about time that we use whatever diplomatic weapons are available to us to take action against those countries that are perfectly willing to let American planes land but who are also perfectly willing to support murderers and terrorists.

The amendment we have introduced is a good one. It is a matter of great urgency. It is not something on which we can wait for months and months. The amendment is very clear. It states that the President of the United States can suspend air service to any country used by terrorists as a base of operations or training or as a sanctuary, and that we can suspend air service to any country which aids or abets in any way terrorist organizations.

It is a very simple issue. It does not need to be subjected to months of hearings. These terrorists must be stopped—and we must begin to act now.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. JAVITS. Mr. President, I do not know if the opposition wishes to use any of its time.

Mr. CANNON. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 2 minutes.

Mr. CANNON. Mr. President, I am very sympathetic to this proposition, generally. However, I am not sympathetic to having it come into this bill when we have a hijacking bill that we have already encumbered. The bill is loaded now with nongermane matters to the point that I have some concern about whether we can get it through the House rapidly.

This amendment raises a serious foreign policy question. I think it is a matter which should properly be considered by the Foreign Relations Committee. It has not been the subject of any hearings before my committee, whereas we have had hearings on all the matters contained in the bill, either by amendment or otherwise.

This was the reason for my objection. The amendment has not had any hearings. The matter may raise grave problems as to whether we can get the bill eventually passed with these provisions in it with no hearings of any sort on them, even though I am in sympathy with the problem they are trying to get at. This might apply to a lot of countries; having nothing to do with the issue of hijacking itself.

Mr. JAVITS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from New York has 15 minutes remaining.

Mr. JAVITS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 2 minutes.

Mr. JAVITS. Mr. President, I have two points to make and then I think that the Senate will have a clear grasp of the situation.

First, this is entirely a matter of giving authority to the President. The President may do something or he may not. I have no idea as to when, how, or where he would use that authority. However, he has it. We are saying that we are giving it to him for a given purpose.

This is critically important. It concerns the attitude of the United States toward what seems to be highly elusive terrorism. And that is the main point. It is only the granting of authority. How he uses it and whether he uses it and when he uses it is another matter.

Mr. President, the second question concerns what we can do. We have to keep up with what seems to be a creeping scourge upon us. We should try to keep up with it as it hits us. This is a situation which has crept up upon us in the night. It is a clear and evident situation.

This is a Senate bill that will go to conference. If there are bugs in these ideas, they can come out in conference for good reason. However, at least we show the President that we want to do something.

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

Mr. JAVITS. I yield.

Mr. PASTORE. Mr. President, let us assume that an American plane has landed in one of these countries and there are terrorists there who want to hijack it. Many of these people are dangerous, even more so than those mentally deranged people who hijack a plane for a thrill or for some ulterior motive.

Why should not the President say—if that is what is going to happen in these countries—that we will not have our planes land there.

Mr. JAVITS. Mr. President, we should not have our planes land there. I ask every Senator to ask himself if, when he is in a plane at an airport in Amsterdam, Paris, or some other city and he looks out the window and sees a plane there from a country that has been responsible for murders, whether that pleases him. Do we have any right to act in a manner that concerns our survival? It is that principle upon which the amendment is based.

I hope that the Senate adopts the amendment.

We are ready to yield back our time.

Mr. CANNON. Mr. President, I yield 2 minutes to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 2 minutes.

Mr. FULBRIGHT. Mr. President, the Senator has suggested that this involves serious international questions and wanted to know my position on it.

I am sympathetic with the position of the chairman. I would think, though I had nothing to do with the legislation itself, that we had a treaty relating to the matter of hijacking, and the matter is very serious. I am very sympathetic with the position of the Senator from New York with respect to this tragedy that occurred at Munich.

I will support the position of the chairman of the committee. I think this is a broad new proposal that does require hearings.

It is quite clear what we all think of this terrible event which happened in the airport at Tel Aviv and in Munich. However, we have also done some things which could very well be raised against us.

I do not know how far-reaching it is. However, as far as killing people, the United States is not without responsibility in the last few years. It is a terrible thing when we see individuals do the sort of thing that occurred at Munich. It is very offensive. However, the people that we kill are just as dead.

I do not think that we should take this kind of action off the cuff. I believe it would endanger the ultimate passage of this legislation.

There has been more hijacking in our country than there has been in any other country throughout the world. When we were discussing the International Convention, the testimony indicated that substantially more hijacking had occurred here than anywhere else.

This is not all one sided. The killing has not all been done by the bloody terrorists who have been in the news so much recently.

I, for one, think the record should be made on this matter before we adopt the amendment. I shall support the position of the chairman of the committee.

Mr. TUNNEY. Mr. President, I should like to explain a bit more fully the urgent nature and necessity of this legislation.

Mr. President, it is imperative that the Congress take the most effective possible action to curb air piracy and terrorist violence. That is why Senator JAVITS and I have introduced this amendment.

Our amendment enables the President to suspend air service between the United States and any nation which is used as a base of operations or training, or as a sanctuary for terrorist organizations which thrive on violence and which deal in death. It would also permit the President to suspend air operations to those countries which aid or abet these international outlaws.

S. 2280 is a good bill, Mr. President, and it is an important step in the right direction. But it does not go far enough. Millions of innocent civilians live in increasing fear of terrorist fanaticism. Airline passengers face potential danger every time they board a plane. We have already mentioned the fact that terrorist gangs have already proudly claimed credit for the massacre at Lod Airport, the violent seizure of a number of civilian airplanes, and the infamous and maniacal murders in Munich, to mention only the most recent and well-publicized crimes they have committed.

This Nation and this Congress cannot stand idly by while civilians are threatened, intimidated, and killed by the wild excesses of barbarians.

Something effective must be done, Mr. President. Pious pronouncements and mild legislation will not suffice. Our commitment must be demonstrated by tough, clear, and comprehensive legislation which will work.

That is why we have introduced this amendment. With this amendment, the President will have the clear authority to suspend air travel between the United States and those nations which harbor or assist terrorists.

Mr. President, if we are to begin to take effective action to curb terror and to protect airline passengers I respectfully suggest that the Javits-Tunney amendment must be enacted.

Mr. CANNON. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 1 minute.

Mr. CANNON. Mr. President, I am very sympathetic with the views of the two Senators. However, I do think this kind of proposal ought to have some kind of hearing and consideration. The State Department ought to be heard from as to what problems are involved. It does go far beyond the problem of hijacking.

We are vitally concerned and we are now trying to get a bill on hijacking passed.

Mr. President, if no one else desires to use any more time, I intend to yield back the remainder of my time and I move to table the motion to recommit.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the motion to recommit. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Alabama (Mr. SPARKMAN), the Senator from Virginia (Mr. SPONG), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Indiana (Mr. BAYH), the Senator from Indiana (Mr. HARTKE), the Senator from North Carolina (Mr. JORDAN), and the Senator from Wyoming (Mr. MCGEE) are absent on official business.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. MCINTYRE) would vote "nay."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senators from Tennessee (Mr. BAKER and Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Michigan (Mr. GRIFFIN), the Senator from Florida (Mr. GURNEY), the Senator from Iowa (Mr. MILLER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) is absent on official committee business on the west coast and also celebrating a wedding anniversary.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senators from Ohio (Mr. SAXBE and Mr. TAFT) and the Senator from Vermont (Mr. STAFFORD) are absent on official business to attend the Interparliamentary Union meetings.

If present and voting, the Senator from Michigan (Mr. GRIFFIN), the Senator from Iowa (Mr. MILLER), and the Senator from Texas (Mr. TOWER) would each vote "nay."

The result was announced—yeas 31, nays 44, as follows:

[No. 464 Leg.]

YEAS—31

Anderson	Edwards	Long
Bellmon	Ervin	Magnuson
Bennett	Fannin	Mansfield
Bentsen	Fong	Montoya
Bible	Fulbright	Moss
Burdick	Hart	Pearson
Byrd, Harry F., Jr.	Hollings	Randolph
	Hruska	Stennis
Cannon	Inouye	Symington
Church	Jackson	Young
Curtis	Jordan, Idaho	

NAYS—44

Aiken	Eastland	Pell
Allen	Gambrell	Percy
Beall	Gravel	Proxmire
Boggs	Hansen	Ribicoff
Brooke	Harris	Roth
Byrd, Robert C.	Hatfield	Schweiker
Case	Hughes	Scott
Chiles	Humphrey	Smith
Cook	Javits	Stevens
Cooper	Kennedy	Stevenson
Cotton	Mathias	Talmadge
Cranston	Mondale	Thurmond
Dole	Nelson	Tunney
Dominick	Packwood	Weicker
Eagleton	Pastore	

NOT VOTING—25

Allott	Jordan, N.C.	Saxbe
Baker	McClellan	Sparkman
Bayh	McGee	Spong
Brock	McGovern	Stafford
Buckley	McIntyre	Taft
Goldwater	Metcalf	Tower
Griffin	Miller	Williams
Gurney	Mundt	
Hartke	Muskie	

So Mr. CANNON's motion to lay on the table Mr. JAVITS' motion to recommit S. 2280 with instructions to include the Tunney-Javits amendment was rejected.

Mr. PASTORE. Mr. President——

The PRESIDING OFFICER. The question now recurs on the motion to recommit offered by the Senator from New York.

The Senator from Rhode Island.

Mr. PASTORE. Mr. President, I ask unanimous consent at this time that the bill be returned to the status it was in before third reading.

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

Mr. JAVITS. Mr. President, may we know the parliamentary situation?

The PRESIDING OFFICER. The Chair will advise the Senator from New York that he should withdraw his motion to recommit with instructions at this point, by unanimous consent.

Mr. JAVITS. Mr. President, I ask unanimous consent to withdraw that motion.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I send an amendment to the desk, for myself, the Senator from California (Mr. TUNNEY), and the Senator from Utah (Mr. MOSS).

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

On page 6, line 1, after the word "aircraft," insert the following: "or if he determines that a foreign nation is used as a base of operations or training or as a sanctuary or which arms, aids, or abets in any way, terrorist organizations which knowingly use the illegal seizure of aircraft or the threat thereof as an instrument of policy."

Mr. JAVITS. Mr. President, the matter has been thoroughly debated. I think the Senate is ready to vote. I shall abide by the views of the Senate.

Is there a request for the yeas and nays?

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. JAVITS. Mr. President, I yield back my time.

Mr. CANNON. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back. The question is on agreeing to the amendment of the Senator from New York. [Putting the question.]

The amendment was agreed to.

Mr. DOMINICK. Mr. President, I send an amendment to the desk, which I ask to have stated.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read the amendment, as follows:

On page 3, between lines 23 and 24, add the following:

"Provided that wherever the court or jury find that the offense has been carried out by a defendant or defendants who are refugees from a foreign jurisdiction, the court or jury shall have discretionary authority to determine the penalty, if any, and shall not be limited by the provisions of subsection (n)(1) (a) and (b) hereof."

Mr. DOMINICK. Mr. President, I brought this matter up a little earlier. Not many Senators were present on the floor. I hope I can have the attention of the Senate to describe what I am trying to do.

The PRESIDING OFFICER. The Senate will please be in order so we may hear the words of the Senator from Colorado.

The Senator from Colorado.

Mr. DOMINICK. As I understand the penalty clause in this bill, it does not make any difference under what circumstances an offense has been committed. If, for example, a U.S. citizen had gone legally to Cuba and was then illegally jailed or held there without being allowed to go back, and he eventually got a small plane and forced the pilot to fly here, that U.S. citizen who went to court on that offense, because it would be an offense under this bill, would be either given the death penalty or held for 20 years in jail. I do not want to be any party to that, if I can help it.

Similarly, under the amendment offered by the Senator from New York, if a Pan American aircraft were hijacked and taken to Libya, and a U.S. citizen was not allowed to get out of there, and then he subsequently did it by getting a small plane and going to Italy, likewise, when they got him back here, even though he had done no wrong to begin with, he would be subject to 20 years in jail or punished by death.

I see no point in any of this. What I am trying to say is not that it should not be an offense, but that the court ought to have discretion under these circumstances to determine what the penalty should be. That is the whole point or purpose of the amendment. It does not try to change the impact of the bill. It simply says, let the courts have some discretion. We let courts have discretion with respect to the punishment of criminals on their first offense, even when they use a firearm in the commission of a felony.

Let us, for heaven's sake, give the court and the jury some discretion in this kind of case, where we are dealing with a U.S. citizen, potentially, or a refugee who may not be a citizen but is trying to get out from a totalitarian government. It seems to me that under those circumstances the court or the jury ought to have some discretion. I would certainly hope the manager of the bill would accept that proposition.

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

Mr. DOMINICK. I yield.

Mr. CHILES. I wonder whether the Senator from Colorado can tell me whether the bill would actually provide for the death penalty, if we put in discretion? As I have read the Supreme Court decisions in recent cases involving the death penalty, I understood them to say that wherever there is discretion, and the statutes would allow the jury to give a penalty other than death, the Court has knocked out the death penalty.

My question is, Would not that discretion knock out the death penalty in hijackings? And second, what would it do to the constitutionality of the measure itself?

Mr. DOMINICK. I will try to answer the Senator's first question first. I am not changing the bill in any way except to provide discretion under certain circumstances. I do not want to get into the question of the constitutionality of the death penalty at this point, although obviously that will be subject to review at some point along the line.

What I am saying is, for heaven's sake, let us not put this provision in where a fellow is trying to get to freedom from another country, or a U.S. citizen himself is trying to get to freedom. It just seems to me that is wrong, and that is why I urge the proviso.

Mr. CHILES. Another question that occurs to me is that I just wonder whether a jury, in the fact situation the Senator has presented, where someone has hijacked a plane to Cuba, or is arrested in Cuba, or a plane is hijacked to Libya—does the Senator feel that any jury in this country would ever convict a man, a citizen of the United States, who, under that factual situation, took a plane?

Mr. DOMINICK. I would say to the distinguished Senator from Florida that under this bill as now written, they have no choice. All they have to do is to prove the offense, and the penalty is then automatic. There is not anything that can be done about it. That is why I put the proviso in.

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

Mr. DOMINICK. I yield.

Mr. COTTON. It would still be possible to have a Presidential pardon.

Mr. DOMINICK. It would be possible to have Presidential pardon, that is true.

Mr. COTTON. I know that my friend from Colorado is a well-trained lawyer. I think there is merit to his point. Certainly, I do not want to see Congress override Executive discretion or the judicial branch. But, when we talk about giving the courts discretion, in the last few years I have begun to wonder how many courts have any discretion. I simply do not like to weaken this bill. In an extreme case such as the Senator from Colorado has explained, I cannot imagine, between the jury and the possibility of a Presidential pardon, that leniency would not be extended even under the strict provisions of the bill.

Mr. DOMINICK. I appreciate the comments of the Senator from New Hampshire, but all he has to do is read the bill. On page 3 it says:

Whoever aboard an aircraft in flight outside the special aircraft jurisdiction of the United States commits "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, and is afterward found in the United States shall be punished—

(A) by death if the verdict of the jury shall so recommend, or, in case of a plea of guilty, or a plea of not guilty where the de-

fendant has waived a trial by jury, if the court in its decision shall so order; or

(B) by imprisonment for not less than twenty years, if the death penalty is not imposed.

No matter what the circumstances are. All I am trying to do is say, for heaven's sake, under certain circumstances, let us give them a break. I do not see that there is any harm in taking this thing to conference, and maybe working on it there, if Senators want to, but I would want a chance to bring it up.

Mr. CANNON. Mr. President, I yield myself 2 minutes.

This would completely gut the stern tone of the bill. We put together this hijacking bill to make it clear to the world community that we would not countenance air piracy. What this amendment would do is say, "We are only going to countenance a little bit of air piracy; if you don't do it too much, you will be all right."

I do not believe that the nations of the world ought to be in a position where they can countenance air piracy of any sort, whether a man takes a four-place airplane by force a 140-place airplane by force.

We said, in the committee report:

We believe it would be an unfortunate precedent to provide a lesser penalty applicable to a hijacker who is a fugitive from the jurisdiction of another nation and happens to be found in the United States as opposed to the more stringent minimum penalty applicable to a hijacker who is within the aircraft jurisdiction of the United States. If we wish to impress upon the world community that hijacking is a crime against international civil aviation, we must not differentiate between the penalty structure applicable to other nations' hijackers as compared to that of U.S. hijackers.

Mr. President, we would be doing exactly that. We would be saying, "You can have a little bit of a penalty if you want to get back to our country." I do not know what would apply to the man who is in this country and wants to get away. This is what started the whole thing; someone wanted to hijack an airplane and go to Cuba, and that started it.

With respect to the penalty, I would say this: The President has the authority to pardon or commute sentences, and I am sure, if appropriate circumstances were shown, he would take the appropriate action. But I hope very much the Senate would not make a complete turnaround, and completely gut a bill that started out to be a hijacking bill to discourage international air piracy. If the Senate should do that, I would say the hijacking bill got hijacked.

Mr. DOMINICK. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. DOMINICK. I will just yield myself 3 or 4 minutes. I do not want to extend this debate any farther; but I am really amazed at the statement of the Senator from Nevada, for whom I have great respect.

What he is saying is that we are going to put a penalty in here which we do not have on any other crime, as far as I know, in the whole United States, for anything that goes on with the exception of murder, and not even there, because even in those cases they have the right of leniency. And yet in this one situation, even where you have mitigating circumstances which in most cases would cause a country to let them go free, they are not allowed to go free, but they are going to get 20 years in jail at the minimum, or the death penalty, which is subject to this constitutional problem to begin with.

For the life of me I cannot see how we can gut a bill if we simply say, "We are going to leave those two provisions in, but under this type of circumstances you have discretion to make the penalty lesser if you want to."

It might be that if someone gets shot up and badly hurt in this kind of situation, it may be they have been brutal, or something of that kind, all right; under those circumstances, leave in the 20 years, or whatever it may be. But where no one has been hurt, why would you send a guy to 20 years in jail, simply because he was trying to get to what we consider the free world? I think that is wrong.

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

Mr. DOMINICK. I yield.

Mr. PASTORE. In the hypothetical situation suggested by my good friend from Colorado, I do not think any American grand jury would ever indict anyone.

The PRESIDING OFFICER. Who yields time? Do Senators yield back the remainder of their time?

Mr. CANNON. Mr. President, I am prepared to yield back the remainder of my time.

Mr. DOMINICK. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Colorado.

The amendment was rejected.

Mr. SPONG. Mr. President, as a member of the Senate Commerce Committee which helped develop S. 2280, I am pleased to support this legislation.

We must take the strongest of actions to deter the hijacking of aircraft. We must do everything that we can to remove the possibility of hijacking and the shadowy fear which must lurk in the minds of passengers every time they board an airplane. Hijacking is an evil which must be dealt with in the harshest of terms.

We have seen too much hijacking and we know it for what it is. It is an instrument of terror—a means utilized by a small group of demented men to try to embarrass and damage a nation. It is a tactic used by guerrillas against Israel, an effort to employ a type of international blackmail.

It is a threat to life—to innocent persons caught by happenstance in a situation over which they have no control and forced to suffer often for causes and issues over which they have no influence or responsibility. It is a threat of useless and senseless loss of life.

It is a possible destruction of property—an attempt to bring about damage and loss.

It is the act of distorted men and women, confused by life and ideas of right and wrong—an act, which all too often goes beyond those misguided individuals initiating it to bring tragedy and suffering to others.

Against all this, we must do what we can to curtail hijacking, to remove the smallest likelihood that such attempts will succeed. The measures suggested by the pending legislation may seem harsh. They are. They should be. The threat to international air traffic and to the lives and properties of millions of persons throughout our nation and the world at stake.

In view of this, I believe we have little choice but to move toward the termination of air service with those nations which refuse to cooperate in every way possible to prevent hijackings and the tragic ramifications which all too often occur. And, I believe minimum sentences for hijackers are only logical.

Mr. JAVITS. Mr. President, because of the importance of this legislation, I intend to vote for it in spite of my misgivings concerning the penalty provisions—section (n) (1) (a) of the amended Federal Aviation Act of 1958. This new section would provide for a death penalty "if the verdict of the jury shall so recommend" or where the defendant has waived jury trial, "if the court, in its descretion shall so order."

On June 29 of this year, the Supreme Court decided, in the case of Furman against Georgia, that the death penalty is void as an unconstitutional imposition of cruel and unusual punishment. The full scope of the opinion is unclear because Justice White, one member of the 5-to-4 majority limited his decision to cases where the judge or jury had discretion in imposing the death penalty. It is possible then, that at some future time, the Court may uphold statutes making the death penalty mandatory in certain situations, thus eliminating discretion and attendant possible discrimination. The Furman case however, is crystal clear on the unconstitutionality of discretionary death penalty, such as this bill contemplates. Since I believe the provision is therefore unconstitutional, and will be stricken by the court to which it may be appealed, I can vote for the otherwise desirable bill.

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

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

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), the Senator from New Hampshire (Mr. McINTYRE),

the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Indiana (Mr. BAYH), the Senator from Indiana (Mr. HARTKE), the Senator from North Carolina (Mr. JORDAN), and the Senator from Wyoming (Mr. MCGEE) are absent on official business.

I further announce that, if present and voting, the Senator from New Jersey (Mr. WILLIAMS) and the Senator from New Hampshire (Mr. MCINTYRE) would each vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senators from Tennessee (Mr. BAKER and Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Michigan (Mr. GRIFFIN), the Senator from Florida (Mr. GURNEY), the Senator from Iowa (Mr. MILLER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) is absent on official committee business on the west coast and also celebrating a wedding anniversary.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senators from Ohio (Mr. SAXBE and Mr. TAFT) and the Senator from Vermont (Mr. STAFFORD) are absent on official business to attend the Interparliamentary Union meetings.

If present and voting, the Senator from Colorado (Mr. ALLOTT), the Senator from Michigan (Mr. GRIFFIN), the Senator from Iowa (Mr. MILLER), the Senator from Ohio (Mr. TAFT), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 75, nays 1, as follows:

[No. 465 Leg.]

YEAS—75

Aiken	Eastland	Moss
Allen	Edwards	Nelson
Anderson	Ervin	Packwood
Beall	Fannin	Pastore
Bellmon	Fong	Pearson
Bennett	Fulbright	Pell
Bentsen	Gambrell	Percy
Bible	Gravel	Proxmire
Boggs	Hansen	Randolph
Brooke	Harris	Ribicoff
Burdick	Hart	Roth
Byrd, Harry F., Jr.	Hatfield	Schweiker
Byrd, Robert C.	Hollings	Scott
Cannon	Hruska	Smith
Case	Humphrey	Spong
Chiles	Inouye	Stennis
Church	Jackson	Stevens
Cook	Javits	Stevenson
Cooper	Jordan, Idaho	Symington
Cotton	Kennedy	Talmadge
Cranston	Long	Thurmond
Curtis	Magnuson	Tunney
Dole	Mansfield	Weicker
Dominick	Mathias	Young
Eagleton	Mondale	
	Montoya	

NAYS—1

Hughes

NOT VOTING—24

Allott	Hartke	Mundt
Baker	Jordan, N.C.	Muskie
Bayh	McClellan	Saxbe
Brock	McGee	Sparkman
Buckley	McGovern	Stafford
Goldwater	McIntyre	Taft
Griffin	Metcalf	Tower
Gurney	Miller	Williams

So the bill (S. 2280) was passed, as follows:

S. 2280

An act to amend sections 101 and 902 of the Federal Aviation Act of 1958, as amended to implement the Convention for the Suppression of Unlawful Seizure of Aircraft and to amend title XI of such Act to authorize the President to suspend air service to any foreign nation which he determines is encouraging aircraft hijacking by acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft and to authorize the Secretary of Transportation to revoke the operating authority of foreign air carriers under certain circumstances

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

TITLE I—ANTI-HIJACKING ACT OF 1972

Section 1. This title may be cited as the "Anti-Hijacking Act of 1972".

SEC. 2. Section 101 (32) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 (32)), is amended to read as follows:

"(32) The term 'special aircraft jurisdiction of the United States' includes—

"(a) civil aircraft of the United States;

"(b) aircraft of the national defense forces of the United States;

"(c) any other aircraft within the United States;

"(d) any other aircraft outside the United States—

"(1) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or

"(ii) having 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

"(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States;

while that aircraft is in flight, which is from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard."

SEC. 3. Section 902 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472), is amended as follows:

(a) By striking out the words "violence and" in subsection (i) (2) thereof, and by inserting the words "violence, or by any other form of intimidation, and" in place thereof;

(b) By redesignating subsections (n) and (o) thereof as "(o)" and "(p)", respectively, and by adding the following new subsection:

"AIRCRAFT PIRACY OUTSIDE SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

"(n)(1) Whoever aboard an aircraft in flight outside the special aircraft jurisdiction of the United States commits 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, and is afterward found in the United States shall be punished—

"(A) by death if the verdict of the jury shall so recommend, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion shall so order; or

"(B) by imprisonment for not less than twenty years, if the death penalty is not imposed.

"(2) A person commits 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft when, while aboad an aircraft in flight, he—

"(A) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

"(B) is an accomplice of a person who performs or attempts to perform any such act.

"(3) This subsection shall only be applicable if the place of takeoff or the place of actual landing of the aircraft on board which the offense as defined in paragraph 2 of this subsection is committed is situated outside the territory of the State of registration of that aircraft.

"(4) For purposes of this subsection an aircraft is considered to be in flight from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over responsibility for the aircraft and for the persons and property aboard."

(c) By amending redesignated subsection (o) thereof by striking out the reference "(m)", and by inserting the reference "(n)" in place thereof; and

SEC. 4. (a) Title XI of the Federal Aviation Act of 1958 is amended by adding a new section 1114 as follows:

"SUSPENSION OF AIR SERVICES

"SEC. 1114. (a) Whenever the President determines that a foreign nation is acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft, or if he determines that a foreign nation is used as a base of operations or training or as a sanctuary or which arms, aids, or abets in any way, terrorist organizations which knowingly use the illegal seizure of aircraft or the threat thereof as an instrument of policy, he may, without notice or hearing and for as long as he determines necessary to assure the security of aircraft against unlawful seizure, suspend (1) the right of any air carrier and foreign air carrier to engage in foreign air transportation, and any persons to operate aircraft in foreign air commerce, to and from that foreign nation, and (2) the right of any foreign air carrier to engage in foreign air transportation, and any foreign person to operate aircraft in foreign air commerce, between the United States and any foreign nation which maintains air service between itself and that foreign nation. Notwithstanding section 1102 of this Act, the President's authority to suspend rights in this manner shall be deemed to be a condition to any certificate of public convenience and necessity or foreign air carrier or foreign aircraft permit issued by the Civil Aeronautics Board and any air carrier operating certificate or foreign air carrier operating specification used by the Secretary of Transportation.

"(b) It shall be unlawful for any air carrier or foreign air carrier to engage in foreign air transportation, or any person to operate aircraft in foreign air commerce, in violation of the suspension of rights by the President under this section.".

(b) Title XI of the Federal Aviation Act of 1958 is amended by adding a new section 1115 as follows:

"SECURITY STANDARDS IN FOREIGN AIR TRANSPORTATION

"SEC. 1115. (a) Not later than 30 days after the date of enactment of this Act the Secretary of State shall notify each nation with which the United States has a bilateral air transport agreement or, in the absence of such agreement, each nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to section 402 of the Federal Aviation Act of 1958, of the provisions of subsection (b) of this section.

"(b) In any case where the Secretary of Transportation, after consultation with the competent aeronautical authorities of a foreign nation with which the United States

has a bilateral air transport agreement and in accordance with the provisions of that agreement or, in the absence of such agreement, of a nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to such section 402, finds that such nation does not effectively maintain and administer security measures relating to transportation of persons or property or mail in foreign air transportation of persons or property or mail in foreign air transportation that are equal to or above the minimum standards which are established pursuant to the Convention on International Civil Aviation or, prior to a date when such standards are adopted and enter into force pursuant to such Convention, the specifications and practices set out in Appendix A to Resolution A17–10 of the 17th Assembly of the International Civil Aviation Organization, he shall notify that nation of such finding and the steps considered necessary to bring the security measures of that nation to standards at least equal to the minimum standards of such Convention or such specifications and practices of such Resolution. In the event of failure of that nation to take such steps, the Secretary of Transportation, with the approval of the Secretary of State, may withhold, revoke, or impose conditions on the operating authority of the airline or airlines of that nation."

SEC. 5. Section 901(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)) is amended by inserting the words "or section 1114" before the words "of this Act" when those words first appear in this section.

SEC. 6. Section 1007(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1487(a)) is amended by inserting the words "or, in the case of a violation of section 1114 of this Act, the Attorney General," after the words "duly authorized agents,".

SEC. 7. That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading

"Sec. 902. Criminal penalties.",

is amended by striking out the following items:

"(n) Investigations by Federal Bureau of Investigation.

"(o) Interference with aircraft accident investigation.";

and by inserting the following items in place thereof:

"(n) Aircraft piracy outside special aircraft jurisdiction of the United States.

"(o) Investigations by Federal Bureau of Investigation.

"(p) Interference with aircraft accident investigation.";

and that portion which appears under the heading

"TITLE XI—MISCELLANEOUS"

is amended by adding at the end thereof the following:

"Sec. 1114. Suspension of air services.

"Sec. 1115. Security standards in foreign air transportation.".

SEC. 8. The last sentence of section 403(b) of the Federal Aviation Act of 1958 is amended by inserting after "ministers of religion" the following: "or individuals who are twenty-one years of age or younger or sixty-five years of age or older".

SEC. 9. Section 403(b) of the Federal Aviation Act of 1958 is amended (1) by inserting after "persons in connection with such accident;" the following: "and handicapped persons and persons traveling with and attending such handicapped persons when the handicapped person requires such attendance;", and (2) by inserting at the end thereof the following: "As used in this section the term 'handicapped persons' means the blind and other persons who are physically or mentally handicapped, as further defined by regulations of the Board."

SEC. 10. The second sentence of section 403(b) of the Federal Aviation Act of 1958 is amended by inserting after "in the service of such air carrier or foreign air carrier;" the following: "widows, widowers, and minor children of employees who have died while employed by such air carrier or foreign air carrier after twenty-five or more years of such employment;".

TITLE II—AIR TRANSPORTATION SECURITY ACT OF 1972

SEC. 21. This title may be cited as the "Air Transportation Security Act of 1972".

SEC. 22. The Congress hereby finds and declares that—

(1) the United States air transportation system which is vital to the citizens of the United States is threatened by acts of criminal violence and air piracy;

(2) the United States air transportation system continues to be vulnerable to violence and air piracy because of inadequate security and a continuing failure to properly identify and arrest persons attempting to violate Federal law relating to crimes against air transportation;

(3) the United States Government has the primary responsibility to guarantee and insure safety to the millions of passengers who use air transportation and intrastate air transportation and to enforce the laws of the United States relating to air transportation security; and

(4) the United States Government must establish and maintain an air transportation security program and an air transportation security-law enforcement force under the direction of the Administrator of the Federal Aviation Administration in order to adequately assure the safety of passengers in air transportation.

SEC. 23. (a) Title III of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:

"SCREENING OF PASSENGERS IN AIR TRANSPORTATION

"SEC. 315. (a) The Administrator shall as soon as practicable prescribe regulations requiring that all passengers and all property intended to be carried in the aircraft cabin in air transportation or intrastate air transportation be screened by weapon-detecting devices operated by employees of the air carrier, intrastate air carrier, or foreign air carrier prior to boarding the aircraft for such transportation. One year after the effective date of such regulation the Administrator may alter or amend such regulations, requiring a continuation of such screening by weapon-detecting devices only to the extent deemed necessary to assure security against acts of criminal violence and air piracy in air transportation and intrastate air transportation. The Administrator shall submit semi-annual reports to the Congress concerning the effectiveness of this screening program and shall advise the Congress of any regulations or amendments thereto to be prescribed pursuant to this subsection at least thirty days in advance of their effective date.

"(b) The Administrator shall acquire and furnish for the use by air carriers, intrastate air carriers, and foreign air carriers at airports within the United States sufficient devices necessay for the purpose of subsection (a) of this section, which devices shall remain the property of the United States.

"(c) The Administrator may exempt, from provisions of this section, air transportation operations performed by air carriers operating pursuant to part 135 title 14 of the Code of Federal Regulations."

(b) Notwithstanding any other provision of law, there are authorized to be appropriated from the Airport and Airway Trust Fund established by the Airport and Airway Revenue Act of 1970 such amount, not to exceed $5,500,000 to acquire the devices required by the amendment made by this section.

SEC. 24. Title III of the Federal Aviation Act of 1958 is further amended by adding at the end thereof the following additional new section:

"AIR TRANSPORTATION SECURITY FORCE

"Powers and Responsibilities

"SEC. 316. (a) The Administrator of the Federal Aviation Administration in administering the air transportation security program shall establish and maintain an air transportation security force of sufficient size to provide a law enforcement presence and capability at airports in the United States adequate to insure the safety from criminal violence and air piracy of persons traveling in air transportation or intrastate air transportation. He shall be empowered, and designate each employee of the force who shall be empowered, pursuant to this title, to—

"(1) detain and search any person aboard, or any person attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation to determine whether such person is unlawfully carrying a dangerous weapon, explosive, or other destructive substance;

"(2) search or inspect any property, at any airport, which is aboard, or which is intended to be placed aboard, any aircraft in, or intended for operation in, air transportation or intrastate air transportation to determine whether such property unlawfully contains any dangerous weapon, explosive, or other destructive substance;

"(3) arrest any person whom he has reasonable cause to believe has (A) violated or has attempted to violate section 902 (i), (j), (k), (l), or (m) of the Federal Aviation Act of 1958, as amended, or (B) violated, or has attempted to violate, section 32, title 18, United States Code, relating to crimes against aircraft or aircraft facilities; and

"(4) carry firearms when deemed by the Administrator to be necessary to carry out the provisions of this section,

and, at his discretion, he may designate and deputize State and local law enforcement personnel to exercise the authority conveyed in this subsection.

"Training and Assistance

"(b) In administering the air transportation security program, the Administrator may—

"(1) provide training for State and local law enforcement personnel whose services may be made available by their employers to assist in carrying out the air transportation security program, and

"(2) utilize the air transportation security force to furnish assistance to an airport operator, or any carrier, intrastate air carrier, or foreign air carrier engaged in air transportation or intrastate air transportation to carry out the purposes of the air transportation security program.

"OVERALL RESPONSIBILITY

"(c) Except as otherwise expressly provided by law, the responsibility for the administration of the air transportation security program, and security force functions specifically set forth in this section, shall be vested exclusively in the Administrator of the Federal Aviation Administration and shall not be assigned or transferred to any other department or agency."

SEC. 25. Section 1111 of the Federal Aviation Act of 1958 is amended to read as follows:

"AUTHORITY TO REFUSE TRANSPORTATION

"(a) The Administrator shall, by regulation, require any air carrier, intrastate air carrier, or foreign air carrier to refuse to transport—

"(1) any person who does not consent to a search of his person to determine whether he is unlawfully carrying a dangerous weapon, explosive, or other destructive substance, or

"(2) any property of any person who does

not consent to a search or inspection of such property to determine whether it unlawfully contains a dangerous weapon, explosive, or other destructive substance;

Subject to reasonable rules and regulations prescribed by the Administrator, any such carrier may also refuse transportation of a passenger or property when, in the opinion of the carrier, such transportation would or might be inimical to safety of flight.

"(b) Any agreement for the carriage of persons or property in air transportation or intrastate air transportation by an air carrier, intrastate air carrier, or foreign air carrier for compensation or hire shall be deemed to include an agreement that such carriage shall be refused when consent to search persons or search or inspect such property for the purposes enumerated in subsection (a) of this section is not given."

SEC. 26. Section 902(1) of the Federal Aviation Act of 1958 is amended to read as follows:

"Carrying Weapons Aboard Aircraft

"(1)(1) Whoever, while aboard, or while attempting to board, any aircraft in or intended for operation in air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, explosive, or other destructive substance, or has placed, attempted to place, or attempted to have placed aboard such aircraft any property containing a concealed deadly or dangerous weapon, explosive, or other destructive substance, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(2) Whoever willfully and without regard for the safety of human life or with reckless disregard for the safety of human life, while aboard, or while attempting to board, any aircraft in or intended for operation in air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, explosive, or other destructive substance, or has placed, attempted to place, or attempted to have placed aboard such aircraft any property containing a concealed deadly or dangerous weapon, explosive, or other destructive substance shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"(3) This subsection shall not apply to law enforcement officers of any municipal or State government, or the Federal Government, while acting within their official capacities and who are authorized or required within their official capacities, to carry arms, or to persons who may be authorized, under regulations issued by the Administrator, to carry concealed deadly or dangerous weapons in air transportation or intrastate air transportation."

SEC. 27. To establish, administer, and maintain the air transportation security force provided in section 316 of the Federal Aviation Act of 1958, there is hereby authorized to be appropriated for fiscal year 1973 the sum of $35,000,000, and for each succeeding fiscal year such amounts, not to exceed $35,000,000, as are necessary to carry out the purpose of such section.

SEC. 28. Section 101 of the Federal Aviation Act of 1958, as amended, is amended by adding after paragraph (21) the following:

"(22) 'Intrastate air carrier' means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, solely to engage in intrastate air transportation.

"(23) 'Intrastate air transportation' means the carriage of persons or property as a common carrier for compensation or hire, by turbojet-powered aircraft capable of carrying thirty or more persons, wholly within the same State of the United States."

and is further amended by redesignating paragraph (22) as paragraph (24) and redesignating the remaining paragraphs accordingly:

SEC. 29. That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading

"TITLE III—ORGANIZATION OF AGENCY AND POWERS AND DUTIES OF ADMINISTRATOR"

is amended by adding at the end thereof the following:

"Sec. 315. Screening of passengers in air transportation.

"Sec. 316. Air transportation security force.

"(a) Powers and responsibilities.

"(b) Training and assistance.

"(c) Overall responsibility."

The title was amended, so as to read: "An act to amend sections 101 and 902 of the Federal Aviation Act of 1958, as amended to implement the Convention for the Suppression of Unlawful Seizure of Aircraft and to amend title XI of such Act to authorize the President to suspend air service to any foreign nation which he determines is encouraging aircraft hijacking by acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft and to authorize the Secretary of Transportation to revoke the operating authority of foreign air carriers under certain circumstances."

Mr. CANNON. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical corrections or additions required to be made in S. 2280 as amended, and I further ask unanimous consent that the Senate bill as passed be printed.

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

Mr. CANNON. Mr. President, I ask unanimous consent that further consideration of S. 1655, Calendar No. 1102, be indefinitely postponed.

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

Mr. KENNEDY. Mr. President, I voted in favor of the hijacking legislation although I have serious disagreements with those provisions of the legislation that impose a death penalty.

Usually when the Congress acts to establish legislative procedure, that action occurs without the experience or the precedent of rulings passed by the Supreme Court. However, in regard to the matter of imposing the death penalty for serious crimes like hijacking, it is my understanding that the Court has determined such penalty to extend beyond the bounds of constitutionality. It is my understanding that the Court's decision on the Furman case has made it clear that the death penalty cannot be legally imposed in instances of this type. Although, I voted to support the principal provisions of the pending legislation, I do not intend for my vote to stand in support of imposing the death penalty for these very serious crimes. Because of the Supreme Court ruling in this area I continue to hold very serious reservations about the death penalty as a lawful penalty for those convicted of the crimes described in this measure. I would hope, however, that upon enactment, this legislation will have been engineered so as to include sufficient deterrents that meet the seriousness of the acts described and at the same time accomplish those goals in an acceptable and judicious manner.

Mr. HUGHES. Mr. President, if we are under agreement, I ask unanimous consent that I be allowed to make a 30-second statement as to why I voted against the previous bill.

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

Mr. HUGHES. Mr. President, the principles of the bill just passed almost unanimously I agree with 100 percent. But the Senator from Iowa cannot vote for legislation containing the death penalty. My commitments in public life have been toward that end.

Throughout my service in public life, I have felt that the provisions of a death penalty, and also other legal provisions of penalties which are in this bill, almost make it mandatory for those presumed guilty to accept trial other than by jury.

For these two reasons, Mr. President, I voted against the legislation although I agree with everything else in the bill.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 3419) to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the joint resolution (S.J. Res. 204) to authorize the preparation of a history of public works in the United States, with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the House had passed a bill (H.R. 11682) to change the name of the Department of Commerce Laboratories in Boulder, Colo., to the Dwight David Eisenhower Laboratories, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to the following concurrent resolutions, in which it requested the concurrence of the Senate:

H. Con. Res. 679. Concurrent resolution to provide for the printing of additional copies of the report of the Commission on the Organization of the Government of the District of Columbia;

H. Con. Res. 681. Concurrent resolution to provide for the printing of one thousand additional hearings entitled "Corrections" parts I through VI; and

H. Con. Res. 687. Concurrent resolution providing for the printing of additional copies of parts I and II of hearings entitled "Discrimination Against Women".

HOUSE BILL REFERRED

The bill (H.R. 11682) to change the name of the Department of Commerce Laboratories in Boulder, Colo., to the Dwight David Eisenhower Laboratories, was read twice by its title and referred to the Committee on Commerce.

HOUSE CONCURRENT RESOLUTIONS REFERRED

The following concurrent resolutions were referred to the Committee on Rules and Administration:

H. Con. Res. 679. Concurrent resolution to provide for the printing of additional copies of the report of the Commission on the Organization of the Government of the District of Columbia.

H. Con. Res. 681. Concurrent resolution to provide for the printing of one thousand additional hearings entitled "Corrections" parts I through VI; and

H. Con. Res. 687. Concurrent resolution providing for the printing of additional copies of parts I and II of hearings entitled "Discrimination Against Women".

CONSUMER PROTECTION ORGANIZATION ACT OF 1972

The PRESIDING OFFICER (Mr. CURTIS). The Chair now lays before the Senate the unfinished business, S. 3970, which the clerk will state.

The legislative clerk read as follows:

S. 3970, to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

The Senate resumed the consideration of the bill.

QUORUM CALL

Mr. ERVIN. 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. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AIRCRAFT PIRACY AMENDMENTS OF 1972

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a time limitation on S. 2567 of 20 minutes, to be equally divided between the distinguished Senator from Nebraska (Mr. HRUSKA) and the distinguished Senator from New York (Mr. JAVITS).

Mr. ERVIN. Mr. President, reserving the right to object, I should like to ask the distinguished assistant majority leader what that bill is.

Mr. ROBERT C. BYRD. In response to the very distinguished senior Senator from North Carolina (Mr. ERVIN), may I say that this is a bill to facilitate the prosecution of certain crimes and offense committed aboard aircraft. The bill was referred a few days ago to the Committee on the Judiciary with the understanding that it would be reported back within a certain time. The bill has been reported back from the Committee on the Judiciary. It is related to the one just passed a few minutes ago. It was felt that it would be appropriate to call it up at this time, with a time limitation thereon.

Mr. ERVIN. I have no objection.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from North Carolina.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the unfinished business be temporarily laid aside and that the Senate proceed to the consideration of S. 2567 and that the unfinished business remain in a temporarily laid-aside status until the disposition of S. 2567, or close of business today, whichever is the earlier.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the bill (S. 2567) to facilitate prosecutions for certain crimes and offenses committed aboard aircraft, and for other purposes which had been reported from the Committee on the Judiciary and the Committee on Commerce with amendments.

The amendments of the Committee on the Judiciary are as follows:

On page 1, line 4, after the word "of", strike out "1971" and insert "1972"; at the top of page 2, strike out:

SEC. 2. Section 35 of title 18, United States Code, is amended by deleting "false information," and substituting therefor "a threat or false information" in subsections (a) and (b) of that section.

SEC. 3. Section 1395 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) A proceeding to recover a penalty under section 35 of title 18 or under section 901(c) of the Federal Aviation Act of 1958 may be brought in the judicial district where the defendant resides or the district where the false information or threat was imparted or conveyed or attempted to be imparted or conveyed. In any such suit process against any defendant may be served in the district where the defendant is found with the same force and effect as if the process had been served within the district in which said suit is brought."

And, in lieu thereof, insert:

SEC. 2. (a) Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following news section:

"§ 36. Imparting or conveying threats

"Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by section 32 or 33 of this chapter or section 1992 of chapter 97 or section 2275 of chapter 111 of this title with an apparent determination to carry the threat into execution, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

(b) The analysis of chapter 2 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"36. Imparting or conveying threats.".

On page 3, after line 6, insert a new section, as follows:

SEC. 3. Subsection (a) of section 1395 of title 28, United States Code, is amended by striking the period at the end of such subsection and adding the following: ", and in any proceeding to recover a civil penalty under section 35(a) of title 18 of the United States Code or section 901(c) of the Federal Aviation Act of 1958 (72 Stat. 731; 49 U.S.C. 1471(c)), all process against any defendant or witness, otherwise not authorized under the Federal Rules of Civil Procedure, may be served in any judicial district of the United States upon an ex parte order for good cause shown.".

In line 20, strike out "Threats"; in line 22, after the word "conveyed", strike out "any threat, or"; on page 4, after line 6, strike out:

(a) Section 902(1) is amended to read as follows:

"Carrying Weapons Aboard Aircraft

"(1) (1) Whoever, while aboard, or while attempting to board, an aircraft being operated by an air carrier or a foreign air carrier in air transportation, has on or about his person a concealed deadly or dangerous weapon shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(2) Whoever willfully and without regard for the safety of human life or with reckless disregard for the safety of human life, while aboard, or while attempting to board, an aircraft being operated by an air carrier or a foreign air carrier in air transportation, has on or about his person a concealed deadly or dangerous weapon shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"(3) This subsection shall not apply to law enforcement officers of any municipal or State government, or the Federal Government, who are authorized or required to carry arms, or persons as may be so authorized under regulations issued by the Secretary of Transportation, while acting within their official capacities."

(b) Section 902(m) is amended to read as follows:

On page 5, line 8, after the word "conveyed", strike out "a threat, or"; in line 11, after the word "a", strike out "crime" and insert "felony"; in line 12, after "(j)", strike out "(k), or (l)" and insert "or (1) (2)"; in line 14, after the word "or", strike out "both." and insert "both."; and, after line 14, insert:

"(2) Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by subsections (i), (j), or (1)(2) of this section, with an apparent determination to carry the threat into execution, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

(c) The table of contents of the Federal Aviation Act of 1958, in the matter of title IX (72 Stat. 734; subchapter IX, chapter 20 of title 49, U.S.C. § 1472(m)) is amended by redesignating

"Sec. 902. (m) False information."

to read

"Sec. 902. (m) False information and threats.".

The amendments of the Committee on Commerce are as follows:

On page 4, line 5, after "Section 902", insert "(m)"; and, after line 6, strike out:

(a) Section 902(1) is amended to read as follows:

"Carrying Weapons Aboard Aircraft

"(1)(1) Whoever, while aboard, or while attempting to board, an aircraft being operated by an air carrier or a foreign air carrier in air transportation, has on or about his person a concealed deadly or dangerous weapon shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(2) Whoever willfully and without regard for the safety of human life or with reckless disregard for the safety of human life, while aboard, or while attempting to board, an aircraft being operated by an air carrier or a foreign air carrier in air transportation, has on or about his person a concealed deadly or dangerous weapon shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"(3) This subsection shall not apply to law enforcement officers of any municipal or State government, or the Federal Government, who are authorized or required to carry arms, or persons as may be so authorized under regulations issued by the Secretary of Transportation, while acting within their official capacities."

(b) Section 902(m) is amended to read as follows:

So as to make the bill read:

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 "Aircraft Piracy Amendments of 1972".

SEC. 2. (a) Chapter of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 36. Imparting or conveying threats

"Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by section 32 or 33 of this chapter or section 1992 of chapter 97 or section 2275 of chapter 111 of this title with an apparent determination to carry the threat into execution, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

(b) The analysis of chapter 2 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"36. Imparting or conveying threats.".

SEC. 3. Subsection (a) of section 1395 of title 28, United States Code, is amended by striking the period at the end of such subsection and adding the following: ", and in any proceeding to recover a civil penalty under section 35(a) of title 18 of the United States Code or section 901(c) of the Federal Aviation Act of 1958 (72 Stat. 731; 49 U.S.C. 1471(c)), all process against any defendant or witness, otherwise not authorized under the Federal Rules of Civil Procedure, may be served in any judicial district of the United States upon an ex parte order for good cause shown.".

SEC. 4. Section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471) is amended by adding at the end thereof the following new subsection:

False Information

"(c) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by subsection (i), (j), (k), or (l) of section 902 of this title, shall be subject to a civil penalty of not more than $1,000 which shall be recoverable in a civil action brought in the name of the United States."

SEC. 5. Section 902(m) of the Federal Aviation Act of 1958 (49 U.S.C. 1472) is amended as follows:

"False Information and Threats

"(m)(1) Whoever willfully and maliciously, with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a felony prohibited by subsection (i), (j), or (1)(2) of this section, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"(2) Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by subsections (i), (j), or (1)(2) of this section, with an apparent determination to carry the threat into execution, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

(c) The table of contents of the Federal Aviation Act of 1958, in the matter of title IX (72 Stat. 734; subchapter IX, chapter 20 of title 49, U.S.C. § 1472(m)) is amended by redesignating

"Sec. 902. (m) False information."

to read

"Sec. 902. (m) False information and threats.".

SEC. 6. Section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473) is amended by striking "Such" at the beginning of the second sentence of subsection (b)(1) of that section, and substituting therefor, "Except with respect to civil penalties under section 901(c) of this title, such".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a time limitation on any amendment, debatable motion, or appeal, with respect to S. 2567, of 20 minutes and that the agreement be in the usual form.

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

ORDER OF BUSINESS

Mr. SCOTT. Mr. President, if the Senator from Connecticut and the Senator from Nebraska have no objection, I ask for 2 minutes for the majority leader to propose a unanimous-consent request, the time not to be taken out of either side.

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

TIME LIMITATION AGREEMENT ON SCOTT, AND STENNIS TO BROOKE AMENDMENTS TO FOREIGN AID BILL, AND ON PASSAGE OF THE BILL

Mr. MANSFIELD. Mr. President, the joint leadership has discussed the consent agreement which I am about to make and I hope that it will meet with the approval of the Senate, in view of the difficult schedule we have confronting us. If the agreement is amenable to the Senate, we will not come in on Saturday. I am not holding that out as a carrot, but the circumstances just worked out on that basis.

As the Senate knows, the foreign aid bill will be laid before the Senate and made the pending business tomorrow at the conclusion of morning business.

Mr. President, I ask unanimous consent that the votes on the Scott amendment to increase the amount, the vote on the Stennis amendment to delete the Brooke amendment, and the vote on the final passage occur, in that order, without further debate beginning at 2 o'clock on Tuesday afternoon next and that rule XII be waived.

The PRESIDING OFFICER (Mr. CURTIS). Is there objection? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on the Scott amendment and the Stennis amendment there be a division of time from the conclusion of the morning business until the hour of 2 o'clock, the time to be equally set aside for both amendments and the time to be divided between the authors of the amendments and the manager of the bill, the Senator from Arkansas.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, with that understanding, there will be no business for the Senate to attend to on Saturday, except to spin its wheels. We do not want to come in, unless there is business to be done; so after tomorrow, we will go over until Monday.

Mr. SCOTT. Mr. President, I thank the distinguished majority leader. I do not regard the decision as to Saturday as offering a carrot. It is rather sort of an 18-carat proposal, which we readily accept. I thank the majority leader.

Mr. MANSFIELD. I thank the Senator from Mississippi (Mr. STENNIS), the distinguished Republican leader, the Senator from Pennsylvania (Mr. SCOTT), the distinguished Senator from California (Mr. CRANSTON), the Senator from Massachusetts (Mr. BROOKE), the chairman of the committee, the Senator from Arkansas (Mr. FULBRIGHT), and the ranking minority member of the committee, the Senator from Nebraska (Mr. HRUSKA).

Mr. SCOTT. If the Senator will further yield, I understand debate will continue tomorrow on the foreign aid bill.

Mr. MANSFIELD. Yes, it will be laid before the Senate, and hopefully, if there are any other amendments, we can dispose of them at that time.

AIRCRAFT PIRACY AMENDMENTS OF 1972

The Senate continued with the consideration of Calendar No. 1128 (S. 2567), a bill to facilitate prosecution for certain crimes and offenses committed aboard aircraft, and for other purposes.

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. I yield myself 4 minutes. I ask unanimous consent, Mr. President, that Robert Blakey and Ken Lazaras be granted the privilege of the floor during the consideration of S. 2567.

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

Mr. HRUSKA. The Senator from Arkansas (Mr. MCCLELLAN) is conducting a hearing and has asked me, in his absence, to manage S. 2567 this afternoon.

Mr. President, this is the second time this month that the Senate has had before it for consideration this bill, S. 2567, relating to aircraft piracy. I refer those interested in the proposal to the remarks made by this Senator and Senator MCCLELLEN on the Senate floor on September 5, 1972, at S. 14097 et seq., in the daily edition of the CONGRESSIONAL RECORD.

At that time the chairman of the Commerce Committee asked permission for his committee to be given an opportunity to look at the terms of S. 2567 in conjunction with its work on S. 2280, a bill to implement the Convention for the Suppression of Unlawful Seizure of Aircraft. The managers of S. 2567 concurred in the request of Senator MAGNUSON and the Commerce Committee was given until September 19 to examine the bill. This examination has now been completed and the bill has been reported favorably, with an amendment, by the Commerce Committee. S. 2280 has just been approved by the Senate.

This Senator feels that the action by the Commerce Committee on S. 2567 deleting section 5(a) from the Judiciary bill is constructive. I believe that I can speak for not only myself but the Senator from Arkansas in indicating that

the amendment is agreeable to us. This is especially true in light of the language in the Commerce Committee bill which duplicates and indeed expands the deleted portion of the Judiciary Committee bill.

At the time the Senate had S. 2567 under consideration, the Senator from Kentucky (Mr. COOPER) and the Senator from New York (Mr. JAVITS) raised a question concerning the constitutionality of two provisions of the bill, sections 2(a) and 5, relating to "imparting or conveying threats". As a result of this colloquy, the views of the Department of Justice were sought on this question. In response, I received a letter dated September 15, 1972, from the Assistant Attorney General in charge of the Office of Legal Counsel which discusses the language in the bill in relation to the Supreme Court decision in *Watts v. United States*, 394 U.S. 705 (1969) reversing the decision of the U.S. Court of Appeals for the District of Columbia Circuit, *Watts v. United States*, 402 F. 2d 676 (1968).

I ask unanimous consent that the full text of the letter and the two court opinions be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, let me indicate that having considered the arguments made by Mr. Cramton in his letter and having read the per curiam Supreme Court decision and the lower court decision, including the dissent by Judge Wright, I am convinced anew that the bill as reported from the Judiciary Committee is in accord with the first amendment and would be found to be constitutional should it be questioned. I will have more to say on this point in a moment. I believe that if Congress enacts a statute with the specific intent to make unlawful the imparting or conveying of threats with an apparent determination to carry the threat into execution, it would not fail under the Watts test.

I do not believe that any Senator questions the need for such a statute. By our vote to approve this bill, we will indicate that such language has our approval and, to this Senator, that is sufficient to meet the potential problem raised by the Watts decision.

EXHIBIT 1

DEPARTMENT OF JUSTICE,
Washington, D.C., September 15, 1972.

Hon. ROMAN L. HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HRUSKA: During the Senate debate on S. 2567, a question was raised as to the constitutionality of certain provisions of the bill proscribing "threats". For this and other reasons, the bill was sent to the Commerce Committee for its study. Senator Magnuson, Chairman of that Committee, then requested an advisory opinion from the Office of Legislative Counsel of the Senate on the merits of the constitutional question. The Memorandum from the Office of Legislative Counsel concluded that the provisions as drafted presented problems of constitutional dimension. For the reasons set forth herein, we are of the opinion that the provisions are constitutional.

Two provisions of the bill have been questioned. Sec. 2(a) of the bil amends Chapter 2 of title 18, United States Code, by adding at the end thereof the following new section:

"§ 36. Imparting or conveying threats

"Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by section 32 or 33 of this chapter or section 1992 of chapter 97 or section 2275 of chapter 111 of this title *with an apparent determination to carry the threat into execution*, shall be fined not more than $5,000 or imprisoned not more than five years, or both." (Emphasis supplied)

Sec. 5 of the bill amends § 902(m) of the Federal Aviation Act of 1958 and provides:

"(m)(2) Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by subsections (i), (j), or (1) (2) of this section, *with an apparent determination to carry the threat into execution*, shall be fined not more than $5,000 or imprisoned not more than five years, or both." (Emphasis supplied)

The memorandum from the Office of Legislative Counsel argues, on the basis of *Watts* v. *United States*, 394 U.S. 705 (1969), that the underscored language of each provision is of doubtful constitutional validity.

We believe that this contention misinterprets *Watts*. The memorandum appears to be grounded upon the belief that that decision discusses the constitutionality of the subject statute when, in fact, the language referred to by the Legislative Counsel is merely an exposition on the proper construction of the term "willfulness" in the law.

The petitioner in *Watts* was convicted of a violation of 18 U.S.C. § 871(a) which prohibits, *inter alia*, any person from "knowingly and willfully . . . [making] any threat to take the life of or to inflict bodily harm upon the President of the United States . . ." The conviction was affirmed by the United States Court of Appeals for the District of Columbia in a majority opinion authored by Judge Burger, 402 F. 2d 676 (1968). The Supreme Court reversed on the ground that the petitioner's speech was "political hyperbole" rather than a "threat" within the meaning of the statute. The Court made it clear, however, that 18 U.S.C. § 871(a) was constitutional on its face, and that true "threats" could be proscribed. To the same effect see Judge Wright's dissent in *Watts*:

". . . threats are properly punished every day under statutes prohibiting extortion, blackmail and assault without consideration of First Amendment issues." (420 F. 2d at 690.)

The Supreme Court turned its attention to the "willfulness" requirement of section 871(a), stating:

"The judges in the Court of Appeals differed over whether or not the 'willfulness' requirement of the statute implied that a defendant must have intended to carry out his 'threat'. Some early cases found the willfulness requirement met if the speaker voluntarily uttered the charged words with 'an *apparent* determination to carry them into execution.' *Ragansky* v. *United States*, 53 F. 643, 645 (C.A. 7th Cir. 1918) (emphasis supplied); cf. *Pierce* v. *United States*, 365 F. 2d 292 (C.A. 10th Cir. 1966). This majority below seemed to agree. Perhaps this interpretation is correct, although we have grave doubts about it. See the dissenting opinion below, 131 U.S. App. D.C., at 135–142, 402 F. 2d, at 686–693 (Wright, J.)."

It is the above-quoted language that has led to the contention that the "apparent determination" test adopted by S. 567 is of questionable constitutionality.

While this position is appealing at first glance, it suffers under detailed scrutiny—the Court rested its decision only on the issue of what a "threat" was within the limits of 18 U.S.C. § 871(a). The Court was merely saying that it had grave doubts about the long-standing judicial understanding of the legislative history underlying the word "willfully" as it appeared in that particular statute. It did not say that the "apparent determination" test was unconstitutional, only that Congress might have intended a greater degree of culpability in connection with offenses under section 871(a). The dissent of Judge Wright below is informative in this respect; he discussed at length the intent of the framers of the statute and concluded that a showing of specific intent is required.

There is nothing in the quoted language to indicate that a constitutional problem would be present had Congress expressly included language requiring an "apparent determination" to carry threats into execution.

The Judiciary Committee has explicitly set out the proper meaning for the intent requirement by adopting the "apparent determination" test. If the bill is enacted in this form, the courts will not be faced with the question of Congressional intent as they were in the *Watts* litigation.

In our view, the quoted sections of the bill appear to be within the proper scope of Congressional judgment and consistent with constitutional guarantees under the First Amendment.

Sincerely,

ROGER C. CRAMTON,
Assistant Attorney General.

WATTS V. UNITED STATES

(On petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit—No. 1107, Misc. Decided April 21, 1969)

Petitioner's remark during political debate at small public gathering that if inducted into Army (which he vowed would never occur) and made to carry a rifle "the first man I want to get in my sights is L. B. J.," *held* to be crude political hyperbole which in light of its context and conditional nature did not constitute a knowing and willful threat against the President within the coverage of 18 U. S. C. § 871(a).

Certiorari granted; 131 U. S. App. D. C. 125, 402 F. 2d 676, reversed and remanded.

Joseph Forer for petitioner.

Solicitor General Griswold for the United States.

Ralph J. Temple, Melvin L. Wulf, and *Lawrence Speiser* for the American Civil Liberties Union et al. as *amici curiae*.

Per Curiam.

After a jury trial in the United States District Court for the District of Columbia, petitioner was convicted of violating a 1917 statute which prohibits any person from "knowingly and willfully . . . [making] any threat to take the life of or to inflict bodily harm upon the President of the United States . . ."* The incident which led to petitioner's arrest occurred on August 27, 1966, during a public rally on the Washington Monument grounds. The crowd present broke up into small discussion groups and petitioner joined a gathering scheduled to discuss police brutality. Most of those in the group were quite young, either in their teens or early twenties. Petitioner, who himself was 18 years old, entered into the discussion after one member of the group suggested that the young people present should get more education before expressing their views. According to an investigator for the Army Counter Intelligence Corps who was present, petitioner responded: "They always holler at us to get an education. And now I have alalready received my draft classification as 1–A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L. B. J." "They are not going to make me kill my black brothers." On the basis of this statement, the jury found that petitioner had committed a

Footnotes at end of article.

felony by knowingly and willfully threatening the President. The United States Court of Appeals for the District of Columbia Circuit affirmed by a two-to-one vote. 131 U. S. App. D. C. 125, 402 F. 2d 676 (1968). We reverse.

At the close of the Government's case, petitioner's trial counsel moved for a judgment of acquittal. He contended that there was "absolutely no evidence on the basis of which the jury would be entitled to find that [petitioner] made a threat against the life of the President." He stressed the fact that petitioner's statement was made during a political debate, that it was expressly made conditional upon an event—induction into the Armed Forces—which petitioner vowed would never occur, and that both petitioner and the crowd laughed after the statement was made. He concluded, "Now actually what happened here in all this was a kind of very crude offensive method of stating a political opposition to the President. What he was saying, he says, I don't want to shoot black people because I don't consider them my enemy, and if they put a rifle in my hand it is the people that put the rifle in my hand, as symbolized by the President, who are my real enemy." We hold that the trial judge erred in denying this motion.

Certainly the statute under which petitioner was convicted is constitutional on its face. The Nation undoubtedly has a valid, even an overwhelming, interest in protecting the safety of its Chief Executive and in allowing him to perform his duties without interference from threats of physical violence. See H.R. Rep. No. 652, 64th Cong., 1st Sess. (1916). Nevertheless, a statute such as this one, which makes criminal a form of pure speech, must be interpreted with the commands of the First Amendment clearly in mind. What is a threat must be distinguished from what is constitutionally protected speech.

The judges in the Court of Appeals differed over whether or not the "willfullness" requirement of the statute implied that a defendant must have intended to carry out his "threat." Some early cases found the willfullness requirement met if the speaker voluntarily uttered the charged words with "an *apparent* determination to carry them into execution." *Ragansky* v. *United States*, 253 F. 643, 645 (C. A. 7th Cir. 1918) (emphasis supplied); cf. *Pierce* v. *United States*, 365 F. 2d 292 (C. A. 10th Cir. 1966). The majority below seemed to agree. Perhaps this interpretation is correct, although we have grave doubts about it. See the dissenting opinion below, 131 U.S. App. D. C., at 135–142, 402 F. 2d, at 686–693 (Wright, J.). But whatever the "willfullness" requirement implies, the statute initially requires the Government to prove a true "threat." We do not believe that the kind of political hyperbole indulged in by petitioner fits within that statutory term. For we must interpret the language Congress chose "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270 (1964). The language of the political arena, like the language used in labor disputes, see *Linn* v. *United Plant Guard Workers of America*, 383 U.S. 53, 58 (1966), is often vituperative, abusive, and inexact. We agree with petitioner that his only offense here was a "kind of very crude offensive method of stating a political opposition to the President." Taken in context, and regarding the expressly conditional nature of the statement and the reaction of the listeners, we do not see how it could be interpreted otherwise.

The motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted and the judgment of the Court of Appeals is reversed. The case is remanded with instructions that it be returned to the District Court for entry of a judgment of acquittal.

It is so ordered.

MR. JUSTICE STEWART would deny the petition for certiorari.

MR. JUSTICE WHITE dissents.

MR. JUSTICE DOUGLAS, concurring.

The charge in this case is of an ancient vintage.

The federal statute under which petitioner was convicted traces its ancestry to the Statute of Treasons (25 Edw. 3) which made it a crime to "compass or imagine the Death of . . . the King." Note, Threats to Take the Life of the President, 32 Harv. L. Rev. 724, 725 (1919). It is said that one Walter Walker, a 15th century keeper of an inn known as the "Crown," was convicted under the Statute of Treasons for telling his son: "Tom, if thou behavest thyself well, I will make thee heir to the CROWN." He was found guilty of compassing and imagining the death of the King, hanged, drawn, and quartered. 1 J. Campbell, Lives of the Chief Justices of England 151 (1873).

In the time of Edward IV, one Thomas Burdet who predicted that the king would "soon die, with a view to alienate the affections" of the people was indicted for "compassing and imagining of the death of the King," 79 Eng. Rep. 706 (1477)—the crime of constructive treason[1] with which the old reports are filled.

In the time of Charles II, one Edward Brownlow was indicted "for speaking these words, that he wished all the gentry in the land would kill one another, so that the comminalty might live the better." 3 Middlesex County Rec. 326 (1888). In the same year (1662) one Robert Thornell was indicted for saying "that if the Kinge did side with the Bishops, the divell take Kinge and the Bishops too." *Id.*, at 327.

While our Alien and Sedition Laws were in force, John Adams, President of the United States, en route from Philadelphia, Pennsylvania, to Quincy, Massachusetts, stopped in Newark, New Jersey, where he was greeted by a crowd and by a committee that saluted him by firing a cannon.

A bystander said, "There goes the President and they are firing at his ass." Luther Baldwin was indicted for replying that he did not care "if they fired through his ass." He was convicted in the federal court for speaking "sedicious words tending to defame the President and Government of the United States" and fined, assessed court costs and expenses, and committed to jail until the fine and fees were paid. See J. Smith, Freedom's Fetters 270–274 (1956).

The Alien and Sedition Laws constituted one of our sorriest chapters; and I had thought we had done with them forever.[2]

Yet the present statute has hardly fared better. "Like the Statute of Treasons, section 871 was passed in a 'relatively calm peacetime spring,' but has been construed under circumstances when intolerance for free speech was much greater than it normally might be.'" Note, Threatening the President: Protected Dissenter or Political Assassin, 57 Geo. L. J. 553, 570 (1969). Convictions under 18 U.S.C. § 871 have been sustained for displaying posters urging passersby to "hang [President] Roosevelt." *United States* v. *Apel*, 44 F. Supp. 592, 593 (D.C.N.D. Ill. 1942); for declaring that "President Wilson ought to be killed. It is a wonder some one has not done it already. If I had an opportunity, I would do it myself." *United States* v. *Stickrath*, 242 F. 151, 152 (D.C.S.D. Ohio 1917); for declaring that "Wilson is a wooden-headed son of a bitch. I wish Wilson was in hell, and if I had the power I would put him there," *Clark* v. *United States*, 250 F. 449 (C.A. 5th Cir. 1918). In sustaining an indictment under the statute against a man who indicated that he would enjoy shooting President Wilson if he had the chance, the trial court explained the thrust of § 871:

"The purpose of the statute was undoubtedly, not only the protection of the President, but also the prohibition of just such statements as those alleged in this indictment. The expression of such direful intentions and desires, not only indicates a spirit of disloyalty to the nation bordering upon treason, but is, in a very real sense, a menace to the peace and safety of the country. . . . It arouses resentment and concern on the part of patriotic citizens." *United States* v. *Jasick*, 252 F. 931, 933 (D.C.E.D. Mich. 1918).

Suppression of speech as an effective police measure is an old, old device, outlawed by our Constitution.

MR. JUSTICE FORTAS, with whom MR. JUSTICE HARLAN joins, dissenting.

The Court holds, without hearing, that this statute is constitutional and that it is here wrongly applied. Neither of these rulings should be made without hearing, even if we assume that they are correct.

Perhaps this is a trival case because of its peculiar facts and because the petitioner was merely given a suspended sentence. That does not justify the Court's action. It should induce us to deny certiorari, not to decide the case on its merits and to adjudicate the difficult questions that it presents.

FOOTNOTES

*U. S. C. § 871 (a) provides:

"Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, the President-elect, the Vice President or other officer next in the order of succession to the office of President of the United States, or the Vice-President-elect, or knowingly and willfully otherwise makes any such threat against the President, President-elect, Vice President or other officer next in the order of succession to the office of President, or Vice President-elect, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

[1] The prosecution in those cases laid bare to the juries that the treasonous thoughts were the heart of the matter; "the original of his Treasons proceeded from the imagination of his heart; which imagination was in itself High-Treason, albeit the same proceeded not to any overt fact; and the heart being possessed with the abundance of his traitorous imagination, and not being able so to contain itself, burst forth in vile and traitorous Speeches, and from thence to horrible and heinous actions." *Trial of Sir John Perrot*, 1 How. St. Tr. 1315, 1318 (1592). "[T]he high treason charged, is the compassing or imagining (in other words, the intending or designing) the death of the king; I mean his Natural Death; which being a hidden operation of the mind, an overt act is any thing which legally proves the existence of such traitorous design and intention—I say that the design against the king's natural life, is the high treason under the first branch of the statute; and whatever is evidence, which may be legally laid before a jury to judge of the traitorous intention, is a legal overt act; because an overt act is nothing but legal evidence embodied upon the record." *Trial of Thomas Hardy*, 24 How. St. Tr. 199, 894 (1794). And see 84 Eng. Rep. 1057 (1708).

For a discussion of the adequacy of mere words as overt acts see 3 W. Holdsworth, History of English Law 293 (1927).

[2] In the Sedition Act cases, the tendency of words to produce acts against the peace and security of the community was stretched to its utmost latitude. Likewise, judges and juries, in their willingness to presume evil

intent on the part of Republican writers, largely nullified the safeguards erected by the Sedition Act itself. Criticism of the President and Congress—in which every American indulges as his birthright—was severely punished; yet this practice manifestly has only a remote tendency to injure and bring into contempt the government of the United States. In short, much that has become commonplace in American political life was put under the ban by the Federalist lawmakers and judges of 1798." J. Miller, Crisis in Freedom 233 (1951).

[U.S. Court of Appeals, District of Columbia Circuit, Argued April 10, 1968, Decided September 25, 1968, No. 21528]

ROBERT WATTS, APPELLANT, v. UNITED STATES OF AMERICA, APPELLEE

Defendant was convicted in the United States District Court for the District of Columbia, Burnita Shelton Matthews, J., of threatening life of President of the United States and he appealed. The Court of Appeals, Burger, Circuit Judge, held that defendant's alleged statement that he would refuse induction into the armed forces and "If they ever make me carry a rifle the first person I want in my sights is LBJ" could be found to amount to a threat against the life of the President of the United States.

Affirmed.

J. Skelly Wright, Circuit Judge, dissented.

1. Homicide.—92

It is the making of the threat, not the intent to carry out, that violates statute prohibiting threats against life of President of the United States. 18 U.S.C.A. § 871(a).

2. Homicide.—92

Ultimate purpose underlying statute prohibiting threats against life of President of the United States is to deter the act of killing or injuring President by deterring the act of threatening his life or safety. 18 U.S.C.A. § 871(a).

3. Homicide.—92

For purposes of statute prohibiting threats against life of President of the United States, there is no requirement that the person uttering the threats have an intention to carry them out, nor is it a defense that the words were intended merely as a jest. 18 U.S.C.A. § 871(a).

4. Homicide.—92

Fact that threat is conditional does not per se prevent it from being a violation of statute prohibiting threats against life of President of the United States. 18 U.S.C.A. § 871(a).

5. Homicide.—92

Defendant's alleged statement that he would refuse induction into the armed forces and "If they ever make me carry a rifle the first person I want in my sights is LBJ" could be found to amount to a threat against the life of the President of the United States. 18 U.S.C.A. § 871(a).

6. Constitutional Law.—90

The First Amendment does not prevent proscription of utterances that comprise knowing and wilful threats to the life or safety of the President of the United States. U.S.C.A. Const. Amend. 1; 18 U.S.C.A. § § 871, 871(a).

7. Judgment—751

A defendant in a criminal case can assert collateral estoppel against the government in the proper circumstances.

8. Judgment—751

Prior judicial determination on motion to suppress made in a separate proceeding on another charge in the Court of General Sessions that there had been no probable cause for Secret Service agents to believe that defendant's words constituted a threat to the President of the United States did not operate as a collateral estoppel to felony charge in the District Court. 18 U.S.C.A. § 871(a).

Mr. Joseph Forer, Washington, D.C., (appointed by this court) for appellant.

Mr. Lee A. Freeman, Jr., Asst. U. S. Atty., with whom Messrs. David G. Bress, U. S. Atty., Frank Q. Nebeker and Victor W. Caputy, Asst. U. S. Attys., were on the brief for appellee.

Before Wilbur K. Miller, Senior Circuit Judge, and Burger and Wright, Circuit Judges.

Burger, Circuit Judge:

This is an appeal from a conviction for threatening the life of the President of the United States in violation of 18 U.S.C. § 871 (a) (1964).[1]

Appellant attended a DuBois Club meeting and participated in a discussion group dealing with police brutality. In the course of these discussions, Appellant allegedly made a statement that he would refuse induction into the armed forces and "if they ever make me carry a rifle the first person I want [or would want or would like to have] in my sights is LBJ."[2] There is evidence that he also stated that Negroes should not shoot their "black brothers" or Vietnamese. The following day he was arrested by Secret Service agents for threatening the life of the President. When arrested, Appellant was found to possess marijuana and an information was filed in the Court of General Session charging him with this misdemeanor.

Prior to his trial for threatening the President, Appellant moved to dismiss the indictment on the ground that his words did not constitute a "threat" within the language of the statute. This motion was denied. Subsequently, in the marijuana prosecution, Appellant moved to suppress the evidence on the ground that the arrest and search were illegal since the arresting officers lacked probable cause to believe that a felony—threatening the life of the President—had been committed. The Court of General Sessions granted the motion. The government's request for reconsideration being denied, the government nolle prossed the marijuana charge.

The felony charge of threatening the President was tried in the District Court and Appellant was convicted.[3] Appellant raises three grounds for reversal (1) that the evidence was insufficient to support a finding that he uttered a "threat" against the President; (2) that a conviction would violate the First Amendment; and (3) that the prior judicial determination on the motion to suppress in the Court of General Sessions operated as collateral estoppel to the felony charge in the District Court.

I

[1] Turning to the language of 18 U.S.C. § 871 (1964), we see that what it prohibits is "knowingly and willfully * * * mak[ing] any * * * threat to take the life of or to inflict bodily harm upon the President * * *." On its face, and under conventional standards of statutory construction, the statute prohibits the knowing and willful *act of threatening* the life of the President. The forbidden utterance is the criminal act; the adjective "willfully" precedes and modifies "threaten"; it has no relation whatever to the *act of killing or injuring*. The act of killing or assaulting is a separate crime. Therefore, the District Judge correctly instructed the jury: "It is the making of the threat, not the intent to carry it out, that violates the law."

Given this clarity of the statute itself, there is little necessity to turn to the legislative history, except to discern the broad purposes of Congress. However, in light of the dissent's reliance on some utterances of an individual Congressman in terms that would actually alter the clear meaning of the statute, we turn to the total legislative history. The record of the House debates on section 871 does not, as the dissent asserts, "indicat[e] that Congress considered specific intent to execute the threat an element of the offense * * *." Indeed the House record is to the contrary.[4]

[2] The ultimate purpose underlying section 871 is to deter the *act* of killing or injuring the President by deterring the *act* of threatening his life or safety. As Congressman Webb, the proponent of the bill, asserted: "That is one reason why we want this statute—in order to decrease *the possibility* of actual assault *by punishing threats* to commit an assault." 53 Cong.Rec. 9377–78 (1916) (emphasis added). The act of willfully threatening was itself made the crime not only to deter the threat but also the consequences of verbal or published threats in terms of their incitement of others—including those less stable than the speaker and perhaps more suggestible. Congressman Webb's explication of the rationale behind a prohibition of "threats" is of interest:

"A bad man can make a public threat, and put somebody else up to committing a crime against the Chief Executive, and that is where the harm comes. The *man who makes the threat* is not himself very dangerous, but *he is liable to put devilment in the mind of some poor fellow who does try to harm him*" [the President].

Id. at 9377 (emphasis added). Prophetically, Congressman Webb added: "I think the time may come when we will have great need for this kind of a statute." This review of the factors which prompted the promulgation of legislation prohibiting "threats" would seem to cast doubt upon the assertion of the dissent that "Congress considered specific intent to execute the threat an element of the offense."[5]

The dissent correctly quotes Congressman Webb's comment that "I think it must be a willful intent to do serious injury to the President." But we need to look at the context in which this statement was made. Some Representatives were troubled by the possibility that in the absence of the need for a "willful" threat, a man might be convicted for mailing to a friend, as a matter of news, an article he had discovered which contained a threat by the author of the article on the life of the President.[6] A reading of the entire debate on section 871 reveals that Congressman Webb's comment about *"willful intent to do serious injury* to the President" is the only time that the concept of "willful intent" was joined with the act of killing or injuring. Without exception, every other reference to "willful intent" was in the context of a *"willful intent to threaten"*. Reviewing the entire legislative debate on section 871, we conclude that, as is so often the case when various members address themselves extemporaneously to statutory language, these speeches are not without ambiguity; certainly the debate is far from indicating a Congressional desire to demand proof that the accused "made the statement with the specific intent to execute it" as Judge Wright argues.[7] Indeed if the legislative history were to be so read, it would repeal the statute.

[3] Prior decisions construing section 871 similarly evidence the interpretation that it is the *threat* which must be "knowingly and willfully" made and not that the intent to execute the content of the threat be an element. To meet these requirements the government must establish that "the maker [of the threat] comprehends the meaning of the words uttered by him" and that "the maker voluntarily and intentionally utters them as the declaration of an apparent determination to carry them into execution." Ragansky v. United States, 253 F. 643, (7th Cir. 1918). *See* Pierce v. United States, 365 F.2d 292, 294 (10th Cir. 1966). There is no requirement that the person uttering the threats have an intention to carry them out. *Cf.* Michaud v. United States, 350 F.2d 131 (10th Cir. 1965).

Footnotes at end of article.

Nor is it a defense that the words were intended merely as a jest. Pierce v. United States, *supra;* Ragansky v. United States, *supra.*

Appellant contends that the words he used could not be interpreted as a threat because they did not contain a statement of present intention to injure the President. Appellant asserts that his statement was a matter of common hyperbole rather than a true threat, that it expressed a desire rather than an intention to carry it out, and that it was conditional upon his being forced—by involuntary service—to carry a rifle whereas he had stated an intention to avoid induction into the Army.

[4] Appellant's conditional theory stems from the principle of the classic case of Tuberville v. Savage, 86 Eng. Rep. 684 (K.B. 1669), in which it was held that there was no assault where the defendant, at assize time, placed his hand on his sword and stated: "If it were not assize-time, I would not take such language from you." If an utterance is conditioned on factors which cannot be fulfilled, the condition negates any threat. Such a condition removes the apparent intent which is a necessary element. But the fact that the threat is conditional does not *per se* prevent it from being a violation of 18 U.S.C. § 871 (1964). Convictions have been affirmed [8] and indictments sustained [9] where the language was conditional. The "condition" of Appellant's submitting to induction into the Army does not negate the presence of apparent present intent since it is a matter within his control.[10] Statements with conditions such as "if I had the opportunity" or "if I had the power" or "if I ever get close enough to him," have been held violations of the statute. *See* notes 8 & 9 *supra.*

Appellant also claims that, when he stated he "would want" or "would like to have" or "wanted" to have "LBJ" in his rifle sights, he was merely expressing a desire, and not a threat. Other convictions under this statute have been affirmed where the statement was essentially in the form, as Appellant urges his statements were, of mere expressions of desires or wishes.[11] Appellant relies, however, on two cases in which there was found to be no statement of apparent intention to inflict harm. In United States v. Daulong, 60 F. Supp. 235 (W.D. La. 1945), the indictment was quashed because it charged that the accused only stated he "had a notion" to kill the President and that, if no one else did it, he "felt like" killing him. The court found these words to lack any "expression of determination or intent to do the act itself." In United States v. Marino, 148 F. Supp. 75 (N.D.Ill. 1957), an indictment was dismissed which charged that the accused had posted signs reading: "There can be slain no sacrifice to God more acceptable than an unjust President." Here again, the court found no expression of intent to perform the act in question.

Unlike these cases, Appellant's words, considered in context, reasonably permit an inference that he was uttering a threat. The naked words do not always tell the whole story. For example, the words "I will see you in the street at sundown" meant, in certain times and places, a challenge to a shooting. The context was all important—on Beacon Hill in Boston, the same words at the same period might have had a totally different meaning or none at all. It is the *message* the words communicate that is at issue, and what that message meant was a question of fact for the jury under appropriate instructions. On this appeal, there is no challenge to the instructions.

Appellant's counsel urged the jury, as he does on appeal, that Appellant was expressing a mere *desire* and that his statements were gratuitous hyperbole. The District Judge charged the jury in accordance with the case law developed under the statute, including the definition of threat. He also instructed the jury that "a declaration of a mere desire to injure is not a threat" and that they were to consider the context and circumstances in which the alleged statement was made.

[5] Among the circumstances that the jury could have considered in determining the import of the words here used was the testimony that in speaking Appellant made a gesture as if sighting down the barrel of a rifle. Appellant points out that his remarks were greeted by laughter and applause, and argues that this negates any acceptance by the listeners as a genuine threat. But it has not been unknown for laughter and applause to have sinister implications for the safety of others. History records that applause and laughter frequently greeted Hitler's predictions of the future of the German Jews. Even earlier, the Roman holidays celebrated in the Colosseum often were punctuated by cheers and laughter when the Emperor gestured "thumbs down" on a fallen gladiator. However, since Appellant did not claim at trial that his words were uttered in jest, we need not reach or decide what instructions would have been appropriate had he made such a claim except to observe in passing that subjective intent of the speaker, standing alone, has not been considered dispositive.[12] We need not decide what the situation would be if one accused under this statute claimed that he was acting in jest and showed that his listeners considered the utterance to be such. Here the Appellant laid no evidentiary basis for an instruction that his statements were uttered in jest and accepted as such by those who heard him. On the evidence and contentions developed at trial, a jury could reasonably have concluded either that the words were or that they were not a threat and either conclusion is within the range of a permissible verdict.[13]

II

Appellant's second contention is that his utterances are protected by the First Amendment and cannot be made the basis of a criminal prosecution. He argues that they are not words that by their very utterance tend to inflict injury or incite an immediate breach of the peace, Chaplinsky v. State of New Hampshire, 315 U.S. 568, 571–572, 62 S. Ct. 766, 86 L.Ed. 1031 (1942), and that they did not constitute a clear and present danger of a substantive evil which Congress has the power to prevent. Dennis v. United States, 341 U.S. 494, 71 S.Ct. 857, 95 L.Ed 1137 (1951); American Communications Ass'n v. Douds, 339 U.S. 382, 70 S. Ct. 674, 94 L.Ed. 925 (1950). *See also* Wood v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L.E4. 2d 569 (1962).[14]

[6] Meeting these claims directly, we conclude that the First Amendment does not prevent proscription of utterances that comprise knowing and willful threats to the life or safety of the President. Although freedom of speech is indeed one of "our most precious freedoms," Keyishian v. Board of Regents, 385, U.S. 589, 603, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967), and needs "breathing space to survive," *id.* at 604, 87 S. Ct. 675, [a]n analysis of the leading cases in [the Supreme Court] which have involved *direct limitations on speech* * * * will demonstrate that * * * this is not an unlimited, unqualified right, but that the societal value of speech must, on occasion, be subordinated to other values and considerations.

Dennis v. United States, 341 U.S. 494, 503, 71 S. Ct. 857, 864, 95 L. Ed. 1137 (1951). Simply because first amendment rights are in the "balance," Congress is not precluded from regulating particular individual activity. Before a decision on constitutionality is reached, "there must be weighed the value to the public of the ends which the regulation may achieve." Communist Party v. SACB, 367 U.S. 1, 91, 81 S. Ct. 1357, 1407, 6 L. Ed. 2d 625 (1961). *See also* Dennis, *supra;* American Communications Association, C.I.O. v. Douds, 339 U.S. 382, 70 S. Ct. 674, 94 L. Ed 925 (1950); Schenck v. United States, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed 470 (1919).

The basis for section 871 is clear. The Congress arrived at a legislative determination that the safety and freedom of movement of the Chief Executive was of such overriding importance to the well-being of the entire nation that threats which would tend to restrict his capacity to fulfill his duties or incite others to harm his person would not be tolerated. Congressional awareness of past Presidential assassinations in part contributed to the enactment of the 1917 statute.[15] Recent experience with the assassination of three public figures in less than 5 years hardly undermines the conclusion reached by the Congress 50 years ago when it enacted Section 871.

A statute making it a criminal act to utter threats as to citizens generally might well be open to constitutional challenge. Assuming arguendo that a statute might not be sustained if applied to any threat toward any one of 200 million Americans, the statute here in question must be judged by different standards, limited as it is to Chief Magistrate of the nation and his constitutional successors. Threatening language which might be thought tolerable when directed at a private citizen takes on a different hue when directed at the President and the dimensions of the consequences are an important guide.[16]

There are unique considerations surrounding the President of the United States. No person in the world, perhaps, is so comprehensively guarded. Yet this intensive protection has not prevented the assassination of four Presidents. In our system, the safety of the Chief Magistrate of the nation is so crucial to the national welfare that, notwithstanding our traditional tolerance of uninhibited and even vicious criticism of a President,[17] it was thought essential to make threats upon the life and safety of the President criminal acts. To appreciate the need to protect a President from danger or the inhibiting effect of threats, one only need recall the shock waves which rocked the entire world in November 1963 when a President was murdered. The enormous political, sociological, and economic consequences of that event are poignant reminders of the evil sought to be avoided by section 871. The assassination, or even attempted assassination, or suspicion of a conspiracy to this end, of no living person can upset the nation's—even the world's—equilibrium as does such action directed at a President of the United States.

When the interests to be protected are evaluated in the light of first amendment safeguards, the consequences here sought to be prevented afford a valid basis for reasonable limitation on speech.[18] The impediments which this statutory "regulation causes to entire freedom of individual action" are indeed outweighed by "the value to the public of the ends which the regulation may achieve." Communist Party v. SACB, *supra,* 367 U.S. at 91, 81 S.Ct. 1407. The protection of the President is precisely the type of substantial public interest which can justify prohibitions aimed at preventing substantive evils which can flow from the condemned activity. Cf. NAACP v. Button, 371 U.S. 415, 444, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

Although speech "may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger," Terminello v. City of Chicago, 337 U.S. 1, 5, 69 S.Ct. 894, 896, 93 L.Ed. 1131 (1919), a threat on the life of the President is "likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." *Id.* Trivial hazards must of course be

Footnotes at end of article.

tolerated if they fall within the purview of the First Amendment,[19] but the turmoil attendant upon the death or disability of a President is hardly a "trivial hazard." When the gravity of this evil is discounted by the not so improbable likelihood of its occurrence, we conclude that it "justifies such invasion of free speech as is necessary to avoid the danger." Dennis v. United States, 341 U.S. 494, 510, 71 S.Ct. 857, 868, 95 L.Ed. 1137 (1951).

Given the sound basis for section 871's prohibition of threats on the President's life, we feel that the jury, having acted under instructions not challenged here, was warranted in finding that Appellant had or had not "knowingly and willfully" threatened the life of the President. Here, the import of Appellant's words were indeed susceptible of an interpretation by the jury that Appellant had made such a threat.[20]

This statute does not require the jury to undertake the almost impossible task of evaluating Appellant's subjective mental processes in relation to executing his apparent intent as that intent was manifested by his words and gestures in context.

III

[7] Appellant also argues that the finding of the jury that his words constituted a threat under 18 U.S.C. § 871 (1964), cannot stand because of the collateral estopped effect of a prior judicial determination. His claim is based upon the suppression by a Court of General Sessions Judge of the marijuana found on Appellant at the time of his arrest. The Judge found that there had been no probable cause for the Secret Service agents to believe that Appellant's words constituted a threat to the President. It is settled that a defendant in a criminal case can assert collateral estoppel against the Government in the proper circumstances.[21] Collateral estoppel will prevent the relitigation of an issue that was necessary to a prior judgment or final disposition of a case.[22]

Appellant's claim does not take into account that there was a determination by a District Court Judge in the present case, prior to the action of the Court of General Sessions Judge, that the indictment charged statements sufficient to sustain a conviction under the statute. A General Sessions Judge acting on a minor charge cannot reverse a holding of the United States District Court—relating to the same issue. Appellant argues that the District Court order decided only that the words could support a conviction, depending upon the surrounding circumstances, whereas the General Sessions Judge made a factual determination considering those surrounding circumstances. The record, however, fails to support Appellant's characterization of the decision of the General Sessions Judge.[23] He heard only the testimony of one witness who related, not the circumstances surrounding the statements by Appellant, but the events surrounding the subsequent arrest and the words that the witness had been told were spoken by Appellant. His decision, just as that of the District Judge, was concerned only with the legal issue of whether the words spoken were sufficient under the statute.

[8] A further difficulty with the claim of collateral estoppel here is that no authority holds that rulings on unappealable pre-trial motions matters are proper subjects for collateral estoppel. The only cases located were contrary to Appellant's position.[24] For example, in People v. Kissane, 347 Ill. 385, 179 N.E. 850 (1932), a defendant charged in a county court with the unauthorized possession of a pistol sought collateral estoppel from a municipal court's suppression of the pistol in a prior case on the same charge. The Illinois Supreme Court held that the doctrine was not available because the decision was a "mere preliminary motion" and there had not been a trial, or even the entry of a plea by the defendant, in the prior case.

Affirmed.

FOOTNOTES

[1] 18 U.S.C. § 871(a) (1964) provides:

(a) Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, the President-elect, the Vice President or other officer next in the order of succession to the office of President of the United States, or the Vice President-elect, or knowingly and willfully otherwise makes any such threat against the President, President-elect, Vice President or other officer next in the order of succession to the office of President, or Vice President-elect, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

[2] It is not disputed that this referred to President Johnson.

[3] The imposition of sentence was suspended and Appellant was placed on probation for four years.

[4] Before seeking to discover Congressional intent relating to an unambiguous statute, we would do well to remember Justice Frankfurter's incisive admonition that when the legislative history is unclear, judges should turn back to the language of the statute.

[5] We see therefore that if the statute is directed at deterring the incitement of others to the prohibited action, to demand that the speaker "must willfully intend to do serious injury to the President" would defeat the effectiveness of the statute. We must ask ourselves whether Congress is impotent to prevent the reckless exhortations of a rabble-rouser who urges a mob to storm the White House but has absolutely no intention of his own to kill the President. *See* the dissent's evaluation that a conviction under § 871 cannot be sustained unless "the defendant made the statement with specific intent to execute it. * * *" With this thrust of the dissenting opinion, we profoundly and explicitly disagree.

Nor can we agree with the assertion that: "What *is* clear is that Congressman Webb, the sponsor of the bill, insisted upon a specific intent to execute the threat." Dissent at p. 687 n. 4. This analysis does not take sufficient cognizance of Congressman Webb's previously noted concern for the *incitement* dangers inherent in uncontrolled threats. See discussion *supra*.

[6] The following colloquy ensued when some Congressmen were troubled by the possible conviction of a person who "intended" to make no *threat*.

Mr. VOLSTEAD. Mr. Speaker, I think it would be a mistake to strike out the word "willfully." Suppose a person found a document containing a threat and sent it through the mail to a friend as a matter of news. He might knowingly send the document, not intending to convey any threat. *The word "willfully" adds an intention to threaten,* and distinguishes a case of that kind so as to take it out of the category of criminal acts.

* * * * *

Mr. VOLSTEAD. No; I did not say that. If the gentleman will read it with the word "willfully" stricken out, he will see that a person might send innocently, without any intention to convey a threat at all, an instrument to a friend that contained a threat, and he would be guilty if you strike out the word "willfully."

* * * * *

Mr. VOLSTEAD. The gentleman does not catch the point I have in mind. This statute does not require that the instrument shall be sent to the President. It might be sent to some other person. *If, as the gentleman suggests, you strike out the word "willfully," a person who simply sends an instrument, say, a newspaper that contains such a threat to some friend to call his attention to the matter, would do so knowingly, and would come within the language of this bill.* 53 Cong. Rec. 9379 (1916) (emphasis added).

[7] In fact, Congressman Raker felt that sending or conveying a known threat should be enough to allow conviction. It was to prevent conviction in these circumstances of one who did not *"intend to threaten"* that the word willfully was retained in the statute. *See* note 6 *supra*.

[8] Rothering v. United States, 384 F.2d 385 (10th Cir. 1967) ("appellant said that he wanted to go to jail; that he would do the same thing [rob] over again; that he would rob other people; and that 'if they didn't do any good "I will kill the President if it is necessary."'"); United States v. Stepp, 144 F. Supp. 826 (D. Colo. 1956) ("President Eisenhower is a German [———], and if I ever get close enough to him I will kill him. I have a 30–30 bullet for him. If he walks across the street in front of me I would let him have it."); Clark v. United States, 250 F. 449 (5th Cir. 1918) ("I wish Wilson was in hell, and if I had the power I would put him there.").

[9] United States v. Stickrath, 242 F. 151 (S.D. Ohio 1917) ("President Wilson ought to be killed. It is a wonder some one has not done it already. If I had an opportunity, I would do it myself.").

[10] That the threat is conditioned upon a contingency subject to the maker's control does not deprive it of the quality of a threat, if the contingency be a possible one. Every threat unexecuted involves some contingency, if none other than the maker's purpose be not abandoned, or that execution by him be not prevented.

United States v. Metzdorf, 252 F. 933, 938 (D. Mont. 1918).

[11] Ragansky v. United States, 253 F. 643 (7th Cir. 1918) ("We ought to make the biggest bomb in the world and take it down to the White House and put it on the dome and blow up President Wilson and all the rest of the crooks."); Clark v. United States, 250 F. 449 (5th Cir. 1918) ("I wish Wilson was in hell, and if I had the power I would put him there."); *cf.* United States v. Stobo, 251 F. 689 (D. Del. 1918) ("The President ought to be shot and I would like to be the one to do it.") (Demurrer to indictment sustained for failure to aver that the oral threat was heard by anyone.)

[12] Pierce v. United States, 365 F. 2d 292 (10th Cir. 1966); Ragansky v. United States, 253 F. 643 (7th Cir. 1918); *cf.* Morissette v. United States, 342 U.S. 246, 72 S. Ct. 240, 96 L. Ed. 288 (1952).

[13] See cases cited in notes 7–10, *supra*.

[14] Contrary to what Appellant claims, he was not prosecuted for his expression of views on Negroes and the Vietnamese war. He was free to challenge and attack the policies of the United States and actions of the President. *See* Bond v. Floyd, 385 U.S. 116, 87 S. Ct. 339, 17 L. Ed. 2d 235 (1966). Appellant was prosecuted for uttering a threat against the life of the President under a statute narrowly drawn to prevent such utterances.

[15] Congressman Webb made this observation:

[E]veryone admits that the Chief Executive of a great nation like ours ought to be protected in every way possible, especially in view of the sad experience we have had in losing by assassination three of our beloved Presidents.

* * * * *

[A]n ounce of prevention is worth a pound of cure, and we want to prevent the threats which often incite men to kill and murder. 53 Con. Rec. 9378 (1916).

[16] This distinction was clearly recognized by the drafters of section 871:

It is a crime to assault any person, but it

is not a crime to assault the President any more than any other person. It is a crime against the person, but it ought to be a very different offense. Assaulting the President of the United States is quite a different matter from assaulting some private individual. That is the reason the gentleman's bill has the provision against threats. There is a law now covering the private individual, as far as these things are concerned, and the President to the same extent; but in this bill you are differentiating the office of President, and the man who fills the office, from any other citizen of the United States.

53 Con. Rec. 9377 (1916).

[17] Few would claim that much of the editorial commentary that has been aimed at our Presidents fails to fulfill the sought for "uninhibited, robust, and wide-open" debate necessary to a democratic society. New York Times Co. v. Sullivan, 376 U.S. 254, 270, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964). Moreover, prohibiting the very limited "criticism" of threatening the life of the President seems to be a trivial limitation on the overall capacity to present effective political argument. Can it be thought that "robust debate" is inhibited by prohibiting threats on the very life of a President?

[18] Without entering the fashionable semantic debate, *see* dissent, pp. 690, 691 n. 11, on the vitality of "clear and present danger," "balancing of interests," or other labeled "tests" for determining First Amendment controversies, we conclude that the present regulation is valid within the strictures of any of these criteria.

[19] Whitney v. People of State of California, 274 U.S. 357, 377, 47 S.Ct. 641, 649. 71 L.Ed. 1095 (1927) (Brandeis, J., concurring): "Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to society."

[20] That these utterances were made at a meeting focusing on dissatisfaction with police-community relations and police brutality, and were made within a few hundred yards of the White House, are not irrevelant factors; they could have weighed in the jury's evaluation. Violence of extraordinary dimensions only recently was triggered in part by verbal incitement—again within a few hundred yards of the White House.

[21] Sealfon v. United States, 332 U.S. 575, 68 S.Ct. 237, 92 L.Ed. 180 (1948); United States v. Oppenheimer, 242 U.S. 85, 37 S.Ct. 68, 61 L.Ed. 161 (1916); Laughlin v. United States, 120 U.S.App. D.C. 93, 344 F.2d 187 (1965); United States v. Kramer, 289 F.2d. 909 (2d Cir. 1961).

[22] The Government argues that the suppression order was not a final order because it was not appealable. DiBella v. United States. 369 U.S. 121, 130–131, 82 S.Ct. 654, 7 L.Ed.2d 614 (1962). But appealability is not the touchstone of a final order for these purposes. The most frequent type of order that leads to a claim of res judicata or collateral estoppel is a judgment of acquittal, *see, e. g.,* cases cited in note 21, *supra,* and that is not subject to appeal by the Government. However, judgments of acquittal and even dismissals of cases have a degree of finality that is absent when, as here, the prior case is terminated by the Government's nolle prosequi.

[23] In assessing what issues have been terminated for the purposes of collateral estoppel, it is appropriate to examine the record to see what was raised before the judge in question. Sealfon v. United States, 332 U.S. 575, 579, 68 S.Ct. 237, 92 L.Ed. 180 (1948).

[24] Tell v. Wolke, 21 Wis.2d 613, 124 N.W. 2d 655 (1963) (prior discharge after preliminary hearing is not res judicata as to subsequent prosecution on same charge); People v. Van Eyk, 56 Cal.2d 471, 15 Cal.Reptr. 150, 364 P.2d 326 (1961) (order in prior case setting aside information because of illegal seizure of evidence not res judicata in subsequent prosecution for related offense); People v. Prewitt, 52 Cal.2d 330, 340, 341 P.2d 1, 6 (1959) (prior dismissal of same charge on preliminary hearing because it was determined that the evidence was illegally seized was not res judicata or collateral estopped on same issue in subsequent prosecution). *See* Vestal & Coughenour, *Preclusion/Res Judicata Variables: Criminal Prosecutions,* 19 VAND.L.REV. 683, 692 (1966).

One reason for not according collateral estopped consequence to rulings on pre-trial motions of this nature is that frequently such action does not reflect full and careful determination of the issue. In the present case, for instance, the General Sessions Judge granted the Assistant United States Attorney only a short recess to locate the Assistant United States Attorney who had already convinced the District Court that the words were sufficient to constitute a violation of 18 U.S.C. § 871(a) (1964). When that Assistant could not be located at once, the General Sessions Judge gave short shrift to the prosecutor's argument that the same issue had already been determined by the District Court and was not open to the Court of General Sessions.

J. Skelly Wright, Circuit Judge (dissenting).

Appellant attended a rally of the W. E. B. DuBois Club at the Sylvan Theater on the Washington Monument grounds. Those attending the rally divided into several discussion groups, one of which appellant joined. The rally and the discussion groups were open to the public.

In the course of a discussion of police-community relations in appellant's group, a participant said something to the effect that "we should have a better education before we get involved in things of this nature." According to Freeburger, an investigator for the Army Counter Intelligence Corps who was observing the discussion, appellant then replied:

"They always holler at us to get an education and yet I have already received my draft classification as 1–A and I have got to report this Monday coming for my physical. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L. B. J. They are not going to make me kill my black brothers."

Shoemaker, a detective sergeant of the United States Park Police, essentially confirmed this version of what appellant said. According to Wieghart, a reporter for the Milwaukee Sentinel, appellant said in substance:

"* * * that he did not think that Negroes ought to serve in Vietnam to shoot Vietnamese. He didn't think black men should look down the barrel of a rifle to kill Vietnamese. He said that rather than looking down the barrel of a rifle to kill Vietnamese people he would rather look down a rifle aimed at the President."

After appellant made his remark, persons in the audience laughed and applauded.

On the basis of these facts, appellant was convicted of "knowingly and willfully" making a "threat to take the life of or inflict bodily injury upon the President of the United States," under 18 U.S.C. § 871 (1964). I believe that the conviction cannot stand, when Section 871 is construed in accordance with its legislative history and the dictates of the First Amendment.

I

The statute today codified as 18 U.S.C. § 871 was enacted in what for purposes of this case can be regarded as its present form in 1917.[1] The brief report of the House Judiciary Committee, which approved the bill, stated its purpose as follows:

"This bill is designed to restrain and punish those who would threaten to take the life of, or inflict bodily harm upon, the President of this Republic. It is the first and highest duty of a Government to protect its governmental agencies, in the performance of their public services, from threats of violence which would tend to coerce them or restrain them in the performance of their duties." [2]

The House floor debate on the bill somewhat clarified and expanded upon this cryptic expression of legislative intent. In responding to the complaint that the bill was useless as a protection of the President's person, its chief spokesman, Congressman Webb, indicated that it was partly designed to prevent the incitement of others to assassination.[3] More significantly, Congressman Webb repudiated a suggestion that the words "and willfully" be deleted from the bill. In so doing, he indicated his view, as representative of the committee which had recommended the bill, of the intent required as an element of the offense which it created:

"* * * I think he ought to be shown to have done it willfully. *I think it must be a willful intent to do serious injury to the President.* If you make it a mere technical offense, you do not give him much of a chance when he comes to answer before a court and jury. I do not think we ought to be too anxious to convict a man who does a thing thoughtlessly. *I think it ought to be a willful expression of an intent to carry out a threat against the Executive,* and I hope that the gentleman will not offer his amendment."

53 CONG. REC. 9378 (1916). (Emphasis added.) The requirement of willfulness was retained and the bill was enacted into law without further substantive debate in either house.[4]

This indication that Congress considered specific intent to execute the threat an element of the offense was largely ignored by the courts which first construed the act during 1917–18. Thus in United States v. Stickrath, S.D.Ohio, 242 F. 151 (1917), no intent to execute the threat was required to be alleged or shown. *See also United States* v. Stobo, D.Del. 251 F. 689, 693 (1918).

Ragansky v. United States, 7 Cir. 253 F. 643 (1918), gives an often cited definition of the intent element of the offense. The court upheld the conviction of a defendant alleged to have said, among other things, "I can make bombs and I will make bombs and blow up the President." The trial court had charged the jury that "'the claim that the language was used as a joke, in fun' is not a defense." *Id.* at 644. In supporting this charge over defendant's objection that it ignored the word "willfully" in the statute, the appellate court said:

"And a threat is willfully made, if in addition to comprehending the meaning of his words, the maker voluntarily and intentionally utters them as the declaration of an *apparent* determination to carry them into execution."

Id. at 645. (Emphasis added.) And, remarkably, the court went on:

"While under some circumstances, the word 'willfully' in penal statutes means not merely voluntarily, but with a bad purpose [citations omitted], nothing in the text, context, *or history* of this legislation indicates the materiality of the hidden intent or purpose of one who * * * voluntarily uses language known by him to be in form such a threat * * *."

Ibid. (Emphasis added.)

In only one early case did the court cleave to the requirement of a specific intent to execute the threat. In United States v. Metzdorf, D.Mont., 252 F. 933, 938 (1918), a District Court dismissed an indictment under the act on the ground, among others, that it had alleged the supposedly threatening words alone, without including the innuendo that they were accompanied by a "present determination or intent to injure presently or in the future."

Footnotes at end of article.

Among the few reported decisions between 1918 and 1965 which construe this statute, none explicitly deal with the actual intent which must be shown to support a conviction for willfully threatening the President.[5] In two cases, courts dismissed indictments because the words defendants were alleged to have used could not have constituted threats; they did not even express *apparent* intent. United States v. Marino, N.D.Ill., 148 F.Supp. 75 (1957); United States v. Daulong, W.D.La., 60 F.Supp. 235 (1945).[6] Neither case reached the question of what, beyond the objective purport of the words, would have to be shown at trial to support a conviction under Section 871.

Since 1965, three decisions construing Section 871 are reported, all in the Tenth Circuit, which indicate that that Circuit has rejected the requirement of intent to execute the threats as an element of the offense. In Michaud v. United States, 10 Cir., 350 F.2d 131 (1965), the defendant telephoned a clear and explicit threat against the President's life to the White House. At trial, the court instructed the jury that, at least in the case of threats not inciting others to injure the President, "there must be proof beyond a reasonable doubt that the maker of such threats intended to carry them out himself." On appeal, the Tenth Circuit identified this charge with *Metzdorf*, which it characterized as a minority view, and remanded for a new trial under the *Ragansky* standard, according to which specific intent is not at issue.

The *Ragansky* rule was extended by the same Circuit in Pierce v. United States, 10 Cir., 365 F.2d 292 (1966), apparently to include obvious jokes, and in Rothering v. United States, 10 Cir., 384 F.2d 835 (1967), to include hyperbole. In *Pierce*, the defendant, an inmate in the city jail of Holton, Kansas, passed to a guard with orders that it be sent to the White House a piece of paper on which he had written in pencil, "I * * * swear to kill the President of the United States of America the first chance I get." To this oath he had appended the ominous postscript, "and by the way send me $100.00 for cigarette money." Tried under Section 871, he defended on the ground that his scrawled "threat" arose out of a joke with a drunken cellmate. The trial court charged, on the basis of *Ragansky*, that the claim that the "threat" was a joke is no defense. The Tenth Circuit affirmed, under the rubric, used by the District Court in its charge in this case, that "[i]t is the making of the threat, not the intent to carry it out, that violates the statute, 365 F 2d at 294.

Rothering affirmed the Section 871 conviction of a defendant who, after being arrested for breaking into a food market, told a policeman "that he wanted to go to jail; that he would do the same thing over again; that he would rob other people; and that 'if that didn't do any good "I will kill the President if it is necessary."'" Against the defense that this statement was exaggeration or hyperbole, the court held that, just as the claim that a supposed threat was made as a joke was held to be no defense in *Pierce*, "[t]he claim of exaggeration is entitled to the same treatment."

The trial judge here relied on *Ragansky*, *Pierce* and *Rothering* in charging the jury as follows:

"You are told that if one makes a threat against the President, he cannot shield himself by a claim that the words were uttered lightly or without intent to do bodily harm. It is the making of the threat, not the intent to carry it out, that violates the law. Therefore, idle talk or jesting is not a defense. * * *"

Appellant had established at trial that the audience had laughed when he made his statement. He urged to the jury that, given the circumstances, the offending words were at most rhetorical exaggeration or hyperbole, which the jury could not believe beyond a reasonable doubt were accompanied by an intent to harm the President.

I have indulged in a perhaps overlong recitation of the facts of cases in which Section 871 convictions were sustained under the *Ragansky* construction simply in order to demonstrate that Congressman Webb knew what he was doing when he insisted that "willfully threaten" meant "threaten with intent to execute" in his bill. He did not think "we ought to be too anxious to convict a man who does a thing thoughtlessly." Where the standard he convinced the House to maintain has been ignored, men have been convicted of doing something thoughtless—of using offensive language, with some implication against the President's life, which was meant as jest, as rhetoric, or as hyperbole.

II

I do not rest my belief that this conviction cannot stand upon the legislative history of Section 871 alone. The First Amendment restricts the construction which may constitutionally be placed on the statute, at least in cases of the kind which is before us today.

In my view, Section 871 is on its face a valid statute, designed to ward off two evils which Congress has the constitutional power to prevent. The first evil is an attempt on the life of the President. The second is restriction of the President's movements, and hence interference with his conduct of his duties, caused by reasonable fear for his safety arising out of serious threats on his life.[7] That Congress legitimately aimed at these evils in enacting what is now Section 871 is indicated by the legislative history.[8]

However, the statute which Congress passed in the relatively calm peacetime spring of 1917 was destined to be first construed in a nation at war when concern for constitutionally protected individual rights is ordinarily at low ebb.[9] Thus in United States v. Stickrath, *supra*, the first case construing the act, the court interpreted it on the understanding that the use of threatening language against the President "stimulates opposition to national policies, however wise," "is an affront to all loyal and right-thinking persons," and "is akin to treason."[10] 242 F. at 153.

The trial court in United States v. Stobo, *supra*, held that "[t]he vital inquiry under the act is whether the threat is of such a nature as to create or tend to create sedition or disloyalty." 251 F. at 692. And in United States v. Jasick, E.D.Mich., 252 F. 931, 933 (1918), we find that threats against the President indicate "a spirit of disloyalty" and arouse "resentment and concern on the part of patriotic citizens."

All of these stated reasons for interpreting Section 871 broadly cannot stand First Amendment scrutiny. Speech may not be prohibited in this country because it stimulates opposition to national policies, indicates or produces a spirit of disloyalty or affronts right thinking people. This was made finally clear by New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d 686 (1964), which laid to rest the threadbare contention that the First Amendment preserved the English common law of seditious libel.

Nor does the First Amendment give Congress a free hand in pursuing its valid objectives of protecting the President's safety and his freedom of movement. Particular "threats" within the ambit of Section 871 may be protected speech, and courts may be required to decide whether such threats may be prohibited under the clear and present danger test. Of course, all spoken threats do not constitute protected speech. Utterances which "are no essential part of any exposition of ideas" or which are "not in any proper sense communication of information or opinion" are not within the purview of the First Amendment. Chaplinsky v. State of New Hampshire, 315 U.S. 568, 572, 62 S.Ct. 766, 86 L.Ed. 1031 (1942); Cantwell v. State of Connecticut, 310 U.S. 296, 310, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). Thus threats are properly punished every day under statutes prohibiting extortion, blackmail and assault without consideration of First Amendment issues.

On the other hand, where an utterance does convey an idea, particularly an idea about how public affairs should be conducted, the label "threat" does not preclude First Amendment protection any more than do the labels "obscenity," Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed. 2d 1498 (1957), or "libel," New York Times Co. v. Sullivan, *supra*.

Nor is provocative, tasteless, or even shocking speech outside the constitutional protection. The First Amendment favors "uninhibited, robust, and wideopen" debate on public issues, debate which may include "unpleasantly sharp" attacks on public officials. New York Times Co. v. Sullivan, *supra*, 376 U.S. at 270, 84 S.Ct. 710. Free speech "may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." Terminiello v. City of Chicago, 337 U.S. 1, 4, 69 S.Ct. 894, 896, 93 L.Ed. 1131 (1949).

For these reasons, speech which communicates ideas, particularly speech which criticizes public policies or public officials, "is * * * protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." Ibid.[11]

Prosecutions under Section 871 for alleged threats which are part and parcel of the communication of ideas, particularly political ideas, must thus conform to the clear and present danger test. At the very least, this consideration supports the construction of the statute urged in Part I of this opinion. Where statutes impinge upon protected speech, statutory provisions governing intent will be read to require specific intent. Abrams v. United States, 250 U.S. 616, 627, 40 S.Ct. 17, 63 L.Ed. 1173 (1919) (dissenting opinion of Mr. Justice Holmes); *cf.* Dennis v. United States, 341 U.S. 494, 499–500, 71 S.Ct. 857, 95 L.Ed. 1137 (1951). Where the allegation is that the defendant, by his threat, incited others to kill the President, it is clear that specific intent to bring about this result must be shown. Yates v. United States, 354 U.S. 298, 318, 77 S.Ct. 1064, 1 L. Ed.2d 1356 (1957). Otherwise protection of free speech would be illusory, for in one sense "[e]very idea is an incitement." Gitlow v. People of State of New York, 268 U.S. 652, 673, 45 S.Ct. 625, 69 L.Ed. 1138 (1925) (dissenting opinion of Mr. Justice Holmes).[12]

Where the claim is that the alleged threat brings about the other evil which concerned Congress in enacting Section 871, "threats * * * which would tend to coerce * * * or restrain [the President] in the performance of his duties," a more difficult problem arises in reconciling this statutory purpose with the First Amendment. Congress may no doubt legislate to meet this evil. The restrictions placed upon the movements of the President, as well as other public men, by the danger of assassination have recently been much noted and deplored. There can be little doubt that the proper functioning of the Executive branch is hindered by these restrictions. On the other hand, a First Amendment standard which would allow abridgement of speech because it "tends" to create a substantive evil has been long rejected in favor of the clear and present danger test. Abrams v. United States, *supra*, 250 U.S. at 627–628, 40 S.Ct. 17 (dissenting opinion of Mr. Justice Holmes); West Virginia State Board of Education v. Barnette, 319

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U.S. 624, 633, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943).[13]

Many statements wholly proetcted against restriction by the First Amendment may "tend" to contribute to the climate of hate which makes the free movement of the President dangerous. The affirmations of the affluent as well as the militant exhortations of the dispossessed may have this tendency. Many statements on political affairs may, by implication or through hyperbole, compass the violent end of the Chief Executive. The threat of punishment for all such statements would exert a chilling effect on political speech too drastic to be consistent with the guarantee of free expression.

I would reconcile these competing considerations as follows. Where an alleged threat which involves the communication of ideas is thought to "coerce or restrain" the President in the performance of his duties, a conviction under Section 871 can be sustained if (1) the defendant made the alleged threat with specific intent to execute it, *and* (2) in the context and circumstances the statement unambiguously constituted a threat upon the life or safety of the President. The first requirement follows from both the legislative history and the consistent strict requirement of specific intent in criminal prosecutions impinging upon protected speech, Yates v. United States, *supra*, 354 U.S. at 318, 77 S.Ct. 1064. The second is an application of the clear and present danger test to the purposes of Section 871.

Consonant with Dennis v. United States, *supra*, 341 U.S. at 511–515, 71 S.Ct. 857, I would leave the question of subjective intent to the jury, but would make the application of the objective standard a question for the court. In *Dennis*, the Court ruled that "[t]he doctrine that there must be a clear and present danger of a substantive evil that Congress has a right to prevent is a judicial rule to be applied as a matter of law by the courts." *Id.* at 513, 71 S.Ct. at 869. In free speech cases, appellate courts have long engaged in detailed examination of the facts to determine whether the First Amendment permitted restriction of expression in the particular situation.[14]

III

When the standards developed in Part I of this opinion are applied to the facts of this case, it is clear that at the very least appellant should have a new trial. The District Court followed the *Ragansky, Pierce* and *Rothering* cases in charging the jury that intent to execute the supposed threat was not an element of the offense. This was contrary to the meaning of Section 871 as Congress enacted it. Further, the First Amendment standards developed in Part II of this opinion, in my judgment, require reversal and entry of a judgment of acquittal.

In applying these standards, the first question is whether appellant's supposed threat was speech of a kind which comes within the protection of the First Amendment at all, or whether it was, like obscenity, malicious libel and the threats which typically constitute the crimes of extortion and assault, excluded from such protection. The inquiry here is whether the words used were "in any proper sense communication of information or opinion." Cantwell v. State of Connecticut, *supra*, 310 U.S. at 310, 60 S.Ct. 900, 84 L.Ed. 1213.

The version of appellant's statement most damaging to him, that reported by Agent Freeburger, was in my mind unquestionably the expression of a political idea. The idea was that it was wrong for Negroes to kill their "black brothers," the Vietnamese, because their real grievance was against the white establishment at home, personified by the President. The idea is the same as that articulated in more developed and refined form in the statement held protected by the First Amendment in Bond v. Floyd 385 U.S. 116, 87 S.Ct. 339, 17 L.Ed.2d 235 (1966).

The fact that the statement expressed political ideas merely brings the First Amendment into play; it does not decide the case. The statement "I have a gun and I intend to kill the President, because that's the best way to end the war in Vietnam" similarly expresses an idea, but it might well be the basis of a valid conviction under Section 871. The language used and the surrounding circumstances must be examined to determine if appellant's words constituted an unambiguous threat against the President's life.

Several factors lead me to conclude that they did not. First the "threat" was uttered in conjunction with an attack on the war and the killing of "black brothers." In this context, the words Agent Freeburger reported are more likely than not to have had as their natural purport the meaning ascribed to them by the witness Wieghart—the rhetorical idea that appellant would *rather* shoot the President than the Vietnamese.

Second, appellant's "threat" was conditioned on an event which he stated he had no intention of allowing to take place—his induction into the armed forces. The premising of a "threat" upon a condition which the speaker has the power and avowed intention to frustrate renders it something less than an unambiguously serious threat.

Finally, the audience's response—laughter mixed with applause—is relevant if not dispositive. Such laughter may, as the majority opinion argues, have sinister implications. However, it is much more reasonable to interpret it as indicating that the words which evoked it were taken in context by their hearers to be hyperbolic emphasis of a political view which they supported.[15]

In short, appellant's words, taken in their context, are most readily susceptible to the interpretation that they were a crude, even offensive, rhetorical device. They cannot be read unambiguously as a serious threat against the President. Thus in my view punishment of appellant for speaking these words would deprive him of the right to free speech guaranteed to him by the First Amendment.

I respectfully dissent.

FOOTNOTES

[1] The Act was amended in 1955 to include threats against the Vice President and the President-elect, 69 STAT. 80, and in 1962 to include threats against the Vice President-elect and the person next in line to succeed the President when there is no Vice President, 76 STAT. 956.

[2] H.R. REP. No. 652, 64th Cong., 1st Sess. (1919).

[3] 53 CONG. REC. 9377 (1916).

[4] A statute punishing a "threat" made "knowingly and willfully" is hardly so unambiguous as to preclude looking to the legislative history for clarification of the mental element required. I do not claim that the House debate unambiguously supports the construction urged here. Congressman Volstead's remarks, for instance, can be read to have the import which the majority gives them. They can as well be read to express concern with only one among many dangers which deletion of the word "willfully" would bring on. What is clear is that Congressman Webb, the sponsor of the bill, insisted upon a specific intent to execute the threat. Because of the obvious dangers posed by the statute, and amply illustrated by the history of its use, I consider the narrower view of the mental element the proper one.

[5] The cases I have located are Pierre v. United States, 8 Cir., 275 F. 352 (1921) (indictment dismissed because no allegation that anyone heard threat); United States v. Stepp, D.Colo., 144 F.Supp. 826 (1956) (indictment sustained); United States v. Reid, W.D.La., 49 F.Supp. 313, *affirmed*, 5 Cir., 136 F.2d 476, *cert. denied*, 320 U.S. 775, 64 S.Ct. 87, 88 L.Ed., 465 (1943) (motion for new trial denied); United States v. Apel. N.D.Ill., 44 F. Supp. 592 (1942) (indictment sustained); as well as the *Daulong* and *Marino* cases cited in text.

[6] In *Daulong*, the defendant was alleged to have said that he "had a notion to" kill and "felt like" killing the President. These words were held to be mere expressions of hope or desire that someone might kill the President, rather than "an expression of determination or intent to do the act itself." There was dictum to the effect that the statute required apparent but not actual intent to carry out the threat.

In *Marino*, the defendant was alleged to have posted a statement reading "There can be slain no sacrifice to God more acceptable than an unjust President." Here too the court found in the words no expression of apparent intent, hence no threat.

[7] A threat may endanger the President's life either by indicating that the person making the threat plans to attempt assassination, or by inciting others to the crime. If the former were the legislative concern, the statute would come dangerously close to punishment for thoughts alone. Where the latter is feared, the statute should be construed consistently with other laws making incitement to crime an offense.

The purpose of protecting the President's freedom of movement appears to subsume the purpose of protecting his safety. Any threat serious enough to warrant punishment for endangering life would presumably also serve to restrict officially mobility.

[8] *See* Notes 2 and 3, *supra*.

[9] For an account of the widespread judicial abdication of responsibility for civil liberties during World War I, *see generally* Z. CHAFEE, FREE SPEECH IN THE UNITED STATES 36–107 (2d ed. 1941), and for a criticism of wartime prosecutions under this statute, *see id.* at 184.

[10] The suggestion that threatening the President is "akin to treason" is historically accurate. According to English law, it had been treason to "compass or imagine" the death of the King at least since the statute of 25 Edw. 3 in 1352, and still was at the time the Constitution was framed. *See generally* 2 J. STEPHEN, HISTORY OF THE CRIMINAL LAW OF ENGLAND 241–297 (1883). For an account of two perhaps apocryphal extreme applications of this statute, *see* Note, 32 HARV.L. REV. 724 (1919). Chafee suggests that the careful definition of treason in the Constitution, Article III, Section 3, which excludes "imagining" or "compassing," invalidates by implication Section 871. Z. CHAFEE, *supra* Note 9, at 172.

[11] I have no doubt that clear and present danger is the proper test to apply to direct restrictions of protected speech. Though criticized by both balancers and absolutists, and occasionally weakened by the courts under the stress of extraordinary times and circumstances, Dennis v. United States, 341 U.S. 494, 71 S.Ct. 857, 95 L.Ed. 1137 (1951), the historic standard has survived. Wood v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed. 2d 569 (1962); Edwards v. South Carolina, 372 U.S. 229, 237, 83 S.Ct. 680, 9 L.Ed. 2d 697 (1963); *cf.* Kingsley International Pictures Corp. v. Regents, 360 U.S. 684, 689, 79 S.Ct. 1362, 3 L.Ed. 2d 1512 (1959).

[12] In any event, there would appear to be no support for any claim of an inciting threat in this case.

[13] *And see* Dennis v. United States, *supra* Note 11, 341 U.S. at 507, 71 S.Ct. 857, for explicit recognition that the early Holmes and Brandeis dissents in First Amendment cases have become law.

[14] On the allocation of issues between judge and jury in First Amendment cases, *see* E. HUDON, FREEDOM OF SPEECH AND PRESS IN AMERICA 116–121 (1963); Richardson, *Freedom of Expression and the Function of Courts*, 65 HARV.L.REV. 1, 24–31 (1951).

[15] These three factors, of course, also go to the statutory question of whether defendant made a threat against the President in

the sense of an expression of *apparent* intent to harm him. *See* United States v. Marino, N.D.Ill., 148 F.Supp. 75 (1957); United States v. Daulong, W.D.La., 60 F.Supp. 235 (1945). As such they were doubtless considered by the jury. However, since in my view the clear and present danger test requires a *judicial* determination that an unambiguous threat has been made, the jury's apparent findings cannot have controlling weight here.

Mr. HRUSKA. Mr. President, I ask unanimous consent that the bill as reported by the Judiciary Committee and the Commerce Committee be considered as original text for the purpose of further amendment.

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

Mr. HRUSKA. Mr. President, the Commerce Committee deleted three provisions of the bill as reported by the Judiciary Committee. Those three sections are to be found on pages 4 and 5 of the bill. They are contained in section 5(a) of the bill as reported by the Judiciary Committee. These sections, Mr. President, pertain to the amendment of section 902 of the Federal Aviation Act of 1958. Those deleted sections were incorporated into the bill, S. 2280, just approved. They are properly there and they were dealt with in much more extended fashion in the measure just approved by the Senate than they have been in the bill as reported by the Judiciary Committee.

The Judiciary Committee, I am authorized to say this for the chairman of the Subcommittee on Criminal Laws, approves of that change and commends, in fact, the Committee on Commerce for having acted as it did. It is for action on the balance of the bill that request is made now for decision by the Senate.

Earlier I made reference to a potential problem which some Senators see in sections 2(a) and 5 of the bill. It has to do with the constitutionality and the propriety of these two provisions of the bill, relating to imparting or conveying threats. As a result of conferences with the Senator from New York and the Senator from Kentucky, an amendment is proposed to clarify that language which I believe is agreeable to all concerned.

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

Mr. HRUSKA. I yield myself 3 more minutes.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 3 additional minutes.

Mr. HRUSKA. I call up the amendment at this time.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 3, line 1 following the word "determination" add the words "and will".

On page 5 line 18 following the word "determination" add the words "and will".

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. Mr. President, I yield myself three minutes.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. HRUSKA. Mr. President, a question arose with reference to the adequacy and the constitutionality of the language, which reads at page 3, line 1, and page 5 of the bill, line 18, "with an apparent determination to carry out the threat."

It was suggested that that was vulnerable language and that it should be modified. The Senator from New York and I have reached an agreement that the amendment will insert on line 1 of page 3 and on line 18 at page 5 after the word "determination" two additional words, "and will", so that phrase in the bill would read "that the threat would be imparted or conveyed. * * *" and so forth, "* * * with an apparent determination and will to carry the threat into execution."

Now, it is considered by this Senator that this clarifying language would be an improvement. It will be adequate and I am sure it will answer the original purpose and intent of the bill.

I reserve the remainder of my time on the amendment and yield to the Senator from New York for such comments as he would like to make.

Mr. JAVITS. Mr. President, we had originally thought that the word "determination" should be stricken and that the word "ability" should be included. After talking with the distinguished Senator from Nebraska (Mr. HRUSKA) we came to the conclusion that this might be too restrictive in terms of what we are seeking to reach in that sometimes a threat itself is blackmail and the word "ability" would carry it beyond the threat stage, so that the person would have to have the means to carry out the threat.

I feel, therefore, that with the addition of the words "and will" where the threat itself is considered, premeditated willful act, that it would be proper to make that the crime in view of the damage it can do—to make a person do something he would not otherwise do; where it is blackmail, an oppression in the sense of the criminal law.

For those reasons, although I do not consider it a perfect solution, I am willing to accept it as the best that can be done in view of the fact, as I said a while ago, that a threat itself, standing in and of itself, can be used as a criminal instrument.

Therefore, as I say, it is possible that the definition of the crime could be, under conceivable circumstances, the threat itself.

Mr. COOPER. Will the Senator yield?

Mr. JAVITS. I yield to the Senator from Kentucky.

Mr. COOPER. Mr. President, I recall when the bill was before us several days ago I raised the question of the constitutionality of these two sections. The Senator from New York (Mr. JAVITS), with his usual ability, proposed language which we hoped solved the problem.

I have read the letter which has been written to the Senator from Nebraska (Mr. HRUSKA) by the Assistant Attorney General at the Department of Justice.

I think the Senator from New York made a very correct statement when he said some threats can be considered a part of the crime, for instance a threat to extort, or blackmail is a part of the crime which induces the person against whom it is directed to do something. The threat to do these things which are felonies under these acts could be linked so substantially itself to the crime I do not think there would be difficulty. Does the Senator from New York agree?

Mr. JAVITS. Yes, I do agree.

Mr. COOPER. I believe we could have situations where the mere threat, as evil as it is and as wrong as it is, could be considered as just a first amendment statement, and not punishable. But I think the Senator from Nebraska and the Senator from New York have made their statements and I accept those statements.

Mr. HRUSKA. Mr. President, I am prepared to yield back the remainder of my time on the amendment.

Mr. JAVITS. I yield back my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HRUSKA. Mr. President, I yield myself 3 minutes on the bill.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HRUSKA. Mr. President, the discussion we had 2 weeks ago, together with the discussion that has been made here, will be ample explanation for purposes of a vote on the merits of the bill and final passage at this time.

But before yielding back all of our time I wish to thank the Senator from New York (Mr. JAVITS) and the Senator from Kentucky (Mr. COOPER) for their interest in the matter and for their cooperation in working out what I believe is a satisfactory solution.

If the Senator from New York is prepared to yield back the remainder of his time, I am prepared to yield back my time.

Mr. JAVITS. I yield back the remainder of my time.

Mr. HRUSKA. I yield back the remainder of my time.

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

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

S. 2567

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 "Aircraft Piracy Amendments of 1972".

SEC. 2. (a) Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 36. Imparting or conveying threats

"Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by section 32 or 33 of this chapter or section 1992 of chapter 97 or section 2275 of chapter 111 of this title with an apparent determination and will to carry the threat into execution, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

(b) The analysis of chapter 2 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"36. Imparting or conveying threats.".

SEC. 3. Subsection (a) of section 1395 of title 28, United States Code, is amended by striking the period at the end of such subsection and adding the following: ", and in any proceeding to recover a civil penalty under section 35(a) of title 18 of the United States Code or section 901(c) of the Federal Aviation Act of 1958 (72 Stat. 731; 49 U.S.C. 1471(c)), all process against any defendant or witness, otherwise not authorized under the Federal Rules of Civil Procedure, may be served in any judicial district of the United States upon an ex parte order for good cause shown.".

SEC. 4. Section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471) is amended by adding at the end thereof the following new subsection:

"FALSE INFORMATION

"(c) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by subsection (i), (j), (k), or (l) of section 902 of this title, shall be subject to a civil penalty of not more than $1,000 which shall be recoverable in a civil action brought in the name of the United States."

SEC. 5. Section 902(m) of the Federal Aviation Act of 1958 (49 U.S.C. 1472) is amended as follows:

"FALSE INFORMATION AND THREATS

"(m)(1) Whoever wilfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a felony prohibited by subsection (i), (j), or (l)(2) of this section, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"(2) Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by subsections (i), (j), or (l)(2) of this section, with an apparent determination and will to carry the threat into execution, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

(c) The table of contents of the Federal Aviation Act of 1958, in the matter of title IX (72 Stat. 734; subchapter IX, chapter 20 of title 49, U.S.C. § 1472(m)) is amended by redesignating

"SEC. 902. (m) False information."

to read

"Sec. 902. (m) False information and threats.".

SEC. 6. Section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473) is amended by striking "Such" at the beginning of the second sentence of subsection (b)(1) of that section, and substituting therefor, "Except with respect to civil penalties under section 901(c) of this title, such".

Passed the Senate September 21, 1972.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONSUMER PROTECTION ORGANIZATION ACT OF 1972

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the unfinished business, which the clerk will state.

The bill was read by title as follows:

S. 3970, to establish a Council of Consumer Advisers in the executive office of the President, to establish an Independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that during the debate and voting on this bill, the staff of the Subcommittee on Executive Reorganization and Government Research be granted the privileges of the floor, and that Michael Pertschuk and Lynn Sutcliffe of the Commerce Committee also be granted the privileges of the floor.

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

Mr. JAVITS. Mr. President, I ask unanimous consent that during the consideration of S. 3970, Dennison Young, Jr., of my office, may be on the floor.

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

Mr. ERVIN. Mr. President, I ask unanimous consent that Mr. Robert B. Smith, of the staff of the Committee on the judiciary, be allowed to be on the floor of the Senate at all times during the Senate's consideration of S. 3970, the Consumer Protection Organization Act of 1972.

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

Mr. PERCY. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. RIBICOFF. I yield.

Mr. PERCY. Mr. President, I ask unanimous consent that Mr. Stuart Statler, minority counsel of the Subcommittee on Executive Reorganization be permitted on the floor during the consideration of the bill, including votes.

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

Mr. HANSEN. I ask unanimous consent that my legislative assistant, Miss Jody Reed, may have the privilege of the floor during the consideration of this bill and during the vote.

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

Mr. RIBICOFF. Mr. President, before making my opening statement I would like to take this opportunity to pay tribute to the distinguished Senator from Illinois (Mr. PERCY) and the distinguished Senator from New York (Mr. JAVITS) for their outstanding work on this bill. Their contributions and cooperation were extremely valuable to make this measure possible.

I also would like to take this opportunity to pay tribute to our distinguished chairman who has so ably and fairly exercised the chairmanship of the full committee during the latter part of the consideration on the measure. He extended to us all possible courtesy, understanding, and cooperation, although he was opposed to the bill and voted against the bill. As the chairman he held meeting after meeting; and when it was difficult to obtain a quorum he was the first to arrive and the last to leave. Many of the amendments which were adopted by the committee, which greatly improved this bill, were suggested by him, and this bill already bears many of his excellent ideas. I pay this tribute to my chairman for the cooperation he gave the entire committee in working its will on this bill.

I also pay tribute to the former chairman of the committee, the Senator from Arkansas (Mr. MCCLELLAN) who from time to time has unjustly been criticized, supposedly for what he did or did not do on this bill. The Senator from Arkansas (Mr. MCCLELLAN), as chairman of the committee, day after day came at 10 o'clock in the morning and stayed to the end to assure that there was full consideration of this measure when it was difficult to get a quorum. Chairman MCCLELLAN, like Chairman ERVIN, was always there to do everything he could to expedite consideration of the bill. This generous attitude was characteristic of the outstanding leadership which the distinguished Senator from Arkansas gave to the Government Operations Committee for many years. For the permanent RECORD I specifically wish to thank our present distinguished chairman and our previous distinguished chairman for their fairness, their courtesy and their cooperation in making sure that the bill would have an opportunity to be brought before the full committee and the full Senate.

Mr. ERVIN. I thank the Senator. With the full acquiescence of the entire committee, at my request the Senator from Connecticut is acting as floor manager of the bill. He was one of the original authors. As he said, I am not in favor of the bill and it would be inappropriate for me to have any official connection with the bill on the floor.

Mr. RIBICOFF. I thank the chairman.

Mr. President the purpose of this bill is to strengthen the organization and improve the operation of Federal consumer protection activities. To achieve this, it establishes a Council of Consumer Advisers in the White House Executive Office and a Consumer Protection Agency in the executive branch. Together, they will provide what is now lacking in our consumer protection efforts—effective program coordination and policy development, a vigorous advocate to represent the consumer interest in the regulatory process and support for State and local consumer protection programs.

This bill is the product of more than 3 years' work by its sponsors and the Government Operations Committee. We have held 13 days of hearings on seven different proposals. We heard from many leading consumer, business, and Government spokesmen. Our total record covers 1,480 pages.

The committee has carefully considered the bill. After it was unanimously approved by the Subcommittee on Executive Reorganization and Government Research, the full committee closely scrutinized it in seven executive sessions lasting more than 16 hours. We adopted more than 50 substantive and technical amendments, then overwhelmingly approved it 11 to 2, with four additional proxies also in support. The final result is a measure which is refined and improved over the Consumer Protection Agency bill passed by the Senate 74 to 4 in December 1970.

TITLE I

Title I of the bill establishes a Council of Consumer Advisers in the Executive Office, composed of three members appointed by the President with the advice and consent of the Senate. The President will designate one member to serve as chairman.

One of the primary responsibilities of the Council will be to assist the President in preparing a yearly consumer report to Congress and the American people. The report, similar to the report of the Council of Economic Advisers and the Council on Environmental Quality, will review the effectiveness of Federal consumer protection programs, evaluate the coordination among Federal agencies engaged in consumer protection and recommend national priorities and resources for advancing the consumer interest.

Today no one knows how many consumer protection programs are conducted by the Federal Government, nor do we have a realistic assessment of their performance. We need a top-level executive branch organization to analyze our consumer protection efforts and determine whether the programs are meeting their goals. We also need to plan ahead, so that we will be ready to meet emerging consumer protection problems with the necessary programs and resources. The Council will perform these functions and thus provide the high-level leadership now lacking in Federal consumer protection activities.

TITLE II

Title II is the heart of the bill—it establishes the CPA as an independent, nonregulatory agency and defines its mission.

The CPA will be a unique agency in Government. It will have no substantive authority over any other agency or person. Its rights will be solely procedural. The purpose of the CPA is to fill a gap which has existed for decades in our regulatory process. Business interests have always been well represented, but there has never been adequate representation for the consumer interest. This will be the job of the CPA.

The Agency will be headed by a bipartisan three-member Commission, which will establish its policies and control its resources. The President will designate the chairman, who will also serve as Administrator of the Agency. The Administrator will be the chief operating officer and will carry out the day-to-day functions of the Agency.

The Commissioners will be appointed by the President with the advice and consent of the Senate from among persons who are especially qualified to represent the interests of consumers by reasons of their training, experience, and attainments. Commissioners will be eligible to serve no more than two 4-year terms, coterminous with that of the President.

The Agency's mandate covers the entire spectrum of the consumer interest. The bill lists 12 specific functions for the Administrator. The most important of these are:

First. Represent consumer interests before Federal agencies and courts;

Second. Receive and transmit consumer complaints;

Third. Conduct surveys and research concerning the interests of consumers;

Fourth. Disseminate information relating to consumer interests; and

Fifth. Make grants to States and localities, to assist their consumer protection programs.

CONSUMER REPRESENTATION

The primary responsibility of the Agency will be representation of the consumer interest before Federal agencies and courts. Section 203 sets forth the rights and duties of the Administrator when representing the consumer interest before other Federal agencies.

Whenever the Administrator determines that the result of any formal adjudicatory or rulemaking proceeding, conducted under the Administrative Procedure Act, may substantially affect the interests of consumers, he may as of right intervene or otherwise participate for the purpose of representing the interests of consumers. The Administrator must refrain from intervening as a party unless he determines it is necessary to represent adequately the interests of consumers. The purpose of this legislation is to emphasize that the Administrator is to avoid unnecessary involvement in the administrative process. Where submission of written briefs or other material is sufficient, he should do no more than that.

When intervening or participating in formal proceedings, the Administrator must comply with the Administrative Procedure Act and the statutes and rules of procedure of the host agency. This assures that the CPA will not disrupt the proceeding or the agency's decisionmaking process.

In informal agency activities, outside the formal procedures prescribed by the APA, such as the investigation of a case or the negotiation of a consent order, the Administrator may as of right participate whenever he determines that the result of the activity may substantially affect the interests of consumers. Under this section, the Administrator is entitled to present orally or in writing relevant information, briefs, and arguments to responsible agency officials, and to additional participation equal to that of any person outside the agency. This means that if representatives of General Motors have a meeting with the officials of the Highway Safety Bureau concerning the alleged defect in the Corvair heater, the Administrator has a right to present his views on the subject to Safety Bureau officials at another meeting.

Note that the section does not require that the Administrator be present at the General Motors meeting and have an opportunity to present his position at the same time it does. This is the meaning of the last sentence of section 203(b):

Such participation need not be simultaneous, but should occur within a reasonable time.

What is required is that the CPA have a fair chance to represent the consumer interest.

In exercising his rights under this section the Administrator must proceed in an orderly manner and without causing undue delay. He should always recognize the interest of the host agency in the efficient use of its resources.

These sections, and those that follow, cannot be fully understood without reference to the definition of two important terms, "interests of consumers" and "agency activity."

Section 401(11) states that—

Interests of consumers means the substantial concerns of consumers related to any business, trade, commercial or marketplace transaction.

Thus the CPA will not be much involved in environmental matters nor will it have a significant role in occupational health and safety cases. The CPA will not be a superagency, intruding into any subject remotely related to the consumer interest. The Agency will concentrate its efforts on the fundamental interests of people as consumers of goods and services.

Section 401(4) states that agency activity means "any agency process, or phase thereof, conducted pursuant to any authority or responsibility under law, whether such process is formal or informal, but does not mean any particular event within such process." This may appear to be a complex and difficult concept, but basically it is meant to cover everything an agency does in carrying out its statutory responsibilities, but not each individual act which it does. For example, in the FTC Geritol advertising case, which lasted more than 10 years, the CPA would not have a right to participate in every communication between the agency and the company during that time. But it would have a right to present its views during the decisionmaking process. Thus the definition strikes a balance between the interest of the CPA and the host agency—it grants the CPA access to the decisionmaking process, but allows the host agency to do its job without interference at each step in the process.

If the CPA is to intervene and participate effectively in proceedings and activities before departments and agencies it must have notice of the matters they are considering. Section 205 spells out a general framework for providing adequate notice to the Administrator of important consumer matters before Federal agencies.

Subsection (a) requires any agency considering any subject matter which may substantially affect the interests of consumers, to notify the Administrator, upon request, of any proceeding or activity at such time as public notice is given. Subsection (b) further provides that after specific request by the Administrator, any Federal agency considering a subject matter which may substantially affect the interests of consumers, shall give the Administrator a brief status report on what has been done concerning it and what is presently being considered. The term "specific request" should not be read narrowly to limit the Administrator's right to have adequate notice of important matters, but rather should be read broadly to allow him to obtain the information necessary to be an effective advocate. He should not be required, for

example, to specify a specific adjudication in asking for information about a particular area. The requirement of a "specific request" would be satisfied, for example, by a request to provide information about regulation of a certain product, or definable class of products. The committee recognized, of course, that the more general the request for information by the Administrator, the more general would be the reply he would likely receive.

When intervening in a proceeding or participating in an activity, the Administrator may request the host agency to issue such subpenas or interrogatories as are appropriate under its statute and rules of procedure, and the agency shall do so, unless it determines that the Administrator's request is not relevant to the case, would be unnecessarily burdensome to the party, or would unduly interfere with the conduct of the proceeding or activity. Thus, the CPA has no independent authority to obtain information when involved in cases before other agencies. It must rely on the discovery powers of the other agencies and has no greater powers than they do.

The committee also struck a balance in defining the conditions in which the CPA could intervene or participate in State or local agency or court proceedings. Clearly, the health, safety and economic welfare of large numbers of consumers are affected by decisions of these governmental bodies; however, the smooth functioning of our Federal system requires that agencies at one level not disrupt the proceedings of those at other levels of government. For this reason the bill gives the Administrator discretion to intervene in civil proceedings which may substantially affect the interests of consumers when he is requested to do so in writing by the Governor of the State, the State consumer protection agency or other State or local agency or court conducting the proceeding.

In order to carry out its mandate to represent the interests of consumers, the CPA must be able to intervene and participate not only before the agencies, but before the courts as well. Accordingly, section 204 establishes the terms on which the CPA may obtain judicial review. Whenever a final agency action may substantially affect the interests of consumers, the Administrator may obtain judicial review of any case reviewable under law which involves the review or enforcement of a Federal agency action. The Administrator may intervene as of right as a party or otherwise participate in any civil proceeding whether or not he intervened or participated in the proceeding or activity out of which the action arose. However, where he did not intervene or participate in the case before the host agency, the Administrator must file a timely petition for rehearing or reconsideration if this is authorized by the agency statute or rules. The reasoning behind this provision is that while it is wise to conserve the CPA's resources, by allowing it to forego pro forma interventions in order to preserve its appellate rights, before seeking judicial review, the CPA should give the host agency an opportunity to hear its arguments. Moreover, where the Administrator did not intervene or participate before the host agency, he may not intervene if the court determines that his appeal of the case would be detrimental to the interests of justice.

Opponents of the bill have expressed fears that interagency litigation will lead to "guerrilla warfare" between agencies and foster a policy of "survival of the fittest." These fears are groundless. The administrative law section of the American Bar Association recently completed a study which found that—

> Interagency litigation over the validity of administrative action has been commonplace since the early days of the Federal administrative process.

The study went on to point out that multiplicity of governmental parties has not created any difficulties for the courts, which have welcomed the presentation of all sides in the complex and important matters frequently involved. In summing up, the study said:

> We therefore conclude (a) that no new problems, either doctrinal or practical, are presented by the proposal to give the Consumer Protection Agency the right to initiate or intervene in proceedings for judicial review of other agencies' actions, and (b) that the feasibility and desirability of interagency litigation should accordingly be recognized in this context as readily as elsewhere.

Mr. President, I ask unanimous consent that this study and the resolution of the House of Delegates of the American Bar Association endorsing CPA intervention in cases before Federal departments and agencies be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

CONSUMER COMPLAINTS

Mr. RIBICOFF. The complaint section, 206, received more attention from the committee than any other provision of the bill. As a result, it strikes a good balance between the public's right to know about products or services which may endanger their health and safety, or which may cause substantial economic injury to consumers, and the right of those complained against to answer and protect their reputation.

The bill provides that written and signed complaints alleging a violation of Federal law, or a trade practice detrimental to the interests of consumers, shall be referred to the appropriate authority for action. The Administrator will also forward a copy to the person complained against, unless such disclosure would impede an investigation into the alleged violation. The person complained against will be given a reasonable time for comment. Then the complaint, the comment, and any agency evaluation of it will be made available for public inspection where disclosure will serve to protect the health or safety of consumers or reveal substantial economic injury to them. The bill grants the Administrator authority to delete the name of the complainant, for good cause, or not publish the complaint, where publication would be detrimental to him.

INFORMATION GATHERING

The effectiveness of the Administrator's advocacy will be largely determined by the amount of information in his possession. Thus, it is important that he have adequate information gathering powers.

Section 207(b) authorizes the Administrator to submit interrogatories to persons engaged in a business which substantially affects interstate commerce, and whose activities he determines may substantially affect the interests of consumers. The interrogatories must concern the health or safety of consumers or seek to discover consumer frauds. The fraud need not involve a technical violation of law. It is sufficient if the Administrator is seeking information on deceptive or fraudulent practices which result in substantial economic injury to consumers.

In order to prevent unwaranted fishing expeditions by the Administrator, his interrogatories must meet three conditions: First, the information sought must substantially affect the health or safety of consumers or be necessary to discover consumer fraud; second, the interrogatory may not be unnecessarily or excessively burdensome to the person requested to provide the information, and third, the information must be relevant to the purpose for which it is sought. The court is given power to modify the Administrator's interrogatory and to apportion costs on a just basis. In answering the interrogatory, no person need disclose any information which would violate any relationship privileged according to law.

To prohibit the unjustified use of the interrogatory authority, the bill places three additional limitations on the Administrator. He may not exercise the power where the information is available as a matter of public record, can be obtained from another Federal agency, or is for use in connection with his intervention in any pending agency proceeding.

Thus, this section, like the others, balances the public and private interests involved to accommodate the legitimate interests of each. The CPA is granted substantial authority to obtain information from businesses, but the power is carefully restricted to assure fairness in its exercise.

It should be noted that the authority granted here is very narrow. The Administrator is not authorized to inspect or copy documents, books, papers, or records, nor may he issue a subpena to compel the attendance of any person at any proceeding. In fact, the CPA has less information-gathering authority than the FTC has had for nearly 60 years and less than that which was approved just 3 months ago for the Food, Drug, and Consumer Product Agency in S. 3419. See section 104(c)(6).

One of the primary sources of information for the CPA will be the records and documents of other agencies. As an equal Government agency, the CPA is granted access as of right to all the material in their files, with six specific exceptions: First, classified national security information; second, policy recommendations by agency personnel intended for internal use only; third, information concerning routine executive and administrative functions which are

not otherwise a matter of public record; fourth, personnel, medical, and similar files containing private and personal material; fifth, information which one agency is expressly prohibited by law from disclosing to another agency, and sixth, income tax records. These exceptions are designed to protect the legitimate interests of other agencies in the privacy of certain sensitive classes of information.

INFORMATION DISCLOSURE

One of the premises of this bill is that well-informed consumers will be able to choose intelligently the products and services they buy and so better protect their own health, safety, and economic interests. Accordingly, section 208 authorizes the Administrator to disclose all information appropriate for carrying out the purposes of the legislation.

But here also the committee has created several necessary exceptions and restrictions in order to balance the public's right to know with the rights of other agencies and private firms to safeguard the confidentiality of certain kinds of information. Thus, the Administrator must not disclose:

First, information received from another agency which is exempt from disclosure under the Freedom of Information Act or any other law, and which the agency has specified shall not be disclosed; or where the agency has prescribed a particular form or manner of disclosure, only in compliance with the form or manner so prescribed;

Second, trade secrets or other confidential business information, except to protect the public health and safety, and in a manner designed to protect confidentiality, to Congress and courts and other agencies; and

Third, information which would violate any relationship privileged according to law.

The Administrator is directed to take all reasonable measures to assure that the information released is accurate and not misleading or incomplete, and to act promptly to correct any errors. Where the release of information is likely to cause substantial injury to a person, the Administrator is ordered to notify the person and provide an opportunity for comment and injunctive relief, unless immediate release is necessary to protect the public health or safety. Tight restrictions are imposed on the release of information which discloses brand names. Where applicable, the Administrator must make clear that not all competitive products have been tested, that products tested have not been rated over those untested, and he must not indicate in any manner that one product is a better buy than another.

IMPORTANT GENERAL PROVISIONS

Section 210 of the bill contains several important general provisions applicable to the entire bill. Subsection (b), for example, grants Federal agencies discretion to allow the Administrator additional participation in, or notice of, any proceeding or activity beyond what is authorized in sections 203 and 205, respectively.

Subsections (e) (1) (B) and (C) define the circumstances in which persons involved in agency proceedings and activities may obtain appellate court review of actions of the Administrator. The committee wanted to prevent wasteful, piecemeal litigation, but it also wanted to assure that persons adversely affected by the actions of the Administrator would be afforded the protection of review in a court of law. Accordingly, the committee authorized a party to any agency proceeding or activity in which the Administrator intervened or participated, to obtain judicial review, where it is otherwise accorded by law, of any final agency action on the ground that the Administrator's intervention or participation resulted in prejudicial error to such party. The committee also provided that any person substantially adversely affected by the Administrator's request for discovery or an interrogatory or his release of information may obtain judicial review of that action, unless a court determines that judicial review would be detrimental to the interests of justice. These provisions assure that the propriety of important actions taken by the Administrator may be tested in court.

As a final step to guarantee that no person is unfairly prejudiced by the Administrator's actions, he is required to issue regulations designed to assure fairness to all affected persons in carrying out his discovery, complaint, interrogatory, and information disclosure functions.

TITLE III

Consumer protection is not solely the responsibility of the Federal Government. States, local governments and private, nonprofit organizations have an important role to play. And may I add, in addition to my other commendations of the senior Senator from New York (Mr. JAVITS), that the idea of involving State and local governments is his. It did not come from the administration or from any other Member of Congress. But I, together with the other members of the committee, saw the value and the constructive nature of his suggestion, and therefore we incorporated into the overall proposal the States and local governments because we know and believe they have an important role to play. Many hazards to the health, safety, and economic welfare of consumers are local in nature and are best remedied at that level. Accordingly, the proper role for the Federal Government is to support and assist these units in carrying out their consumer protection activities.

This is the purpose of the grant program authorized in title III. It provides planning and program grants to States and local agencies for a wide variety of consumer protection programs. The grant formula has been designed to provide an equitable distribution of funds, so that all American consumers will benefit from the program.

As reported from the Subcommittee on Executive Reorganization and Government Research, section 303 provided for direct grants from the Administrator to private, nonprofit organizations. The committee amended the bill to provide that States may contract with such organizations for the performance of consumer protection activities. This will assure closer supervision of the wide variety of tasks they may undertake.

COST

The bill authorizes $15 million for the CPA in fiscal 1973, $20 million in fiscal 1974, and $25 million in fiscal 1975. These funds provide for a successful launching of the agency, but leave no room for wasted manpower or effort. They guarantee that the CPA will not become a superagency involved in the minutiae of every other Federal department and agency. It simply will not have the funds to do so. This authorization, if fully funded, will only put the CPA on a par with other independent agencies such as the FTC, FPC, and SEC after 3 years.

The bill provides no funds for the grant program during the first fiscal year of the Agency. The committee believes that the Administrator should devote his full time during this period to its organization and operation. Thereafter, the bill provides $20 million and $40 million, respectively, for the next 2 years.

CONCLUSION

During the past 6 years Congress has enacted many new consumer protection laws. We passed the Wholesome Meat and Poultry Acts, but the GAO continues to report unsanitary conditions at meat and poultry plants. We passed a Flammable Fabrics Act, but there are no effective standards for most children's clothing. And we passed a Motor Vehicle Safety Act, but millions of defective cars continue to roll off the assembly lines each year.

We passed so many consumer protection laws, it seemed every agency was responsible for protecting the consumer. But in reality none of them were, for each one had only a limited function to perform. Our consumer protection efforts lack a sharp organizational focus. There is no one to coordinate them and assure consistent policy development. Nor is there any agency specifically charged with representing the consumer interest, to assure that it is properly considered in the decisionmaking process.

S. 3970 will remedy those defects. The Council will pull together current programs so that they will be more effective and the CPA will advocate the consumer interest before the policymaking agencies of Government. In tandem, these two agencies will assure that our Government will meet the needs of consumers in the 1970's.

The bill has been precisely drafted by the committee. The many perfecting and clarifying amendments we adopted improved it. Weakening amendments were rejected. This is a strong bill, but it is fair and well balanced. It will not tip the scales of justice for the consumer or against business. It advances the consumer interest without harming legitimate private interests. It provides the CPA with the tools and resources needed to represent effectively the consumer interest. The Agency will fit smoothly into the Federal administrative process.

The Consumer Protection Agency is truly an idea whose time has come. We have debated it for a decade, and this year it was endorsed in the platforms

of both major political parties. It is responsible, bipartisan legislation in the best sense. Senators JAVITS, PERCY, and I, with other members of the committee, have worked harmoniously for 3 years to produce this bill. It is one which all friends of the consumer can support.

This is historic legislation, for the Federal Government has never made a lasting commitment to the consumer. Now is our opportunity to elevate the consumer interest to the same level as business, labor and agricultural interests. The passage of this legislation will be the fulfillment of our Nation's promise to the American consumer that his rights to be heard, to be informed, to be safe and to choose will be assured by the Federal Government.

Mr. President, I yield the floor.

EXHIBIT 1

AMERICAN BAR ASSOCIATION SECTION OF ADMINISTRATIVE LAW

RECOMMENDATION

The Section of Administrative Law recommends the adoption of the following resolution:

Whereas, the House of Delegates has directed the Section of Administrative Law to preserve the gains made by adoption of the Administrative Procedure Act as the law of the land; and

Whereas, the purpose of the Administrative Procedure Act, as expressed in the title thereof, is "to improve the administration of justice by prescribing fair administrative procedure"; and

Whereas, fairness requires that the interests of consumers be adequately represented by administrative proceedings which may substantially affect such interests; and

Whereas, pursuant to the action of the House of Delegates at the 1972 Midyear Meeting, the Section has reconsidered its views in light of the suggestions advanced by the Solicitor General of the United States in the course of debate on the floor of the House of Delegates;

Now therefore, be it resolved:

That the Chairman of the Section is directed to cause the Congress of the United States and the appropriate Committees thereof to be notified:

(a) that the American Bar Association supports in principle the enactment of Title II of H.R. 10835, 92d. Cong., 1st Sess. ("The Consumer Protection Act of 1971"), as passed by the House of Representatives on October 14, 1971:

(b) that the ABA recommends the inclusion therein of a provision which would confirm and make explicit the authority of the new Consumer Protection Agency to institute judicial review proceedings under the Freedom of Information Act if another Federal agency invokes the exceptions in that Act so as to preclude public disclosure of information such other agency has supplied; and

(c) that the ABA opposes the inclusion therein of any provision which would, under any circumstances, make special findings by a reviewing court a prerequisite to the Consumer Protection Agency's institution of or intervention in judicial review proceedings.

REPORT

At the suggestion of the Solicitor General, we have carefully reconsidered the desirability of giving the Consumer Protection Agency any authority at all to seek judicial review of other agencies' action. We conclude that interagency litigation over the validity of administrative action has been commonplace since the early days of the administrative process; that no new problems, either doctrinal or practical, are presented by the proposal to give the Consumer Protection Agency the right to initiate or intervene in proceedings for judicial review of other agencies' actions; and that the feasibility and desirability of inter-agency litigation should accordingly be recognized in this statutory context as well. The legal analysis supporting our conclusion is spelled out in the attached Second Interim Report of the Consumer Protection Committee of the Administrative Law Section.

We have also considered the implications of the recent Supreme Court decision in *S & E Contractors, Inc.* v. *United States*, 40 U.S.L. Week, 4410 (April 24, 1972). In that case, the Wunderlich Act (40 U.S.C. Sec. 321–22) and the standard provisions of Government procurement contracts were held to preclude refusal by the General Accounting Office to approve payment on an award rendered in a contract dispute by the contracting Federal agency, and also to preclude relitigation by the Department of Justice when the contractor sues in the Court of Claims to recover on the award.

Not only did the decision apparently respond to the unique problems faced by contractors in dealing with the Government as customer, however, the Court made it perfectly clear that even these factors were considered merely as a guide in interpreting the particular statute involved and that Congress would have been perfectly free to promulgate a different rule. We therefore conclude that the reaons for allowing the Consumer Protection Agency to seek judicial review of other agencies' decisions, as expressed in the attached Committee Report, are in no way called into question by the *S & E* case.

The Section of Administrative Law endorses in principle Title II of the "Consumer Protection Act of 1971." We believe it will materially improve the administrative process by facilitating agency consideration of important interests—those of the consumer as defined elsewhere in the bill (Sec. 304(4)–(5)). We also applaud the bill's utilization of the scheme of the Administrative Procedure Act as the frame of reference for defining the role of the Consumer Protection Agency.

We recommend, however, that the bill explicitly provide for judicial review of administrative agency action in two situations not presently included in it.

First, we believe there should be no room for doubt that the judicial-review provisions of the Freedom of Information Act are available to the Consumer Protection Agency when another agency invokes one of that statute's exceptions, pursuant to Sec. 209 (a)(2) of the bill, so as to preclude public disclosure of information supplied by the other agency.

Private persons seeking the same information from the transmitting agency could obtain review of a decision to withhold it. In a dispute over applicability of a Freedom of Information Act exception, a Consumer Protection Agency assertion that disclosure should be allowed is at least as likely to be meritorious as the position of a private person seeking disclosure. Thus, review of the transmitting agency's contrary determination should be available to the Consumer Protection Agency just as it would be to the private person. Allowing such review is fully consistent with the limited reason for allowing a transmitting agency to forbid disclosure by the Consumer Protection Agency on Freedom of Information Act grounds, i.e., to prevent the Consumer Protection Agency from serving "either purposely or inadvertently as a conduit for information which would not otherwise be made available to the public" (H.R. 92–542, 92d Cong., 1st Sess. 26 (1971)).

Second, we believe that the Consumer Protection Agency should not be required to satisfy a reviewing court as to preliminary matters before being permitted to institute or intervene in a judicial review proceeding, whether or not the Agency was a party to the administrative proceeding below. The inclusion of such requirement in Sec. 204(d) of the bill, which requires findings of adverse effect and inadequate representation in cases where the Agency was not a party below, should be deleted.

The preliminary-findings requirement seems to thwart the purpose of the bill in granting the Agency *any* authority to seek review in such cases, i.e., to make it necessary for the Agency to file *pro forma* papers in administrative proceedings so as to secure its right to review in the event the final agency action is adverse to consumers. Avoiding the need to satisfy a reviewing court as to preliminary matters would be just such an undesirable incentive to *pro forma* participation or intervention.[1]

Under the bill as presently written, moreover, Sec. 204(d) reviewing-court findings would arguably be required on review of fine/penalty/forfeiture adjudications where the Agency has merely filed briefs or argued as *amicus* pursuant to Sec. 204(c). If the reviewing-court findings requirement has any significance at all, it would thus hamper Agency efforts to obtain judicial relief from administrative action in such cases where the interests of consumers have been adversely affected.

The preliminary reviewing-court findings required by Sec. 204(d), finally, relate to the "standing" of the Agency to seek judicial review. The trend in recent decisions has been to minimize the role of such barriers to review and to focus attention on the merits of the challenge to administrative action. As amended on the floor of the House, the new Act would allow the Agency to institute judicial review proceedings where it had not been a party below only "to the extent that a right of review is otherwise accorded by law" (CONGRESSIONAL RECORD, vol. 117, pt. 28, p. 36209), thus insuring that generally-applicable doctrines of ripeness and standing will govern. No more stringent criteria should apply merely because it is the Agency rather than a private person which seeks review.

Respectfully submitted,

MILTON M. CARROW,
Chairman.

SUMMARY

Inter-agency litigation over the validity of administrative action has been commonplace since the early days of the Federal administrative process. In some instances, such litigation has been expressly authorized by statute. Elsewhere, the right to seek judicial review of other agencies' action has been asserted as inherent in the challenging agency's authority to carry out its own statutory mandate.

The nominal posture of the challenging agency may vary. Sometimes the litigation has been between co-defendants in a judicial review proceeding brought by a private party. In other cases, the challenging agency has intervened as plaintiff or petitioner in a privately-initiated review proceeding. And in some instances, the review proceeding has been initiated by the challenging agency itself.

[1] The provision in Sec. 204(d) requiring the Agency in some situations to move for reconsideration at the administrative level before seeking review does not; in our view, jeopardize its right to seek review when it was not a party below. It is our understanding that all agencies would be required to entertain such reconsideration motions notwithstanding that the Agency was not previously a party. Otherwise, we would oppose the reconsideration requirement on the ground stated in text above.

The interests asserted by the challenging agency have in some cases been proprietary, *i.e.*, involving the Government's financial interests. In other instances the challenging agency has sought to litigate pure policy differences, such as over the proper role of competition in a regulated industry. In neither type of dispute has the multiplicity of Governmental parties appeared to create any difficulties for the courts, which indeed have welcomed the presentation of all sides in the complex and important matters frequently involved.

The agency unable to secure the services of the Department of Justice in such a conflict has readily obtained legal representation from its own General Counsel. Several major agencies are expressly authorized by statute thus to defend their own actions independently of the Justice Department, in the Supreme Court as well as in the lower courts. Where no such statute obtains, the Solicitor General has simply authorized agency lawyers to conduct the litigation on behalf of their respective "clients".

We therefore conclude (a) that no new problems, either doctrinal or practical, are presented by the proposal to give the Consumer Protection Agency the right to initiate or intervene in proceedings for judicial review of other agencies' actions, and (b) that the feasibility and desirability of interagency litigation should accordingly be recognized in this context as readily as elsewhere.

DISCUSSION

1. Present Federal law provides a clear statutory precedent for allowing the Consumer Protection Agency to seek judicial review of other agencies' decisions. Section 201 of the Agricultural Adjustment Act of 1938 (52 Stat. 36, 7 U.S.C. § 1291) authorizes the Secretary of Agriculture not merely "to make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the Commission" (§ 201(a), 7 U.S.C. § 1291(a)), but also "to invoke and pursue original and appellate judicial proceedings involving the Commission's determination" (§ 201(b), 7 U.S.C. § 1291(b)). The provision was apparently intended as a vehicle for relieving farmers of exorbitant and discriminatory freight rates, which were thought by many members of Congress to be a significant cause of the economic depression then afflicting American agriculture (see generally the debates on the Act in 82 Cong. Rec.)

Section 201 may have been inspired by a provision in earlier legislation setting up what became the Bituminous Coal Consumers' Counsel (see 82 Cong. Rec. 1199 (remarks of Rep. Mapes)). The original Bituminous Coal Conservation Act of 1935 (49 Stat. 991) had authorized the National Bituminous Coal Commission to participate in administrative proceedings before the ICC relating to the transportation of coal, although unlike the Agricultural Adjustment Act the coal statute was silent as to subsequent judicial review (§ 18, 49 Stat. 1007). This right of participation before the ICC had been extended by the Bituminous Coal Act of 1937 (50 Stat. 72) to the Coal Commission's office of consumer's counsel (§ 16, 50 Stat. 90), which had been created by the 1935 legislation to represent the consuming public in proceedings before the Coal Commission.[1]

Pursuant to the judicial review authorization in Section 201(b), the Secretary of Agriculture has repeatedly attacked a wide variety of ICC orders viewed as contrary to the interests of farmers. Typical cases include *Benson* v. *United States*, 281 F. 2d 34 (D.C. Cir. 1960) (Secretary filed suit to review ICC order denying reparations to cotton shippers, and took appeal from adverse district court decision); *Sec'y of Agriculture* v. *United States*, 350 U.S. 162 (1956) (Secretary intervened as plaintiff in suit to review ICC order approving exoneration-from-liability provisions in rail tariffs, and took appeal from adverse district court decision); *Sec'y of Agriculture* v. *United States*, 347 U.S. 645 (1954) (Secretary intervened as plaintiff, "acting on behalf of the affected agricultural interests" (347 U.S. at 647), in suit to review ICC order approving railroad charges for unloading, and took appeal from adverse district court decision); *East Texas Motor Freight Lines, Inc.* v. *Frozen Food Express*, 351 U.S. 49 (1956) (Secretary intervened as plaintiff in suit to review ICC order enjoining uncertificated carriage of allegedly nonexempt agricultural products, and defended favorable decision on appeal); *ICC* v. *Inland Waterways Corp.*, 319 U.S. 671 (1943) (Secretary intervened as plaintiff in suit to review ICC order setting rail rates for grain and defended favorable district court decision on appeal); *McLean Trucking Co.* v. *United States*, 321 U.S. 67 (1944) (relying on § 201, Secretary intervened as plaintiff in suit to review ICC order approving motor carrier merger, and took appeal from adverse district court decision).

Each of the foregoing cases, like many others in which the Secretary challenged ICC action, involved not only the Secretary and the ICC as parties, but also the United States as the statutory defendant (28 U.S.C. § 2322), represented by the Department of Justice (28 U.S.C. § 2323), in suits to review ICC orders.[2] In some instances, the Justice Department sided with the Secretary against the ICC (*East Texas Motor*, *supra*; *Sec'y of Agriculture* v. *United States*, 350 U.S. 162, *supra*). In others, the Justice Department took no position (*Sec'y of Agriculture* v. *United States*, 347 U.S. 645, *supra*; *ICC* v. *Inland Waterways Corp.*, *supra*). Where the Justice Department has declined to support the Secretary, the latter has usually been represented by the General Counsel of his own Department.[3]

Another statute authorizing judicial review of agency action at the instance of another government agency is the Bank Merger Act of 1966 (80 Stat. 7, 12 U.S.C. § 1828(c)), which authorizes antitrust suits against bank mergers approved by the Comptroller of the Currency, the Federal Reserve Board, or the Federal Deposit Insurance Corporation. Although such suits technically arise under the antitrust laws, the Supreme Court has indicated that they are in the nature of judicial review proceedings (*United States* v. *First City National Bank*, 386 U.S. 361, 366–67 (1967); indeed, under the terms of the statute. The function of the court in such suits is to "review de novo the issues presented" in the prior administrative proceedings (12 U.S.C. § 1828(c)(7)(A)), and the agency which granted approval is authorized to intervene as a defendant in support of its order (12 U.S.C. § 1828(c)(7)(D)).

Numerous proceedings have been initiated under this statute by the Justice Department in the name of the United States. In each instance the banking agency involved has vigorously opposed the Justice Department both at trial and on appeal to the Supreme Court. Examples include *United States* v. *First City National Bank*, *supra* (Justice Department filed suit and took appeal from adverse district court decision, which was defended by Comptroller of the Currency); *United States* v. *Phillipsburg National Bank & Trust Co.*, 399 U.S. 350 (1970) (same); *United States* v. *First National Bancorporation, Inc.*, 329 F. Supp. 1003 (D. Colo. 1971), *prob. juris. noted*, 40 U.S. L. Week 3398 (1972) (same).

2. While the Agricultural Adjustment Act was the first statute expressly to authorize the initiation of judicial review proceedings by one federal agency against another, litigation between agencies over the validity of orders entered by one of them has been authorized by statute ever since 1911 in a procedural context differing only in form. The Urgent Deficiencies Act (28 U.S.C. § 2321–25) provides, *inter alia*, that all actions to review orders of the ICC shall be brought "by or against the United States" (28 U.S.C. § 2322),[4] which shall be represented by the Justice Department (28 U.S.C. § 2323).[5] The ICC is authorized, however, to appear as a party in such a judicial review proceeding (ibid.), and to defend its order "unaffected by the action or nonaction of the Attorney General therein" (*ibid.*). Over the years similar provisions have been enacted to govern proceedings for review of certain orders entered by the Atomic Energy Commission, the Federal Communications Commission, the Federal Maritime Commission, the Maritime Administration, and the Secretary of Agriculture (28 U.S.C. §§ 2344, 2348).[6]

The Justice Department has consistently maintained that, in this as in all types of Government litigation, its duty differs from that of counsel for a private litigant in that if the Department is persuaded of the invalidity of the agency order in question its public responsibility requires it to so advise the court.[7] Such a course has frequently been taken at least since *Pennsylvania R. Co.* v. *ICC*, 235 U.S. 708 (1914) (Justice Department supported ICC below but took a neutral position in the Supreme Court) and *Assigned Car Cases*, 274 U.S. 564 (1927) (Justice Department opposed ICC throughout the litigation).

The result has been vigorous litigation between the Justice Department and the agencies subject to this procedure, on matters as varied as railroad mergers (*Baltimore & O.R. Co.* v. *United States*, 386 U.S. 372 (1967)); rate competition between railroads and coastwise water carriers (*ICC* v. *New York, N.H. & H.R. Co.*, 372 U.S. 744 (1963));[8] harmonization of the Administrative Procedure Act with procedural provisions of the Interstate Commerce Act (*Pan-Atlantic Corp.* v. *Atlantic Coast Line R. Co.*, 353 U.S. 436 (1957)); exclusive-dealing discounts in ocean freight rates *FMB* v. *Isbrandtsen Co.*, 356 U.S. 481 (1958)); applicability of the APA prohibition against *ex parte* contracts in certain FCC rule making proceedings (*Sangamon Valley Television Corp.* v. *United States*, 269 F.2d 221 (D.C. Cir. 1959)); and segregation in railroad dining cars (*Henderson* v. *United States*, 339 U.S. 816 (1950)). In virtually each instance[9] the agency has been represented by its General Counsel or a member of his staff, and the court has resolved the intra-Governmental dispute as readily as one between private parties.

The concept of litigation between agencies which nominally are codefendants has met with no disfavor in the courts. To the contrary, one court has expressly stated (*Consolidated Truck Service, Inc.* v. *United States*, 144 F. Supp. 814, 820 (D.N.J. 1956)) that:

"We can perceive no reason why a Department or a Cabinet Officer, charged with duties of decision by Congress may not express views in accordance with judgment and conscience. The writ of Mark, iii, 25 does not run in this case."[10]

Before Congress, the Justice Department has steadily urged the preservation of its right to litigate against other agencies in judicial review proceedings, despite agency allegations that the procedure is "embarrassing" or otherwise unseemly. As recently as 1970, Deputy Attorney General Kleindeinst wrote (*Hearings on Judicial Review of Decisions of the ICC Before the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee*, 91st Cong., 2d Sess. 8–9):

"Still applicable is the following objection to legislation to remove the United States and the Attorney General from suits to set

Footnote at end of article.

aside Commission orders expressed by the then Deputy Attorney General William P. Rogers in an April 11, 1955 letter to the Director of the Bureau of the Budget:

"* * * The overall legislative plan now is and should be to create a check and balance between the Commission and the Attorney General in such fashion as to give double protection to the people of the United States.'"

The Justice Department's testimony in the cited hearings explicitly recognized the particularly important role of "double protection" when the representation of consumer interests is involved (*id.* at 12):

"Mr. Comegys (Deputy Ass't Att'y Gen., Antitrust Division). * * * Transportation affects the economy. It also affects the consumer. There is no independent consumer counsel within the Interstate Commerce Commission. Therefore, it is important that the United States bring an independent view to bear on the conduct of this litigation at all levels."

3. Even in the absence of explicit statutory authorization, numerous federal agencies (sometimes represented by the Justice Department and sometimes not) have sought judicial review of other agencies' decisions. Their right to do so has regularly been asserted by the Justice Department, and been confirmed by the Supreme Court.

The seminal case is *United States* v. *ICC*, 337 U.S. 426 (1949). The Department of the Army (represented by the Justice Department) had sought reparations from certain railroads, alleging discrimination vis-a-vis other shippers. The district court had dismissed the Army Department's appeal from an adverse ICC decision, on the ground that the United States (in whose name the proceeding was being conducted) was statutorily required to be named as defendant in the review action and that a suit by the United States against itself could not be maintained. The Supreme Court reversed, holding that "courts must look behind names that symbolize the parties to determine whether a justifiable case or controversy is presented" (337 U.S. at 430).

The inherent right of Government agencies to protect the proprietary interests of the United States by seeking judicial review of other agencies' decisions had previously been recognized in *United States* v. *Public Utilities Commission*, 151 F.2d 609 (D.C. Cir. 1945), where the Justice Department filed suit in the name of the United States to review an electric power rate order of the District of Columbia PUC. Subsequent instances include *United States* v. *ICC*, 352 U.S. 158 (1956) (controversy similar to that in *United States* v. *ICC*, 337 U.S. 426, *supra*); *Western Air Lines, Inc.* v. *CAB*, 347 U.S. 67 (1954), and *Delta Air Lines, Inc.* v. *Summerfield*, 347 U.S. 74 (1954) (Postmaster General, represented by Justice Department, petitioned for review of CAB orders setting mail pay rates); *Secretary of the Army* v. *FPC*, F.2d 496 (D.C. Cir. 1969) (Secretary, represented by Justice Department, petitioned for review of FPC order disclaiming regulatory jurisdiction over natural gas sales to military post); *American Trucking Associations, Inc.* v. *FCC*, 377 F.2d (D.C. Cir. 1966), *cert. denied*, 388 U.S. 943 (1967) (Administrator of General Services, acting in name of United States but represented by GSA lawyers, petitioned to review FCC order approving radio common carrier rates).[11]

4. In *Far East Conference* v. *United States*, 342 U.S. 570 (1952), the Supreme Court ruled that a Justice Department petition to review a Federal Maritime Board order on antitrust grounds would be justified by the position of the United States as a shipper of ocean freight. Even where no proprietary interests are involved, however, but only differences in policy, the Justice Department has relied upon the proprietary cases as establishing a right to seek judicial review.

Thus, when the Justice Department filed suit in the name of the United States to review on antitrust grounds the ICC order approving the Great Northern/Northern Pacific railroad merger, it asserted that "the government's right to maintain this action, even though it is in form of a suit by the United States against the United States, is clearly established by *United States v. Interstate Commerce Commission*, 337 U.S. 426, 430–32" (Brief for the United States, p. 85, *United States* v. *United States*, 296 F. Supp. 853 (D.D.C. 1968), *aff'd*, 396 U.S. 491 (1970)). Similarly, the Justice Department has cited *United States* v. *ICC* as well as confession-of-error cases as showing that intra-Governmental litigation on policy matters "in fact, of course * * * is far from unique" (Reply Brief for Appellant United States of America, p. 6, *Pacific Far East Line, Inc.* v. *FMB*, 275 F. 2d 184 (D.C. Cir.), *cert. denied*, 363 U.S. 827 (1960) (Justice Department, in the name of the United States, intervened as plaintiff in suit to review FMB order on antitrust grounds).

The principal rationale invoked by the Justice Department to justify challenges in court by one agency to the decisions of another has been, however, that "government agencies have standing to protect the interests committed to their jurisdiction by participating in administrative proceedings or challenging administrative action even without express statutory authority for those specific acts" (Mem. in Support of Motion for Stay, p. 31, *United States* v. *FCC*, No. 21147, D.C. Cir., *dismissed as moot*, Jan. 23, 1968) (Justice Department took appeal in name of United States from FCC order approving transfer of ABC's broadcast stations to ITT as part of ITT/ABC merger). In that case, as in its suit to review the ICC order approving the Great Northern/Northern Pacific railroad merger, the Justice Department relied upon "the authority of the Attorney General to protect the interests of the public in competition * * * as an independent basis for suit" (*ibid.*; Brief for the United States, p. 85, *United States* v. *United States*, 296 F. Supp. 853 (D.D.C. 1968), *aff'd*, 396 U.S. 491 (1970)).[12] Substantially the same argument had been advanced twenty-five years earlier, specifically as to a Consumers' Counsel, in *Associated Industries of N.Y. State, Inc.* v. *Ickes*, 134 F.2d 694 (2d Cir.), *vacated as moot*, 320 U.S. 707 (1943).

In *Associated Industries*, the Government urged that individual consumers of coal had no standing to seek review of an order of the Interior Department's Bituminous Coal Division (successor to the National Bituminous Coal Commission, see note 1 *supra*) setting minimum prices for coal. The argument was (a) that if the Coal Consumers' Counsel had standing to assert consumer interests on review, his standing must be exclusive so as to protect his authority to forego judicial review on behalf of consumers, and (b) that the Consumers' Counsel did have standing, even though the statute nowhere so provided, because "being designated by § 2(b) [of the Coal Act] to represent the Consumers' interest in 'any proceeding before the [Coal] Commission,' he is necessarily, by clear implication, * * * a 'person aggrieved', for purposes of court review within the meaning of [the Act's general judicial review provisions]" (134 F.2d at 708) (Frank, J.).[13]

The Second Circuit rejected the Government's claim of exclusivity, on the ground that "anyone possessing or representing a consumer's interest, is a 'person aggrieved', and accordingly, if he is a party to the Commission proceedings, entitled to seek court review" (*id.* at 709). There was no hint of disagreement with the Government's reliance on the same theory to show that, despite the lack of explicit statutory authorization for the Consumers' Counsel to pursue the interests of consumers beyond the administrative level, he was nevertheless empowered to seek judicial review.

The *Associated Industries* opinion was subsequently cited by its author in *Isbrandtsen Co.* v. *United States*, 96 F. Supp. 883 (S.D.N.Y. 1951) (3-judge court), *aff'd by an equally divided court*, 342 U.S. 950 (1952), as authority for the Secretary of Agriculture to intervene as plaintiff in a suit to review a Federal Maritime Board decision even though no statute explicitly so provided. In conjunction the court cited Section 203(j) of the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended, 7 U.S.C. § 1622 (j)), which authorizes the Secretary to assist in * * * obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, the Maritime Commission, the Civil Aeronautics Board, or other Federal or State transportation regulatory body * * *". Unlike the Agricultural Adjustment Act of 1938, however, the 1946 statute makes no provision for judicial review at the instance of the Secretary.

It is therefore clear, we think, that the inherent-power rationale for allowing one agency to seek judicial review of another's decisions was accepted by the court in *Isbrandtsen*. And Judge Frank's reference to his prior *Associated Industries* opinion is further evidence that the Second Circuit in the latter case had entertained a similar view.

In *United States ex. rel. Chapman* v. *FPC*, 345 U.S. 153 (1953), the Supreme Court explicitly upheld the right of the Secretary of the Interior to petiton for review of an FPC order granting a hydroelectric plant construction license even though no statute so provided. While declining to state its reasons, the Court indicated no disagreement with the inherent-power test which had been applied by the court below, *i.e.*, whether the challenging agency is "able to point to some special interest for which he is charged with responsibility that may be adversely affected by the decision attacked" (191 F.2d 796, 800 (4th Cir. 1951)).[14]

In numerous other instances, both before and after that decision, the Supreme Court has similarly entertained challenges to agency orders initiated in the lower courts by other agencies despite the lack of an express enabling statute. Examples include *Vision* v. *Washington Gas Light Co.*, 321 U.S. 489 (1944) (OPA filed suit to review D.C. Public Utilities Commission rate order); *ICC* v. *City of New Jersey City*, 322 U.S. 503 (1944) (OPA intervened as plaintiff in suit to review ICC rail passenger fare order); *North Carolina* v. *United States*, 325 U.S. 507 (1945) (same); *FMB v. Isbrandtsen Co.*, 356 U.S. 481 (1958) (Secretary of Agriculture intervened as petitioner in proceeding for review of FMB order); *Udall* v. *FPC*, 387 U.S. 428 (1967) (Secretary of Interior petitioned to review FPC order granting hydroelectric plant construction license).

5. A remaining issue, and one possibly troubling the Solicitor General, may be the extent to which the Consumer Protection Agency should be free to litigate outside the Justice Department's control. The issue has occasionally arisen as to proposed legislation affecting other agencies, with the Justice Department usually insisting that its role as lawyer for the Government should be exclusive. But Congress has frequently declared otherwise, as the foregoing text demonstrates.[15] Even where no statute explicitly so authorizes, moreover, a number of agencies (*e.g.*, the FCC, the FTC, the SEC) conduct their own court of appeals litigation through their own lawyers despite the

Footnote at end of article.

general provisions of 28 U.S.C. §§ 516 and 518 reserving the conduct and supervision of litigation to the Justice Department. See *FTC* v. *Dean Foods Co.*, 384 U.S. 597 (1966), where the Supreme Court endorsed this practice as proper. And in the Supreme Court the Solicitor General has frequently authorized agencies to litigate through their own lawyers when he determines not to support them. For example, in addition to many of the cases cited herein, see *Purolator Prods., Inc.*, v. *FTC*, 389 U.S. 1045 (1968); *Standard Oil Co.* v. *FTC*, 340 U.S. 231 (1951).

CONCLUSION

Against this history of inter-agency judicial review litigation, it would be difficult to argue that fundamental principles are infringed by the proposed explicitly to authorize the Consumer Protection Agency to seek judicial review of other agencies' decisions. To the contrary, it is probable that the courts would recognize the standing of the Agency to seek review even in the absence of statutory provision therefor.

The Consumer Protection Agency proposal is in substance identical, moreover, to the existing provision for review of ICC orders at the instance of the Secretary of Agriculture. That procedure has apparently worked well to protect the interests of farmers for almost 35 years. We perceive no reason why the use of a similar procedure to protect the interests of consumers would not be equally workable.

Nor would any problem in fact arise in determining the proper role of the Justice Department in such interagency review litigation. As in the cases cited herein, an agency which the Justice Department is unwilling to support can readily be authorized to litigate through its own lawyers. This procedure has worked well in the past, and there is no reason to suppose it would not work here.

The desirability of this practice where agencies are in dispute was spelled out by a former Acting Solicitor General in *Stern, "Inconsistency" in Government Litigation*, 64 *Harv. L. Rev.* 759, 768–69 (1951). It was noted that—

"even where the ultimate authority over litigation policy rests in the Attorney General and Solicitor General, the most orderly course may not be the best course. Many of the administrative agencies are important policy-making bodies. Not even the President has authority to tell them how to decide particular cases. They are not subject to the supervisory authority of the Department of Justice. "In such cases, determination by the judiciary is often more satisfactory than an effort by the Department of Justice to force its own views on the disagreeing agency, by refusing to present the agency's position to the courts. The Attorney General has no authority to give binding legal advice to the independent agencies. Only the judiciary has authority to give the conclusive answer to the question in dispute."

We believe this view is sound. We believe it applies to the proposed Consumer Protection Agency as well as to the agencies before which the new Agency would appear, just as it was in fact applied to officers such as the Secretary of Agriculture, the Secretary of the Interior, or the Director of Economic Stabilization in the cases cited herein. As a recent study concluded (Note, *Government Litigation in the Supreme Court: The Roles of the Solicitor General*, 78 *Yale L. J.* 1442, 1466 (1969)):

"The fact that * * * policy disagreements involve intra-governmental conflict should not alter the appropriateness of the court's assuming the responsibility for resolution. * * *

"Where an issue has reached the court, the presentation of the conflict within the Executive, and certainly between the Executive and the regulatory commissions, may encourage more informed decisionmaking by the court."

FOOTNOTES

[1] In 1941 the Bituminous Coal Consumers' Counsel was established as an independent agency in Executive Branch to carry on the work of the former office of consumers' counsel in the Coal Commission (55 Stat. 134), which was then being performed by a Division in the Office of the Solicitor of the Interior Department pursuant to Executive Reorganization Plan No. II of 1939 (53 Stat. 1431). Participation in ICC proceedings was thus among the functions of the Coal Consumers' Counsel and his predecessors from 1935 until the expiration of the Bituminous Coal Act in 1943 (57 Stat. 84).

[2] The statute speaks of the Attorney General. In the Supreme Court, however, the United States is represented by the Solicitor General (28 C.F.R. § 0.20(a)). References hereafter to the Justice Department should therefore be read to include not merely the Attorney General and his subordinates but also the Solicitor General insofar as Supreme Court proceedings are involved.

[3] In *McLean Trucking, supra*, the Attorney General sided with the Secretary in the district court and formally took no position in the Supreme Court. Lawyers supplied by the Antitrust Division were among those representing the Secretary on appeal, although the complaint filed by the Secretary as plaintiff in the district court had been signed only by the Acting Solicitor of the Department of Agriculture.

[4] The reference to actions "by" the United States may have been intended to cover actions to *enforce* ICC orders, which are provided for in the same section as review actions (28 U.S.C. § 2321).

[5] See note 2 *supra*.

[6] The procedure has also been made applicable to judicial review of certain orders of the Secretary of the Interior (50 U.S.C. § 167h(b)).

[7] *E.g.*, Reply Brief for the United States, p. 1, *Maintenance of Way Employees* v. *United States*, 221 F. Supp. 19 (E.D. Mich.) *aff'd*, 375 U.S. 216 (1963).

[8] In this case the Attorney General took an appeal from a district court decision overturning an ICC order but reserved the right to part company with the Commission, and ultimately argued that the ICC order was erroneous.

[9] See note 3 *supra* as to the unusual situation in *McLean Trucking Co.* v. *United States*, 321 U.S. 67 (1944).

[10] The cited verse reads, "And if a house be divided against itself, that house cannot stand" (King James).

[11] The United States was also named a respondent in the review petition, as required by statute (see p. 8 *supra*).

[12] See also Brief for Appellant United States of America, pp. 12–13, *Pacific Far East Line, Inc.* v. *FMB, supra* ("* * * intervention [by the United States as a plaintiff in suit to review FMB order] was deemed necessary in order to permit the United States to protect its 'interest' in assuring that fullest consideration be given to these basic competitive factors").

[13] The Attorney General had previously given a formal opinion to the Secretary of the Interior that the question whether the Consumers' Counsel had standing to seek review "can be finally determined only by the courts" and that, if called upon to appear in a review proceeding initiated by the Consumers' Counsel, "it would be my purpose not to oppose the position of the Consumers' Counsel but only to collaborate in the full and free presentation of the issues to the court for its assistance in resolving any doubts that might be suggested concerning the right of the Consumers' Counsel to the relief sought" (Letter dated Feb. 3, 1938, from Att'y Gen. Cummings to the Secretary of the Interior, in *Hearings on Interior Department Appropriation Bill for 1939 Before the Subcommittee of the House Appropriations Committee*, 75th Cong., 3d Sess., Pt. I, at 78 (1938)).

[14] The same test was applied by the D.C. Circuit in holding that the Civil Aeronautics Administrator, the prosecutor in pilot license revocation proceedings before the Civil Aeronautics Board, could not seek judicial review of Board decisions favorable to the pilots (*Lee v. CAB*, 225 F.2d 950 (D.C. Cir. 1955) ("When one government agency has been found to have standing to seek review of another government agency's action, the two agencies have had different interests * * *. We have found no case in which agency action has been reviewed on the application of an official whose function is to prosecute claims in and for the same agency.")

[15] See also § 4(a) of the National Labor Relations Act, 49 Stat. 451, as amended, 29 U.S.C. § 154(a) ("Attorneys appointed under this section may, at the direction of the [National Labor Relations] Board, appear for and represent the Board in any case in court"); § 20(c) of the Natural Gas Act, 52 Stat. 832, 15 U.S.C. § 717s ("The [Federal Power] Commission may employ such attorneys as it finds necessary * * * to appear for or represent the Commission in any case in court"); § 213(c) of the Federal Power Act, 49 Stat. 861, 16 U.S.C. § 825m(c) (same).

Mr. JAVITS. Mr. President, I deeply appreciate the very fine presentation made by Senator RIBICOFF and the very gracious things he has said about me and Senator PERCY and other Senators.

It is a fact, however, that the first bill on this matter, in the last Congress, on which I had the privilege of cooperating with Senator RIBICOFF, was authored by him long before the tremendous surge of sentiment respecting the rights of consumers came up in the country.

Without in any way showing any ungraciousness about the very fine things he has said about me and my colleague who is the ranking minority member of the Committee on Government Operations, I think, in all fairness, that a real understanding should be had in the country of the role of initiative and leadership which has been played by Senator RIBICOFF, the chairman of the Subcommittee on Executive Reorganization, from which came this bill. In addition he has been instrumental in helping to carry it through successive committee stages and with the consideration of the enormous number of amendments.

Many amendments were included in the bill in order to meet disquiets expressed by various elements of the business community. As a lawyer, I would say that if they are not satisfied that the bill will not be used as an inquisitorial weapon against them now, they should be, because it is my conviction that the strict advocacy function which has now been delineated for the Consumer Protection Agency, further protected by Senator MCCLELLAN's very fine and helpful intercession for a commission in the nature of a board of directors to determine top policy, bipartisan in nature—to which I will refer again later—makes this bill, in my judgment, as fair and balanced an instrument for advocacy of consumer interests as one could possibly ask.

I do not know of a bill in which an able lawyer could not see the many ways we have safeguarded the legitimate interest of business concerns. I do not see the remotest way in which it can be used as an instrument of oppression. It is perfectly the privilege of those who will argue that it can be to so argue. But I think that in this respect we have articulated almost every way in which one could fashion a bill to satisfy anyone who wishes reasonably to be satisfied on that particular issue.

As Senator RIBICOFF has said, this is a historic moment. It has been a long time coming. The bill fills a long standing and unmet need of the American people. I believe that it is quite characteristic of the times that the leadership has called it up notwithstanding that we are close to the end of the session and that the desire is to deal only with essential matters and matters in which it is not likely that there will be any undue delay.

It is a tribute to its importance and to its timeliness, in a historic, not a superficial sense, that it has been called up now.

S. 3970 represents an effort by Government to better organize itself so that the consumers interests—like those of business, agriculture, labor, and so forth—are given due consideration throughout the Government's regulatory network. It has as its primary objective the improvement of the Government's consumer protection structure. Too often—for one reason or the other—the agencies and departments of Government have failed to weigh in the decisionmaking processes the needs and concerns of the consumer or to insure the consumer's problems—vis-a-vis the problems of other private interests—have been given the attention they deserved.

One thing that needs to be placed in a proper frame of reference immediately is the fact that the Government in all its departments today is supposed to protect the consumer's interest, because the consumer is everybody and the Government is everybody's servant; hence, that is the primary objective of all government and it was properly raised when we were discussing this bill.

This bill is nothing but a way of reorganizing the Government's consumer "advocacy" function, so that at least in part it may be better channeled and staffed in one agency, instead of just ranging throughout the Government.

That is the real essence of this bill. It should be looked at properly as a method by which the Federal Government is organizing itself in order to better perform the consumer advocacy function.

It has not been done effectively and adequately up to now and the reason is that what is everybody's business is nobody's business.

Mr. President, what this bill does by providing certain structural changes, especially by the institutionalization of a "consumer advocate" within the Federal system, is to try to help the Government correct this serious lack of consumer representation. This bill establishes a Consumer Protection Agency—CPA—to advocate the consumer interests before all the other departments and agencies of government and in the Federal courts. It provides for grants to State and local governments and nonprofit private organizations to assist them with consumer protection programs; and it establishes a three-member Council of Consumer Advisers in the White House to help coordinate and reinforce the ongoing consumer efforts in the executive branch.

The bill itself has been under active consideration by both Houses of Congress for more than 3 years and each House has supported it at least once. A measure similar in design passed the Senate in the 91st Congress, December 1, 1970, overwhelmingly by a vote of 74–4. That measure died in the House at the tail end of the session on a tie vote, 7–7, in the Rules Committee. This Congress the House has passed companion legislation, 344–44. What we are doing now is presenting our version of the bill so that it can be reconciled when the ultimate product may be available for signature by the President.

After extensive and detailed consideration and careful refinement, the Senate Government Operations Committee, by a vote of 11–2 with four additional proxies in support, reported out S. 3970, modifying the original S. 1177 which Senators RIBICOFF, PERCY, and I have cosponsored. Indeed the committee met for more than 16 hours on the bill discussing virtually every section and adopting 57 amendments. These amendments perfect the bill in many ways and reflect the deliberateness with which the committee members considered it, and I personally would like to express my appreciation to Senators ERVIN, ALLEN, and others, who had problems with the bill, for their diligence, attention, and study to the various aspects of the bill. The total quantum was essential in finally turning out what I consider to be a highly finished product and the result of this committee action was a bill with broad based support.

We left the bill on the calendar for a time so that the Committee on Commerce might have an opportunity to look at it, so that the Senator from Washington (Mr. MAGNUSON) and the Senator from New Hampshire (Mr. COTTON), respectively the chairman and the ranking minority member, might have an opportunity to make a studied view of the bill and the parts of it which they felt reflected the work of their committee.

In 1970 before coming to the floor the Commerce Committee, which has primary jurisdiction over consumer matters, reviewed the bill and, with a number of amendments, recommended that it pass. Had it not been for the dispatch with which Senators MAGNUSON and COTTON as well as the others on the Commerce Committee considered this measure then and now and the sympathy they have for the needs of consumers it is hardly likely this bill would have come this far. The Senate should commend them for their efforts.

Mr. President, I ask unanimous consent to include at this point in my remarks a summary of the bill we, the sponsors, have prepared.

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

SUMMARY AND EXPLANATION OF S. 3970 AS MENT OPERATIONS ON SEPTEMBER 8, 1972 APPROVED BY THE COMMITTEE ON GOVERN-

This bill is the end product of more than three years of work by the Committee. It is a sharpened and refined version of the bill which passed the Senate in December, 1970, 74–4. The bill was favorably reported by the full Committee by a vote of 11–2 with four additional proxy votes all in support.

Title I establishes a three-member Council of Consumer Advisers patterned after the Council of Economic Advisers. It will prepare a yearly report on the status of the consumer interest, just as the CEA does on the economy.

In addition, it will be responsible for:

1. recommendation of program priorities;
2. assistance in program coordination;
3. development of new policies and legislation;
4. evaluation of current programs.

Title II establishes an independent, nonregulatory Consumer Protection Agency. The Agency will be headed by a three-member Commission appointed by the President with the advice and consent of the Senate for a term of four years, coterminous with the President. The Commission will be chaired by an Administrator who shall be the chief administrative and executive officer.

The principal functions of the Agency will be to:

1. Represent consumer interests before Federal agencies and courts;
2. Receive and transmit consumer complaints;
3. Conduct surveys and research concerning the interests of consumers;
4. Disseminate information relating to consumer interests;
5. Publish a Federal Consumer Register of information useful to consumers; and
6. Make grants to states, localities, and nonprofit private organizations to encourage and assist their consumer protection programs and activities.

The most important function of the Agency will be representation of the consumer interest before Federal agencies and courts (sections 203, 204). In *formal* adjudicatory or rulemaking proceedings under the Administrative Procedure Act, the CPA is authorized to intervene as a party, but shall refrain from doing so unless such intervention is necessary to adequately represent the interests of consumers. The purpose of this limitation is to emphasize that the Administrator must exercise discretion in his intervention and avoid unnecessary involvement in the administrative process. Where submission of written briefs and other material is sufficient, the Administrator should do no more than that.

In *informal* agency activities, such as notice and comment rulemaking or investigations, the Administrator is authorized to present oral and written arguments to agency officials and have an opportunity to participate equal to that of any person outside the agency. This means that if the lead tinsel manufacturers have a meeting with the Commissioner of FDA on the schedule for removing lead tinsel from the market, the Administrator is entitled to present his views on the subject to FDA officials. The section *does not* give him the right to be present at the tinsel manufacturers meeting and argue his case at the same time they do. To use an analogy from broadcasting, the concept is one of "fairness," not "equal time."

When intervening in an agency proceeding

or participating in an agency activity, the Administrator may request the host agency to issue such subpoenas or interrogatories as are appropriate under its rules of practice and procedure, and the agency shall do so, unless it determines that the Administrator's request—is not relevant to the case, would be unnecessarily burdensome to the party, or would unduly interfere with the proceeding or activity. Thus, the CPA has no independent authority to obtain information when involved in cases before other agencies. It must rely on the discovery powers of the other agencies and has no greater powers than they have.

The Administrator is authorized to intervene in a state and local agency or court proceeding, except a criminal proceeding, where the Administrator determines that the result of such proceeding may substantially affect the interests of consumers and such intervention has been requested in writing by an appropriate state official or agency.

The Administrator is authorized to seek judicial review and intervene in any civil proceeding reviewable under law if he was a party to the proceeding below, or participated in the activity out of which the appeal arose. The Administrator may also seek review of cases in which he did *not* intervene or participate, unless the court determines that such intervention or participation in the judicial proceeding would be detrimental to the interests of justice. However, before taking the appeal, he must file a timely petition before the Federal agency for rehearing and reconsideration, if this is authorized by statute or agency rules. The purpose of this provision is to allow the CPA to forego pro forma interventions in order to preserve its appellate rights.

Section 205 provides for notice to the CPA of the proceedings and activities of other agencies which may substantially affect the interests of consumers. Basically, it grants the Administrator three rights:

1. To be notified at the same time public notice is given;

2. To request a brief status report on any case or investigation; and

3. To request other relevant information which would not be unreasonably burdensome to the agency.

The complaint section (206) has been simplified and pared down from the 1970 bill. It now provides that non-frivolous complaints alleging violations of law shall be referred to the appropriate authorities. Producers and sellers of goods are to be furnished copies of complaints unless such disclosure is likely to prejudice or impede an investigating or prosecuting action. Public disclosure to the extent required to protect consumer health or safety or reveal substantial economic injury to consumers is authorized. Prior to public disclosure, the producer or seller will be afforded an opportunity to review and comment on the complaint and that comment will be included with the complaint at the time it is made public. The evaluation of the complaint by any agency to which it was referred will also be included. The name of the complainant will be deleted where the Administrator finds good cause to do so.

To carry out his survey and research authority, section 207 grants the Administrator authority to submit written interrogatories to persons engaged in a trade, business or industry substantially affecting interstate commerce and whose activities are found to substantially affect the interests of consumers. Such interrogatories must be by general or specific order setting forth the consumer interest involved and the purposes for which the information is sought. The purpose of the interrogatories will be to promote and protect the health and safety of consumers and to discover instances of consumer fraud. In responding to the interrogatory, no one need disclose any information privileged according to law. The Administrator may not use the authority granted here where the information is publicly available, can be obtained from another Federal agency, or is for use in an agency proceeding or activity. Thus, when the Administrator is involved in cases before other agencies, he may only use the discovery authority granted under Section 203. Interrogatories must be relevant to the purpose for which they are sought and not unnecessarily burdensome.

Section 207 also provides for access by the CPA to information contained in the files of other agencies which does not involve national security, tax records, policy recommendations intended for internal use only and other similar private information.

Section 208 covers information disclosure. As a general rule, the Administrator is authorized to disclose, as much information as he deems appropriate in carrying out the purposes of the Act. However, he shall not disclose:

1. Information received from another agency which is exempt from disclosure under the Freedom of Information Act or any other law, and which the agency has specified shall not be disclosed, except in a form or manner prescribed by the host agency.

2. Trade secrets or other confidential business information, except to protect the public health and safety, and in a manner designed to protect confidentiality, to Congress and courts and other agencies; and

3. Information which would violate any relationship privileged according to law.

The Administrator is directed to take all reasonable measures to assure that the information released is accurate and not misleading or incomplete. Where the release of information is likely to cause substantial injury to a person, the Administrator is ordered to notify the person and provide an opportunity for comment and injunctive relief, unless immediate release is necessary to protect the public health or safety. Tight restrictions are imposed on the release of information which discloses product or service names.

Section 209 contains the standard administrative powers normally granted an agency.

Section 210 sets forth several general provisions applicable to the entire Act. It:

1. Confirms the Administrator's authority to communicate with Federal, State and local agencies in a lawful manner;

2. States that nothing in the Act should be construed to limit the discretion of any Federal agency to permit the Administrator to participate in any proceeding to a greater extent than he is entitled as of right and to provide him more notice or information than is required by this Act.

3. States that appearances by the CPA shall be in its own name;

4. States that the Administrator shall have full authority to direct the conduct of all litigation in which the CPA is involved; and

5. Provides for judicial review of the actions of the Administrator and of Federal agencies concerning the authority of the Administrator and of Federal agencies concerning the authority of the Administrator under Sections 203, 205, 206, 207 and 208.

Section 212 authorizes $15 million for fiscal year '73, $20 million for fiscal year '74, and $25 million for fiscal year '75. The section also provides that funds appropriated for the Agency cannot be withheld by OMB.

Title III authorizes $20 million and $40 million for planning and program grants to states, local governments, and private, nonprofit organizations in fiscal years '74 and '75. No grant funds are authorized for '73 because in the first year the CPA should concentrate on getting organized and beginning its operations.

Twenty percent of the funds are reserved for planning with the Federal share not to exceed 75 percent. The funds are to be distributed equitably, with no more than 15 percent of the funds allocated to a single state. The same distribution formula is applied to program grants with 50 percent of the funds reserved to the states for such grants. The Federal share is limited to 75 percent of the total amount except in special circumstances. Grants may be made for a broad variety of purposes relating to state and local consumer protection laws and educational activities.

No more than 15 percent of the total funds may be reserved for the states for contracting with private, nonprofit organizations. Ten percent of the program grant funds are specified for pilot and demonstration projects.

Title IV contains the definitions and other general provisions. The most important definition is the one of "agency activity." This is defined to mean, "any agency process, or any phase thereof, conducted pursuant to any authority or responsibility under law, whether such process is formal or informal, but does not mean any particular event within such process." Thus, it includes anything the agency does which may substantially affect the interests of consumers, but not any specific thing. The purpose of this distinction is to differentiate between an entire course of conduct and any single part of it. As explained above, in connection with Section 203, the CPA's rights of participation in agency activities extend to the course of conduct, not an individual event within it.

In Section 401(11) the interests of consumers are defined. The committee has defined this concept to include matters which might be of substantial concern to people in their roles as consumers. To qualify as substantial the consumer interest should be a significant aspect of any issue and reasonably related to it. A concern must be related to a business, trade, commercial, or marketplace transaction. This includes the overall process by which tangible or intangible goods and services are transferred for value.

Section 405 establishes basic rules of public participation for all Federal agencies. This is an important and useful step forward since many agencies do not now have such rules.

Section 407 exempts the CIA, FBI, NSA and the security and intelligence functions of the Department of Defense or the Office of Emergency Preparedness.

Mr. JAVITS. Mr. President, this sketch may be helpful to our colleagues and, together with the report, should make clear the meaning and interpretation of the various sections in the bill.

CONSUMER PROTECTION AGENCY

As I said a minute ago, the core of the bill is the Consumer Protection Agency. Its most important function is to "advocate" the interest of consumers before other agencies and departments of Government.

The Senator from Connecticut (Mr. RIBICOFF) has already noted that the idea of a Consumer Protection Agency is supported in both the Republican and Democratic Party platforms.

Unfortunately the basic design and mission of this Agency too often has been misunderstood. What must be made clear from the outset is that this Agency is an advocacy agency. It will have absolutely no regulatory nor enforcement authority. To highlight this fact, that the CPA will not be able to veto, override, or overrule the decisions of the various agencies of Government, the bill specifically provides in the declaration of purpose—(section 3 (3)):

. . . the authority of the Consumer Protection Agency to carry out this purpose does not supersede, supplant or replace the juris-

diction of any other Federal agency over any subject matter, nor deprive any agency of any responsibility to exercise its statutory authority according to law;

The CPA is an advocacy agency. It is not a "superagency" of Goverment. As to its advocating role before other agencies, it has procedural rights, and that is all. I greatly appreciate that many in the business community and some among the Federal agencies fear that the CPA in its advocate's role would disrupt the orderly processes of Government and unduly interfere with legitimate relationships businesses have with these agencies.

I respectfully submit that the design of the bill, as well as its intent, does not admit of that fear. We have designed it so that there is no reason for the fears. They may be entertained, but there is no reasonable basis for them.

CPA'S ADVOCACY RIGHTS

The Administrator, as an advocate, will have the right to appear as a party in the formal proceedings of the agencies, which may substantially affect the interests of consumers—section 203(a)—and to participate in the informal activities roughly to the same extent as outside parties—203(b). It will also have the right to appeal cases in certain instances—section 204. But these rights are not unrestricted. There are many limitations incorporated in the bill to insure that the exercise of these rights does not unduly disrupt the agency processes.

To intervene, the Administrator must first determine that the proceeding may substantially affect the interests of consumers and if he intervenes he must do so in a timely way and in compliance with the statutes and rules of procedure governing the conduct of the proceeding. Furthermore, the legislation mandates that the Administrator refrain from entering as a party, unless he determines that party intervention is necessary to represent adequately the interests of consumers. Where the presentation of arguments of the submission of written briefs or other material is sufficient, he is to limit his involvement accordingly.

In the less formal activities of agencies, after making the determination that the activity may substantially affect the interests of consumers, the Administrator may participate, but only in a manner roughly equivalent to the way in which outside persons participate in those activities and only in "an orderly manner and without undue delay." Language of the bill will not allow the CPA to force its way into every meeting between the host agency and outside persons nor to be involved in every telephone call made to the decisionmaking agency. Should the FAA wish to meet privately with the airlines concerning safety regulations, for example, it could do so without the CPA being there. The CPA in such a case could inquire as to what transpired and could present any material to the FAA it thought relevant to the issue of aircraft safety and might even ask for a meeting of its own, but if the FAA wanted the CPA excluded from the meeting with the airline then generally speaking the CPA would have no right to be there.

The bill grants the CPA the right to request the host agency to use the agency's discovery powers on the CPA's behalf. But if the request is not relevant to the matter at issue, or it is unnecessarily burdensome to the person from whom the information is sought, or it would unduly interfere with the conduct of the agency's proceeding or activity, then the agency could deny the CPA's request.

As integral to the advocacy role the CPA Administrator is authorized to bring appeals of those cases in which he did intervene or participate or, unless the court determines that such action would be detrimental to the interests of justice, in which he could have intervened or participated—but again this authority is limited by the language of the legislation and by existing law relating to appeals. Like all outside persons who may wish to appeal an agency decision, the CPA would have to do so "in a manner prescribed by law". The decision from which the appeal is taken would have to be one presently "reviewable under law." And before taking such appeal the Administrator would have to "file a timely petition" within the decisionmaking agency for a rehearing or reconsideration of the decision if such a petition is authorized by law. The requirements necessary to overturn Federal agency actions are generally stringent. These standards would likewise apply to the CPA such that the CPA will have no advantage over another person affected by the agency decision in pressing his point of view.

In short, Mr. President, without going into too much detail in the bill, there are tremendous safeguards with respect to the advocacy authority and the appeal-taking authority of the agency.

In addition we have provided in section 210(e)(1)(B) that a party or participant to any agency proceeding or activity in which the Administrator intervened or participated may obtain judicial review, where it is otherwise accorded by law, of the final agency action if the Administrator's intervention or participation resulted in prejudicial error based on the record viewed as a whole.

This is a very important protection to the individual who deals with the new Government agency in a case in which the consumer protection agency takes part.

What these limited rights to advocate do is offer the consumer a voice in his Government decisions which affect him. It will help fill a void in the decisionmaking process—that is, to have a consumer point of view presented before a decision is made.

Mr. President, I believe that we have striven, and have striven successfully, to make this an advocacy agency, not to give it plenary power, not to give it oppressive power, not to give it power that could be used oppressively, even though they are not oppressive in themselves, but to give integrity to each other Federal agency with which the Consumer Protection Agency may deal so that it will have an ability to run its own show without the Consumer Protection Agency being able to break in and inhospitably ask what is going on.

Safeguards such as those I have mentioned concerning the advocacy role of the CPA run throughout the bill and relate to each of the CPA's other functions. Limitations have been applied, for example, to the CPA's information-gathering authority, to its disclosure authority and to the way in which it will handle complaints. I ask unanimous consent to insert in the RECORD at this point of my remarks a list of the major safeguards we have included in this bill.

There being no objection, the list of major safeguards was ordered to be printed in the RECORD, as follows:

MAJOR SAFEGUARDS IN S. 3970 AGAINST UNDUE INTERFERENCE BY THE CONSUMER PROTECTION AGENCY WITH RESPONSIBLE BUSINESS PRACTICES AND THE ORDERLY PROCESSES OF GOVERNMENT

1. The CPA will have no regulatory authority. It will not be able to overrule, veto or impair any Federal agency's final determinations. The participation rights granted to the CPA are procedural only, not substantive, such that no authority granted to the CPA shall be construed as superseding, supplanting, or replacing the jurisdiction of any agency over any subject matter, nor deprive any agency of its responsibility to exercise its authority under law. (Section 3(3), Declaration of Purpose)

2. Limitation on CPA interventions: Authority to intervene as of right as a party is granted to the CPA in formal agency proceedings, but the Administrator must exercise discretion and avoid unnecessary involvement. He is to refrain from intervening as a party unless he determines that such extent of involvement is necessary to represent adequately the interests of consumers. Where submission of written briefs or other material is sufficient, or presentation of oral argument is sufficient, he is to exercise self-restraint and limit his involvement accordingly. (Section 203(a))

3. Protection against disruption and delay of agency proceedings and activities: Upon intervening, or participating in formal agency proceedings, the Administrator must comply with the host agency's statutes and rules of procedure governing the timing of his participation and the conduct of such proceeding (Section 203(a)). In participating in an informal agency activity, the Administrator must do so in an orderly manner and without undue delay. (Section 203(b))

4. Protection against CPA intrusion in the private meetings and discussions between a Federal agency and a particular business firm: While the CPA may present orally or in writing relevant information and arguments (Section 203(b)(1)), it is not granted the right or authority to be present at any particular meeting or discussion, nor to monitor any phone conversations, between an agency and a company. Instead, it needs only have an opportunity *equal* to that of the company to present its views. CPA's participation, therefore, need not be simultaneous (and generally will not be) but need only occur within a reasonable time of any prior involvement by such company or at a time when it might reasonably have an input into a contemplated agency action. (Section 203(b)(2))

5. Protection against misuse of a host agency's compulsory process: Where the CPA seeks to use an agency's subpena authority for discovery purposes, the host agency retains discretion and control over such use. CPA's request must be: (i) relevant to the matter at issue: (ii) not unnecessarily burdensome to the person from whom the information is sought; and (iii) not such as would unduly interfere with the conduct of the host agency proceeding—all to

be determined by the host agency, not the CPA. (Section 203(e))

6. Protection against unfair advantage to CPA in requiring information from businesses: The compulsory information gathering authority of the CPA (Section 207(b)) may not be exercised to obtain information which: (i) is available as a matter of public record; (ii) can be obtained from another Federal agency; or (iii) is for use in connection with his intervention in any pending agency proceeding. (Section 207(b)(2)). The Administrator's request under Section 207 must relate to consumer health or safety or consumer frauds and be specific as to the purpose for which the information is intended. Moreover, the request must be relevant to that purpose and not unnecessarily burdensome to the person from whom the information is sought. The scope of the Section has been limited so as not to require the production of records, books, or documents, the appearance of witnesses, or the disclosure of information which would violate any relationship privileged according to law. (Section 207(b)(1))

7. Protection against arbitrary, capricious or vindictive intervention by CPA: The determination by the CPA that a consumer interest may be substantially affected by the result of an agency proceeding will be subject to ultimate judicial review if there was prejudicial error involved. (Section 210(e)(1)(B)). The Administrator is required explicitly and concisely to set forth in a public statement the interests of consumers he is representing in a particular agency or court proceeding. (Section 402(b))

8. Protection against unwarranted allegations in complaints from consumers against business, its products or services: Upon receipt of consumer complaints, CPA will as a matter of course promptly notify the company named, furnish it a copy of the complaint, and afford it a reasonable time in which to respond to the charge. Both the complaint and the company's response will be placed in the public file simultaneously, together with any comments or report from any Federal agency to which the complaint was referred for action. Frivolous, malicious and unsigned complaints will not be placed in the public file. (Sections 206(b) and (c)).

9. Protection against access by CPA to all classified information and restricted data under the Atomic Energy Act. Section 207(c)(1).

10. Protection against CPA access to internal policy recommendations: The CPA will have access to factual material developed by agencies but will have no right to have access to opinions expressed by agency personnel which are not in the nature of factual data. Section 207(c)(2).

11. Protection against CPA access to information concerning routine executive and administrative functions: Most internal agency documents dealing with the management of the agency need not be accessible to the CPA. This will protect the legitimate interests of federal agencies in managing their own affairs without interference. Section 207(c)(3).

12. Protection against CPA access to personnel and medical files and other files access to which would constitute an unwarranted invasion of personnel privacy: The CPA will not have a right to have access to these files, which should properly remain private in order to preserve important interests of confidentiality. Section 207(c)(4).

13. Protection against CPA access to information which any agency is expressly prohibited by law from disclosing to another federal agency: Where a statute of judicial decision has declared that an agency may not disclose information to another agency, this policy applies to the CPA, and denies the CPA the right to access to such information. Section 207(c)(5).

14. Protection against CPA access to income tax records: There is no authorization in this act to any federal agency to disclose the amount or source or income, profits, losses, expenditures, or any particular thereof, from any income return, or to permit CPA access to any such return. This will insure that records which are now treated as confidential by the IRS with respect to access by other federal agencies will be treated in the same manner with respect to the CPA. Section 207(d).

15. Protection against disclosure of confidential information relating to business practices in the files of another agency: The CPA has access to, and can copy agency files but cannot disclose to the public any information which the host agency has exempted from disclosure or is otherwise exempted by law. (Section 208(b))

16. Protection for business trade secrets that come into CPA's possession: Trade secrets and other confidential business information may not be disclosed under criminal penalty of law, except if necessary to protect public health and safety, or to courts, committees of Congress, and other concerned Federal agencies in a manner designed to preserve confidentiality. (Section 208(c))

17. Protections against disclosure to the public of false or misleading information regarding a business: CPA disclosures may not be inaccurate, misleading or incomplete. Otherwise, CPA will be required promptly to issue a retraction, to take other appropriate measures to correct any error, or to release significant additional information affecting the accuracy of information previously released. (Section 208(d))

18. Protection against "surprise" disclosures to the public information likely to injure the reputation or good will of a business: CPA is required, as a matter of course, to give prior notice to such company and afford an opportunity to comment, unless public health and safety would be imperiled by such action. (Section 208(d)). Injunctive relief to a company which might be damaged is provided for.

19. Protections against unfair comparisons of the products or services of a business: In disclosing information, CPA: (i) must make clear that all products of a competitive nature have not been compared, if such is the case; (ii) must make clear that there is no intent or purpose to rate products compared over those not compared, nor to imply that those compared are superior or preferable in quality to those not compared; and (iii) must not subjectively indicate that one product is a better buy than another. (Section 208(e))

20. Clarification that substantive criteria applicable to agency decisions remain unaffected: Reference in the predecessor bill, S. 1177, to giving "due consideration" to the interests of consumers in agency decisionmaking might have been construed—and was by some—as meaning that added weight was to be given to the consumer interest in regulatory and other decisions involving, e.g., the grant or denial of a license, route, or rate increase. We did not intend to change the substantive standards now applicable and have therefore taken out the reference to "due consideration" requiring only a concise statement as to how, if at all, the consumer interest was taken into account in reaching a decision. (Section 402(a))

FINAL OBSERVATION

The structure and operation of a Consumer Protection Agency need not be hostile to business interests. There are numerous situations where the CPA would, in presenting the case for consumers, find itself advancing or defending a business practice. For example, antitrust law today often frustrates industry self-regulation even where health or safety considerations may be at stake. The television industry, alerted to a potential fire hazard in color TVs two years ago, responsibly assembled in Chicago to upgrade flammability standards only at the risk of possible antitrust suit by the Justice Department. Not untypical, the power lawnmower industry for years has been leery of using collective means to devise an alternative to the rotary blade, which each year is responsible for more than 140,000 injuries, some resulting in death, blinding, or severe disfigurement. The CPA might also help to expedite agency action, as for example in the case of a new drug application before the FDA, where more timely response could promote health or save lives. In these circumstances, the consumer interest in maximizing safety would clearly outweigh the consumer interest in seeing that the antitrust laws are enforced to the letter. Thus, the CPA would expectably intervene on behalf of the legitimate business interest which, in not a few cases, coincides with the legitimate consumer interest.

Mr. JAVITS. Mr. President, this bill is balanced and is responsible legislation. It will offer the consumer a strong voice in his Government's activities, but will not unduly interfere with the legitimate operations of responsible business nor with the orderly processes of government.

POINTS TO BE STRESSED

Mr. President, I have a few basic points that need to be made.

OBLIGATION OF OTHER AGENCIES

First, it cannot be repeated often enough that this agency has no regulatory nor enforcement authority; that the decisionmaking authorities and powers now vested in the other agencies will remain there. What must be drummed home is that the agencies and departments empowered to make the decisions and to take action must continue to do what they think is right. The only obligation they will have with respect to the advocacy rights of the CPA is to let the CPA have the opportunity to present its evidence and arguments, listen to what it has to say and give its views appropriate consideration. If the host agency disagrees with a position taken by the CPA, it must not be afraid, based on the whole record before it, to come to the conclusion it thinks just. The CPA will plead its case; the host agency must make the decision. If the basis for the decision is sound, it will be sustained and respected. The obligation is on the host agency to make its decision on the merits and in no way to feel intimidated by what may be no more than a fashionable idea marked by a sympathetic press.

My own view is that it would be helpful to the various agencies to have the specialized Consumer Protection Agency in the picture. It will help them with the public and the press, which is not so likely to be so quick to jump on an agency for failure to give consideration to consumer viewpoint. I think it is a tremendously important way of organizing the Federal Government.

PRUDENCE OF THE CPA

Second, Mr. President, we have made it very clear that if this Consumer Protection Agency is going to survive, it will have to watch its step. It must be judicious in the positions it takes and in the manner in which it presents them.

For this agency to operate successfully, it must have the confidence of the other agencies and of the business community; both must know that the CPA will act with discretion and prudence and will not be reckless. The restrictions we have imposed on the CPA help set the proper tone. The CPA will have no free-for-all at a host agency's or a company's expense. In large measure we will have to depend on those who are appointed to run the CPA to follow our outline. To best serve the consumer interest they will need the cooperation and trust of their colleagues in the other agencies and in large measure of business. The Administrator must achieve this reputation of respect and even-handedness while at the same time never compromising his advocacy role. He must not be afraid to present an honestly held opinion and fight for it to the fullest; but if a decision goes against him he must respect the honestly held views of others.

ROLE OF COMMISSION AND ADMINISTRATOR

Third, one of the most important protections in the bill, in my judgment—and the Senator from Arkansas (Mr. McCLELLAN) is responsible for having this in the bill—is that the Agency has as its board of directors a bipartisan three-member commission. The chairman of the commission is the Administrator of the Agency.

The report appropriately analogizes this setup to that of a corporation. The commission is vested with the authorities and powers of the Agency, but the Administrator is charged with the full responsibility of carrying on the functions and day-to-day operations. The board of directors of a corporation is vested with the authorities and powers of the corporation, but it is the chief executive officer who carries out the policies laid down by the Board. The Administrator will, as does a chief executive officer, have broad discretion to carry out the responsibilities he will have, but only within the frame of reference of and under the directives given him by the commission. Ultimate responsibility vests with the commission as it does with a board of directors. Throughout the bill, the Administrator is charged with taking certain actions and making certain determinations. Naturally these actions and determinations would follow guidelines put forth by the commission, but the actions and determinations themselves would be made by the Administrator. It would be unwise for the commission to intrude in the daily operation of the Agency, for only chaos and confusion would result, both in the Agency and outside among its sister agencies and in the business community.

Mr. President, I think this is the single most effective safeguard which has now been latched onto the bill.

COMPETING CONSUMER INTERESTS

Fourth, the CPA is not the sole repository of knowing what is best for the consumer. It is not to be thought of by the people of the United States or the other agencies as the one and only consumer voice. This Agency is an advocate; it is charged with presenting and fighting for consumer positions before other agencies. Though it may present to a host agency a variety of consumer concerns upon which a particular agency decision may impact it is expected that it will advocate one interest over another. It, therefore, must be recognized—especially by the host agencies—that there may be competing consumer interests and that often many of them may never be presented.

The host agency is under an obligation to make decision in the public interest. Unlike the CPA it must weigh the impact of its decision on all segments of the society. It, therefore, is of paramount importance in my opinion that decision-making agencies be ever vigilant of all consumer interests. They must keep their doors open to other consumer groups, who must be encouraged to present their own views, and even to solicit their opinions. Sometimes the CPA's positions may coincide with those of private consumer groups, or with businesses or political representatives, but frequently they will not. The host agency should make it easy—by adopting new procedural regulation if necessary or instituting internal watchdogs for such purposes—for these other consumer voices to be heard.

AMICUS CURIAE

Fifth, to give this new agency any less authority to intervene and participate before the other agencies than the bill now provides—that is, to provide "amicus" standing only—would be like giving someone a new car on the condition he is not allowed to buy gas—the car just will not go.

The primary responsibility of the CPA is to represent the consumer interests before other agencies. It will not be able to do this effectively if it does not have authority "as of right" to plead its position fully—as a full party, in the case of "formal" proceedings, for example. The right to intervene or participate in agency proceedings or activities insures that the CPA will have its views heard and that it will be able to develop its position as the situation demands. As an amicus curiae, the CPA would merely be an interested outsider whose views could not be forcefully argued before the decisionmakers. To grant the CPA standing as amicus curiae only would curtail the effectiveness of the CPA. It would deny it the basic tool it needs to get the job done.

Indeed, we believe it would cut down the responsibility of the agency as an agency of the Federal Government to protect consumers. To adopt the amicus would be negating the concept of establishing an advocate agency as a method of helping to better organize the company advocacy functions in Government—instead of having them totally diffused to every Government department—to give them a specific voice, a specific place, a specific point of view, and guidelines under which to operate. So the amicus curiae amendment simply negated the whole theory of Government reorganization in which we were engaged in the Government Operations Committee.

That is not to say that the CPA should be—or has been—given unbridled authority to involve itself in agencies' affairs. To the contrary, the CPA's intervention and participation authority have been carefully defined and limited, as I have discussed before. I have already inserted in the RECORD as part of my remarks a list of limitations and safeguards to show the balance we have struck between the rights of the CPA to be involved and the rights of the host agencies to run their own affairs and retain their authorities and for businesses to be free from undue Government interference. The CPA will not be an interloper, nor a superagency. It will not hamstring the normal course of agency business.

CONGRESSIONAL OVERSIGHT

Sixth, the Congress will maintain a constant oversight of the CPA. The CPA as a responsible agency of Government will be answerable to Congress; generally to its parent committees—Government Operations and Commerce; to the appropriations committees before which it will plead for funds; and in particular instances to the substantive committees which have jurisdiction over the host agencies before which the CPA will appear. It is hardly likely that the CPA will act with reckless abandon. Clearly the limited authorizations of funds will curtail such activity. And if it is to survive, the CPA will have to act exceptionally prudently. It will have to spend its funds wisely and make every effort to respect the "decisionmaking" authority of the other agencies. Section 212 authorizes funds for 3 years. As that authorization expires, Congress will be called upon to either recharge the Agency's batteries or let it die. It is quite unusual in creating a new agency, but we limit it so that we might have a thorough look at it in an effort to test them. Its record over the 3 years will determine what is to be done.

Mr. President, in addition to creating a CPA this bill also provides for a consumer grant program and establishes a three-member Council of Consumer Advisors in the White House.

The grant program authorized by title III is modeled after a bill I introduced. It will serve primarily to upgrade consumer protection on the local level where problems must be dealt with directly and speedily. Clearly consumer protection is the shared responsibility of all levels of Government. Consumer protection should not be the responsibility of, nor can it be handled by, the Federal Government alone. The local unit of Government is frequently in the best position to curtail fraud and deception in the marketplace and to improve the consumer's lot generally, and by encouraging and supporting them we will offer the consumer the quickest and most direct assistance possible. The local governments generally have greater flexibility to respond to their peculiarly indigenous consumer problems; yet because local consumer protection units—some 40 States have some sort of statewide unit—are short of funds, they are of limited usefulness to the consumer.

Title III authorizes the Federal Government for the first time to make consumer protection grants to States and local governments—and limitedly to pri-

vate nonprofit organizations—for the planning and operation of consumer protection programs. The major purpose of this title is to stimulate new approaches and techniques for protecting the interests of consumers in our rapidly changing economy, society, and marketplace. There is great latitude in the type of consumer protection program that can be funded under this title and the bill directs the Administrator to insure that the bulk of the funds are apportioned among the States evenly. Accordingly in this way we attempt to have the limited funds applied to as many different consumer problems as possible. These grant programs have enormous capability for accelerating solutions, making infinitely more efficient and broad, consumer protection programs throughout the country. With this small amount of money we can have a great impact.

Title I establishes the three-member Council of Consumer Advisers in the White House, modeled after the Council of Economic Advisers and the Council on Environmental Quality. It would expand and build upon the present White House Office of Consumer Affairs.

The Government Operations Committee felt that a council of this nature would have greater stature and visibility in the Federal Government and with the public. It would be in a better position and more able to assume the far broader and more profound responsibilities we have prescribed for it, than would be the present Office of Consumer Affairs. The council would coordinate, evaluate, and review the consumer protection programs and activities of the Federal Government. It would develop and recommend national policies on priority consumer matters and new consumer legislation. And it would assist the President with the preparation of the annual consumer report of the President, a report similar to those of the Council of Economic Advisors and the Council on Environmental Quality. The day-to-day operation activities of this high level White House unit would be limited and most of those operational activities, now ongoing in the present office, would be shifted to the CPA.

Mr. President. I would like to pay tribute to Mrs. Knauer, the director of the White House office. Mrs. Knauer's office has functioned well for what it was designated to do. The establishment of this Council should in no way derrogate from her excellent service or the high caliber of her staff. To the contrary the office under her leadership as well as under her predecessors has shown us just how effective a unit in the White House can be and how necessary it is to have one there. If she is continued as the chairman of the council, I think it will only validate this and will show the extent and kind of service that can be rendered in view of the great experience she has had. The fact is that the existence of her office has stimulated us to provide what we think may be an even more effective and useful operation in the White House. This is not to say that an office like Mrs. Knauer's could not function in the way we would like to see the Council function. But the success evidenced by the Council of Economic Advisors and the Council on Environmental Quality in their respective areas leads us to believe that a council may be more suited to serve the consumers than an office.

Mr. President, I would like the Senate to note what I am sure is the sincere desire on the part of the President to have a workable Consumer Protection Agency. The administration does support the House-passed version of this bill and though the Senate bill may differ somewhat I am confident each House can accommodate one another so that we might all unify behind and support the resulting agency and its goals.

On the part of the administration, Mrs. Knauer and her exceptionally able deputy, William Walker, and general counsel, Robert Montgomery, have worked extremely hard on this legislation both in the House and here, and many of their recommendations have been included. While the administration may have reservations about certain provisions and is not yet able to support the Senate bill, the administration should be given large credit for helping us articulate some of the underlying philosophies of the bill. Similarly the Senate should recognize the great assistance and input of Mr. Roger Cramton, former Chairman of the Administrative Conference, who has just recently been appointed Assistant Attorney General for Legal Affairs. In his testimony and during the extensive amount of time he spent with the staff, he and his deputy, Richard Berg, added immeasurably to the soundness of this bill and we should be especially grateful.

In addition, representatives of business, consumer advocates, law professors, and legislators were consulted and the thinking of them has been in some way included in this bill. I think the result is a balanced responsible piece of legislation. It is a refinement of a bill that passed the Senate once before. It deserves to be passed again.

It is really an organization of the advocacy function of the Federal Government in an intelligent, centralized, and effective way. It also seeks to bring down as far as possible to the local level the activities of consumer protection. In no way is it in a position to negate, overrun or veto the work of any other Government agency.

Finally, I wish to repeat, under the amendment of the Senator from Arkansas (Mr. McCLELLAN), the commission that will run the agency has the ability to draw back authority from the administrator which, in my judgment, is the final element of making this a balanced piece of legislation. This bill is of great benefit to all the people as consumers, and it will help Government agencies to do their job. It can be a great reassurance to business that once it goes to the agency with this kind of consumer agency participation, that is it. The decision reached will have a broad acceptance to go forward.

Mr. President, for all those reasons, I very much hope the Senate approves this measure.

Mr. PERCY. Mr. President, I have probably spent more time on the piece of legislation before us at this moment than on any other single measure that I have been involved with in the Senate during the course of the last 6 years. I commend my distinguished colleague from Connecticut (Mr. RIBICOFF) for his excellent and concise explanation of this bill in which I concur completely. He, together with the senior Senator from New York (Mr. JAVITS), has worked studiously and tirelessly for over 3 years in assuring that the legislation before us affords adequate protection for the American consumer and at the same time sufficient guarantees that responsible business enterprises will not be penalized or harassed and that the orderly processes of government will remain intact.

Having myself spent 25 years in the business community, and as a cosponsor of this vital legislation, I was a natural target for businessmen to seek out to stop what some called "dreadful legislation" and as to which others categorized as a "super-agency." I can say without any hesitation that there has been no piece of legislation that I have encountered in my years in the Senate as to which there have been more misstatements of fact and misrepresentations as to impact than has surrounded this bill. I know of no legislation in my years in the Senate as to which more lobbyists have tried to see me. I have met with board chairmen, chief executive officers and general counsels of some of the most outstanding firms in this Nation, as well as with executive directors of trade associations and many others, many of whom, when questioned face-to-face about the measure, have indicated that they have never read the bill but were concerned as to what they had heard about it. Most frequently, as I sat down with them and turned the pages of the bill, we found that the harsh accusations, the innuendoes and the untruths could not be substantiated—indeed were refuted by the very language of the bill.

In fact, some came in for certain types of protection to be incorporated in the bill that were already in it. When I read the particular section to them they would say, "That answers the question, but our trade association did not tell us that."

Many of these trade associations justify their annual salaries and the next dues increase with the vengeance with which they attack legislation of this type. It almost reached ludicrous proportions when I would receive letters addressed "Dear Chuck," from friends of mine in business, 3, 3½ pages long, saying that from their personal experience this is their reaction to this bill; and I had to write back to remind them that it could not be very personal when I had received exactly the same letter, word for word, comma for comma, period for period, all 3½ pages of it, from another good friend of mine who had spoken about his personal reaction to this bill.

I consider it rather an insult to my intelligence not to be able to discern after all these years a form letter written by a trade association, with that good friend of mine or a constituent signing

it without understanding what he was signing.

For that reason I have been somewhat concerned, as we have spent months and months working with highly responsible members of the business community who have found no objection to appropriate legislation, that the rest of the business community has not kept abreast of the fact that we have tried to keep the doors open, we have been open-minded. I can certainly speak for my colleagues from Connecticut and New York, that we have always been willing to listen to reason, bearing in mind that first and foremost this is a consumer economy.

For far too long businessmen have assumed that the purpose of the economy is to serve the producer. That is not true. "The customer is king," should be the adage and guideline that motivates every businessman. It certainly did me in my years in business, and I think it does for 97 percent of the businessmen of this country. They have built their businesses on the success they have had. Most businesses get their increase in business from the satisfaction that existing customers have.

What we are really doing is a great favor to the business community, to find a way to take the low regard in which the American public holds many segments of the business community now, and simply show that the reason for it is the callous attitude adopted by a very small—a minuscule—percentage of business. That small segment stains the reputation of so many of the other businesses that observe a code of ethics which would be considered acceptable, and probably the highest in the world. I do have that regard and faith in the American business community.

In the last few months I, and I am sure Senators RIBICOFF and JAVITS, have found that simply addressing ourselves to the charges against the bill, and patiently meeting with those who were legitimately concerned, had the result of assuaging many of the fears and anxieties which led these people to seek a meeting with me in the first place. I have sat down with the president and other representatives of the Illinois Chamber of Commerce and I have addressed such groups as the Consumer Affairs Council of the U.S. Chamber of Commerce and the National Council of Better Business Bureaus with respect to this legislation. I think it fair to say that after each of these sessions the response back was one of considerable relief that so many of the representations that had been made about the proposed Consumer Protective Agency were in fact unfounded.

Of course, the question that inevitably arises is, Why do we need a Consumer Protection Agency? The answer, and it is a sad one to face up to, is that the consumer has been neglected and kicked around too often by the very regulatory agencies of Government that we have set up to protect him, most particularly and most dismayingly in the important areas of health and safety and fraud where his vital interests are at stake.

To cite an example, for the past 4 years, the manufacturers of several brands of baby cribs have been told by experts that the spaces between bars of their cribs are wide enough to allow a baby to squeeze his body through, but not his head. Each year about 200 infants strangle themselves trying to get out of their cribs, many of them in this way.

In 1969, when the chairman of the board of one of the largest crib firms was informed that the space between the bars of a crib he manufactured exceeded safety limits prescribed by the Food and Drug Administration—FDA—he responded "So what?" He did not "have to justify anything," he said. In a practical sense it seems he was right. That brand of crib, and others with the same hazard, are still on the market even though the FDA holds the power to remove them.

Who, one can reasonably ask, should represent the interests of the thousands of infant consumers who have died in the past, and who will die in the future, because impervious manufacturers and an idle Federal agency refuse to take needed action?

The existence of so many infant crib deaths demonstrates in the most abhorrent way the inadequacy of the present system of caveat emptor—let the buyer beware. No sane parent would buy a crib in which he knows his child can hang himself. But the combined efforts of responsible manufacturers and sellers, of the 1970 National Commission on Product Safety, and of the FDA failed to eliminate their manufacture and sale or to inform all buyers of their dangers. In this instance, "let the buyer beware" literally meant let the children perish.

Such abuses demanded Government action, and this is why we wrote the Consumer Protection Organization Act. This is also why, at the end of the 91st Congress, in December of 1970, the Senate, by an overwhelming vote of 74 to 4, approved legislation to create an independent Consumer Protection Agency whose fundamental structure, functions, authorities, and responsibilities were in all major respects nearly the same as those contained in S. 3970, which is before us today. Unfortunately, because of a tie-up in the House Rules Committee at that earlier time, companion legislation which had been reported out of the Government Operations Committee never reached the floor of the House in that Congress.

In this 92d Congress, however, legislation to establish such an agency, H.R. 10835—which embodies the principle of full party participation where necessary for the CPA and which enjoyed the support of the administration—has been resoundingly approved by the House of Representatives, 344 to 44. This was largely due to the considerable and persistent efforts of Chairman CHET HOLIFIELD of the House Government Operations Committee and of FRANK HORTON, the ranking minority member of the Subcommittee on Legislation and Military Operations which considered the measure, thus reflecting the bipartisan support that this legislation has had from its inception.

I think this would be a very appropriate time to pay high tribute to the former chairman of our Government Operations Committee, Senator MCCLELLAN, who, though he had some problems with the legislation, consistently and steadily tried to help get a quorum on the bill—always trying to move it forward so this Congress could consider this legislation.

In that same spirit, though he has been eloquent in pointing out certain policies and flaws which, in his good judgment and conscience, he has seen in this bill, the new chairman of the Committee on Government Operations (Mr. ERVIN), has himself consistently pushed forward so that we could have this bill in a form—which he disagrees with—which could be considered by this Congress, because he wanted to see the will of the Senate worked on a bill involving 210 million consumers in America.

I pay high tribute to our colleague for the way in which he has conducted the Government Operations Committee since he has taken over the chairmanship, despite the fact that he himself has had very heavy and pressing business in other areas of his Senate responsibilities.

S. 3970 had as its predecessor S. 1177, which was reported out of the Subcommittee on Executive Reorganization on June 13 of this year by a unanimous 7-to-0 margin. After 2 months' consideration by the full Government Operations Committee, on which I am privileged to serve as the ranking minority member—indeed after more than 16 hours of intensive deliberations and discussion—the committee reported the bill on August 17 by yet another lopsided margin of 15 to 2—including proxies—with only Chairman ERVIN and Senator ALLEN voting in the negative. In the course of its consideration, the committee adopted numerous amendments, a good number proposed by its sponsors, which for the most part refined and improved the bill.

In the deliberative process that has gone on this year in the Government Operations Committee, both in subcommittee and in full committee, I can certify to consumers and producers that we have, up to the very moment of putting this bill to bed and reporting it out, continued to refine and improve it. I feel confident that there will be further amendments offered on the floor that will further strengthen and improve this bill.

While providing for a strong and effective voice for consumers, we have been careful to protect the overwhelming number of businessmen from any harassment or unwarranted intervention in their businesses.

REGULATORY NEGLECT

The Consumer Protection Agency will be a serious inconvenience only to businessmen such as the crib maker I have described. Businessmen of that ilk, who guide their firm by caveat emptor, have yet to learn that whatever short-term gain they make at the expense of the consumer costs them in the long run and leads to further long-term, industry-wide Government intercession in the marketplace.

The position I take as a public official today is no different from the position

I have taken for 25 years in business. The worst enemies the business community has are some men in business who feel that by short-changing and by short-circuiting the marketplace and its normal functions, by finding some way to cut corners through trade practices that are illegal or reprehensible, they can obtain an advantage. They are the ones who do more damage to business than anyone else. This measure is for the interest of the overwhelming majority of the business community. We feel that the Consumer Protection Agency actually will serve the best interests of the whole economy and of reputable business enterprises in this country.

But the practices that we know of, which are being practiced at this very moment, that we are condemning and wish to seek out, expose, and eliminate, are not of recent vintage. It goes back many, many years, in the history of the business community. And this is true not just for this country, but has been true for as long as business has ever been done between people on earth, at any point in civilization.

But in our country's history, as early as 1887, the price gouging tactics of a number of railroads led to the creation of the Interstate Commerce Commission and the regulation of all rates charged by any interstate carrier. In 1906, a Congress sickened by the poisoning stench of some food processing plants created what is now the FDA to regulate the purity of all food shipped in interstate commerce.

But despite the creation of these and other regulatory agencies, despite the development of hundreds of consumer protection programs, the regulatory process has too often permitted consumer safety and welfare to be compromised.

Let me remind my colleagues of but a few recent examples of documented regulatory neglect:

In the spring of this year it was discovered that almost 1,250,000 chickens tainted with PCB—polychlorinated biphenyls—a DDT-like industrial chemical linked with skin irritation in humans—had been destroyed in Maine after discovery was made by Agriculture Department officials. Who, among the responsible Federal inspection officials, was sleeping on the job to have permitted so many chickens to have become contaminated without earlier discovery? This disclosure followed on the heels of a General Accounting Office report to Congress sharply criticizing the Department's inspection of poultry plants and citing such unsanitary conditions as:

Filthy and debris-strewn floors;

Greasy conveyor motors and rollers congested with fecal material, feathers, and dirt;

Dusty, cobwebbed ceilings and green algae on the walls of coolers; and

Rusty, dirty equipment, with heavy blood accumulations from previous slaughter.

While 4,000 people die annually from clothing burns, and even though in 1967 Congress amended the Flammable Fabrics Act to provide much more stringent fire prevention standards, the Commerce Department did not announce standards for infant sleepwear until last year and we must now wait until next year for the standards to take effect.

Some 200 children under the age of 6 die annually from lead poisoning contracted by eating paint chips with lead content from cracked or peeling walls; all told, between 50,000 and 100,000 children take in enough lead each year to require medical treatment. Reacting, the Department of Housing and Urban Development—HUD—last year banned the use of paint containing more than 1-percent lead by weight in the construction or renovation of federally assisted owned or mortgaged residential property. But this year HUD quietly circulated a directive to its regional offices exempting HUD-owned properties from the ban.

In August 1971, a secret agreement was negotiated between Food and Drug Administration officials and particular suppliers of leaded Christmas tree tinsel. FDA dealt away its obligation to inform the public of the hazard in return for the manufacturer's promise to discontinue manufacturing the leaded tinsel after Christmas 1971, and discontinue sales of the tinsel after Christmas 1972—this coming Christmas.

Despite the complaints of hundreds of Corvair owners of odors and fumes entering the passenger compartment through an alleged faulty heating system—and instances of carbon monoxide poisoning reported—the National Highway Safety Bureau in the Department of Transportation even today stands by without taking action.

Local Federal Housing Administration—FHA—officials in Chicago permitted wholesale fraud and corruption in the operation of mortgage insurance housing programs to go on right under their noses.

Here is something that I feel very deeply about, because I came to the Senate of the United States 6 years ago with one particular concept foremost in mind and ready to go on a piece of legislation. I introduced it in Congress. At that time, it seemed to me wrong that for 30 some years, FHA had been subsidizing middle-income families to build homes essentially in the suburbs, to become homeowners, to become a part of this country, to own something, to have something of their own. But at the same time, FHA was then building high rise public housing for the low-income people crowding them all together and sticking them all in the same area. In Chicago it is the Robert Taylor homes, where crime and the chance for a woman to be raped, robbed, or murdered are multiplied, in fact, by some 40 times in Federal public housing projects over those in any other part of urban America.

So we looked for a new concept, and after several years of struggle, it became the law of the land, bipartisanly supported, that lower income people should have the opportunity to buy their own homes. Instead of putting them in federally owned projects, we give them a chance to buy their own housing. We give them a chance to accept a subsidized interest payment if they look as though they are a good risk for the future. They have a chance to work their way out of the subsidy, and if they cannot make a down payment in cash, they can contribute sweat equity.

We called in the housing industry, we called in the mortgage people, and we told them of this new type of legislation that would be such a boom for the housing industry and for the low-income people. We told them how ludicrous it was for this country to be helping people in Latin America with 2 percent loans, and forcing every low-income person in this country to seek a loan at the regular rate of interest, without any assistance or help from the Federal Government.

Some people asked, "Well, why should they be subsidized in this area?" I could only reply that middle-income Americans and high-income Americans have been subsidized, in that they can deduct their interest costs and their tax payments.

But what happened? This legislation went into effect, and we now have, particulary in the area of section 235 homeownership programs and section 236 rental and cooperative housing programs, agency officials who ignore unscrupulous operators and fast-buck artists who are bilking low-income families and defrauding the public treasury. Similar problems involving FHA administration of Federal housing programs have been documented on the front pages of major dailies throughout the country.

This is now the subject of grand jury investigations in a number of cities. But if we had an alert, aggressive consumer protection agency where complaints could have been brought from St. Louis or Chicago or New York, as they would have been brought, the situation might have been different. But here they purchased a house and signed a 30-year mortgage for a house that probably will not last 15 years. They were talked into it by some fast-buck operator who did not even read to them the fine print in the contract and who committed them to this mortgage and sold them a house that should not be valued at more than $17,000, but he put a value of $24,000 or $23,000 on it because, after all, the Government was paying for it. These are the representations that were made.

If enough of these had come in so that we could have seen a pattern early enough, these persons would have been saved hundreds of millions of dollars and much grief.

As it is, the problem has worked out reasonably well, despite these abuses, and we have almost a million people living in these homes. But how much better it would have been if we did not have to tie up the courts across the country now, tie up FHA, tie up HUD, tie up any number of agencies, if we could have had someone looking out for the interests of the unsuspecting consumer, moving in on this situation in an earlier time and alerting HUD to the potential danger that we were moving into.

Other examples abound:

Ruling against a majority of its own advisors, the Labor Department in June of this year decided to give industry more than 4 years to cut in half the 20 to 30 million hazardous asbestos fibers in the air which workers breathe.

Just last month the General Accounting Office—official watchdog of Congress

over the executive branch agencies—charged the Bureau of Mines with laxity in failing to enforce Federal coal mine safety standards against flagrant violation by some mine operators.

And in March of this year the Government Accounting Office told Congress that the Division of Biologics Standards—DBS—in the National Institutes of Health was guilty of a callous disregard for public health and safety in permitting the sale of ineffective and potentially hazardous flu vaccines to the public. From 1966 through 1968, DBS indiscriminately approved subpotent dosages of influenza vaccine and thereby subjected Americans to more than 60 million doses of what may have been worthless prevention, or worse. The agency failed to turn down a single lot of flu vaccine, even though some contained as little as 1 percent of the required strength. Of 221 lots released during the period, 130 did not meet standards established by the agency itself. Inasmuch as the side effects of these inoculations—including extreme fever, rash, incapacitating diarrhea, and cramps—can be severe, I suspect that for thousands, if not millions, of Americans, their attempts to protect themselves from illness were actually much more harmful than no protection at all. The DBS blunder illustrates that the American public has been deceived into believing that, because an agency of the Federal Government has been set up to afford protection, the public is indeed being protected. But the tragic truth is: that just is not so.

Before this act became law, the distinguished Senator from Connecticut, the distinguished Senator from New York, and I accepted the spirit of this legislation. When we were advised that a public notification would be put out naming the 10 manufacturers who had been responsible for the manufacture of these vaccines, we asked that reasonable notice be given to these manufacturers so that they might prepare simultaneously whatever statement they wished, to protect their own integrity, to explain what they had done, to give any amount of detail they wanted about the circumstances of the charges that were being made against them. I recall that telephone calls were made by our respective offices, so that the spirit of this law could be enacted and implemented.

These 10 manufacturers, when the charge was being made against them, were protected, in that they could then respond and provide answers.

This is one of many protections built into this measure so that businesses cannot in the future, as they have been in the past, be caught absolutely offguard, unsuspecting that any charge was to be made, and then finding themselves on page 19 in answering a charge several days later, when the charge itself was on page 1. We considered this grossly unfair. Now they all have a chance to be on page 1, if it is of enough public interest; but at least the company has a chance to put in a response.

Too often, as these examples indicate, the regulatory agencies are sloppy, seemingly unconcerned and negligent. In themselves the frequency and severity of these mistakes require the intercession of a consumer advocate to protect the consumer interest.

But the need is deeper and involves the day-to-day operation of hundreds of programs where honest, conscientious Federal regulators are willing to respond to reasonable arguments presented in an effective manner. The problem lies in the fact that more often than not the consumer viewpoint goes unargued.

Take, for example, the recent case where the airline industry requested permission from the Civil Aeronautics Board for a price increase that, now granted, requires a consumer to pay almost 3 percent more on domestic flights.

That amount will almost certainly not be significant enough to the individual consumer to justify his hiring an advocate to protest to the agency. For the industry, however, that relative small percentage increase multiplied by thousands of flight bookings will represent millions of dollars. When a Federal agency is about to make a decision that may mean just a few dollars in price increases for millions of consumers, but millions of dollars in sales for a few producers of goods or suppliers of a service, it is no wonder that the consumer's voice is barely heard, if heard at all.

For each consumer this process may be repeated with hundreds, even thousands, of goods and services. Even though in recent years a number of consumer interest organizations have been formed, they are too few and too inadequately funded to counterbalance the resources of the regulated industries. As long as the consumer interest lacks an effective way of presenting its position, no agency—no matter how honest and competent—can be expected to take full and accurate account of that interest. And, as long as that imbalance exists, it also gives individuals such as the manufacturer of a potentially deadly baby crib an opportunity to say, "So what?"

SAFEGUARDS

But, as I mentioned earlier, S. 3970 reflects a deeply felt sensitivity on the part of its sponsors and others on the Government Operations Committee for the legitimate interests of responsible businesses in this country. In the course of the drafting of this legislation, while it was before the Subcommittee on Executive Reorganization, and in sessions involving the full Government Operations Committee, I personally sponsored or supported a series of safeguards against undue interference by the Consumer Protection Agency with responsible business practices and the orderly processes of government. Among these safeguards are the following:

1. The CPA will have no regulatory authority. It will not be able to overrule, veto or impair any Federal agency's final determinations. The participation rights granted to the CPA are procedural only, not substantive, such that no authority granted to the CPA shall be construed as superseding, supplanting, or replacing the jurisdiction of any agency over any subject matter, nor deprive any agency of its responsibility to exercise its authority under law. (Section 3(3), Declaration of Purpose)

2. Limitation on CPA interventions: Authority to intervene as of right as a party is granted to the CPA in formal agency proceedings, but the Administrator must exercise discretion and avoid unnecessary involvement. He is to refrain from intervening as a party unless he determines that such extent of involvement is necessary to represent adequately the interests of consumers. Where submission of written briefs or other material is sufficient, or presentation of oral argument is sufficient, he is to exercise self-restraint and limit his involvement accordingly. (Section 203(a))

3. Protection against disruption and delay of agency proceedings and activities: Upon intervening, or participating in formal agency proceedings, the Administrator must comply with the host agency's statutes and rules of procedure governing the timing of his participation and the conduct of such proceeding (Section 203(a)). In participating in an informal agency activity, the Administrator must do so in an orderly manner and without undue delay. (Section 203(b))

4. Protection against CPA intrusion in the private meetings and discussions between a Federal agency and a particular business firm: While the CPA may present orally or in writing relevant information and arguments (section 203(b)(1)), it is not granted the right or authority to be present at any particular meeting or discussion, nor to monitor any phone conversations, between an agency and a company. Instead, it need only have an opportunity *equal* to that of the company to present its views. CPA's participation, therefore, need not be simultaneous (and generally will not be) but need only occur within a reasonable time of any prior involvement by such company or at a time when it might reasonably have an input into a contemplated agency action. (Section 203(b)(2))

5. Protection against misuse of a host agency's compulsory process: Where the CPA seeks to use an agency's subpoena authority for discovery purposes, the host agency retains discretion and control over such use. CPA's request must be: (i) relevant to the matter at issue; (ii) not unnecessarily burdensome to the person from whom the information is sought; and (iii) not such as would unduly interfere with the conduct of the host agency proceeding—all to be determined by the host agency, not the CPA. (Section 203(e))

6. Protection against unfair advantage to CPA in requiring information from businesses: The compulsory information gathering authority of the CPA (Section 207(b)) may not be exercised to obtain information which: (i) is available as a matter of public record; (ii) can be obtained from another Federal agency; or (iii) is for use in connection with his intervention in any pending agency proceeding. (Section 207(b)(2)). The Administrator's request under Section 207 must relate to consumer health or safety or consumer frauds and be specific as to the purpose for which the information is intended. Moreover, the request must be relevant to that purpose and not unnecessarily burdensome to the person from whom the information is sought. The scope of the Section has been limited so as not to require the production of records, books, or documents, the appearance of witnesses, or the disclosure of information which would violate any relationship privileged according to law. (Section 207(b)(1))

7. Protection against arbitrary, capricious or vindictive intervention by CPA: The determination by the CPA that a consumer interest may be substantially affected by the result of an agency proceeding will be subject to ultimate judicial review if there was prejudicial error involved. (Section 201(e)(1)(B)). The Administrator is required explicitly and concisely to set forth in a public statement the interests of consumers he is representing in a particular agency or court proceeding. (Section 402(b))

8. Protection against unwarranted allegations in complaints from consumers against business, its products or services: Upon receipt of consumer complaints, CPA will as a matter of course promptly notify the company named, furnish it a copy of the complaint, and afford it a reasonable time in which to respond to the charge. Both the complaint and the company's response will be placed in the public file simultaneously, together with any comments or report from any Federal agency to which the complaint was referred for action. Frivolous, malicious and unsigned complaints will not be placed in the public file. (Sections 206(b) and (c))

9. Protection against disclosure of confidential information relating to business practices in the files of another agency: The CPA has access to, and can copy agency files, but cannot disclose to the public any information which the host agency has exempted from disclosure or is otherwise exempted by law. (Section 208(b))

10. Protection for business trade secrets that may come into CPA's possession: Trade secrets and other confidential business information may not be disclosed under criminal penalty of law, except if necessary to protect public health and safety, or to courts, committees of Congress, and other concerned Federal agencies in a manner designed to preserve confidentiality. (Section 208(c))

11. Protections against disclosure to the public of false or misleading information regarding a business: CPA disclosures may not be inaccurate, misleading or incomplete. Otherwise, CPA will be required promptly to issue a retraction, to take other appropriate measures to correct any error, or to release significant additional information affecting the accuracy of information previously released. (Section 208(d))

12. Protection against "surprise" disclosures to the public of information likely to injure the reputation of good will of a business: CPA is required, as a matter of course, to give prior notice to such company and afford an opportunity to comment, unless public health and safety would be imperiled by such action. (Section 208(d)). Injunctive relief to a company which might be damaged is provided for.

13. Protections against unfair comparisons of the products or services of a business: In disclosing information, CPA: (i) must make clear that all products of a competitive nature have not been compared, if such is the case; (ii) must make clear that there is no intent or purpose to rate products compared over those not compared, nor to imply that those compared are superior or preferable in quality to those not compared; and (iii) must not subjectively indicate that one product is a better buy than another. (Section 208(e))

14. Clarification that substantive criteria applicable to agency decisions remain unaffected: Reference in the predecessor bill, S. 1177, to giving "due consideration" to the interests of consumers in agency decisionmaking might have been construed—and was by some—as meaning that added weight was to be given to the consumer interest in regulatory and other decisions involving, e.g., the grant or denial of a license, route, or rate increase. We did not intend to change the substantive standards now applicable and have therefore taken out the reference to "due consideration" requiring only a concise statement as to how, if at all, the consumer interest was taken into account in reaching a decision. (Section 402(a))

Perhaps most important of all, as I have insisted from the outset, the structure and operation of a Consumer Protection Agency need not be hostile to business interests. There are numerous situations where the CPA would, in presenting the case for consumers, find itself advancing or defending a business practice. For example, antitrust law today often frustrates industry self-regulation even where health or safety considerations may be at stake. The television industry, alerted to a potential fire hazard in color TV's 2 years ago, responsibly assembled in Chicago to upgrade flammability standards only at the risk of possible antitrust suit by the Justice Department. Not untypical, the power lawnmower industry for years has been leery of using collective means to devise an alternative to the rotary blade, which each year is responsible for more than 140,000 injuries, some resulting in death, blinding, or severe disfigurement. The CPA might also help to expedite agency action, as for example in the case of a new drug application before the FDA, where more timely response could promote health or save lives. In these circumstances, the consumer interest in maximizing safety would clearly outweigh the consumer interest in seeing that the antitrust laws are enforced to the letter. Thus, the CPA would expectably intervene on behalf of the legitimate business interest which, in not a few cases, coincides with the legitimate consumer interest.

COUNCIL OF CONSUMER ADVISERS

I am pleased to be able to report that one of the major provisions of S. 3970, which has received virtually no opposition either from the business community or in the Government Operations Committee, involves the establishment in title I of a Council of Consumer Advisers in the Executive Office of the President. The Council, replacing the existing Office of Consumer Affairs in the White House, would be patterned after two existing high-level advisory structures of proven effectiveness; namely, the Council of Economic Advisers and the Council on Environmental Quality.

We recognize that there is nothing mystical about the concept of a three-member council, but inasmuch as this organizational structure has already been created for the economy and the environment, it makes eminent good sense to provide for a parallel structure for the vital function of assuring that the President is directly informed with respect to the consumer impact of administrative decisionmaking, and that the various consumer functions that are carried out throughout Government are coordinated with one another.

The Council would primarily deal with advising and assisting the President in establishing consumer priorities and policies and in managing consumer protection programs. The Council would engage in:

First. Evaluation of the performance of current consumer protection programs in relation to the needs and the objectives of the programs;

Second. Coordination of consumer protection programs, especially those where authority is shared by several agencies;

Third. Formulation of new consumer protection policies and programs; and

Fourth. Analysis of the impact of other Federal policies and programs upon consumers.

A statutory council, free of the day-to-day operation of consumer programs and able to fully concentrate on policy, would have greater stature, visibility, and credibility with both the Federal Government and the public. It would expand and build upon the work of the Office of Consumer Affairs.

Mr. President, S. 3970 represents literally years of conscientious study, refinement, and improvement on the part of its sponsors and supporters. The bill provides the Senate with an opportunity to temper the arrogance, cynicism, and callousness of those who would deceive, cheat, injure, or even kill buyers and users of goods and services; it affords the opportunity to help protect and preserve the integrity of the overwhelming percentage of business and responsible Government officials who do have the public interest in mind. Passage of the Consumer Protection Organization Act of 1972 will mean that the American consumer can soon be represented at the highest levels of Government, before regulatory agencies, and in the courts by highly trained professionals voicing, fighting for, and enduring on behalf of the consumer interest.

This is a cause which the Senate resoundingly endorsed less than 2 years ago and I trust will endorse again by an even more overwhelming vote.

Mr. ERVIN. Mr. President, I ask unanimous consent that during further consideration of the pending business, the following persons from the Committee on Government Operations be permitted the privilege of the floor, so that they may help any Member who may have any questions about the proposed legislation, which they helped develop: James R. Calloway, Thomas M. Gunn, Arnold Smith, Eli Nobelman, and Max Parrish.

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

Mr. KENNEDY. Mr. President, the establishment by Congress of a full-time consumer advocate is long overdue. Through the years our Government has experimented with various methods of promoting advocacy of the consumer's interest within the various agencies and departments, dating back to the Consumers' Counsel established in the Coal Commission in 1935. President Johnson established an Office of Consumer Counsel in the Justice Department in the mid-1960's; recent legislation setting up the Postal Service provided for a public counsel to participate in rate proceedings. The Consumer Protection Agency represents a culmination of decades of these piecemeal efforts, and would build into the federal system generally an independent voice for the interests of the American people as consumers.

Much of the administrative process works in an adversary manner, even when rulemaking is involved. But too often the adversaries all represent special interests vying for a favored position in the marketplace. The interests of big business are never forgotten in proceedings affecting their interests; the Washington lawyer sees to that, perennially subjecting the agencies to lopsided pressures. The large economic blocks in our society can afford to hire agents who

keep tabs on agency activities and are alerted usually before actions affecting their interests are initiated. Whether over cocktails or at lunch, or through the Federal Register or trade journals, industry's representatives stand ready to do battle. At hearings they appear with an army of engineers, economists, and other experts—in quadruplicate—to persuade the agency that the public interest or the public convenience and necessity coincide with their position. Yet all the while the voice of the consumer is drowned out by competition of these more particularized interests.

It is no secret that particularized interests have found effective representation within the structure of the Federal Government. Hardly a day goes by without the newspapers carrying further evidence that the agencies have become captives of the industries they regulate. The Department of Agriculture represents the farmer. The Department of Commerce represents the businessman. The Interstate Commerce Commission represents the carrier. So far, however, the consumer does not have his own, independent, exclusive spokesman.

Last year a study completed for the National Product Safety Commission analyzed the scope and adequacy of the automobile safety, flammable fabrics, toys, and hazardous substances programs of the Department of Transportation, Commerce, and Health, Education, and Welfare. That study concluded:

> To counter industry arguments and institutional constraints limiting vigorous agency action, an independent voice speaking for the generalized consumer interest should be intruded into the administrative process. That voice should be heard in the critical phases of standard setting before specific proposals are published, and later, when formal proposals have been formulated. The ubiquitous presence of the consumer spokesman should stiffen the spine of the most timid official.

At last count, over 50 separate bills had been introduced in Congress to provide, in some manner, representation for the consuming public—often broadly defined—before Federal agencies. All of these would, among other things, give consumers a vehicle through which their interests could be translated into effective representation and channeled through the proper administrative channels to reach Government decisionmakers.

Proposed legislation would have placed this public advocate in a Cabinet-level agency, in an independent agency, in the Executive Office, in the Justice Department, or in an independent public corporation. Each approach had its advantages and disadvantages, and many of these have been brought out in hearings on the bills. In short, the need for a full-time consumer advocacy agency at the Federal level has been well established. After hearings extending over 3 years in various committees, the Consumer Protection Agency established by S. 3970 has been determined to be best designed to meet this need.

I, myself, authorized a bill to create a Public Counsel Corporation—an independent Federal agency to represent the views of the public in administrative proceedings. This bill was one of the first, if not the first, proposal for a strictly advocacy agency, with no regulatory or product-testing functions. Hearings were held before my Administrative Practice Subcommittee and witness after witness brought out the urgent need for the establishment of an institutional voice in Washington for the consumer. I am most pleased to see that the proposed Consumer Protection Agency will be able to shoulder the burdens for which my Public Counsel Corporation was designed; in many respects it is a stronger, more comprehensive bill, and it has my full support.

As has been pointed out on numerous occasions, hundreds of Federal consumer protection activities are spread out among dozens of departments and agencies. Thousands of decisions are made each day affecting every aspect of our lives, while we often stand by wondering whether the Government—our Government—exists of the people and for the people, or whether it merely exists for its own sake. The average consumer does not know who makes the decisions here in Washington, or how they are made. And he is not involved in the process by which they are made. But he knows one thing: those decisions affect him, and he must live with their outcome. The consuming public want to be heard on decisions affecting them, and the decisionmakers desperately need to hear fully and forcefully the views of consumers. But in the past the consumer's voice has seldom reached the decisionmaker, and the quality public regulation and administration has suffered the consequences. The Consumer Protection Agency can fill the void, providing a new, vigorous advocate to assist all government agencies in responding more directly to the real needs of the American public.

Mr. MOSS. Mr. President, the Committee on Government Operations is to be congratulated for reporting out this outstanding piece of legislation, one which will protect and preserve the rights of the American consumer. S. 3970 has been a long time in coming, but through the diligent efforts of the Committee on Government Operations, we at last have a very fine bill, one that has bipartisan support, and one that is wholeheartedly endorsed by the American public.

In the 91st Congress, I was particularly close to the development of S. 4459, which was the Consumer Protection Organization Act of 1970. As you will recall the legislation passed the Senate by a 74 to 4 vote after having been favorably reported by both the Committee on Government Operations and the Senate Commerce Committee. I presided over hearings on that legislation and thoroughly investigated existing State and local consumer protection activities. Additionally we paid close attention to the activities of the Federal Trade Commission and the Office of Economic Opportunity which are the primary Federal agencies involved in State and local consumer protection programs.

Let us make clear what the Consumer Protection Organization Act does and does not do. It does not create a new Federal regulatory agency. It does not have the power to interfere with a businessman's way of doing business. It does not issue comparative lists of products. It does not interfere in any way with the private concerns of the public or the business community.

What does the Consumer Protection Organization Act do? First, it establishes a Council of Consumer Advisers similar to the Council of Economic Advisers. The Council would issue an annual report on the status of the consumer interest as well as recommend program priorities, assist in program coordination, develop new policies in legislation, and evaluate current consumer programs. The bill would also establish a Consumer Protection Agency which would be headed by a Commission appointed by the President with the advice and consent of the Senate. This agency would represent the consumer interest before Federal agencies and in courts, it would receive and transmit consumer complaints, it would conduct surveys and research concerning the interest of consumers, it would disseminate information relating to consumer interests, it would publish a Federal Consumer Register of information useful to consumers, and it would make grants to States, localities, and nonprofit private organizations to encourage and assist consumer protection programs and activities.

Far and away the most important functions of this agency are its advocacy functions. From our investigation of various consumer legislation both in the 91st and 92d Congress, we have learned that the energy and effectiveness of consumer protection regulations diminishes in direct proportion to the absence of vigorous external surveillance and initiatives. No single fact of bureaucratic life emerges with more striking clarity from legislative oversight activities of the Senate Commerce Committee.

Unhappily we have witnessed a virtually unvaried pattern, first a growth and promise, then debilitation, in the implementation of consumer laws. Congress enacts a new law; the agency charged with regulatory responsibilities issues a bold pronouncement of its plans for implementation, Congress turns its attention to new issues which press for the legislative limelight. Then come the inevitable delays in implementation; regulations are eroded; the agency begins to lose its initial sense of mission and purpose. In the end, the agency finds itself facing every day only one consistently concerned constituency—the very industries that it regulates. For example, just today I read in the trade press that some sleepwear manufacturers, in an effort to avoid the standard for children's sleepwear promulgated by the Department of Commerce under the Flammable Fabrics Act, have renamed their products playwear, thus attempting to evade the meaning and intent of the Flammable Fabrics Act and the standards promulgated.

Mr. President, there must be someone present to speak for the consumer and to present a balanced picture for those agencies of government which must

make the decisions. That is one of the primary functions of the Consumer Protection Agency and that is why I endorse this legislation and urge Senate approval.

There will be a number of amendments which the distinguished chairman of the Committee on Commerce, Senator MAGNUSON, and I will jointly offer, but these are merely to clarify and strengthen several provisions of the bill reported by the Committee on Government Operations. It is truly a fine piece of legislative draftmanship and a positive contribution to the public good.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed a joint resolution (H.J. Res. 1304) authorizing the President to proclaim October 1, 1972, as "National Heritage Day," in which it requested the concurrence of the Senate.

HOUSE JOINT RESOLUTION REFERRED

The joint resolution (H.J. Res. 1304) authorizing the President to proclaim October 1, 1972, as "National Heritage Day," was read by its title and referred to the Committee on the Judiciary.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that today, September 21, 1972, he presented to the President of the United States the following enrolled bills:

S. 1031. An act to credit certain service rendered by District of Columbia substitute teachers for purposes of civil service retirement;

S. 2478. An act to provide for the disposition of funds to pay a judgment in favor of the Shoshone-Bannock Tribes of Indians of the Fort Hall Reservation, Idaho, as representatives of the Lemhi Tribe, in Indian Claims docket numbered 326–I, and for other purposes; and

S. 2575. An act for the relief of William John West.

Mr. RIBICOFF. 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. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER FOR RECOGNITION OF SENATORS CHILES, PACKWOOD, PROXMIRE, FULBRIGHT, HART, HUMPHREY, ROBERT C. BYRD, AND SCOTT TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow, immediately following the recognition of the two leaders under the standing order, the following Senators be recognized, each for not to exceed 15 minutes and in the order stated: Mr. CHILES, Mr. PACKWOOD, Mr. PROXMIRE, Mr. FULBRIGHT, Mr. HART, Mr. HUMPHREY, Mr. ROBERT C. BYRD, and Mr. SCOTT.

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

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the recognition of Senators under the orders aforementioned, there be a period for the transaction of routine morning business tomorrow for not to exceed 15 minutes with statements limited therein to 3 minutes.

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

ORDER TO CONSIDER AMENDMENT TO FOREIGN ASSISTANCE ACT TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow at the conclusion of routine morning business the Senate proceed to the consideration of H.R. 16029, an act to amend the Foreign Assistance Act of 1961.

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

ORDER FOR S. 3970 TO BE LAID ASIDE TEMPORARILY TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the unfinished business, S. 3970, be temporarily laid aside at the conclusion of routine morning business tomorrow and that it remain in a temporarily laid aside status until a time later in the day to be decided by the distinguished majority leader or his designee.

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

ORDER FOR RECOGNITION OF SENATOR BEALL ON MONDAY, SEPTEMBER 25, 1972

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

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

PROPOSED PROCEDURE FOR RECOGNITION OF SENATORS UNDER SPECIAL ORDERS

Mr. ROBERT C. BYRD. Mr. President, I ask the indulgence of the Chair and other Senators, awaiting at the moment word from a Senator as to the possible alteration of time on Tuesday next when the Senate will begin voting under the order entered earlier today by the distinguished majority leader.

In the meantime, may I just say that with respect to unanimous-consent orders for the recognition of Senators for 15 minutes, we have now been operating for a couple of years under a procedure by which unanimous-consent orders for the recognition of Senators prior to the morning business may be entered on any day of actual session prior to the day when such speech is to be delivered. The procedure has worked very well in the main, but it probably would be useful to all Senators if the following could be carefully noted.

First. The 15-minute order must be secured on a day of actual session prior to the day on which the order is to be executed.

Second. A Senator for whom such order is entered must personally be on the floor himself to control the time—although he may yield to others for a colloquy—when it is reached or the order will have to be vacated.

In other words, a Senator could not call up on the telephone and ask that his time be allotted to another Senator who has a 15-minute order. If that were permitted, a half-dozen Senators could get orders entered for recognition of themselves for not to exceed 15 minutes each and could later call in and ask that Senator X, who had 15 minutes under an order, be given their time, and that particular Senator would be able to speak for an hour and a half or so.

Third. Any request to extend the 15-minute period for an additional minute or so has consistently been objected to over the past 2 years and will be objected to in the future. This is necessary, and no exceptions have been or can be permitted or else things will get out of hand, and the procedure which has worked rather well will be useful. Fifteen minutes is the maximum order, but orders for less time—say 10 minutes—may be gotten.

Fourth. It will make for smoother operation and avoid inconvenience to all Senators if he or his own personal staff member will contact my whip office notifying me that the Senator definitely wants a 15-minute order entered for a certain date.

Fifth. A Senator for whom a 15-minute order is entered must be on the floor when the Chair reaches his order. Otherwise, if we are notified that the Senator is on his way, although his order will not then be vacated he runs the risk, depending upon the circumstances, of having the time run against his 15-minute order.

Sixth. Speeches under the 15-minute orders always occur at the beginning of a day, and prior to morning business.

At best, slip-ups can occur and there is no foolproof method, of course, but during the last day or so, orders have been entered for Senators when the Senators apparently were not personally desirous of having the orders entered or did not personally initiate the requests. If a Senator personally requests the leadership to enter an order it can be expected that the Senator will be on the floor at the time his order comes up. The Senate comes in early to accommodate such orders; therefore, if a Senator does not show, the Senator is kept waiting.

What I have said is not offered by way of criticism at all, but if Senators or their own staff members would call the whip office or contact me or my secretary

we will do everything we possibly can to see that their requests are entered and everything possible will be done to notify each Senator for his own convenience as to when his order will occur, as to where in the lineup he will appear. It is hoped that the staffs of Senators would also keep the foregoing in mind. Staffs can be more helpful to Senators if they know the procedures being followed, and this will also assist the leadership in its desire to accommodate all Senators, and at the same time keep the business on the track and expedite the flow of legislation.

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

Mr. ROBERT C. BYRD. I yield.

Mr. ALLEN. I wonder if it would not be helpful also to the Senate if each Senator applying for time would state in capsule fashion the nature of the remarks he plans to make. Just recently the Senator from Alabama was on the floor when one Senator, and it has happened many times, offered a highly controversial resolution and asked unanimous consent that it might be considered at that time. With respect to the 15-minute orders, if it be understood they are merely for the purpose of making a speech, that might be fine; but if it causes the Senate to take action, would it not be well for the Senate to be advised of their plan or at least the nature of the remarks they intend to make?

Mr. ROBERT C. BYRD. It would be helpful to all Senators, I say to the distinguished Senator from Alabama. I, personally, would feel hesitant, however, to ask a Senator what he is going to talk about, but I think it would be helpful if Senators would indicate the subject matter of their statements. Other Senators might want to come to the floor and listen.

Mr. ALLEN. I appreciate the remarks and plans of the distinguished Senator from West Virginia.

Mr. ROBERT C. BYRD. The leadership wants to express appreciation to all Senators for the splendid cooperation they have shown in the past, and hopes it will continue to have the understanding of Senators in this procedure which has been so helpful in saving the time of all Senators, in expediting the business of the Senate, and in taking up Senate matters in conformity with a dependable scheduled order.

There was a time, Senators will remember, when if any Senator chose to speak for 3 minutes, he could get it extended ad infinitum. There were times when I heard 3-minute speeches become 2- and 3-hour colloquies. As a result, the unfinished business or the bill to be taken up as the pending measure was delayed for most of the day, and the legislative business suffered.

It was for that reason that some Senators on both sides of the aisle suggested this procedure, so that they would know when they were to appear, early speeches would be limited, and the Senate could get on to its business at a predictable hour. This has worked out well. As I have said, there are times when things break down a little, and occasionally it is well for the RECORD to just state what the procedures are that we are trying to follow.

ESTIMATED FUNDS AVAILABLE UNDER THE REVENUE SHARING BILL

Mr. COOK. Mr. President, I would like to share with my colleagues in the Senate an article appearing in the September 22, 1972 National Association of Counties News. The article, written by Larry Naake, legislative representative to NACO, outlines the Senate-House conference agreement on the Revenue Sharing Act. It contains the estimated funds for each State as well as the overall State share and local share. The figures in this article have been confirmed as well as the overall outline. I would like to point out one error in the article which was a misprint. After each State was given its highest total under either the Senate or House bill it was necessary to reduce the figures on a percentage basis so that the overall $5.3 billion ceiling could be maintained. This percentage figure is 9.1 percent instead of the 8.3 percent quoted in the article.

I am bringing this to your attention because my office for 1 week has been barraged with phone calls from various city and county officials and State government departments who, needless to say, are concerned about the future of their programs. My office has not been able to obtain any information whatsoever except approximate dates as to when the conference agreement report and figures might be released. In checking with both the House Ways and Means Committee, I was able to verify that no press release or any other form of official information has been released except what was given out at the press conference immediately following the final conference meeting. However, not even a summary of that meeting has been made available for use by congressional offices.

For those of you who would like to compute the approximate figures which will be made available to each county and major city in your State, you need only to use the star print, part II, of the Senate Finance Committee report on the bill and take 83 percent of those figures.

I think it is incredible that a congressional office is forced to seek information from newspapers when it is the duty of the committees involved to make this information available for dissemination as soon as possible so that inquiries may be intelligently and speedily answered. After all, this is one of the prime duties of our office.

Mr. President, I would like to make these remarks and information available in the RECORD so that Senators will have available the information of the funds to be distributed to cities and local communities in their States.

I ask unanimous consent to have the news articles to which I referred printed in the RECORD.

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

CONFERENCE COMMITTEE REPORTS REVENUE BILL

(By Larry E. Naake)

By the time you receive this newspaper, the House-Senate Conference Committee will most likely have come to full agreement on Revenue Sharing. The U.S. Senate and House of Representatives will have approved this agreement, and the President of the United States will have signed the "Revenue Sharing Act of 1972".

The Bill (H.R. 14370) is now progressing rapidly in the House-Senate Conference Committee, following a week of debate on Senate Floor. The Senate earlier last week passed the measure by a vote of 63 to 20. (Please see list on "How Your Senator Voted")

SENATE ACTION

The debate on the Senate Floor centered around the three issues of an annual appropriations process for revenue sharing, a different formula which would have benefited urban states, and the issue of whether or not to include the social services program amendments in the revenue sharing bill. NACo, and the other public interest groups in Washington, were successful in turning back an attempt by Senator John McClellan (D-Ark.), Chairman of the Senate Appropriations Committee, to subject the revenue sharing funds to the annual appropriation process. Such an amendment would have "gutted" one of the basic concepts of general sharing—namely, the access of state, county, and municipal governments to a predictable and dependable source of unfettered revenue over the five-year period. We were quite pleased that the majority of the Senators agreed with us.

All attempts by Senators from urban states to alter the formula to provide more funds to the more populous states was also defeated.

The Senate further rejected an attempt by states and counties to eliminate that portion of the revenue sharing bill which drastically reduced and amended the existing, open-ended social services program. As passed by the Senate, Title III of H.R. 14370 would have virtually eliminated federal assistance for social services. The Senate version limited these two programs to $600 million per year.

CONFERENCE COMMITTEE AGREEMENTS

However, by publication date, the House-Senate Conference Committee had resolved two of the issues discussed above.

SOCIAL SERVICES PROGRAMS

Since Social Service was not in the House version of the Revenue Sharing Bill, it was a point that had to be resolved by the Conference Committee. In a major victory for states and counties, the Conference Committee raised the $600 million limit to $2.5 billion, beginning July 1, 1972. This amount is merely an authorization, and still must go through the annual appropriations process. The funds would be distributed among the states on a straight population basis.

The eligible services were also expanded to include almost all of those that are eligible under existing law, rather than the two limitations contained in the Senate bill—family planning and child care services. Funds under the program for retarded persons, child care, and family planning may be spent on potential, present, and prior welfare recipients. However, 90 percent of the remaining funds (after the funds have been spread by the state or county for the three programs just mentioned) may be spent only for applicants or recipients of welfare. Child care services, as defined under this Conference Committee agreement, have been limited and include only those services needed to enable a member of a family to work, take job training, or to provide necessary supervision for a child whose mother is deceased or disabled.

The program matching features will still contain the 75% federal, 25% local ratio.

DISTRIBUTION OF REVENUE SHARING FUNDS UNDER HOUSE BILL, SENATE BILL, AND UNDER THE CONFERENCE COMMITTEE AGREEMENT

[In millions of dollars]

States	House bill	Senate bill	Conference committee agreement		
			1st year total amount (calendar year 1972)	State share	Local share
U.S. total	5,300.0	5,300.0	5,300.0	1,800.0	3,500.0
Alabama	80.2	127.6	116.1	38.7	77.4
Alaska	6.6	5.5	6.0	2.0	4.0
Arizona	46.1	55.1	50.1	16.7	33.4
Arkansas	38.3	60.4	55.0	18.0	37.0
California	610.8	510.4	555.8	185.2	370.6
Colorado	57.4	60.0	54.6	18.2	36.4
Connecticut	72.6	57.5	66.1	22.1	44.0
Delaware	17.3	12.9	15.7	5.2	10.5
District of Columbia	26.0	14.1	23.7	7.9	15.8
Florida	150.0	160.3	145.9	48.6	97.3
Georgia	103.4	120.7	109.8	36.6	73.2
Hawaii	25.9	22.7	23.6	7.8	15.8
Idaho	15.4	21.8	19.8	6.6	13.2
Illinois	301.8	250.9	274.6	91.5	183.1
Indiana	113.8	114.6	104.3	34.7	69.6
Iowa	67.8	84.6	77.0	25.6	51.4
Kansas	47.7	58.0	52.8	17.6	35.2
Kentucky	71.8	95.9	87.3	29.1	58.2
Louisiana	83.2	124.8	113.6	37.8	75.8
Maine	19.9	34.2	31.1	10.3	20.18
Maryland	117.5	94.8	106.9	35.6	71.3
Massachusetts	179.0	143.5	162.9	54.3	108.6
Michigan	243.7	210.9	221.8	73.9	147.8
Minnesota	141.1	108.2	103.8	34.6	69.2
Mississippi	46.0	99.6	90.6	30.2	60.4
Missouri	107.6	108.5	98.7	32.9	65.8
Montana	16.7	22.6	20.6	6.8	13.8
Nebraska	34.5	47.1	42.9	14.3	28.6
Nevada	12.2	11.7	11.1	3.7	7.4
New Hampshire	13.5	16.7	15.2	5.0	10.2
New Jersey	179.7	142.6	163.5	54.5	109.0
New Mexico	22.5	36.5	33.2	11.0	22.2
New York	649.6	507.1	591.1	197.0	394.1
North Carolina	113.0	148.8	135.4	45.0	90.4
North Dakota	12.0	21.7	19.7	6.5	13.2
Ohio	227.4	185.4	206.9	68.9	138.0
Oklahoma	52.9	65.3	59.4	19.8	39.6
Oregon	60.1	61.8	56.2	18.8	37.4
Pennsylvania	300.9	240.2	273.8	91.2	182.6
Rhode Island	25.9	23.1	23.6	7.8	15.8
South Carolina	57.9	89.5	81.4	27.1	54.3
South Dakota	13.5	27.6	25.1	8.3	16.8
Tennessee	79.3	108.1	98.4	32.8	65.6
Texas	248.3	268.6	244.4	81.4	163.0
Utah	29.0	34.5	31.4	10.4	21.0
Vermont	11.0	16.3	14.8	4.9	9.9
Virginia	115.6	109.7	105.2	3.5	101.7
Washington	79.1	92.3	84.0	28.0	56.0
West Virginia	36.4	57.5	92.1	17.4	34.9
Wisconsin	137.0	147.1	111.0	44.6	89.1
Wyoming	6.1	10.7	9.7	3.2	6.3

Details may not add to total due to rounding.

REVENUE SHARING DISTRIBUTION FORMULA

In an attempt to satisfy the complaints of both urban states and rural states, the Conference Committee agreed on a formula which would give each state the higher amounts of either the House formula or the Senate formula each year. The House version of the bill would essentially have distributed the funds to state and local governments on the basis of population, urbanized population, and population inversely weighted for per capita income. The Senate version would essentially have distributed the funds on the basis of population inversely weighted for per capita inverse per capital income (the so-called poverty factor). By taking the higher amount for each state, the total program for the first calendar year, 1972, would be $5.825 billion. However, the Conference Committee determined that the Federal Government should expend only $5.3 billion this first calendar year. Therefore, after the higher figure for each state is determined, it will be proportionately reduced so that the totals for all states will equal $5.3 billion (this means an approximate reduction of 9.1% for each state). The totals under the House bill, the Senate bill, and the Conference Committee agreement are shown in the chart on page 11.

The Conference Committee also provided that the revenue sharing fund would increase by $150 million each year. Thus, the total revenue sharing funds available each calendar year are as follows: 1972—$5.3 billion; 1973—$5.975 billion ($150 million plus the base year amount of $5.825 billion); 1974—$6.125; 1975—$6.275 billion; 1976—$6.425 billion. The total program, therefore, over the five year period equals $30.1 billion.

After these funds are distributed down to the state level, they are divided one-third to the state government and two-thirds to the local governments within that state. The two-thirds to local governments are then distributed in the same manner as provided under the Senate bill. First, it is distributed to the county area on the basis of county population, tax effort, and inverse per capita income (i.e., each county area's share is determined by its population multiplied by the tax efforts of the county and its municipalities and further multiplied by its inverse per capita income). Second, the funds are split between the county and its municipalities on the basis of "adjusted taxes". "Adjusted taxes" are defined to include property, income, sales, gross receipts, corporate income, etc., with the exception of those taxes levied for or attributable to education. This step in the formula determines the amount that a given county government would receive. Finally, the remaining amount is divided among the municipalities within a county on the basis of the same three factors of population, tax effort, and inverse per capita income.

TRIBAL INDIANS

The Conference Committee also agreed to include tribal Indians as eligible recipients of revenue sharing funds. Basically, they would receive funds in proportion to their population within a given county. For example, if 30 percent of the population of a county consisted of tribal Indians, then 30 percent of the county areas allocation would be distributed to that Indian tribe.

These then are the agreements made by the House-Senate Conference Committee on Revenue Sharing as of publication time of "County News".

A major point of difference between the two bills still to be decided by the Conference Committee concerns the so-called "High Priority Expenditure Items". As you recall, the House version restricted the use of local funds for certain federally-determined high priority areas. These included, for maintenance and operating expenses, public safety, environmental protection, and public transportation. For capital expenditures, the funds could be used for sewage collection and treatment, refuse disposal systems, and public transportation. The bill provided that the states may establish further priorities within the above categories.

The Senate Bill had no such restrictions. It merely provided that the funds may be used by state and local governments for any purpose legally allowable. Our best guess is that the high priority expenditure items will remain in the final version, but that the list of eligible programs for expenditure will be expanded.

Because certain features are the same in both the House and the Senate version of the revenue sharing bill, they will not be debated at points of difference and will be contained in the final bill. These features include the following:

RETROACTIVE PAYMENTS

The funds will be distributed and payments made retroactively to January 1, 1972.

NONDISCRIMINATION

Both bills contain a provision which prohibits state and local governments from using revenue sharing funds in a manner that discriminates on the basis of race, color, national origin or sex.

MATCHING FEDERAL PROGRAMS

Although there are minor differences, both bills prohibit state and local governments from using the funds to match other federal grant funds.

This then is the status of the revenue sharing bill at this time. We will describe and analyze in detail the entire and final version of the Revenue Sharing Act of 1972 in next week's issue of *County News*.

HOW SENATORS VOTED

(Democrats for: 31)

Allen (Ala.) Bayh (Ind.) Cannon (Nev.) Cranston (Calif.) Eastland (Miss.) Edwards (La.) Fulbright (Ark.) Gravel (Alaska) Hart (Mich.) Hartke (Ind.) Hollings (S.C.) Hughes (Iowa) Humphrey (Minn.) Jackson (Wash.) Jordan (N.C.) Long (La.) Magnuson (Wash.) McClellan (Ark.) Metcalf (Mont.) Mondale (Minn.) Montoya (N.M.) Moss (Utah) Muskie (Maine) Pastore (R.I.) Pell (R.I.) Randolph (W. Va.) Ribicoff (Conn.) Spong (Va.) Talmadge (Ga.) Tunney (Calif.) Williams (N.J).

(Republicans for: 32)

Aiken (Vt.) Baker (Tenn.) Beall (Md.) Bellmon (Okla.) Bennett (Utah) Boggs (Del.) Brock (Tenn.) Brooke (Mass.) Buckley (N.Y.) Case (N.J.) Cook (Ky.) Cooper (Ky.) Cotton (N.H.) Dole (Kan.) Dominick (Colo.) Fong (Hawaii) Griffin (Mich.) Gurney (Fla.) Hansen (Wyo.) Hruska (Neb.) Javits (N.Y.) Mathias (Md.) Packwood (Ore.) Pearson (Kan.) Roth (Del.) Schweiker (Pa.) Scott (Pa.) Smith (Maine) Stafford (Vt.) Stevens (Alaska) Tower (Tex.) Weicker (Conn.)

(Democrats against: 15)

Bentsen (Tex.) Bible (Nev.) Burdick (N.D.) Byrd (Va.) Byrd (W. Va.) Chiles (Fla.) Eagleton (Mo.) Ervin (N.C.) Gambell (Ga.) Mansfield (Mont.) Nelson (Wis.) Proxmire (Wis.) Stennis (Miss.) Stevenson (Ill.) Symington (Mo.)

(Republicans against: 5)

Hatfield (Ore.) Percy (Ill.) Saxbe (Ohio) Taft (Ohio) Young (N.D.)

Paired—(A pair designates the positions of

senators when one or both are absent and unable to vote).

Paired for: [Allott (R-Colo.) Thurmond (R-S.C.) McGovern (D-S.D.).]

Paired against: Curtis (R-Neb.) Jordan (R-Idaho) Church (D-Idaho).

Absent or not voting: Fannin (R-Ariz.) Goldwater (R-Ariz.) Harris (D-Okla.) Inouye (D-Hawaii) Kennedy (D-Mass.) McGee (D-Wyo.) McIntyre (D-N.H.) Miller (R-Iowa) Mundt (R-S.D.) Sparkman (D-Ala.) Anderson (D-N.M.).

The PRESIDING OFFICER (Mr. HUMPHREY). The Chair wishes to commend the Senator from Kentucky.

Mr. COOK. I thank the Chair and, 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. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

FOREIGN ASSISTANCE ACT—UNANIMOUS-CONSENT AGREEMENT AND SCHEDULE OF ROLLCALL VOTES ON TUESDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time for beginning the series of rollcall votes on Tuesday next, which was 2 p.m. under the order previously entered, be changed to 1:30 p.m.

The PRESIDING OFFICER. And that rule XII be waived?

Mr. ROBERT C. BYRD. And that rule XII be waived. I thank the Chair.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. I ask unanimous consent that after the first rollcall vote, which is to occur at 1:30 p.m., any succeeding rollcall votes during the afternoon of Tuesday be limited to 10 minutes on each rollcall, with the warning bell to be sounded after the first 2½ minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ORDER FOR ADJOURNMENT FROM FRIDAY UNTIL 9 A.M. ON MONDAY, SEPTEMBER 25

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order providing for a convening of the Senate on Saturday be vacated, and that when the Senate completes its business tomorrow, it stand in adjournment until 9 o'clock a.m. on Monday next.

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

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I am informed that a Senator wishes to speak, and while he is coming to the floor, 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. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 9 o'clock a.m. After the two leaders have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes and in the order stated: Messrs. CHILES, PACKWOOD, PROXMIRE, FULBRIGHT, HART, HUMPHREY, ROBERT C. BYRD, and SCOTT.

At the close of these orders, there will be a period for the transaction of routine morning business for not to exceed 15 minutes, with the usual limitation of 3 minutes on statements.

When morning business is closed, the Senate will take up the foreign aid bill, H.R. 16029. It is hoped that amendments will be offered thereto, in which event yea-and-nay votes could occur.

At some hour on tomorrow, the distinguished majority leader or his designee will set aside the foreign aid bill, and the Senate will resume its consideration of the unfinished business, S. 3970, a bill to establish a Council of Consumer Advisers. Hopefully, amendments to that bill will be called up, in which case yea-and-nay votes could occur. Conference reports can be called up at any time and yea-and-nay votes can occur.

There will be no Saturday session.

On Monday, insofar as I can now see, the Senate will come in at 9 o'clock a.m. Following the recognition of the two leaders under the standing order, the distinguished Senator from Maryland (Mr. BEALL) will be recognized for not to exceed 15 minutes. If there are other orders for the recognition of other Senators entered in the meantime, those orders will be effectuated, after which there will be a period for the transaction of routine morning business for not to exceed 15 minutes, with the usual limitation of 3 minutes on statements therein, following which the Senate will again return to the consideration of the foreign aid bill. If amendments are offered, they will be voted upon. As such time as there is no further progress to be made on that bill and no amendments to be called up, the Senate will resume consideration of the unfinished business, the Council of Consumers Advisers bill, S. 3970. Hopefully, if there are further amendments thereto, they will be called up and yea-and-nay votes could occur. Conference reports can also be called up at anytime and yea-and-nay votes requested.

On Tuesday the Senate will come in at 9 o'clock, or earlier if there are orders entered to recognize Senators, and at no later than 9:30 a.m. the Senate will proceed to the consideration of the foreign aid bill.

There is a time limitation on the Scott amendment to increase the amount. There is a time limitation on the Stennis amendment to delete the Brooke amendment. The time between 9:30 a.m. and 1:30 o'clock p.m. will be equally divided for debate on those two amendments, to wit, 2 hours on each of the two amendments. The votes on the Scott amendment, the Stennis amendment, and final passage of the bill, in that order, will begin at 1.30 o'clock p.m. on Tuesday.

Following the disposition of the foreign aid bill on Tuesday, the Senate will resume the consideration of the consumers advisers bill, if that bill has not been disposed of prior to that time.

On Wednesday, it is the plan of the leadership to call up H.R. 1, the welfare bill, on the first track.

ADJOURNMENT UNTIL 9 A.M.

Mr. ROBERT C. BYRD. Mr. President, word has now come to me that the Senator will not come to the floor to speak. Therefore, I move, in accordance with the previous order, that the Senate stand in adjournment until 9 a.m. tomorrow.

The PRESIDING OFFICER (Mr. HUMPHREY). The Chair heartily concurs in that motion.

The motion was unanimously agreed to; and at 5:48 p.m., the Senate adjourned until tomorrow, Friday, September 22, 1972, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate September 21, 1972:

U.S. AIR FORCE

The following officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

To be general

Lt. Gen. Paul K. Carlton [redacted] FR (major general, Regular Air Force), U.S. Air Force.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 21, 1972:

DIPLOMATIC AND FOREIGN SERVICE

C. Robert Moore, of Washington, a Foreign Service officer of the class of Career Minister, now serving as Ambassador Extraordinary and Plenipotentiary of the United States of America to the United Republic of Cameroon, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Equatorial Guinea.

INTERNATIONAL MONETARY FUND; INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT; INTER-AMERICAN DEVELOPMENT BANK; ASIAN DEVELOPMENT BANK

John N. Irwin II, of New York, to be U.S. Alternate Governor of the International Monetary Fund for a term of 5 years and U.S. Alternate Governor of the International Bank for Reconstruction and Development for a term of 5 years; U.S. Alternate Governor of the Inter-American Development Bank for a term of 5 years and until his successor has been appointed; and U.S. Alternate Governor of the Asian Development Bank.