By Mr. VANIK (for himself, Mr. ADAMS, Mr. FASCELL, Mr. FRENZEL, Mr. HARRINGTON, Mr. RARICK, Mr. ROONEY of Pennsylvania, Mr. STRATTON, Mr. TIERNAN, Mr. WOLFF, and Mr. WYDLER):

H.R. 17030. A bill to prohibit most-favored-nation treatment and commercial and guarantee agreements with respect to any non-market-economy country which denies to its citizens the right to emigrate or which imposes more than nominal fees upon its citizen as a condition to emigration; to the Committee on Ways and Means.

By Mr. HECHLER of West Virginia:

H.J. Res. 1322. Joint resolution to prevent surface mining operations on public lands and deep mining in national forests; to the Committee on Interior and Insular Affairs.

By Mr. STEELE:

H.J. Res. 1323. Joint resolution to insure orderly and responsible congressional review of tax preferences, and other items which narrow the income tax base; to the Committee on Ways and Means.

By Mr. KEMP (for himself, Mr. ROE, Mr. ROSENTHAL, Mr. SCHNEEBELI, Mr. SCHWENGEL, Mr. SMITH of New York, Mr. STRATTON, Mr. THONE, Mr. WHALLEY, and Mr. WYDLER):

H. Res. 1152. Resolution designating May 3 as "Polish Constitution Day"; to the Committee on the Judiciary.

By Mr. KEMP (for himself, Mr. ADDABBO, Mr. ANNUNZIO, Mr. BIESTER, Mr. BOLAND, Mr. BURKE of Massachusetts, Mr. CLEVELAND, Mr. COLLIER, Mr. DELANEY, Mr. FISH, Mr. GARMATZ, Mr. GIAIMO, Mr. GREEN of Pennsylvania, Mr. GUDE, Mr. HALPERN, Mr. HARRINGTON, Mrs. HICKS of Massachusetts, Mr. HUNT, Mr. LONG of Maryland, Mr. MCKEVITT, Mr. MINSHALL, Mr. MOORHEAD, Mr. MURPHY of New York, Mr. PEPPER, and Mr. PIKE):

H. Res. 1151. Resolution designating May 3 as "Polish Constitution Day"; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. GUDE:

H.R. 17031. A bill for the relief of Rosa Ines Toapanta; to the Committee on the Judiciary.

By Mr. HAWKINS:

H.R. 17032. A bill for the relief of Evangelina and Edwardo Sado; to the Committee on the Judiciary.

By Mr. NELSON:

H.R. 17033. A bill for the relief of Selmer Amundson; to the Committee on the Judiciary.

SENATE—*Friday, October 6, 1972*

The Senate met at 11 a.m. and was called to order by Hon. DAVID H. GAMBRELL, a Senator from the State of Georgia.

PRAYER

The Reverend Evans E. Crawford, Ph. D., dean of the chapel, Howard University, Washington, D.C., offered the following prayer:

God of our harvest, hope, and home, come in all Thy nourishing and sustaining presence to these who have been chosen to exercise the people's choice. Grant to them and to us a full harvest of the liberties in whose name we labor. Judge us by our fruits; but if and where we fail, give to us an abundance of Thy promised mercy. Renew in us daily such a hunger and thirst after righteousness that no reach of our power may exceed the roots of our praise. Ring through our responsibilities the resounding amens of the heritages we share. Put the charges we have to keep by living and liberating waters, so that, in planting or reaping, the people and the nations may walk, work, and worship with fruitful freedom in pastures greened by Thy grace and in fields ripened by Thy glory. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 6, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. DAVID H. GAMBRELL, a Senator from the State of Georgia, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, informed the Senate that, pursuant to the provisions of section 804(b), Public Law 91–452, the Speaker had appointed Mr. PURCELL, Mr. CURLIN, Mr. HOGAN, and Mr. HUNT as members of the Commission on the Review of the National Policy Toward Gambling, on the part of the House.

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 amendments of the Senate to the bill (H.R. 56) to amend the National Environmental Policy Act of 1969, to provide for a National Environmental Data System; that the House receded from its disagreement to the amendment of the Senate numbered 1 to the bill and concurred therein, with an amendment, in which it requested the concurrence of the Senate; that the House receded from its disagreement to the amendment of the Senate numbered 2 to the bill and concurred therein, with an amendment, in which it requested the concurrence of the Senate; that the House receded from its disagreement to the amendment of the Senate numbered 6 to the bill and concurred therein, with an amendment, in which it requested the concurrence of the Senate; that the House receded from its disagreement to the amendments of the Senate numbered 21, 44, 65, 66, and 67 to the bill and concurred therein, severally with amendments, in which it requested the concurrence of the Senate; and that the House receded from its disagreement to the amendment of the Senate to the title of the bill, and agreed to same.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, October 5, 1972, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Interior and Insular Affairs and the Committee on Armed Services may be authorized to meet during the session of the Senate today.

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider Executive M—92d Congress, second session—the Convention on International Liability for Damage Caused by Space Objects.

The ACTING PRESIDENT pro tempore. Is there objection?

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

CONVENTION ON INTERNATIONAL LIABILITY FOR DAMAGE CAUSED BY SPACE PROJECTS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Chair lay before the Senate Executive M, 92d Congress, second session.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider Executive M, 92d Congress, second session, the Convention on International Liability for Damage Caused by Space Objects, which was read the second time, as follows:

CONVENTION ON INTERNATIONAL LIABILITY FOR DAMAGE CAUSED BY SPACE OBJECTS

The States Parties to this Convention,

Recognizing the common interest of all mankind in furthering the exploration and use of outer space for peaceful purposes,

Recalling the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,

Taking into consideration that, notwithstanding the precautionary measures to be taken by States and international intergovernmental organizations involved in the launching of space objects, damage may on occasion be caused by such objects,

Recognizing the need to elaborate effective international rules and procedures concerning liability for damage caused by space objects and to ensure, in particular, the prompt payment under the terms of this Convention of a full and equitable measure of compensation to victims of such damage,

Believing that the establishment of such rules and procedures will contribute to the strengthening of international cooperation in the field of the exploration and use of outer space for peaceful purposes,

Have agreed on the following:

ARTICLE I

For the purposes of this Convention:

(*a*) The term "damage" means loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical, or property of international intergovernmental organizations;

(*b*) The term "launching" includes attempted launching;

(*c*) The term "launching State" means:

(*i*) A State which launches or procures the launching of a space object;

(*ii*) A State from whose territory or facility a space object is launched;

(*d*) The term "space object" includes component parts of a space object as well as its launch vehicle and parts thereof.

ARTICLE II

A launching State shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft in flight.

ARTICLE III

In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State or to persons or property on board such a space object by a space object of another launching State, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible.

ARTICLE IV

1. In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State or to persons or property on board such a space object by a space object of another launching State, and of damage thereby being caused to a third State or to its natural or juridical persons, the first two States shall be jointly and severally liable to the third State, to the extent indicated by the following:

(*a*) If the damage has been caused to the third State on the surface of the earth or to aircraft in flight, their liability to the third State shall be absolute;

(*b*) If the damage has been caused to a space object of the third State or to persons or property on board that space object elsewhere than on the surface of the earth, their liability to the third State shall be based on the fault of either of the first two States or on the fault of persons for whom either is responsible.

2. In all cases of joint and several liability referred to in paragraph 1 of this article, the burden of compensation for the damage shall be apportioned between the first two States in accordance with the extent to which they were at fault; if the extent of the fault of each of these States cannot be established, the burden of compensation shall be apportioned equally between them. Such apportionment shall be without prejudice to the right of the third State to seek the entire compensation due under this Convention from any or all of the launching States which are jointly and severally liable.

ARTICLE V

1. Whenever two or more States jointly launch a space object, they shall be jointly and severally liable for any damage caused.

2. A launching State which has paid compensation for damage shall have the right to present a claim for indemnification to other participants in the joint launching. The participants in a joint launching may conclude agreements regarding the apportioning among themselves of the financial obligation in respect of which they are jointly and severally liable. Such agreements shall be without prejudice to the right of a State sustaining damage to seek the entire compensation due under this Convention from any or all of the launching States which are jointly and severally liable.

3. A State from whose territory or facility a space object is launched shall be regarded as a participant in a joint launching.

ARTICLE VI

1. Subject to the provisions of paragraph 2 of this article, exoneration from absolute liability shall be granted to the extent that a launching State establishes that the damage has resulted either wholly or partially from gross negligence or from an act or omission done with intent to cause damage on the part of a claimant State or of natural or juridical persons it represents.

2. No exoneration whatever shall be granted in cases where the damage has resulted from activities conducted by a launching State which are not in conformity with international law including, in particular, the Charter of the United Nations and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

ARTICLE VII

The provisions of this Convention shall not apply to damage caused by a space object of a launching State to:

(*a*) Nationals of that launching State;

(*b*) Foreign nationals during such time as they are participating in the operation of that space object from the time of its launching or at any stage thereafter until its descent, or during such time as they are in the immediate vicinity of a planned launching or recovery area as the result of an invitation by that launching State.

ARTICLE VIII

1. A State which suffers damage, or whose natural or juridical persons suffer damage may present to a launching State a claim for compensation for such damage.

2. If the State of nationality has not presented a claim, another State may, in respect of damage sustained in its territory, by any natural or juridical person, present a claim to a launching State.

3. If neither the State of nationality nor the State in whose territory the damage was sustained has presented a claim or notified its intention of presenting a claim, another State may, in respect of damage sustained by its permanent residents, present a claim to a launching State.

ARTICLE IX

A claim for compensation for damage shall be presented to a launching State through diplomatic channels. If a State does not maintain diplomatic relations with the launching State concerned, it may request another State to present its claim to that launching State or otherwise represent its interests under this Convention. It may also present its claim through the Secretary-General of the United Nations, provided the claimant State and the launching State are both Members of the United Nations.

ARTICLE X

1. A claim for compensation for damage may be presented to a launching State not later than one year following the date of the occurrence of the damage or the identification of the launching State which is liable.

2. If, however, a State does not know of the occurrence of the damage or has not been able to identify the launching State which is liable, it may present a claim within one year following the date on which it learned of the aforementioned facts; however, this period shall in no event exceed one year following the date on which the State could reasonably be expected to have learned of the facts through exercise of due diligence.

3. The time-limits specified in paragraphs 1 and 2 of this article shall apply even if the full damage may not be known. In this event, however, the claimant State shall be entitled to revise the claim and submit additional documentation after the expiration of such time-limits until one year after the full extent of the damage is known.

ARTICLE XI

1. Presentation of a claim to a launching State for compensation for damage under this Convention shall not require the prior exhaustion of any local remedies which may be available to a claimant State or to natural or juridical persons it represents.

2. Nothing in this Convention shall prevent a State, or natural or juridical persons it might represent, from pursuing a claim in the courts or administrative tribunals or agencies of a launching State. A State shall not, however, be entitled to present a claim that is being pursued in the courts or administrative tribunals or agencies of a launching State or under another international agreement which is binding on the States concerned.

ARTICLE XII

The compensation which the launching State shall be liable to pay for damage under this Convention shall be determined in accordance with international law and the principles of justice and equity, in order to provide such reparation in respect of the damage as will restore the person, natural or juridical, State or international organization on whose behalf the claim is presented to the condition which would have existed if the damage had not occurred.

ARTICLE XIII

Unless the claimant State and the State from which compensation is due under this Convention agree on another form of compensation, the compensation shall be paid in the currency of the claimant State or, if the State so requests, in the currency of the State from which compensation is due.

ARTICLE XIV

If no settlement of a claim is arrived at through diplomatic negotiations as provided for in article IX, within one year from the date on which the claimant State notifies the launching State that it has submitted the documentation of its claim, the parties concerned shall establish a Claims Commission at the request of either party.

ARTICLE XV

1. The Claims Commission shall be composed of three members: one appointed by the claimant State, one appointed by the launching State and the third member, the Chairman, to be chosen by both parties jointly. Each party shall make its appointment within two months of the request for the establishment of the Claims Commission.

2. If no agreement is reached on the choice of the Chairman within four months of the request for the establishment of the Commission, either party may request the Secretary-General of the United Nations to appoint the

Chairman within a further period of two months.

ARTICLE XVI

1. If one of the parties does not make its appointment within the stipulated period, the Chairman shall, at the request of the other party, constitute a single-member Claims Commission.

2. Any vacancy which may arise in the Commission for whatever reason shall be filled by the same procedure adopted for the original appointment.

3. The Commission shall determine its own procedure.

4. The Commission shall determine the place or places where it shall sit and all other administrative matters.

5. Except in the case of decisions and awards by a single-member Commission, all decisions and awards of the Commission shall be by majority vote.

ARTICLES XVII

No increase in the membership of the Claims Commission shall take place by reason of two or more claimant States or launching States being joined in any one proceeding before the Commission. The claimant States so joined shall collectively appoint one member of the Commission in the same manner and subject to the same conditions as would be the case for a single claimant State. When two or more launching States are so joined, they shall collectively appoint one member of the Commission in the same way. If the claimant States or the launching States do not make the appointment within the stipulated period, the Chairman shall constitute a single-member Commission.

ARTICLE XVIII

The Claims Commission shall decide the merits of the claim for compensation and determine the amount of compensation payable, if any.

ARTICLE XIX

1. The Claims Commission shall act in accordance with the provisions of article XII.

2. The decision of the Commission shall be final and binding if the parties have so agreed; otherwise the Commission shall render a final and recommendatory award, which the parties shall consider in good faith. The Commission shall state the reasons for its decision or award.

3. The Commission shall give its decision or award as promptly as possible and no later than one year from the date of its establishment, unless an extension of this period is found necessary by the Commission.

4. The Commission shall make its decision or award public. It shall deliver a certified copy of its decision or award to each of the parties and to the Secretary-General of the United Nations.

ARTICLE XX

The expenses in regard to the Claims Commission shall be borne equally by the parties, unless otherwise decided by the Commission.

ARTICLE XXI

If the damage caused by a space object presents a large-scale danger to human life or seriously interferes with the living conditions of the population or the functioning of vital centers, the States Parties, and in particular the launching State, shall examine the possibility of rendering appropriate and rapid assistance to the State which has suffered the damage, when it so requests. However, nothing in this article shall affect the rights or obligations of the States Parties under this Convention.

ARTICLE XXII

1. In this Convention, with the exception of articles XXIV to XXVII, references to States shall be deemed to apply to any international intergovernmental organization which conducts space activities if the organization declares its acceptance of the rights and obligations provided for in this Convention if a majority of the States members of the organization are States Parties to this Convention and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

2. States members of any such organization which are States Parties to this convention shall take all appropriate steps to ensure that the organization makes a declaration in accordance with the preceding paragraph.

3. If an international intergovernmental organization is liable for damage by virtue of the provisions of this Convention, that organization and those of its members which are States Parties to this Convention shall be jointly and severally liable; provided, however, that:

(*a*) Any claim for compensation in respect to such damage shall be first presented to the organization;

(*b*) Only where the organization has not paid, within a period of six months, any sum agreed or determined to be due as compensation for such damage, may the claimant State invoke the liability of the members which are States Parties to this Convention for the payment of that sum.

4. Any claim, pursuant to the provisions of this Convention, for compensation in respect of damage caused to an organization which has made a declaration in accordance with paragraph 1 of this article shall be presented by a State member of the organization which is a State Party to this Convention.

ARTICLE XXIII

1. The provisions of this Convention shall not affect other international agreements in force insofar as relations between the States Parties to such agreements are concerned.

2. No provision of this Convention shall prevent States from concluding international agreements reaffirming, supplementing or extending its provisions.

ARTICLE XXIV

1. This Convention shall be open to all States for signature. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force on the deposit of the fifth instrument of ratification.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Convention, the date of its entry into force and other notices.

6. This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

ARTICLE XXV

Any State Party to this Convention may propose amendments to this Convention. Amendments shall enter into force for each State Party to the Convention accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and therafter for each remaining State Party to the Commission on the date of acceptance by it.

ARTICLE XXVI

Ten years after the entry into force of this Convention, the question of the review of this Convention shall be included in the provisional agenda of the United Nations General Assembly in order to consider, in the light of past application of the Convention, whether it requires revision. However, at any time after the convention has been in force for five years, and at the request of one third of the States Parties to the Convention, and with the concurrence of the majority of the States Parties, a conference of the States Parties shall be convened to review this Convention.

ARTICLE XXVII

Any State Party to this Convention may give notice of its withdrawal from the Convention one year after its entry into force by writen notification to the Depositary Governments. Such withdrawal shall take effect one year from the date of receipt of this notification.

ARTICLE XXVIII

This Convention, of which the English, Russian, French, Spanish and Chinese texts are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Convention.

DONE in trplicate, at the cities of Washington, London and Moscow, this twenty-ninth day of March, one thousand nine hundred and seventy-two.

Mr. MANSFIELD. Mr. President, this convention was negotiated under the auspices of the United Nations Committee on the Peaceful Uses of Outer Space. Its purpose is to provide a means of redress for damages which might result from objects in space falling on the earth.

As of February 1972 there were 2,730 objects in outer space, and as of the same date, 3,120 objects had been identified as having been in orbit but since decayed. Thus, as space exploration continues, it becomes increasingly possible that persons or property may, at some future time, be damaged by space mishaps.

The basic approach of the Convention to liability for damages caused by space objects is set forth in Article II, which reads as follows:

A launching State shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft in flight.

Other provisions of the Convention define and prescribe means for assessing damage and fixing liability in special cases.

Hearings held by the Committee on Foreign Relations on this Convention were supplemented by a most valuable staff report prepared for the use of the Senate Committee on Aeronautical and Space Sciences.

The Committee on Foreign Relations held a public hearing on the Convention on International Liability for Damage Caused by Space Objects on August 3, 1972, at which time the following witnesses testified: Mr. Carl F. Salans,

Acting Legal Adviser, Department of State; Mr. Harry H. Almond, Jr., Senior Attorney Adviser, Office of the General Counsel, Department of Defense; and Mr. Spencer M. Beresford, General Counsel, National Aeronautics and Space Administration. The prepared statements of Mr. Salans and Mr. Almond are reprinted in the appendix.

The Convention was considered in executive session on August 8, 1972. During that session, a question was raised concerning the meaning of "space object." Further action on this Convention was postponed pending the receipt of a comprehensive definition of this term from the executive branch. On September 7, 1972, the committee received a reply from the Department of State. The text of this communication is reprinted in the appendix of the committee report.

On September 19, 1972, the committee met again in executive session and ordered the Convention on International Liability for Damage Caused by Space Objects reported favorably to the Senate for advice and consent to ratification, subject to the receipt of an assurance from the administration that the U.S. instrument of ratification would not be deposited until the Soviet Union deposited its instrument of ratification or that both countries would deposit their instruments of ratification simultaneously. This assurance was received in a letter from the Department of State dated October 3, 1972, and it is also reprinted in the appendix.

Mr. President, I ask unanimous consent that the pending Convention go to final reading.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered and the treaty will be considered as having passed through its various parliamentary stages up to and including presentation of the resolution of ratification which will be read for the information of the Senate.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention on International Liability for Damage Caused by Space Objects, signed at Washington, London, and Moscow, on March 29, 1972 (Executive M, 92d Congress, 2d Session).

Mr. MANSFIELD. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays on the convention immediately after the morning business is concluded and the 3-minute limitation observed, and H.R. 13915 has been laid before the Senate, at which time it will be laid aside temporarily for the vote on the treaty.

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

Mr. MANSFIELD. Mr. President, for the information of the Senate, it would be anticipated that somewhere between 1 hour and one hour and a half from now, there will be a yea-and-nay vote on the treaty which has just been considered in executive session.

Attachés on both sides should notify all Senators accordingly.

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 FOR ADJOURNMENT TO 9 A.M. ON MONDAY NEXT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9 a.m. on Monday next.

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

THE 500TH YEA-AND-NAY VOTE CAST BY SENATE THIS SESSION

Mr. SCOTT. Mr. President, some time after 1 a.m. this morning, the Senate passed the so-called welfare reform bill. There will be a lot of controversy as to whether it is welfare, whether it is reform, and whether it is the best solution. I happen not to believe that it is the best solution, but I invite the attention of the Senate to an interesting fact, that the vote on that bill marks the 500th yea-and-nay vote cast during this session of the Senate.

While there have been more recordings taken in the Senate which include our so-called automatic quorum calls—and away the largest number of record votes ever cast.

In 1964, during the long civil rights filibuster, there were more quorum calls, undoubtedly because of the automatic quorum calls, but I have checked with the Congressional Quarterly and on record votes alone, eliminating quorum calls, this 500th vote is higher than the votes taken in any previous Congress.

Mr. President, I mention this for a reason, particularly on behalf of those Senators who may be campaigning for reelection. I would say for higher office except, of course, there is no higher office than the Senate of the United States. Their constituents, I think, should know that they have been required to remain in the Senate and take part in debate and vote on these measures. We have worked harder and longer and have made more judgments by way of votes on legislative matters than the Senate has ever done before in its history.

That is the reason why so many Senators have been unable to accept, much as they would like to, invitations to speak in their State or in other States.

I think it should be noted, in all fairness, that Senators may accept an invitation 2 or 3 months in advance and still be unable to go. I know at least a dozen who were not able to keep their engagements last night because we were in session yesterday for something like 17 hours.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Utah (Mr. Moss) is now recognized for not to exceed 15 minutes.

ANTICONSUMERISM IN THE NIXON ADMINISTRATION

Mr. MOSS. Mr. President, as chairman of the Consumer Subcommittee of the U.S. Senate, 1 week before the Senate adjourns this year in this session, I rise to address this body on the subject "Anticonsumerism in the Nixon Administration."

Mr. President, in a press conference on August 10, 1972, Mrs. Virginia Knauer, the President's Special Assistant for Consumer Affairs, said in response to a question about the chances of passage of the consumer product safety bill:

> My dear sir, that I shall live so long to see any legislation, consumer legislation out of the Congress.

There are two great ironies in this statement. In the first place Congress has passed significant consumer protection measures during the Nixon administration. But, because the administration has not initiated or supported these efforts, Mrs. Knauer is evidently oblivious to their existence. For example, in the 91st Congress, we enacted the Child Protection and Toy Safety Act which was initiated by the democratically appointed National Commission on Product Safety and sponsored by Senators MAGNUSON and myself in the Senate and by Congressmen STAGGERS and Moss in the House. The 91st Congress also saw the passage of the Fair Credit Reporting Act and the Poison Prevention Packaging Act. Again, the Nixon administration did not initiate these measures and paid only lip service to their passage.

The Senate and the House have just taken final conference action on a very significant consumer bill that could save consumers more than a billion dollars a year by preventing damage to their vehicles. This is the Motor Vehicle Information and Cost Savings Act (S. 976) which has been bitterly opposed by the Nixon administration at each legislative step. The administration testified, at our May 1971 hearings, that the Federal Government had no business regulating the automobile industry for "economic reasons." Of course, this testimony was delivered prior to the initiation of the wage and price control program. Given the position of the Nixon administration, it is little wonder that Mrs. Knauer has eradicated this particular bill from her mind.

The second irony of Mrs. Knauer's statement is her chastising congressional action on consumer legislation when she had deliberately and wittingly assisted the special interests within and without the Government that tried to stall in one house or other passage of important bills. The Nixon administration has not lifted one finger to encourage House action on the Magnuson-Moss bill, S. 986, also known as the Consumer Product Warranties and Federal Trade Commission Improvements Act. Instead the White House professed support for its proposal

for warranty legislation which was merely a watered down version of Democratic initiatives. And who knows what role Mrs. Knauer played in sidetracking the Federal no-fault automobile insurance proposal, after she chastised the trial bar for dilatory tactics? I know that the lobbyist for the National Association of Independent Insurers, the major insurance organizattion opposing no fault, turned the Vice President's ceremonial office adjacent to the Senate floor into his own personal office during Senate debate on S. 945.

For weeks it was tooth and nail as to whether the Rules Committee would grant a rule on the product safety bill. Did the administration raise a finger? No. And now we have the revelation that the Chief Justice sent an envoy a few weeks ago to urge Speaker CARL ALBERT to water down or stall the consumer product safety bill. The Chief Administrator of Federal Courts, Rowland Kirks, went to see the Speaker in the company of influential lobbyist Thomas Corcoran. Corcoran readily admitted that he was not representing any client and that he accompanied his longtime friend Rowland Kirks, Chief Administrator of the Federal Courts, to lobby the Speaker against the consumer product safety bill.

This coupled with revelations of Associate Justice Louis Powell's call upon the U.S. Chamber of Commerce to make use of the judiciary in arguing the special interests of business against the public interest, is particularly troublesome. And what about the Consumer Protection Agency legislation? How long did the administration try to delay Senate committee consideration of a bill to create a consumer advocate within the Federal Government? What steps did the administration take to weaken the House-passed bill? And now, even after the sponsors of the bill announced that they were willing to accept the administration's weakening amendment, the Nixon forces still held out for more and defeated cloture.

With a background like this, it is no wonder that Mrs. Knauer has said:

I should live so long to see any legislation, consumer legislation out of Congress.

After all, the Nixon administration has demonstrated its strength by working hard to keep any meaningful consumer legislation from emerging.

But this interference of Mr. Nixon and even the Nixon appointed Chief Justice in congressional matters is even more disturbing when we read of news reports quoting the President as saying, in reference to appointments to regulatory agencies, that he did "appoint people like FTC Chairman Miles Kirkpatrick but I cannot do anything about them after they are in their jobs." It is quite fortunate for the American people that he is hamstrung in this regard, for the blatent role the Nixon administration has played in protecting big businesses has cast a pall over the Nation. I, for one, would rather deal with men of integrity with whom I may differ, than subvert the public interest to the private interest, as is so common in this administration which, in the words of Senator STEVENSON, is not of the New Deal, not of the Fair Deal, not of the Square Deal, but of "The Deal."

How else has the consumer been harmed by the deception and corruption of the Nixon administration? On March 25, 1969, President Nixon announced the appointment of a cabinet level task force on oil import control. After carefully studying the oil imports for more than 11 months, this task force recommended that the present quota system be ended, because it operated to maintain oil prices at artificially inflated levels to the detriment of the American economy and consumers. But Mr. Maurice Stans, Secretary of Commerce, took such a personal interest in the study that all staff documents were rushed to him even when he was hunting big game in Africa. And, Mr. Stans remembered the "investment in good government" made by the petroleum companies in 1968 when members of that industry contributed almost $800,000 in reported contributions to the Nixon campaign chest. More, I might add, than any other occupational classification.

The remainder of the story is this: Even though the task force recommended abandonment of the quota system, Mr. Stans and big business won the debate. The oil import quota system has not been abandoned and as a result consumers continue to pay $5 billion a year more in higher fuel prices. This amounts to a subsidy or $25 per year for every man, woman, and child in the United States to the major petroleum companies. Being a good businessman, Maurice Stans has returned to the petroleum companies in 1972 to tell them "you made a good investment in 1968. Now it is up to you to protect that investment." In 1968, when the Nixon campaign asked prospective contributors for a tithe to the preservation of the free enterprise system, it said:

That's a low price to pay every four years to insure that the Executive branch of the government is in the right hands.

The $800,000 reported as being contributed by the petroleum industry, and who knows how much was unreported, has definitely proved to be a worthwhile investment both philosophically and financially. Not only did the contributors succeed in buying the executive branch, they may have also succeeded in politicizing the Judiciary to a degree unheard of since Boss Tweed sold judgeships in New York. A $5 billion a year return on an $800,000 investment, that certainly is a sound investment, an investment which results in private profits and a public riff-off.

Secretaries of Commerce have often represented business interests in the Federal Government, but the relationship between campaign contributions and the Government's encouraging the long arm of big business to reach out into every consumer's pocketbook has never been closer. It is time for a change, the American consumer cannot afford another 4 years of Nixonomics. The New York Times put it in a February 24, 1970, editorial:

The consumers have been sacrificed once again to the interests of big oil.

The editorial went on to express revulsion by saying:

An Administration that prides itself on being a great inflation fighter when it comes to trimming outlays for health, education, and welfare does not mind letting consumers pay out more than $60 billion in extra fuel oil bills over the coming decade.

Just look at some of the other brazen attempts to undermine the consumer, to stop regulatory initiatives to protect his safety, and otherwise to cater to the big business interests which have invested so heavily in the Nixon campaign.

It took the Federal courts to rule that the Secretary of Transportation and the Federal Highway Administration had erred in whitewashing a recommended defect recall on GM pickup trucks.

The American consumer is forced to pay one-half billion dollars more per year, because the administration traded campaign contributions for a 1-cent a quart rise in the guaranteed price of milk.

And while the dollar sum is not high, this is the administration which has provided free office space for lobbyists against the consumer interest. Procter and Gamble and the Grocery Manufacturers Association have now installed themselves in a new Capitol Hill location: The Vice President's office which has become a substation for Washington lobbyists who peddle amendments to riddle the fabric of consumerism. The Vice President's office has become a smoke-filled chamber for consumating political deals. It is frequented by lobbyists representing manufacturers of unsafe products and flammable children's clothing who use it as a base of operation for peddling amendments and stalling legislation.

It was the Nixon administration's Office of Management and Budget that on October 5, 1971, issued regulations requiring all Federal departments and agencies to supply OMB with copies of regulations "which could be expected to—impose significant costs on, or negative benefits to, non-Federal sectors"—a euphemism for private industry. And under this policy, OMB has altered Environmental Protection Agency guidelines for State air pollution control boards. According to Peter Bernstein, of the Newhouse News Service, these tough regulations were diluted by OMB at the request of Commerce Secretary Maurice Stans and Federal Power Commission Chairman John Nassikas, along with Presidential Assistants John D. Ehrlichman and Peter M. Flannigan. These are Nixon men, and Nixon's record.

So Mr. President, if President Nixon's consumer spokesman does not expect to live long enough to see consumer legislation out of the Congress, she can perhaps take credit for the demise for much of this consumer legislation.

In this administration of "The Deal" the consumer will continue to get a raw one. A campaign election committee that spends its time wiretapping; an Office of Management and Budget which writes regulations to suit the regulated; a consumer adviser who lobbies against consumer legislation; and a Justice De-

partment whose own attorneys openly defy title 5, United States Code 7322, entitled "Political Use of Authority or Influence: Prohibition," signal an administration unfit to remain in office. It certainly seems that an investigation is warranted when Presidential surrogates run around the country at taxpayers' expense contrary to the provisions of the statute which tell us that—

An employee of an executive agency... may not use his official authority or influence to coerce the political action of a person or body.

But perhaps the height of arrogance is the Chief Justice's performance with regard to the consumer product safety bill reported in yesterday's papers. Perhaps the Chief Justice is not familiar with title 18, United States Code 1913, which reads:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service... intended or designed to influence in any manner a member of Congress, to favor or oppose, by vote or otherwise any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation . . .

But then, this lack of familiarity is understandable in an administration which is not concerned with millions of American consumers who have neglected to contribute millions to the campaign chest of the President.

Mr. President, I ask unanimous consent to have printed in the RECORD an article which was published in the New York Times entitled "Burger Aide Linked to a Bid to Weaken Product Safety Bill," written by Fred P. Graham, and an article from the Washington Post of October 5, 1972, entitled "Chief Justice Lobbies Against Bill."

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

[From the New York Times, Oct. 6, 1972]

BURGER AIDE LINKED TO A BID TO WEAKEN PRODUCT SAFETY BILL

(By Fred P. Graham)

WASHINGTON, October 5.—The chief administrative officer of the Federal courts under Chief Justice Warren E. Burger has worked with a Washington drug industry lawyer in an effort to weaken the product safety bill now pending before Congress. He said he was doing so to avoid an increase in Federal court cases.

Representative Carl Albert of Oklahoma, Speaker of the House, acknowledged today that a man "associated with judicial administration" came to see him last August with a Washington lawyer, Thomas G. Corcoran. The man was subsequently identified as Rowland F. Kirks, the director of the administrative office of the United States Courts.

Mr. Corcoran, a former New Deal official widely known as "Tommy the Cork," has several clients in the drug industry, which is leading the fight against the products safety bill.

Mr. Albert said the two men urged him to remove some of the court remedies from the bill on the ground that the provisions would generate too much new litigation in the Federal courts.

The bill, which is designed to protect consumers from dangerous products, contains provisions that give the public broad rights to bring suits in Federal courts to force companies to follow safety standards or to pay damages if their products cause injuries.

Mr. Corcoran was quoted today by Jack Anderson, the columnist, as stating that Mr. Kirks, saying he was acting for Chief Justice Burger, asked Mr. Corcoran to see the Speaker about watering down the bill.

Chief Justice Burger has warned in speeches against enacting consumer legislation that he contends would create more cases and clog the heavily burdened Federal courts. In a speech before the American Bar Association four days before the approach to Mr. Albert, the Chief Justice called upon Congress to refrain from passing any bills without first considering their impact on the courts.

Today, Chief Justice Burger's office and Mr. Kirk's office referred all questions about the incident to the Supreme Court's information officer, Banning E. Whittington, Mr. Whittington responded to questions by saying that neither the Chief Justice nor Mr. Kirks "would have anything to say about it." Mr. Corcoran was said by his office to be out of town.

MEMORANDUM TO CONGRESSMEN

A Congressional source close to the incident confirmed today that Mr. Kirks' office acknowledged several weeks ago that he was the man who accompanied Mr. Corcoran. Several weeks after the visit, Mr. Corcoran sent key Congressmen a memorandum with his professional card, attacking the sections of the bill broadening the public's right to sue, and quoting Chief Justice Burger's critical statements about consumer bills.

Representative John E. Moss, Democrat of California, who is the chief House sponsor of the bill, said today of the incident, "If this is true, and there is very little evidence that has surfaced that it is not true, it is a shocking and offensive intrusion by the Chief Justice into the legislative process, bordering on judicial misconduct."

UNCERTAIN ROLE

Mr. Albert said that he did not know whether Mr. Corcoran was speaking as "a lobbyist or a lawyer" when he came to Capitol Hill with the man who has been identified as Mr. Kirks. Mr. Albert said he did not catch Mr. Kirks' name or title, but the Speaker added that he understood him to be an official "associated with judicial administration" who was there "to verify what Tommy was saying."

"He said a provision in the bill would throw a lot more cases upon the Federal courts than they were prepared to handle," Mr. Albert said in an interview today. "So far as I can remember, the name of Burger was never mentioned—they didn't come to me as representatives of Burger."

Mr. Corcoran was said to have done all the talking, with Mr. Kirks nodding his agreement.

Mr. Albert said he passed along Mr. Corcoran's views to "two or three members of the Interstate and Foreign Commerce Committee," which was then considering the bill.

No action was taken in the committee as a result of Mr. Albert's message, but the bill was modified on the House floor by a voice vote to permit personal injury suits only if $10,000 in damages were alleged.

Mr. Kirks, a 58-year-old former colleague of the Chief Justice when both were in the Justice Department during the Eisenhower Administration, was appointed to his present position by the Chief Justice shortly after he took office in 1969.

There have been intermittent reports of informal lobbying at social functions by Chief Justice Burger with Congressmen about legislation affecting the judiciary. But this is the first time that an allegation has been made that Mr. Burger expressed his wishes through an intermediary.

[From the Washington Post, Oct. 5, 1972]

CHIEF JUSTICE LOBBIES AGAINST BILL

(By Jack Anderson)

The Supreme Court is supposed to rule on laws after they're passed, not meddle with them while they're still before Congress. Yet, Chief Justice Warren Burger sent an envoy a few weeks ago to urge Speaker Carl Albert to water down the products safety bill.

This would protect consumers from dangerous products. Burger fears it would also overload the federal courts with new cases.

The Chief Justice, therefore, dispatched Rowland Kirks, the stuffy chief administrator of the federal courts, up to Capitol Hill to talk to Albert. Kirks was accompanied, astonishingly, by one of Washington's most engaging special pleaders, Tom (Tommy the Cork) Corcoran, who has clients opposed to the products safety bill.

For months, Burger has been grumbling about all the new laws that are being passed. He complained in 1970 to the American Bar Association: "Not a week passes without speeches in Congress and elsewhere and editorials demanding new laws—to control pollution, for example, and new laws allowing class actions by consumers to protect the public from greedy and unscrupulous producers and sellers." This was clogging the courts, he grumped.

SAME THEME

He hammered on the same theme again a few weeks ago during a return engagement before the bar association. He expressed an urgent need "to have Congress carefully scrutinize all legislation that will create more cases."

Putting his words into action, he sent Kirks four days later to lobby with Speaker Albert against the products safety bill. Tommy the Cork, as charming an Irishman as ever practiced the art of political persuasion, volunteered to serve as Kirk's guide.

When my associate Les Whitten called Kirks to ask about his lobbying mission, Kirks snapped: "I have nothing to say on this matter."

"Does this mean you are denying it?" asked Whitten.

"I am not going to say anything about this," Kirks repeated.

"But you are a public servant," pressed Whitten, "and the public has a right to know about this intervention."

"I don't want to be impolite, Mr. Whitten," said Kirks firmly, "but the conversation is at an end." And he hung up the phone.

Corcoran was more candid. He acknowledged that he had taken Kirks in to see Speaker Albert. "Kirks, acting for the Chief Justice, asked me to take him to see the Speaker," said Corcoran.

Although the drug interests have been leading the fight against the products safety bill and Corcoran has drug clients, he said he had not represented any client during the visit with Albert. Corcoran explained he had accompanied Kirks as a friend. "I have known Kirks for years," he said.

As Albert recalled the visit, Corcoran had done most of the talking. "Corcoran argued that the products safety bill would clutter the courts, and Kirks would say 'yes,'" the Speaker told us. He said he had not intervened, as they had requested, to weaken the bill.

"IMPORTANT INSTRUMENT"

While the Chief Justice has been lobbying to keep public interest cases out of the federal courts, a confidential memo from Associate Justice Lewis Powell calls upon the U.S. Chamber of Commerce to hire a staff of lawyers to bring special interest cases before the courts.

"The judiciary," he wrote shortly before his appointment to the Supreme Court last year, "may be the most important instrument for social, economic and political

change . . . Labor unions, civil rights groups and now the public interest law firms are extremely active in the judicial arena.

"Their success, often at business' expense, has not been inconsequential. This is a vast area of opportunity for the Chamber, if it is willing to undertake the role of spokesman for American business and if, in turn, business is willing to provide the funds."

It looks as if the Warren Burger court may be more interested in encouraging special interest than public interest cases.

Footnote: The Chief Justice flew out to San Francisco for the American Bar Association convention, incidentally, under the assumed name of W. Burke. He is nagged by fears that radicals might try to harm him. Intimates say he greeted a caller at his door several months ago with a drawn pistol. Burger failed to respond to our numerous requests for comment.

ORDER OF BUSINESS

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time set aside for the Senator from Wisconsin (Mr. NELSON) under the order be vacated.

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

Under the previous order, the Senator from Michigan will be recognized for not to exceed 15 minutes.

PREOCCUPATION WITH PROBLEMS OF THE MIGHTY

Mr. HART. Mr. President, I hope that the remarks just made by the able Senator from Utah receive the wide circulation they warrant. I think FRANK MOSS is not known as a harsh partisan. This makes even more persuasive, as I view it, the points he has made. They do affect intimately the lives and future of all Americans, but most especially those who find less representation here from all of us, including me—the poorer, the weaker, the somewhat voiceless, sometimes disorderly, and certainly confused Americans. It is not to suggest there is ill will on the part of Members of Congress or our insensitivity to their concerns and needs.

We explain our seeming preoccupation with the problems of the mighty with the explanation that they are here, they come to our offices, they do have problems, and this initiates a chain of events that reflects itself on this floor all the time.

Acknowledging that they have problems is not to say theirs are the most overwhelming problems that confront us. People with the real problems in this country are people that are not in the lobby, who probably, in many cases, would not know how to express their thoughts, but it is there, it is real, and it is basic. Part of it is reflected in the recital we just heard from Senator Moss.

THE ADMINISTRATION AND CONSUMERS

Mr. HART. Mr. President, critics of the consumer movement when it first was demonstrated in Congress some years ago scoffed at the preponderance of such legislation and labeled it "politicking."

At the time, my reaction was that if this meant Congress was responding to its constituents and delivering the kind of legislation these constituents wanted, this was a constructive thing.

This year it is President Nixon who has engaged in politicking with consumer issues—and thereby demonstrated exactly who he sees as his constituents: Business and contributors.

Documentation of his "let the consumer be damned" attitude may be educational for the electorate and therefore constructive too—if it were not gained at the expense of consumers.

That expense indeed has been financial. But the President's politicking also has cost consumers lives and untold frustration.

When it comes to consumer issues, it seems to me the most powerful lobbyists that have been plying their trade on the Hill have been some of the handmaidens of the President. And they certainly have not been lobbying for enactment of strong legislation.

Worse, they have been effective.

As a result, the bill to establish Federal guidelines for a national no-fault auto insurance bill is languishing in the Senate Judiciary Committee—graveyard for consumer legislation.

As a result of the President's agents twisting enough arms, consumers are destined to continue supporting an insurance system that returns them less than 50 cents on each premium dollar—and leaves them uncompensated for the vast majority of their losses in auto accidents.

As a result of that "successful lobbying," trial lawyers will continue to collect $1.5 billion in fees annually while seriously hurt auto victims get less than 30 percent of their losses covered from all compensation sources.

As a result thousands each year will be denied rehabilitation until the damage to their bodies cannot be repaired.

As a result thousands of victims of single-car accidents will receive no compensation from their auto liability insurance.

It amazes me, frankly, how the President—and his agents—can be proud of a record such as that.

But, then, there is much in this administration that I cannot understand.

For example, I do not understand the administration's opposition to allowing the Consumer Protection Agency to actually participate in discussions of Federal agency actions rather than simply send in a memo of opinion in the form of an "amicus brief."

Nor do I understand the opposition first to the National Motor Vehicle Information and Cost Savings Act, and then to proper funding so the pilot projects on diagnostic centers can be fully tested. The target of that bill is to help save consumers much of the $8 to $10 billion they spend yearly for auto repairs that are unneeded, undone or improperly done. This seems a worthwhile goal to me—but apparently not to the administration.

Nor do I understand the reluctance of this administration to fulfill the law—namely the National Highway Safety Act—and require the States to come up with adequate vehicle inspection.

Congress wrote that requirement in the law because of a belief that lives could be saved by adequate inspection programs. Congress believed in this so much that it instructed the Department of Transportation to withhold highway construction funds for States which did not comply.

But, as of late last year, there were still 19 States which did not have inspection programs meeting the Federal standards. None of them has lost one cent in highway money.

Mr. President, it is clear that with this administration, Congress proposes and the President disposes. And when he does—the consumer loses.

Mr. RIBICOFF. Mr. President, in 1969, when this administration took office, Attorney General John Mitchell warned the Washington press corps that it should "watch what this administration does, not what it says." In no area is this advice more appropriate than with respect to consumer protection. President Nixon's statements favoring consumer programs stand in stark contrast to the policies he has actually pursued.

It began when the Nixon administration undercut the public position of his own consumer adviser, Virginia Knauer, and advocated gutting a bill that would have allowed consumers to vindicate their legitimate legal claims through class action suits. In 1971, the Nixon administration sought to dilute an effort to increase the authority of the Federal Trade Commission to take action in the interests of consumers. In 1972, the Nixon administration worked diligently to defeat a bill that would have established a nationwide system of no-fault insurance.

The Nixon administration's consumer record is perhaps worst where the consumers' interest is most seriously endangered: automobile safety standards. The deadline for the installation of inflatable air bags in automobiles was pushed back at least four times due to pressure from the automobile industry. The Nixon administration's standards for bumpers, for tires, and for recall monitoring have all been inadequate to protect the public safety.

The Nixon administration has been busy in many other areas to insure that economic, health, and safety standards do not really meet the needs of consumers. This administration has worked to frustrate legislation setting a Federal minimum standard for automobile warranties; it has sought to deny the Food and Drug Administration the authority it needs to do an adequate job of protecting consumers; it has opposed creation of a new, independent agency to regulate the safety of consumer products; it has suppressed information concerning cancer-causing chemical additives and residues in the food supply, dragged its feet in taking action to remove these substances from the food supply, and lobbied hard for special-interest legislation to compensate companies affected by Federal regulation; it has tolerated in the Agriculture Department a system of meat and poultry inspection so outrageously inept that reports of its appalling failures have become routine; it has refused, time and again, to take effective action under the

Flammable Fabrics Act to reduce the risk that children will be incinerated by their burning clothes; it has utterly failed, in spite of its grandiose claims, to do anything to reduce spiralling food prices.

The administration's duplicity on the Consumer Protection Agency bill is only the latest in a long series of failures to protect the interests of consumers.

Yesterday on the Senate floor, the Nixon administration and a small minority of the Senate succeeded in denying the entire Senate the opportunity of considering on the merits the most important piece of consumer legislation to come before this Congress. The filibuster that killed the Consumer Protection Agency could not have succeeded without active guidance and encouragement from Richard Nixon's agents on Capitol Hill.

The consumer protection bill enjoyed wide bipartisan support. Both the Republican and the Democratic platforms contain endorsements of the creation of an advocate for consumer interests. The Nixon administration announced its support for the creation of a consumer advocate, but worked in secret to kill the legislation that would have created one. It even withdrew support from the House bill, which it had previously endorsed. The Nixon administration insisted that any amount of consumer advocacy had to be denied.

For nearly 4 years this administration has neglected the consumer interest in favor of the special interests.

Mr. HART. Mr. President, I ask unanimous consent that I may use the remainder of my time on a separate item.

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

(The remarks Mr. HART made at this point when he submitted Senate Resolution 376, dealing with committee hearings, appear in the morning business section of the RECORD under the appropriate heading.)

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time allotted to the Senator from Washington (Mr. MAGNUSON) under the special order be vacated.

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

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

(The remarks Mr. HARRIS made at this point when he introduced S. 4066 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

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

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Does any Senator wish any of my time?

Mr. President, I suggest the absence of a quorum, pending the arrival of the distinguished Republican leader, and I ask unanimous consent that the time be charged against my time.

The PRESIDING OFFICER. 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.

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

Mr. ROBERT C. BYRD. Mr. President, I relinquish the remainder of my time under the order.

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

CONSUMER PROTECTION

Mr. SCOTT. Mr. President, today a scatter of shotgun pellets against the battlements turns on the issue of consumerism; and the fire, which is really more smoke than substance, is directed in part against someone whom I have known most of my life and whose dedication to the welfare of the consumer is as clear as the commitment of anyone I know. I speak of Mrs. Virginia Knauer, from my home city of Philadelphia.

It was my privilege to join in the recommendation of Mrs. Knauer to the post which she holds. She has very well and ably fought the battle of the consumer both through testimony in Congress, the presentation of legislative proposals, and through her advocacy within the branches of Government. The accomplishments of Mrs. Knauer's office, and of the Department of Health, Education, and Welfare, Housing and Urban Development, Labor, Commerce, and other agencies of the Government in support of the consumer has been massive and very largely successful. This is a field of relatively new and separate interest. Formerly it has been more or less lost in the midst of other issues, but we are all now consumer-minded, as we are all now ecology-minded.

There is, therefore, a certain amount of competition as to who has done the most for the people of the United States because, indeed, they are all consumers—whatever else they may be.

On February 25, 1971, the President, in proposing a consumer program, said:

> The purpose of this program is not to provide the consumer with something to which he is not entitled; it is rather to assure that he receives what he is, in every way, entitled to. The continued success of our free enterprise system depends in large measure upon the mutual trust and good will of those who consume and those who produce and provide.

Mr. President, Americans, in this "disposable society" of ours, consume vast amounts of goods—new products, new processes, and new materials which have added to the profusion in the marketplace. There are more than 8,000 products in the average large supermarket.

President Nixon moved in October 1969, when he proposed a "Buyer's Bill of Rights," to coordinate Federal activities in the consumer protection field. This is the area where Congress has failed to take action and we can hardly mount any justifiable criticism on the President when we have not acted ourselves.

The President created the Office of Consumer Affairs on February 24, 1971, which is headed by Mrs. Knauer. This office now has a staff of 50, and a budget of $900,000. They could well and efficiently use more if our budgetary system permitted. This office publishes consumer information, has sponsored regional panels, and provided Congress with consumer law data, as well as sending OCA guidelines on shopping to the Nation's school systems. Four thousand consumer complaints per month are referred to businesses for investigation.

I now refer to the President's speech of February 25, 1971, when he again went to Congress with a consumer proposal. He asked for the creation of a product safety division in HEW to set standards for products, and requested a law to increase the effectiveness of warranties, to give buyers more protection. He also requested a consumer protection act to enable the Federal Government to initiate action against unfair and deceptive practices, providing for stiff penalties.

The act that passed the House would, indeed, substantially have met the President's desires.

Then there is the Consumer Product Testing Act, proposing to establish new testing methods to encourage manufacturers to make a full disclosure of their product tests.

There is the Drug Identification Act, which would establish a uniform code identifying various drugs and setting standards for drug containers.

Then there is the Medical Device Safety Act, establishing safety standards for potential hazardous devices and requiring testing for safety and effectiveness before sales are made.

There is the Consumer Fraud Prevention Act, specifying fradulent practices and providing means for consumers to recover damages through legal action.

There is the National Business Council, established by Executive order on February 25, 1971, and after which there was a 66-percent increase in cease-and-desist orders.

To say that the consumer has been abandoned, when this administration has increased by this percentage this large amount of cease-and-desist orders over previous administrations, argues exactly the contrary.

The Food and Drug Administration has forced removal of dangerous toys from the market. It took cyclamates off the grocery shelves and probed monosodium glutamate, receiving voluntary agreements from industry to take it out of baby food.

In June of this year, Secretary of Health, Education, and Welfare Richardson appointed a Consumer Issues Advisory Panel to advise the Commission on Medical Malpractice. The 10-member panel's directive is to investigate the effects of medical malpractice claims on such issues as patient-doctor relationships and medical costs to consumers.

The Department of Housing and Urban Development's Research and Technology Office has begun a series of consumer information publications on housing. The first book in the series, "A Design Guide for Home Safety," is already underway.

One of the two foremost consumer advocate bureaus, the Food and Drug Administration has, in the past few months, initiated several new research projects. Among these are the investigation of playground equipment, dietary food labeling, foreign drug registration, and more detailed overall food labeling.

To increase the effectiveness and jurisdiction of the Food and Drug Administration, the Nixon administration proposed converting the FDA into the Consumer Safety Administration, and the President requested an FDA budget increase of 70 percent for fiscal year 1973.

The administration has endorsed the concept of an independent Consumer Protection Agency, but has proposed changes to the Senate version which would bring it into line with the House-passed bill, which the administration supports.

It is still not too late for us to take up the House bill and pass it in that form. We would have consumer legislation, the lack of which senatorial critics blame on the President. After all, where Congress has the power to do something and does not do it, it can hardly blame the President.

I say again that if senatorial critics really want Consumer Protection Agency legislation, let them agree to accept the House bill and let us pass it here in the House form and it can go to the President for his signature. Then we will have achieved by action what we certainly cannot achieve by mere talk or rhetoric on this floor.

Mr. COOK. Mr. President, will the distinguished minority leader yield?

Mr. SCOTT. I yield.

Mr. COOK. I thank the Senator from Pennsylvania because one of the remarks that was made here this morning, relative to the fact that certain pieces of legislation had not passed the Senate, was the reference to these people being agents of the President.

Mr. President, I would say that one of the remarks that was made is relative to a piece of legislation that was referred to the Judiciary Committee; namely, the no-fault insurance bill.

The distinguished Senator from Michigan used the phrase that the reason it did not succeed in the Senate was because it succeeded in being sent to the Judiciary Committee by agents of the President. I would like to refer the Senate to page 27306 of the CONGRESSIONAL RECORD of August 8, 1972. That measure was sent to the Judiciary Committee by a vote of 49 to 46. And of the 49 Members of the Senate who voted to send that measure to the Judiciary Committee, 21 were Members of the Senate who reside on the other side of the aisle.

I do not think the distinguished Senator from Michagan wants to refer to those 21 Members as agents of the President.

I notice such prominent names among that list of 29 Senators as the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Missouri (Mr. EAGLETON), and many others.

I think that, in remarks on the floor of the Senate, to give this political rhetoric and persist in it day in and day out at least ought to be credible. I would hope that the Senator from Pennsylvania would agree with me.

I recall the discussion also this morning about the bill we voted down yesterday for the third time. I would suggest that the RECORD show that the Senator from Pennsylvania had, and I had, voted to end debate yesterday and had also voted to end debate on the motion for cloture the time before that.

So when these phrases are used relative to "agents of the President," I hope the people really understand their connotations five weeks away from a national election, because I think it is important to put it in perspective.

Mr. SCOTT. Mr. President, I thank the distinguished Senator from Kentucky. He is entirely right. Of course, it is difficult, I suppose, for critics on the other side to criticize 21 Members of their own party. But they can manage to do it by the process of generalities, elusion, and vagueness. However the criticism might be unintended, it still remains when that happens. I did vote three times to get action on the Consumer Protection Agency bill. I believe in the program. I believe the House bill is better but I believe that the Senate should have had a chance to finish voting on its version. However, we were not prepared to do so.

I am an agent of the President on many occasions, and when I am not, I am free to say so. The President wanted a bill. And since he wanted a bill, many of us did what I did and tried three times to get him one. So the criticism falls from its own lack of factual support.

Mr. President, the weakness in criticizing the administration for the failures of the Congress lies in the fact, as I have so many times pointed out on the floor, that Congress has the authority to enact legislation, and the Congress is in the control of the majority party. The final result of congressional action must always include affirmative action by some Members of the majority party in both Houses, or else there would not be any legislation.

Now, where the Republicans on this side of the aisle have unanimously, or virtually unanimously, taken a position for or against a bill or an amendment, it is certainly a fair comment to say that we were right or that we were wrong. However, where a decision is made, as nine-tenths of the decisions are made in this body, by Senators on both sides of the aisle being on opposite sides of the question, I think it would be very difficult to blame the President for what we have done. When we lay a bill at his door, that is when his responsibility reaches its peak. He can sign it. He can let it become law without his signature. Or he can veto it. I point out that he has not hesitated to veto bills. There have been times when his vetoes have been overridden, and there have been other times when they have been sustained. But Congress for 90 percent of the time during the last 40 years has been in the control of the majority which presently controls it.

One cannot foreswear one's own offspring. One cannot bastardize one's own project. One is stuck with it, with the results of one's efforts. Many of those efforts are quite good, and the majority leader and I join in praising the Congress. We join in advocating a better recognition of what we have achieved.

Mr. President, I thank the distinguished majority leader. But good or bad, let us make the distinction under our balance of power as to what we have done and as to what the President has done about it. And when he has asked for legislation and has not gotten it, that is our fault and not his. When he has asked for legislation and gotten it, he will have to share in the credit. When he has asked for legislation and gotten something that he did not want, he has a chance for a further reaction, and we have a chance for an action after that. However, there is plenty of credit to go around. There is a certain amount of blame to go around. But let us not dip into our pot of odium and spread it too thick for fear some of it may splash back upon ourselves. I presently know of no patented cleansing fluid which will readily remove it.

EPILOG

Mr. SCOTT. Mr. President, I ask unanimous consent that a letter to the editor of the Washington Star, published a short while ago, be printed in the RECORD.

The PRESIDING OFFICER. Without objection, the letter will be printed in the RECORD, as follows:

LETTERS TO THE EDITOR

GLEN DALE, MD.

Sir: After 40 years as a Democrat, it was thrilling to hear that my party can now solve all the problems that it could not solve before handing those problems over to Richard Nixon in 1968.

G. W. MOORE.

TRANSACTION OF ROUTINE MORNING BUSINESS

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar Orders Nos. 1101 and 1202. I understand that these measures have been cleared all around and there is no argument about them.

SHOOTING ANIMALS FROM AIRCRAFT

The Senate proceeded to consider the bill (H.R. 14731) to amend the Fish and Wildlife Act of 1956 in order to provide for the effective enforcement of the provisions therein prohibiting the shooting at birds, fish, and other animals from aircraft.

Mr. STEVENS. Mr. President, on September 15, the Senate Commerce Committee reported H.R. 14731, the bill providing for enforcement of the act we passed last November prohibiting the shooting of animals from aircraft. This was H.R. 5060, now Public Law 92–159. H.R. 14731 will permit the Secretary of the Interior to issue regulations implementing and enforcing the provisions of that act. It will permit him to enter into cooperative agreements with State agencies and to delegate enforcement authority to State law enforcement personnel, including fish and game wardens. It will make subject to forfeiture all guns, aircraft, and other equipment used to aid in the shooting, capturing, or harassment of any animal made illegal under the provisions of the act. It will also permit administrative seizure and forfeiture of such vehicles by a procedure similar to that presently allowed under the customs laws of the United States.

I wholeheartedly support this bill, even as I supported the law it amends—Public Law 92–159. This highly beneficial legislation protects animals from unsportsmanlike and illegal harassment, shooting, and capturing. Many States, such as the State of Alaska, prohibit the use of aircraft under State law. States such as mine also permit the seizure and forfeiture of aircraft involved.

I believe that these provisions are just. They provide for strong enforcement by State fish and game personnel and insure widespread compliance with the law.

The bill also wisely permits Federal delegation of responsibility to State fish and game personnel. The States already have a massive enforcement effort in this area and a great deal of expertise. The amount of money they can expend will, in many areas, far exceed the Federal funds available. Because the States do already have primary jurisdiction over the animals within their territories, this is also in line with current Federal law.

Subsection (e) is of particular importance. As the committee report states, this subsection does not make subject to forfeiture airplanes or other means of transportation used to go from place to place for lawful hunting or fishing. This means that aircraft used solely to transport hunters to camping sites and base camps are not subject to forfeiture under this provision of law.

As I indicated when H.R. 5060 was reported out of the Senate Commerce Committee, I would favor including all moving motor vehicles such as automobiles, air cushion vehicles, motor boats, and snowmobiles under the provisions of this act.

H.R. 14731 is, indisputably, a step in the right direction. Many animals will be saved as a result of its enactment.

Mr. SCHWEIKER. Mr. President. I strongly endorse Senate passage today of H.R. 14731, to provide the Secretary of the Interior with the necessary authority to enforce effectively the provisions of the Fish and Wildlife Act of 1956 that prohibit the shooting at birds, fish, and other animals from aircraft.

As my colleagues will recall, I was the Senate sponsor of the original legislation designating this heinous treatment of our wildlife an unlawful activity. My bill, S. 1563, was identical to H.R. 5060 which passed the Senate November 4, 1971. My colleague from Pennsylvania, Representative JOHN SAYLOR, was the leader in winning House passage of this important wildlife protection measure and deserves considerable credit from sportsmen and environmentalists throughout the country for his foresight and deep concern that helped bring this issue to national attention.

H.R. 5060, enacted as Public Law 92–159, was an amendment to the Fish and Wildlife Act of 1956. It made it an unlawful act, subject to a $5,000 fine or 1 year in prison, for a person to shoot or attempt to shoot while airborne for the purpose of capturing or killing any bird, fish, or other animal; to use an aircraft to harass any bird, fish, or other animal; or to knowingly participate in using an aircraft for any of the purposes described above.

The legislation before the Senate today, H.R. 14731, builds upon this existing law, and provides for its strict enforcement by the Secretary of the Interior. Responsibility under the earlier law rested in the Federal Bureau of Investigation, and, as the committee report clearly points out, the purposes of the law would now be more effectively served by placing enforcement authority for the bill in the Department of the Interior. The Secretary of the Interior is already responsible for enforcement of other Federal laws to protect our national fish and wildlife, an important national resource. In addition, as the committee points out, U.S. game management agents are already in the field for the Interior Department to enforce Federal laws and to work closely with State fish and game officers.

Under today's legislation, the Secretary of the Interior would promulgate regulations, and authorize representatives to arrest persons for violations of the act, would be authorized to enter into cooperative enforcement agreements with State authorities, and would be authorized to execute warrants to carry out these enforcements duties. The bill provides for forfeiture of any birds, fish, or other animals shot or captured in violation of the law, and for forfeiture to the United States of all guns, aircraft, and other equipment used to shoot or hunt animals from aircraft.

Mr. President, in addition to the television documentary on the shooting of wolves from aircraft cited in the committee report on the bill, I remind my colleagues of the shocking shooting of more than 500 eagles in Wyoming and Colorado from helicopters that occurred in 1971. I am sure that all sportsmen will agree that shooting animals or birds from aircraft is a callous and shocking practice. It is not sport and will result in unnecessary and cruel destruction of our wildlife. I commend the chairman and members of the Senate Commerce Committee for acting on this important addition to the earlier prohibition bill, and urge the bill's immediate adoption.

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

MORATORIUM ON THE KILLING OF POLAR BEARS

The Senate proceeded to consider the joint resolution (H.J. Res. 1268) calling for an immediate and appropriate moratorium on the killing of polar bears, which had been reported from the Committee on Foreign Relations with amendments on page 1, line 3, after the word "President", strike out "shall seek" and insert "should seek to negotiate"; in line 6, after the word "for", strike out "an"; and in line 7, after the word "appropriate", strike out "moratorium on the killing of" and insert "action to preserve and protect".

The amendments were agreed to.

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

The joint resolution was read the third time.

Mr. STEVENS. Mr. President, at this time, when the Senate is considering the passage of House Joint Resolution 1268, the joint resolution calling for immediate and appropriate action to preserve and protect polar bears, I ask unanimous consent to have printed in the RECORD a joint statement by my colleague from Alaska (Mr. GRAVEL) and myself.

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

The Senate Foreign Relations Committee has amended H.J. Res. 1268 at our request. This amendment indicates that the treaty, rather than calling for an immediate and appropriate moratorium on the killing of polar bears, should call for immediate and appropriate action to preserve and protect these animals.

We are particularly pleased that the Committee has amended this bill in this manner. This amendment clarifies the language, making it apparent that H.J. Res. 1268 is not in conflict with other legislation on the subject, particularly the Alaska Native Claims Settlement Act (Public Law 92–203) and the Marine Mammal Protection Act of 1972 (H.R. 10420). Such language will also obviate any possible conflict between this resolution and S. 3818, the Endangered Species Act of 1972, which has already been reported out of the Senate Commerce Committee. We have urged the Committee that it is most important that this resolution be complementary and supplementary to these

three bills and not supersede them. We are pleased to note that this language clarifies this.

We are also pleased that this language will permit the State of Alaska, which has extensive fish and game regulations concerning polar bears, and the federal government as well, within their respective jurisdictions, to exercise the necessary authority.

Additionally, this will permit the Department of State to enter into a treaty in accord with Article I, Section 4 of the Draft Protocol of the International Union for the Conservation of Nature and Natural Resources (IUCN) which will permit the continuation of traditional rights of Native people who depend upon this resource. Such dependence is not only "subsistence" in its narrowest sense, but also includes food, clothing, shelter, and the other necessities of life, including arts and crafts manufactured in the "cottage industries." These are necessary for even a marginal cash subsistence economy. This language will insure that the legitimate and traditional needs of our Eskimo citizens will not be ignored by this country.

Finally and of equally great importance is the change in language from a moratorium approach to a more appropriate resource management method. Blanket moratoria are not the most effective methods of resource management. Wildlife management experts must be given the proper discretion they need. The amendment adopted by the Committee will permit the necessary flexibility.

This amendment is in accord with the clarifying colloquy engaged in by our colleague (Mr. Begich) and the manager of the bill (Mr. Fraser) at the time the House of Representatives passed the resolution on Septemebr 19. We hope that the Senate will adopt the Committee amendment and that the House of Represenatives will also accede.

The PRESIDING OFFICER. The joint resolution (H.J. Res. 1268) having been read the third time, the question is, Shall it pass?

The joint resolution (H.J. Res. 1268) was passed.

The title was amended so as to read: "Joint resolution calling for immediate and appropriate action to preserve and protect polar bears."

EMERGENCY RAIL FACILITIES RESTORATION ACT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 1098 (S. 3843).

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

Calendar No. 1098 (S. 3843) a bill to authorize the Secretary of Transportation to make loans to certain railroads in order to restore or replace essential facilities and equipment damaged or destroyed as a result of natural disasters during the month of June 1972.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

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, at the beginning of line 7, strike out "(1)" and insert "(a)";

At the beginning of line 9, strike out "(2)" and insert "(b)";

On page 2, after line 2, insert:

(c) "Net income" means ordinary income reported to the Interstate Commerce Commission pursuant to the relevant railroad annual report form, adjusted for extraordinary items of a nonrecurring nature and directly related to railroad operations.

After line 7, insert:

AUTHORIZATION

In line 10, after the word "conditions", insert "as are specified by this Act and any others";

In line 12, after the word "exceed", strike out "$40,000,000" and insert "$48,000,000";

In line 14, after "(11 U.S.C. 205)," strike out "and";

In line 16, after the word "Commission", strike out "on" and insert "in";

In the same line, after the word "the", strike out "Railroad Annual Report" and insert "railroad annual report";

In line 17, after the word "report", strike out "Form A";

In line 18, after the word "years,", insert "and to railroads whose certified damage to railroad facilities or equipment as a result of the natural disasters which occurred during the month of June 1972 exceeds their net income for either of the last two calendar years";

On page 3, after line 5, strike out:

SEC. 4. Loans shall be made upon application of a railroad in such form and substance as the Secretary shall prescribe and upon satisfactory proof of the costs incurred or to be incurred in the restoration or replacement of essential railroad facilities, equipment, or services. No loan application shall be approved under this Act after six months have elapsed from its date of enactment and unless the Secretary receives satisfactory assurances that the restoration or replacement to be accomplished with funds made available under the loan shall be completed without undue delay.

And, in lieu thereof, insert:

TERMS AND CONDITIONS

SEC. 4. (a) Prior to making a loan under this Act the Secretary shall—

(1) find in writing that there is no other practicable means of obtaining funds from either private or government sources than a loan pursuant to this Act;

(2) find in writing that the probable value of the assets of the railroad provide reasonable protection for the United States;

(3) require that application be made by a railroad in such form and substance as the Secretary shall prescribe;

(4) require satisfactory proof in writing of costs incurred or to be incurred in the restoration or replacement of essential railroad facilities, equipment, or services;

(5) take appropriate action to insure that funds loaned under this Act are used solely for the purpose of restoring or replacing facilities, equipment, or services damaged or destroyed, as a result of the natural disasters of June 1972 and that such funds are used for no restoration or replacement other than is necessary to correct such damage or destruction;

(6) obtain satisfactory assurances from the applicant railroad that the restoration or replacement to be accomplished with funds made available under the loan shall be completed without undue delay;

(7) require as a condition of the loan that the United States obtain such security as the Secretary deems will adequately protect the interests of the United States except that, in the case of a railroad undergoing reorganization under section 77 of the Bankruptcy Act, as amended (11 U.S.C. 205), if the Secretary expressly determines in writing that the railroad does not have sufficient working capital to fund the restoring or replacing of essential railroad facilities, equipment, or services, he may, notwithstanding section 3466 of the Revised Statutes (31 U.S.C. 191) or any other law, require any priority or subordination of the interests of the United States he deems to be appropriate in relation to the claims of any other creditors of the railroad or its trustees, so long as such position is not lower than that of a prebankruptcy unsecured creditor of the railroad; and

(8) require that no part of the restoration or replacement work to be financed by the loan program hereunder which has customarily been performed by the various crafts and classes of railroad employees shall be subcontracted by the railroad; except to the extent that the Secretary finds in writing that the railroad employees, including employees on furlough, in the affected region are insufficient to perform such restoration or replacement work and that such employees on furlough, if not retired, will be employed by a subcontractor to perform such work in which event such employees shall be deemed to be railroad employees retaining all the rights and privileges of railroad employees while so employed.

(b) No loan application shall be approved under this Act after eight months have elapsed from its date of enactment.

(c)(1) The Secretary shall prepare and keep current a comprehensive schedule setting forth transportation facilities and services that should be part of the rail transportation system in the northeastern region of the United States or any other region which was adversely affected by the natural disasters which occurred during the month of June 1972. In formulating such a schedule the Secretary shall take into consideration the interests of persons and communities affected thereby; existing rail facilities and the pattern of service by railroads; and the public interest in a balanced and economical transportation system responsive to the needs of the public and the users of such system. The Secretary in reviewing applications for loans shall compare such applications to the schedule.

(2) If after such review and comparison the Secretary determines that services or facilities of the applicant railroad listed on the schedule and which he finds to be essential to the public interest in maintaining transportation service will not be restored or replaced, the Secretary shall not approve such application unless and until such application is amended to include the restoration and replacement of such services and facilities.

(3) The Secretary shall provide as a condition of the loan that, in consideration of the relief provided by this Act, the railroad shall offer to convey to the State, for just compensation, or in the event any such railroad is subject to a proceeding under the bankruptcy laws, the court having jurisdiction in such bankruptcy proceedings shall direct the trustee or trustees or the debtor to offer to the State, for just compensation, all of its right, tile, and interest free and clear of all encumbrances, in any right-of-way, track, and other related real and personal property on any branch line within such State which has been damaged or destroyed as a result of the natural disasters of June 1972; which have not been scheduled for restoration or replacement under the loan programs as approved by the Secretary; and which such State, or subdivision thereof, proposes to restore or replace.

On page 7, after line 12, strike out:

SEC. 5. Any loan made under this Act shall bear interest at a rate determined by the Secretary of the Treasury, taking into

consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of ten to twelve years reduced by not to exceed 2 per centum per annum. In no event shall any loan made under this Act bear interest at a rate in excess of 6 per centum per annum.

And, in lieu thereof, insert:

STATE AND LOCAL AUTHORITY

SEC. 5. (a) The Secretary is authorized to make loans pursuant to this section to assist regional, State, and local public bodies and agencies thereof in financing the restoration and replacement of railroad facilities and equipment damaged or destroyed as a result of the natural disasters of June 1972. Eligible facilities and equipment may include railroad right-of-way, track, rolling stock, and other real and personal property needed for an efficient and coordinated railroad transportation system and conveyed in accordance with the provisions of section 4(c)(3).

(b) No such loan shall be provided unless the Secretary determines that the applicant has or will have—

(1) demonstrated a valid need for the establishment or reestablishment of railroad services in the affected area; and

(2) the technical capability to carry out the proposal project.

(c) Any such loan may be made for not to exceed 80 per centum of the total costs of the proposed project and shall be subject to such other terms and conditions as the Secretary may determine are necessary to carry out the purposes of this action.

(d) There is authorized to be appropriated not to exceed $10,000,000 to carry out the provisions of this section. Sums so appropriated shall remain available through June 30, 1975.

(e) The Secretary shall impose as a condition of any such loan under this section such fair and equitable labor protective arrangements as are described in the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 565).

On page 9, after line 2, insert a new section, as follows:

LINE ABANDONMENT

SEC. 6. (a) Except as provided in subsection (b) of this section, and except for the conveyance of facilities pursuant to subsection 4(c)(3), all abandonment of facilities and services shall continue to be subject to the appropriate provisions of the Interstate Commerce Act.

(b) The damage or destruction caused by the natural disasters of June 1972 to any railroad facility, equipment, or service therefrom, of a railroad obtaining assistance under this Act, or any action taken pursuant to this Act affecting any railroad, shall not be evidence in any proceeding before any Federal agency or in any court in which line abandonment is an issue. Any violation of this section shall be deemed to be prejudicial.

At the beginning of line 18, change the section number from "5" to "7";

At the top of page 10, insert "Deferral Of Payment";

At the beginning of line 2, change the section number from "6" to "8";

In line 5, after the word "for", strike out "(1)";

After line 7, strike out:

(2) such security, if any, for the loan as he deems to be appropriate; and

(3) notwithstanding section 3466 of the Revised Statutes (31 U.S.C. 191) or any other law, any priority or subordination of the interest of the United States he deems to be appropriate in relation to the claims of any other creditors of the railroad or its trustees, except that the Secretary may not accept a position lower than that of a prebankruptcy unsecured creditor of the railroad.

After line 16, insert a new section, as follows:

RULES AND REGULATIONS

SEC. 9. The Secretary shall issue such rules and regulations as are appropriate to carry out the purposes of this Act.

After line 20, insert a new section, as follows:

ENFORCEMENT

SEC. 10. The Secretary shall insure that railroads which obtain loans under this Act comply with the provisions of this Act and any rules, regulations, or conditions imposed by the Secretary pursuant to this Act. In the event of any failure to comply with such provisions, rules, regulations, or conditions, the Secretary may take such enforcement action as he deems appropriate including a declaration that the obligation of applicant railroads is immediately due and payable as a claim of the United States without regard to any other provisions of the loan or of this Act.

On page 11, after line 5, insert a new section, as follows:

REPORTS

SEC. 11. The Secretary shall, within one year after enactment of this Act, report to the President and to the Congress with respect to his activities pursuant to this Act, including an evaluation of the financial conditions of railroads which obtained loans under this Act and including an evaluation of the impact of this Act on the condition of the rail facilities and services described in the schedule prepared under subsection 4(c)(1) of this Act. Such report shall also include recommendations, if any, for additional legislation action.

After line 16, insert a new section, as follows:

AUDIT

SEC. 12. The Comptroller General of the United States, or any of his duly authorized representatives, shall have access to such information, books, records, and documents as he determines necessary to effectively audit financial transactions and operations carried out by the Secretary in the administration of this Act. The Comptroller General shall make such reports to the Congress on the results of any such audits as are appropriate.

And at the top of page 12, insert a new section, as follows:

INTERSTATE COMMERCE COMMISSION APPROVAL

SEC. 13. A railroad qualifying for a loan or loans under the provisions of this Act shall not be required to comply with the provisions of section 20a of the Interstate Commerce Act (49 U.S.C. 20a) with respect to such loan or loans.

So as to make the bill read:

S. 3843

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Rail Facilities Restoration Act".

DEFINITIONS

SEC. 2. For the purpose of this Act—

(a) "Secretary" means the Secretary of Transportation.

(b) "Railroad" means any common carrier by railroad subject to part I of the Interstate Commerce Act (49 U.S.C. 1–27).

(c) "Net income" means ordinary income reported to the Interstate Commerce Commission pursuant to the relevant railroad annual report form, adjusted for extraordinary items of a nonrecurring nature and directly related to railroad operations.

AUTHORIZATION

SEC. 3. The Secretary is authorized to make loans, upon such terms and conditions as are specified by this Act and any others he deems appropriate, in an aggregate amount not to exceed $48,000,000 to railroads undergoing reorganization under section 77 of the Bankruptcy Act, as amended (11 U.S.C. 205), to railroads which have reported to the Interstate Commerce Commission in the railroad annual report a deficit net income for either of the last two calendar years, and to railroads whose certified damage to railroad facilities or equipment as a result of the natural disasters which occurred during the month of June 1972 exceeds their net income for either of the last two calendar years for the purpose of restoring or replacing railroad facilities, equipment, or services which are determined to be essential to public service (including, without limitation, bridges, track, track structures, signal and communication systems, and rolling stock) damaged or destroyed as a result of the natural disasters which occurred during the month of June 1972. There are authorized to be appropriated to the Secretary to remain available through June 30, 1975, such sums as are necessary to carry out the purposes of this Act.

TERMS AND CONDITIONS

SEC. 4. (a) Prior to making a loan under this Act the Secretary shall—

(1) find in writing that there is no other practicable means of obtaining funds from either private or government sources than a loan pursuant to this Act;

(2) find in writing that the probable value of the assets of the railroad provide reasonable protection for the United States;

(3) require that application be made by a railroad in such form and substance as the Secretary shall prescribe;

(4) require satisfactory proof in writing of costs incurred or to be incurred in the resolution or replacement of essential railroad facilities, equipment, or services;

(5) take appropriate action to insure that funds loaned under this Act are used solely for the purpose of restoring or replacing facilities, equipment, or services damaged or destroyed, as a result of the natural disasters of June 1972 and that such funds are used for no restoration or replacement other than is necessary to correct such damage or destruction;

(6) obtain satisfactory assurances from the applicant railroad that the restoration or replacement to be accomplished with funds made available under the loan shall be completed without undue delay;

(7) require as a condition of the loan that the United States obtain such security as the Secretary deems will adequately protect the interests of the United States except that, in the case of a railroad undergoing reorganization under section 77 of the Bankruptcy Act, as amended (11 U.S.C. 205), if the Secretary expressly determines in writing that the railroad does not have sufficient working capital to fund the restoring or replacing of essential railroad facilities, equipment, or services, he may, notwithstanding section 3466 of the Revised Statutes (31 U.S.C. 191) or any other law, require any priority or subordination of the interests of the United States he deems to be appropriate in relation to the claims of any other creditors of the railroad or its trustees, so long as such position is not lower than that of a prebankruptcy unsecured creditor of the railroad; and

(8) require that no part of the restoration or replacement work to be financed by the loan program hereunder which has customarily been performed by the various crafts and classes of railroad employees shall be subcontracted by the railroad; except to the extent that the Secretary finds in writing

that the railroad employees, including employees on furlough, in the affected region are insufficient to perform such restoration or replacement work and that such employes on furlough, if not rehired, will be employed by a subcontractor to perform such work in which event such employees shall be deemed to be railroad employees retaining all the rights and privileges of railroad employees while so employed.

(b) No loan application shall be approved under this Act after eight months have lapsed from its date of enactment.

(c) (1) The Secretary shall prepare and keep current a comprehensive schedule setting forth transportation facilities and services that should be part of the rail transportation system in the northeastern region of the United States or any other region which was adversely affected by the natural disasters which occurred during the month of June 1972. In formulating such a schedule the Secretary shall take into consideration the interests of persons and communities affected thereby; existing rail facilities and the pattern of service by railroads; and the public interest in a balanced and economical transportation system responsive to the needs of the public and the users of such system. The Secretary in reviewing applications for loans shall compare such applications to the schedule.

(2) If after such review and comparison the Secretary determines that services or facilities of the applicant railroad listed on the schedule and which he finds to be essential to the public interest in maintaining transportation service will not be restored or replaced, the Secretary shall not approve such application unless and until such application is amended to include the restoration and replacement of such services and facilities.

(3) The Secretary shall provide as a condition of the loan that, in consideration of the relief provided by this Act, the railroad shall offer to convey to the State, for just compensation, or in the event any such railroad is subject to a proceeding under the bankruptcy laws, the court having jurisdiction in such bankruptcy proceedings shall direct the trustee or trustees or the debtor to offer to convey to the State, for just compensation, all of its right, title, and interest free and clear of all encumbrances, in any right-of-way, track, and other related real and personal property on any branch line within such State which has been damaged or destroyed as a result of the natural disasters of June 1972; which have not been scheduled for restoration or replacement under the loan program as approved by the Secretary; and which such State, or subdivision thereof, proposes to restore or replace.

STATE AND LOCAL AUTHORITY

SEC. 5. (a) The Secretary is authorized to make loans pursuant to this section to assist regional, State, and local public bodies and agencies thereof in financing the restoration and replacement of railroad facilities and equipment damaged or destroyed as a result of the natural disasters of June 1972. Eligible facilities and equipment may include railroad right-of-way, track, rolling stock, and other real and personal property needed for an efficient and coordinated railroad transportation system and conveyed in accordance with the provisions of section 4(c)(3).

(b) No such loan shall be provided unless the Secretary determines that the applicant has or will have—

(1) demonstrated a valid need for the establishment or reestablishment of railroad service in the affected area; and

(2) the technical capability to carry out the proposed project.

(c) Any such loan may be made for not to exceed 80 per centum of the total costs of the proposed project and shall be subject to such other terms and conditions as the Secretary may determine are necessary to carry out the purposes of this section.

(d) There is authorized to be appropriated not to exceed $10,000,000 to carry out the provisions of this section. Sums so appropriated shall remain available through June 30, 1975.

(e) The Secretary shall impose as a condition of any such loan under this section such fair and equitable labor protective arrangements as are described in the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 565).

LINE ABANDONMENT

SEC. 6. (a) Except as provided in subsection (b) of this section, and except for the conveyance of facilities pursuant to subsection (4)(c)(3), all abandonment of facilities and services shall continue to be subject to the appropriate provisions of the Interstate Commerce Act.

(b) The damage or destruction caused by the natural disasters of June 1972 to any railroad facility, equipment, or service therefrom, of a railroad obtaining assistance under this Act, or any action taken pursuant to this Act affecting any railroad, shall not be evidence in any proceeding before any Federal agency or in any court in which line abandonment is an issue. Any violation of this section shall be deemed to be prejudicial.

INTEREST RATES

SEC. 7. Any loan made under this Act shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of ten to twelve years reduced by not to exceed 2 per centum per annum. In no event shall any loan made under this Act bear interest at a rate in excess of 6 per centum per annum.

DEFERRAL OF PAYMENT

SEC. 8. Whenever he determines it necessary to insure the provision of essential transportation services of a railroad, the Secretary may in his discretion provide in the terms and conditions of a loan under this Act for deferral of the payment of principal and interest on the loan for a period not to exceed ten years from the date the loan is made.

RULES AND REGULATIONS

SEC. 9. The Secretary shall issue such rules and regulations as are appropriate to carry out the purposes of this Act.

ENFORCEMENT

SEC. 10. The Secretary shall insure that railroads which obtain loans under this Act comply with the provisions of this Act and any rules, regulations, or conditions imposed by the Secretary pursuant to this Act. In the event of any failure to comply with such provisions, rules, regulations, or conditions, the Secretary may take such enforcement action as he deems appropriate including a declaration that the obligation of applicant railroads is immediately due and payable as a claim of the United States without regard to any other provisions of the loan or of this Act.

REPORTS

SEC. 11. The Secretary shall, within one year after enactment of this Act, report to the President and to the Congress with respect to his activities pursuant to this Act, including an evaluation of the financial conditions of railroads which obtained loans under this Act and including an evaluation of the impact of this Act on the condition of the rail facilities and services described in the schedule prepared under subsection 4(c)(1) of this Act. Such report shall also include recommendations, if any, for additional legislation action.

AUDIT

SEC. 12. The Comptroller General of the United States, or any of his duly authorized representatives, shall have access to such information, books, records, and documents as he determines necessary to effectively audit financial transactions and operations carried out by the Secretary in the administration of this Act. The Comptroller General shall make such reports to the Congress on the results of any such audits as are appropriate.

INTERSTATE COMMERCE COMMISSION APPROVAL

SEC. 13. A railroad qualifying for a loan or loans under the provisions of this Act shall not be required to comply with the provisions of section 20a of the Interstate Commerce Act (49 U.S.C. 20a) with respect to such loan or loans.

Mr. HARTKE. Mr. President, in June of 1972 widespread devastation was brought to parts of South Dakota and the eastern seaboard by severe storms which had delivered an enormous volume of water to the affected areas. The existing Federal programs were found to be inadequate to cope with the effects of such large scale flooding. Expansion of benefits was sought and largely approved by the Congress where legislative revision was required. For example, Congress authorized the expenditure of $200 million for the reconstruction of highways and related facilities.

The damage to homes, businesses, and public facilities was great, but some Federal assistance is generally available for home repairs and business restoration, particularly for small businesses. Of critical concern is the threat to vital transportation links in the various affected areas. In bringing its forces to bear on the northeastern segment of the United States nature selected the railroad system least able to bear any additional burdens.

The States hardest hit included Virginia, Maryland, Pennsylvania, and parts of New York. While the Penn Central, the largest and financially the weakest railroad in the United States, sustained the most damage, other railroads also were affected. Some Federal assistance is available under existing programs, but it is clear that not all the affected railroads can be accommodated.

Current policy of the United States calls for Government aid in maintaining public transportation facilities such as airports and interstate highways. Railroads own their own facilities and maintain them almost entirely without Federal assistance. The subject legislation does not propose that this policy should change except to the extent that in this unique situation arising from a natural disaster railroads should receive some assistance in the form of Federal loans, not grants, for the purpose of preserving essential transportation services.

Apart from the disastrous effect of the June floods on the railroads, thousands of their employees have suffered personal tragedy. The committee desires to avoid compounding such difficulties.

It is relevant to mention here the railroads' conviction that massive line abandonment should be pursued with single-minded purpose. In committee hearings the question was raised as to the railroads' attitude toward repair of storm damaged facilities which the railroads had previously scheduled for abandonment. For example, would the storm damage be used by the railroads to justify and expedite abandonment of such facilities?

There are further questions, very pertinent in today's transportation picture,

such as what role the railroads should play in the total transportation scene? Should the railroads and the Interstate Commerce Commission effectively decide this question on an ad hoc case by case basis? Would not the storm devastation further aggravate the situation unless Federal programs expressly recognize the need to take a systemwide approach?

The committee undertook to amend S. 3843 as originally introduced to reflect these concerns regarding rail line abandonments and the proper role of railroads in the national transportation system while at the same time providing for restoration of storm damaged facilities and equipment. The goal of this legislation is the restoration of adequate rail service, recognizing the needs of shippers, affected communities, consumers, labor, and the railroads for Federal assistance.

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

Mr. HARTKE. I yield to the distinguished minority leader, who is one of the sponsors of the bill.

Mr. SCOTT. I thank the Senator.

This is the so-called Agnes hurricane bill. I thank the distinguished Senator for presenting the bill and for his support throughout.

Mr. President, S. 3843 is legislation which I introduced to provide long-term Federal loan assistance for the restoration or replacement of essential rail services lost on the eastern seaboard during tropical storm Agnes, and in South Dakota during the severe flood which struck there 1 week earlier.

Congress has already acted to provide substantial relief for private individuals, businesses, highways and other sectors of the economy affected by the floods of June 1972. Yet the success of these programs will depend finally on the ability of the railroads to perform their irreplaceable function as a vital transportation link for goods and services. Total flood recovery will be possible only when—and if—essential railroad services are restored.

Unfortunately, the railroads hardest hit by the June floods included at least four major carriers which are already in bankruptcy receivership, others that are on the verge of imminent financial collapse, and numerous short line carriers which are also in poor financial condition. Although some restoration work has been initiated and, in some cases completed, these railroads simply do not have the funds which are needed for a comprehensive program of replacements and repairs to restore essential rail service; nor does any existing Federal program appear to offer itself as a workable vehicle under which assistance to these railroads to meet this unexpected—and unpreventable—emergency flood situation can be extended.

S. 3843 fills this need. As reported by the Senate Commerce Committee, the bill authorizes the Secretary of Transportation to make low-interest loans totaling up to $48 million available directly to applicant railroads which meet certain qualifications set forth in the legislation. The Secretary is authorized, where warranted, to defer the payment of principal and interest for a period of up to 10 years. Under a committee amendment, an additional $10 million in loans could be made available to State and local authorities which desire to undertake the restoration of damaged rail services and facilities in those instances where the railroads themselves do not initiate such action and where they are not otherwise required to do so.

The Senate Commerce Committee, which held hearings on S. 3843 in August, reported the bill with a number of substantive amendments which are covered fully in the committee report. However, after considerable discussion with officials of the Federal Railroad Administration, railroad labor unions, and the railroads, I proposed several further amendments which I have discussed with the distinguished floor manager (Mr. HARTKE) and which he has agreed to accept.

Subsection 4(a)(2) of the bill, as reported, required that the Secretary of Transportation, before making any loan, first find in writing "that the probable value of the assets of the railroad provide reasonable protection for the United States." Although a number of stringent loan requirements are retained in the bill, my first amendment deletes subsection 4(a)(2) in its entirety and renumbers the following subsections accordingly. The purpose of this amendment is to avoid probable conflict with the policy provision of subsection 4(a)(6), as renumbered, which authorizes the Secretary to "require any priority or subordination of the interests of the United States he deems to be appropriate in relation to the claims of any other creditors of the railroad or its trustees, so long as such position is not lower than that of a prebankruptcy unsecured creditor of the railroad."

Subsection 4(a)(5), renumbered as subsection 4(a)(4), as reported, required the Secretary "to insure that funds used under this Act are used solely for the purpose of restoring or replacing facilities, equipment, or services damaged or destroyed" by the June floods. Since it is possible that in certain instances service between two points could be restored by means of an alternate route that excludes restoration of an otherwise essential line, my second amendment deletes the phase "or services" from this subsection.

At the same time, however, I feel that it is important that the Secretary not be tied to a position that requires in every case a restoration of the exact facility damaged or destroyed. Therefore, in order to give the Secretary the flexibility to deal with situations where location or technological alternatives may be preferable, my second amendment also permits the use of funds for "the upgrading of such facilities and equipment."

Subsection 4(a)(8), redesignated as subsection 4(a)(7), deals with labor protection and is designed to provide that restoration work, even where subcontracted, will be done insofar as possible by railroad employees, including employees on furlough. The committee's original language referred to work "which has customarily been performed" by railroad employees. In order to avoid any possible misinterpretation resulting from the use of a past tense sentence construction, my third amendment changes the reference in this provision to work which "is presently or should be performed under collective bargaining agreements" by railroad employees. This amendment also exempts from the conditions for labor protection work already undertaken, subject to qualifications which the distinguished floor manager (Mr. HARTKE) and I are prepared to discuss, among others, in a floor colloquy which we plan following our statements in order to further clarify the bill's labor protection provisions.

Subsection 4(c)(1), as reported, required that the Secretary, before making any loans, first "prepare and keep current a comprehensive schedule setting forth transportation facilities that should be part of the rail transportation system in the northeastern region of the United States or any other region which was adversely affected" by the June disasters. Department of Transportation estimates, however, placed at possibly 1 year or longer the time which would be required to prepare such a schedule. Obviously, such a delay would conflict with the emergency nature of this legislation and could negate the entire purpose of the bill. Therefore, my fourth amendment requires that such a schedule be prepared and maintained "as an aid to the formulation of public policy," but drops the requirement that such a schedule be tied directly to, or made a precondition of, any loan.

In place of the schedule requirement, my fourth amendment directs the Secretary to determine whether "any service or facility which is essential to the public interest" has been omitted from a loan application. If so, the Secretary is further required to reject the application "unless and until" the application in question is amended to include the essential service. In making such determinations, the Secretary is directed to take into consideration "the interests of persons and communities affected thereby; existing rail facilities and the pattern of service by railroads; and the public interest in a balanced and economical transportation system responsive to the needs of the public and the users of such system." The identical considerations are also made applicable to the "comprehensive schedule."

This amendment further directs the Secretary to find specifically that restoration of the facility known as the Sunbury-Wilkes-Barre—Buttonwood—line is "essential to the public interest."

Mr. President, the need for S. 3843 is underscored by the twofold nature of the dilemma which the railroads in question now face. On the one hand, railroads are unable to provide full revenue services because of losses of rolling stock, locomotives, tracks, bridges, and other operating facilities; on the other hand, major industries which normally provide customer revenues to the railroads are themselves shut down or curtailing operations, some perhaps permanently.

Further complicating this situation is the fact that a number of industries,

although not directly affected by the floods themselves, have nevertheless had to suspend or cut back production because of interrupted rail service. This has resulted not only in losses of payroll, but also in reductions in anticipated State and local taxes. For cities and smaller communities already severely pressed by flood damage, the impact of lost tax revenues resulting from interrupted rail service is, at this time, especially difficult.

Although tropical storm Agnes and the South Dakota flood have long since dropped from the immediate focus of public attention, considerable devastation remains. Human hardships and suffering continue.

In my opinion, the title of this bill—the "Emergency Rail Facilities Restoration Act"—speaks for itself. "Emergency" aptly describes the situation which exists today when one of the most densely populated sections of the country is still left in many instances without essential rail transportation. And because so much of the Nation's manufacturing capability is concentrated in flood torn areas, this situation affects not only the geographical regions directly involved, but ultimately has national ramifications as well.

As I indicated previously, Mr. President, total flood recovery will be possible only when—and if—essential railroad services are restored. With this in mind, I join with the distinguished Senate cosponsors of this bill (Mr. BUCKLEY, Mr. JAVITS, and Mr. SCHWEIKER) in urging immediate enactment.

Mr. HARTKE. Mr. President, I wish to address a series of questions to the Senator from Pennsylvania in connection with this legislation.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

LABOR PROTECTION PROVISIONS

Mr. HARTKE. What is the meaning of furloughed employees being "insufficient to perform" restoration or replacement work?

Mr. SCOTT. It means that the number of employees is insufficient.

Mr. HARTKE. Who makes the determination of insufficiency?

Mr. SCOTT. The railroad makes the determination and, in doing so, it considers whether the work to be done is that which is presently being or should be performed by the various crafts and classes of railroad employees under collective bargaining agreements.

Mr. HARTKE. If the railroad employees, including those on furlough in the affected area, are insufficient to perform the restoration and replacement work, does the railroad have to recall any of them or can it subcontract all the work?

Mr. SCOTT. It must recall its furloughed employee to do as much of the restoration and replacement work as possible. A subcontract cannot be let for the work which the railroad can do.

Mr. HARTKE. Does a railroad have to utilize furloughed employees of other railroads in the affected area in addition to its own furloughed employees before letting subcontracts?

Mr. SCOTT. No. A railroad has to recall only its own furloughed employees. The subcontractor is responsible for hiring furloughed employees of other railroads in the affected area.

Mr. HARTKE. Is a subcontractor obligated to hire such furloughed railroad employees as are needed to do the work?

Mr. SCOTT. Yes. He has to hire as many as are required to do the work, subject only to craft and class distinctions.

Mr. HARTKE. What are "the rights and privileges of railroad employees" which will be retained by furloughed railroad employees when they are hired by a subcontractor?

Mr. SCOTT. They retain their rights and privileges under the Railway Labor Act and under the railroad retirement system. Their work for a subcontractor will be treated for all purposes as if they were employed by the railroad.

Mr. HARTKE. Will the subcontractor be required to pay social security and unemployment compensation for railroad employees that he hires?

Mr. SCOTT. No. Subcontractors will be required to contribute only to the retirement and unemployment compensation funds under the railroad retirement system.

Mr. HARTKE. How will a subcontractor know whom he is required to employ?

Mr. SCOTT. A subcontractor will get lists from railroads or from the railroad retirement system.

Mr. HARTKE. How will the requirement that a subcontractor hire furloughed railroad employees be enforced?

Mr. SCOTT. The term of the contract between the railroad and the subcontractor will provide for the hiring of furloughed railroad employees as a condition of the contract.

Mr. HARTKE. When a subcontractor completes his restoration and replacement work and releases any furloughed employees that he has hired, do these employees return to their status as railroad employees on furlough?

Mr. SCOTT. Yes.

Mr. HARTKE. Will the provisions of subsection 4(a)(7) prejudice or, in any way, affect any claim for violation of any agreement which a railway labor organization may have as a result of contracting out of work covered by this subsection.

Mr. SCOTT. No.

Mr. President, one of the best summaries of the extent of damage suffered by eastern railroads during the tropical storm appeared in an article in the August 14 issue of Railway Age. Because I believe it will add to an understanding of the problem to which S. 3843 is addressed, I ask unanimous consent that the article entitled, "Agnes: The Agony—And the Aftermath," written by Engineering Editor Merwin H. Dick, be printed at this point in the RECORD:

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

AGNES: THE AGONY—AND THE AFTERMATH

(By Merwin H. Dick)

For concentrated, unbridled fury, call her "Agnes"—the hurricane that submerged the Middle Atlantic states in floods unprecedented in modern history. So far as railroads were concerned, talk about her in a few other terms:

Disaster: Damage is estimated at about $40 million to fixed facilities alone, and that does not include lost revenues.

Dedication: Railroad men worked the clock around to get key routes open again, and so did the contractors that the beleaguered railroads employed.

Frustration: "Agnes" did its worst to railroads that could least afford it. In so many cases, so far as rebuilding was concerned, the spirit might have been willing but the treasury was weak.

Rationalization: The storm and the floods it spawned ripped out a lot of mainline. The storm and the floods also washed away a lot of line that has long since outlived whatever usefulness it might once have had. Meanwhile, a Congress that has stalled passage of legislation to help create a more rational railroad system nevertheless forged ahead on legislation—providing $40 million in loans—to help build.

Tragedy: A lot of people died because of "Agnes," and tens of thousands were left homeless. In the greater context, railroad problems seemed minor. But in the context of even regional interest, they were not—because transportation was a key to regional recovery, and no surface transportation agency has the power of recovery that a railroad has.

What happened—and what has happened since? This is the picture, as of early August:

LINGERING EFFECTS

While the storm struck late in June and most of the main lines in the area involved have long since been returned to service, the effects linger on. Many bridges, restored with temporary repairs, are carrying trains only at restricted speeds. With the emphasis on getting main lines back in service, branch lines had to be left until later. Some of them are still out of service and there are some that will never carry another train if the railroads' requests for abandonment are granted. One major bridge in the storm area cannot be rebuilt for at least a year and a half.

Perhaps most lasting of all is the effect on railroad finances. At best, the 1972 property-maintenance programs of railroads in the storm area have been set back at least a month; at the worst, the money earmarked for them is irretrievably gone into the emergency work required to get the roads back into service. Also, the cost of rerouting trains over foreign lines and the revenues lost, partly because of industries put out of service due to flood damage, can never be regained.

By the time railroad properties damaged by the effects of "Agnes" have been restored to normal, the total bill for direct reconstruction—not counting the cost of rerouting traffic, of damaged rolling stock or of lost revenue—will come to approximately $40 million, according to figures compiled by Railway Age. Damage to grades and bridges on the PC is estimated to exceed $14.4 million.

UNSUSPECTING RAILROADERS

People in the northeastern part of the country, including railroaders, were totally unsuspecting as they read or listened to news of "Hurricane Agnes" as the storm swept across Florida from the Gulf of Mexico. What interest they had developed in the storm waned as the hurricane lost force after starting to move up the east coast. But by the time it reached Virginia the storm had developed new vigor and was bringing with it record rains. The James River was brought to a record level of 26.5 feet above flood stage at Richmond.

Watchers in the Northeast began to lose

their equanimity as the storm continued up the coast, bringing record rainfalls of up to 12 inches. On June 21 the full effects of the storm began to hit Penn Central and other northeastern roads. Rains of 10 to 12 inches in the Washington-Baltimore area caused temporary cessation of all transportation services in the New York to Washington corridor.

But this was only a prelude of what was to come. The record rains accompanying the storm were falling on ground that had become saturated by a week or more of rain, thus increasing the rate of runoff. But it was a change in the course of the storm that set the stage for disaster. After looping westward through upstate New York, it turned south into Pennsylvania where it stalled and joined another storm to deliver what Gov. Milton J. Shapp called the greatest disaster in the state's history.

ROGUE RIVER

If the storm was searching for a location where it could inflict maximum railroad damage, it found precisely that in the watershed of the Susquehanna River. Not only do numerous railroad lines follow and cross the rivers in this area, but they also include a high percentage of bankrupt carriers—Penn Central, Reading, Lehigh Valley and then Erie Lackawanna which, teetering on the brink, was nudged into bankruptcy by the effects of the storm.

Swollen tributaries, feeding into the Susquehanna, brought it to higher levels than ever before. Information made available by Penn Central shows that the Chemung River, a tributary of the Susquehanna, reached a level at Corning, N.Y., 5.5 feet above the previous record levels of 1898 and 1936. At Wilkes Barre, Pa., far downstream on the Susquehanna, the river reached a level of 40 feet, exceeding the previous record of 33 feet set in 1936.

At Williamsport, Pa., on the West Branch of the Susquehanna, the flood waters rose to 34.5 feet, which compares with the previous level of 33.6 feet set in 1936. At Sunbury, Pa., where the two branches of the Susquehanna join, 34 feet was the level reached. Here, the highest previous level was 26.9 feet, set in 1936. Farther downstream at Harrisburg, the flood crest was 34 feet, nearly four feet above the 1936 record.

LINES WERE CLOBBERED

Hardly any railroad line in the watershed of the Susquehanna, main or branch, escaped being clobbered. Hardest-hit were properties of Penn Central, Erie Lackawanna and Lehigh Valley. Also hit were parts of the Reading.

A fair assessment of the responsibility must, however, include rivers other than the Susquehanna and its tributaries. Perhaps the hardest hit of all railroads (for its size) was Western Maryland. For this road the culprit wasn't the Susqehanna but the usually peaceful Patapsco, which is in the watershed of the Potomac. The James River must, also, come in for its share of the responsibility.

Because of floods in these and other rivers, other roads affected by the storm included Chesapeake & Ohio/Baltimore & Ohio, Norfolk & Western and Southern (RA July 10, p. 10). At one time several hundred miles of C&O/B&O lines were out of service, with direct storm damage estimated at $4.8 million. But service was restored on these lines generally within 48 hours.

For 71 hours, the main line of the Southern between Washington and Monroe, Va., was out of service due largely to washouts, mud slides and what a spokesman described as a "series of small things." Also, two Southern branch lines were out of service about a week. Responsible officers on Southern, however, rated themselves lucky that their road escaped any disaster comparable to the destruction of its Tye River bridge by "Hurricane Camille" in 1969. Of the major roads in the path of the storm N&W probably escaped with the least damage.

NO REGARD TO COST

Throughout the storm-stricken area, the railroads moved quickly to do what was necessary to get traffic moving. In so doing, they were proceeding without much immediate regard to the cost (as railroads have done ever since they came into existence). In attacking the task of reconstruction, even the bankrupt railroads began spending money as if they had it.

Everywhere, the objective was to get traffic moving again, even if only at restricted speed. With their own forces and equipment, supplemented by rented machines and contractors' men and equipment in some cases, the railroads attacked the job of repairing washed-out embankments.

Explaining how this work was handled on EL, R. F. Bush, chief engineer says that, in general, the smaller washouts were cribbed with old ties and then dumped with ballast and the track raised and tamped. The larger washout locations were restored by using bulldozers, front-end loaders or cranes to place the subgrade material. In locations where material was not available from the former subgrade, dump trucks were used to bring in suitable borrow.

TAILORED BRIDGE REPAIRS

Repairs at damaged bridges had to be tailored to fit the circumstances. At some locations, timber-frame bents were installed to carry the load temporarily over damaged abutments or piers. In others, bents of H-section steel piles were driven to carry steel spans in place of the washed-out structure. An example is provided by the action of the Western Maryland in constructing a six-span steel-pile structure to bridge the 150-foot hole left when a 20-foot concrete arch was washed out.

Through all-out efforts, railroads began to get their lines back into service very quickly after the waters began to subside. By Saturday, July 1, service over PC's important freight lines had been restored. EL got its main lines back in service on July 11. Most lines of Lehigh Valley were back in service very soon after the flood waters had receded. Reading's main line between Sunbury and Williamsport was restored to service on July 9. Service over Western Maryland's Hanover subdivision was restored on June 28, six days after the storm struck.

But the fact that service has been restored is only part of the story. At many locations where temporary repairs were made, trains are still moving at restricted speeds. At others, such as on the PC, new connections were built to establish routes to avoid damaged structures such as the Shocks Mill bridge across the Susquehanna south of Harrisburg. If work had been started right away on reconstruction of this bridge, the project would not have been completed until the end of the year, according to a PC spokesman. The work hasn't been started because the necessary money isn't available—and the cost of reconstructing this bridge alone has been estimated at $4.5 million.

But there is another aspect of the effects of the storm that must be reckoned with. That is the general mess created by the flood waters. This included, on the LV, a six-inch mud layer left on the tracks and right-of-way by the receding waters. Also, the ditches in tunnels were found to be "loaded with debris," said John F. Nash, chief operating officer. "It will take two years to clean up the mess," he said.

PROBLEM OF BRANCH LINES

Although main routes may be back in service, branch lines are something else. On EL, for example, the Bloomsburg branch was scheduled to be opened until Aug. 7. The target date for resuming traffic over the Wayland branch is Sept. 15. At press time, no date had been set for reopening the Tioga branch.

On PC, a number of key branch lines were quickly repaired but there are others on which the cost of repairs could exceed the need for continuation of service—in which case abandonment will be recommended. A case in point is the 62-mile branch from Sunbury to Wilkes Barre. Although this line handled several trains in each direction daily, these trains can be rerouted through existing interchanges. Hence, restoration of the line will not be recommended.

HEART OF THE PENN CENTRAL

The railroads in the Southeast were already emerging from their troubles when lines in the Susquehanna watershed were suffering the full force of the storm. Damage inflicted on Penn Central involved all the main lines of the former Pennsylvania network in the eastern Pennsylvania area, as well as some lines in Maryland and southern New York. Several lines of the former New York Central which reach into this same area were also involved.

As the rains zeroed in on the Susquehanna watershed, they were aimed at the very heart of PC. Main lines of this road extend in four directions from Harrisburg—west to Pittsburgh, east to Philadelphia and Jersey City, south to Baltimore and Washington, and north to Buffalo and Syracuse.

As waters in the Susquehanna and its tributaries reached and then exceeded all previous levels, officers of the road, anxiously waiting in their Philadelphia headquarters, were not long in learning the worst. The news was that all of the routes out of Harrisburg had been put out of service—first by inundation and then by washouts of ballast and fill material and damage to bridges.

Heavy blows were struck at PC bridges, large and small. Largest of the structures hit was the key Shocks Mill bridge. This is a double-track stone arch bridge, 2200 feet long, which carries the main east-west freight line of PC. What happened to this structure is a study in delayed action. Although the effects of the storm struck this area on June 22, it wasn't until June 27 that the crew of a passing train noticed settlement of the track on the structure. Several days later about one-third of the bridge collapsed into the river.

CASE OF TOTAL DESTRUCTION

Another major river crossing of PC to sustain heavy damage (total destruction would be a more accurate term) is the multiple-span truss bridge across the Chemung River at Corning, N.Y. The Chemung is a tributary of the Susquehanna. All six of the truss spans in this bridge were strewn about the river bottom, including one that was carrying three coal cars when it collapsed. Only a girder span at one end remained in place in this bridge. All other piers and abutments were destroyed.

Numerous smaller bridges on PC were damaged in varying degrees, including situations where piers and abutments suffered undercutting. Also, at many locations embankments were riddled with washouts, large and small.

A summary of damage on PC runs something like this: 25 bridges destroyed, 23 bridges seriously weakened, 5,000 miles of track affected, 2700 cars of ballast used in initial rebuilding operations and at least 500 additional cars required to finish the job.

THE HARD-HIT EL

Washouts were numerous on Erie Lackawanna. Lines in New York, including branch lines, are involved with streams in the upper headwaters of the Susquehanna. These include the Canisteo River which EL's main line follows from Hornell, N.Y., to Addison. From Corning to Elmira, the main line is involved with the Chemung, the same river that was the cause of a bridge disaster on PC.

On the EL, damage occurred at numerous points along the 200 miles of main line between Binghamton, N.Y., and Salamanca, with major destruction between Elmira and Hornell. Between Owego and Hornell (95 miles) there were 100 washouts from two feet to 15 feet deep and up to 4,000 feet long. Between River Junction, N.Y., and Salamanca there were 20 washouts from 100 feet to 200 feet in length. On the Buffalo division there were eight washouts ranging up to 1,000 feet in length. Washouts up to 1,000 feet long were also drilled through the roadbed at 55 locations on the Old Main between Hornell and Cuba, N.Y.

EL branch lines were hit, too. These include the Wayland branch which is involved with the Cohocton, a tributary of the Chemung, the Bloomsburg branch which is involved with the east branch of the Susquehanna, and the Tioga branch. The road's forces counted 169 washouts gouged through the road bed on five branch lines. These ranged in length up to 2,640 feet.

Extensive damage was suffered by both mainline and branchline bridges on EL. At five locations on the main line, single- and multiple-span girder bridges were damaged more or less severely when piers or abutments were washed out or undercut.

The biggest bridge to be hit by high water on EL was the 818-foot historic Portage viaduct across the Genesee river on the Buffalo division. Severe undercutting occurred at two of the piers under this structure, which has a height of 235 feet above the bed of the river.

LEHIGH VALLEY FLOODED

During the height of the June floods, Lehigh Valley had some 200 miles of mainline track under water. Primarily responsible were the rampaging Chemung and Susquehanna Rivers. The damage included 25 washouts on the main line, all at least 20 feet deep and ranging in length from 400 feet to 500 feet.

At Athens, Pa., on LV one pier was lost in a four-span bridge, and other bridges were damaged or weakened.

There is one LV branch damaged by the high water which very likely will never be returned to service. This is the branch, 20 miles long, that connects with the main line at Towanda, Pa., and extends to Dushore. This line was hit so hard that it has been rated a "total loss," said John Nash. Because the economics are such that the rebuilding of the branch is not justified, the road plans to file for abandonment.

SUSQUEHANNA HITS READING

On Reading, although the damage was severe, it was confined largely to the western extremities of its lines in Pennsylvania. One of these lines crosses the Susquehanna River at Harrisburg and another follows the West Branch of this river from Sunbury To Williamsport.

It was in the territory between Sunbury and Williamsport that Reading was hit the hardest by the Susquehanna and its tributaries, says E. C. Lawson, chief engineer. Extensive track and embankment washouts were suffered here, and eight bridges in the area either sustained major damage or were completely destroyed. Severe damage was also suffered in the area of the Harrisburg crossing.

On Western Maryland, damage was concentrated largely in the area between Hagerstown, Md., and Baltimore. In this territory the line east of Westminster, Md., was the hardest-hit. Here, the road parallels the Patapsco river and within a stretch of 11 miles it crosses tributaries 14 times. The most serious damage occurred at the location of a 20-foot arch under a 40-foot fill. The hole left by the washout of this structure was 40 feet deep and 150-feet long.

Between Emory Grove, Md., and Highfield, WM has two routes. Explaining what happened, C. L. Robinson, chief engineer, said that the most southerly of these, the main line, sustained the greatest damage, so the road decided to concentrate initial reconstruction efforts on the northern route which is known as the Hanover subdivision. The damage here consisted primarily of washouts at the approaches of bridges across the Gun Powder River and its tributaries. A thorough assessment of the damage on the southern route was not made until later, although this appeared to consist mostly of roadbed washouts including bridge approaches, Robinson said.

WM also experienced extensive roadbed washouts in the Baltimore area, caused by flooding of Gwynns Falls Creek, a tributary of the Patapsco.

Early railroad locating engineers were happy when they found a river going in the direction they wanted to go. The prospect was thus offered of minimum grades and grading for the railroad they were locating. But in placing their railroad and in constructing bridges they were careful to put them beyond the reach of any high water except that which might occur in, say, 75 or 100 years.

In the light of recent experience it's apparent that few if any of these pioneer railroad engineers lived to learn how quickly a hundred years can roll around. Moreover, if they could have foreseen the destruction that could be wrought by their "100-year storms" they might have built their railroads to withstand 200-year storms—that is, if the necessary investment could be justified. It is certain, too, that any kindly feelings they might have had for the rivers they found so helpful would have been entirely erased.

Such thoughts as these must have been going through the minds of present-day engineers as they survey the damage wrought by "Agnes" late in June. For it was the rivers, overflowing from the effects of the storm, that produced one of the most destructive and most costly disasters ever suffered by U.S. railroads.

Mr. HARTKE. Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments are considered and agreed to en bloc.

Mr. SCOTT. Mr. President, I send to the desk amendments and ask that they be considered en bloc.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk proceeded to read the amendments.

Mr. SCOTT. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendments will be printed in the RECORD.

The amendments, ordered to be printed in the RECORD, are as follows:

AMENDMENTS TO S. 3843, WORKING DRAFT NO. 2, DATED AUGUST 13, 1972

(1) Page 3, delete lines 22 through 24. Renumber subsections 3 through 8, beginning on page 3 through page 5, as subsections 2 through 7, respectively.

(2) On page 4, delete line 7 through 13 and insert in lieu thereof the following:

"(4) take appropriate action to insure that funds loaned under this Act are used solely for the purpose of restoring or replacing facilities and equipment (*including the upgrading of such facilities and equipment*) damaged or destroyed as a result of the natural disasters of June 1972."

(3) Page 5, section 4(a)(7) as renumbered is hereby deleted in its entirety and the following inserted in lieu thereof.

"(7) require that no part of the restoration or replacement work to be financed by the loan program hereunder *is presently or should be performed under collective bargaining agreements* by railroad employees shall be subcontracted by the railroad; except that to the extent that the Secretary finds in writing that railroad employees, including employees on furlough, in the affected region are insufficient to perform such restoration or replacement work and that such *railroad* employees on furlough, if not *recalled by the railroad* will be employed by a subcontractor to perform such work in which event such employees shall be deemed to be railroad employees retaining all the rights and privileges of railroad employees while so employed.

"(8) *None of the foregoing conditions shall apply to such work undertaken prior to the enactment of this Act.*"

(4) Page 6, delete lines 1 through 22, and insert in lieu thereof:

"(c)(1) The Secretary *in reviewing applications for loans shall examine such applications to determine whether any service or facility which is essential to the public interest in maintaining transportation service, including specifically the Sunbury-Wilkes-Barre (Buttonwood) line, will not be restored or replaced.* In making such determination the Secretary shall take into consideration the interests of persons and communities affected thereby; existing rail facilities and the pattern of service by railroads; and the public interest in a balanced and economical transportation system responsive to the needs of the public and the users of such system.

"(2) If after such determination the Secretary finds that *any such* service or facility of the applicant railroad will not be restored or replaced, the Secretary shall not approve such application unless and until such application is amended to include *such* restoration and replacement."

(3) As an aid to the formulation of public policy regarding rail transportation, the Secretary shall prepare and keep current a comprehensive schedule setting forth transportation facilities and services that he believes should be provided by railroads in the northeastern region of the United States. In formulating such a schedule the Secretary shall take into consideration the interests of persons and communities affected thereby; existing rail facilities and the pattern of service by railroads; and the public interest in a balanced and economical transportation system responsive to the needs of the public and the users of such system.

The PRESIDING OFFICER. The question is on agreeing to the amendments.

The amendments were 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 the third reading of the bill.

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

Mr. HARTKE. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make necessary technical and clerical corrections in the engrossment of the bill.

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

Mr. HARTKE. Mr. President, I thank the Senator from Pennsylvania for his cooperation in connection with this bill.

Mr. SCOTT. I thank the Senator from Indiana.

NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY AUTHORIZATION ACT OF 1972

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 935, S. 3474.

The PRESIDING OFFICER. The bill will be stated by title.

The bill was read by title as follows:

A bill (S. 3474) to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize appropriations, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce with an amendment, on page 1, after line 4, strike out:

SEC. 2. Section 106 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395) is amended by adding at the end thereof the following new subsection:

"(d)(1) The Secretary is authorized to conduct investigations of the facts, circumstances, conditions, and causes of motor vehicle accidents for the purpose of gathering information to identify design failures or defects relating to motor vehicle safety, collecting data to assist in the preparation of Federal motor vehicle safety standards for new and used motor vehicles, and conducting other studies to carry out the purposes of this Act. In making such investigations, the Secretary shall cooperate with appropriate State and local officials to the greatest extent possible consistent with the purposes of this subsection.

"(2) For the purpose of carrying out the provisions of this subsection, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, at reasonable times and in a reasonable manner, any premises where a motor vehicle or item of motor vehicle equipment involved in a motor vehicle accident is located; (2) to impound temporarily for a period not to exceed seventy-two hours, such motor vehicle or item of motor vehicle equipment; and (3) to inspect such motor vehicle or item of motor vehicle equipment.

"(3) Whenever the Secretary inspects or temporarily impounds for the purpose of inspection any motor vehicle under this subsection (other than a vehicle subject to part II of the Interstate Commerce Act), he shall pay reasonable compensation to the owner of such vehicle to the extent that such inspection or impounding results in the denial of the use of the vehicle to its owner or in the reduction in value of the vehicle.

"(4) The Secretary is authorized to obtain, with or without reimbursement, a copy of the report of the autopsy performed by State or local officials on any person who dies as a result of having been involved in a motor vehicle accident.

"(5) No portion of any statement or information relating to a motor vehicle accident which has been furnished by an individual to the Secretary pursuant to this section and no portion of any report of the Secretary relating to such accident or the investigation thereof shall be admissible in any subsequent criminal, civil, or administrative proceeding.

"(6) As used in this subsection, 'motor vehicle accident' means an occurrence associated with the operation of a motor vehicle in or as a result of which any person suffers death or personal injury, or in which there is property damage."

SEC. 3. Subsection (a) of section 108 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1397) is amended by changing the period at the end of subsection (a)(4) to a semicolon and adding at the end of subsection (a) the following new paragraphs:

"(5) fail or refuse to permit entry, impounding, or inspection, as required under section 106;

"(6) fail to comply with any rule, regulation, or order issued under this title.".

SEC. 4. (a) The first sentence in subsection (a) of section 109 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1398) is amended by deleting immediately after "any provision of section 108" the following: ", or any regulation issued thereunder,".

(b) The second sentence in subsection (a) of section 109 of such Act is amended by deleting immediately after "a provision of section 108" the following: ", or regulations issued thereunder,".

SEC. 5. (a) The first sentence of subsection (a) of section 110 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1399) is amended by inserting immediately after "pursuant to this title," the following: "or to contain a defect which relates to motor vehicle safety,".

(b) The next to the last sentence in subsection (a) of section 110 of such Act is amended by deleting the period at the end thereof and adding the following: "or to remedy the defect.".

SEC. 6. (a) Subsection (a) of section 112 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1401) is amended to read as follows:

"(a) The Secretary is authorized to conduct such inspection and investigation as may be necessary to enforce this title and any rules, regulations, or orders issued thereunder. He shall furnish the Attorney General and, when appropriate, the Secretary of the Treasury any information obtained indicating noncompliance with this title or any rules, regulations, or orders issued thereunder, for appropriate action.".

(b) The first sentence of subsection (b) of section 112 of such Act is amended by inserting immediately after "purposes of enforcement of this title," the following: "or any rules, regulations, or orders issued thereunder,".

(c) Subsection (c) of section 112 is amended to read as follows:

"(c) Every manufacturer of motor vehicles and motor vehicle equipment shall establish and maintain such records and make such reports, and every manufacturer, dealer, or distributor shall provide such information, as the Secretary may reasonably require to enable him to determine whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this title or any rules, regulations, or orders issued thereunder and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this title or any rules, regulations, or orders issued thereunder. Nothing in this subsection shall be construed as imposing reporting or recordkeeping requirements on distributors or dealers.".

SEC. 7. (a) Subsection (b) of section 113 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1402) is amended by inserting immediately after "required by subsection (a)" the following: "or (e)".

(b) Subsection (c) of section 113 of such Act is amended to read as follows:

"(c) The notification required of a manufacturer by subsection (a) or (e) pursuant to the determination of the existence of a defect related to motor vehicle safety or of a failure to comply with an applicable Federal motor vehicle safety standard shall contain a clear description of such defect or failure, an evaluation of the risk to traffic safety reasonably related to such defect or failure, and a statement of the measures to be taken to remedy such defect or failure.".

SEC. 8. Section 121 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1409) is amended to read as follows:

"SEC. 121. There are authorized to be appropriated such funds as are necessary to carry out the purposes of this Act.".

SEC. 9. Section 123 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1410) is amended to read as follows:

"(a) Except as provided in subsection (d) of this section, upon application by a manufacturer at such time, in such manner, and containing such information as the Secretary shall prescribe, the Secretary shall, after publication of notice and opportunity to comment and under such terms and conditions and to such extent as he deems appropriate, temporarily exempt a motor vehicle from any motor vehicle safety standards established under this title if he finds (1) that compliance would cause such manufacturer substantial economic hardship or that such temporary exemption would facilitate the development of new motor vehicle safety features or that such temporary exemption would facilitate the development of vehicles utilizing a propulsion system other than or supplementing an internal combustion engine, and (2) that such temporary exemption would be consistent with the public interest and the objectives of this Act. Notice of each decision to grant a temporary exemption and the reasons for granting it shall be published in the Federal Register.

"(b) The Secretary shall require, in such manner as he deems appropriate, notification to the dealer and first purchaser of an exempted motor vehicle (not including the dealer of such manufacturer) that such vehicle has been exempted from certain motor vehicle safety standards, and the standards from which it is exempted.

"(c) No exemption granted under this section shall remain in effect after three years after the date such exemption is granted.

"(d) No manufacturer whose total motor vehicle production, as determined by the Secretary, exceeds ten thousand annually shall be eligible for an exemption under this section.".

SEC. 10. (a) The first sentence of subsection (a) of section 301 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1431) is amended by deleting all that precedes "except that" and inserting in lieu thereof the following:

"SEC. 301. (a) The Secretary of Transportation is authorized—

"(1) to plan, design, and construct new facilities,

"(2) to alter existing facilities,

"(3) to lease facilities, and

"(4) to acquire or lease real property for use as sites for new facilities or the alteration of existing facilities, suitable to conduct research, development, and compliance and other testing in traffic safety, including highway safety and motor vehicle safety,".

(b) The first sentence of subsection (a) of section 301 of such Act is further amended by striking "or construction", each place it appears in the sentence, and inserting in lieu thereof the following: "constructing, altering, or leasing".

(c) The second sentence of subsection (a) of section 301 of such Act is amended by deleting "or constructed" and substituting in lieu thereof the following: "constructed, altered, or leased".

(d) The second sentence of subsection (a) of section 301 of such Act is further amended by deleting "and" at the end of clause (3), by deleting the period at the end of clause (4) and inserting in lieu thereof a semicolon and by adding a new clause (5) as follows:

"and (5) a statement of justification of the need for leasing any facilities or real property.".

And, in lieu thereof, insert:

SEC. 2. Section 121 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1409) is amended to read as follows:

"SEC. 121. There is hereby authorized to be appropriated for the purpose of carrying out the provisions of this Act the sum of $52,714,000 for the fiscal year ending June 30, 1973.".

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 "National Traffic and Motor Vehicle Safety Authorization Act of 1972".

SEC. 2. Section 121 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1409) is amended to read as follows:

"SEC. 121. There is hereby authorized to be appropriated for the purpose of carrying out the provisions of this Act the sum of $52,714,000 for the fiscal year ending June 30, 1973.".

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

The PRESIDING OFFICER. Without objection, the amendments are considered and agreed to en bloc.

Mr. HARTKE. Mr. President, the Committee on Commerce proposes an authorization of $51,714 million for implementation of the National Traffic and Motor Vehicle Safety Act. This level of expenditure represents an investment in our vehicle safety program of less than 9.4 percent of our total annual economic loss on the highway.

Mr. President, last year 55,300 of our fellow citizens died on the Nation's highways while another 2 million were injured. There were some 15.5 million motor vehicle accidents in which the Nation suffered over $16 billion worth of damage to person and property. Projected losses for 1980 are even more incredible; the Highway Users Federation for Safety and Mobility estimates that by the beginning of the next decade, our losses will almost double, reaching the unprecedented sum of $30 billion.

These latest statistics emphatically underscore the need for increased support for the functions mandated under the Motor Vehicle Safety Act. With increases in the number of vehicles on the road—over 113 million—the number of drivers, and the amount of highway mileage, the need for insuring safe vehicles becomes even more paramount. The resources which the Government has allocated to vehicle safety, however, are grievously low when compared to the dimensions of the driving population.

Contained in the report which accompanies this bill is a comparison of Federal funds allocated for airline safety as compared to that which we allocate for automobile safety. These figures conclude that we spend over four times more money on aircraft safety than vehicle safety. At the same time, there were almost 10 times more passenger miles logged by motorists than by airplane passengers. In short, though we travel 10 times more miles in motor vehicles than in aircraft, we dedicate only one-fourth of the economic resources to insure that our vehicles are safe.

Mr. President, the Commerce Committee's proposed authorization is a recognition by both the majority and minority members of the need for continued research into automotive technology. The automobile, the bus, and the truck are a central component of the American life style; all Americans utilize these modes of transportation. The Federal Government has the responsibility to insure that they are as safe as possible.

Mr. HARTKE. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceded to read the amendment.

Mr. HARTKE. 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:

On page 9, after line 22, insert the following:

"SEC. 3. Section 123 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1410) is amended to read as follows:

(a) Except as provided in subsection (d) of this section, upon application by a manufacturer at such time, in such manner, and containing such information as required in this section and as the Secretary shall prescribe, the Secretary may, after publication of notice and opportunity to comment and under such terms and conditions and to such extent as he deems appropriate, temporarily exempt or renew the exemption of a motor vehicle from any motor vehicle safety standard established under this title if he finds—

(1)(A) that compliance would cause such manufacturer substantial economic hardship and that the manufacturer has, in good faith, attempted to comply with each standard from which it requests to be exempted, or

(B) that such temporary exemption would facilitate the development or field evaluation of new motor vehicle safety features which provide a level of safety which is equivalent to or exceeds the level of safety established in each standard from which an exemption is sought, or

(C) that such temporary exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably degrade the safety of such vehicle, or selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of non-exempted motor vehicles; and

(2) that such temporary exemption would be consistent with the public interest and the objectives of the Act.

Notice of each decision to grant a temporary exemption and the reasons for granting it shall be published in the Federal Register.

(b) The Secretary shall require permanent labeling of each exempted motor vehicle. Such label shall either name or describe each of the standards from which the motor vehicle is exempted and be affixed to such exempted vehicles. The Secretary may require that written notification of the exemption be delivered to the dealer and first purchaser for purposes other than the resale of such exempted motor vehicle in such manner as he deems appropriate.

(c)(1) No exemption or renewal granted under paragraph (1)(A) of subsection (a) of this section shall be granted for a period longer than three years and no renewal shall be granted without reapplication and approval conforming to the requirements of subsection (a).

(2) No exemption or renewal granted under paragraphs (1) (B), (C), or (D) of subsection (a) of this section shall be granted for a period longer than two years and no renewal shall be granted without reapplication and approval conforming to the requirements of subsection (a).

(d)(1) No manufacturer whose total motor vehicle production in its most recent year of production exceeds 10,000, as determined by the Secretary, shall be eligible to apply for an exemption under paragraph (1)(A) of subsection (a) of this section.

(2) No manufacturer shall be eligible to apply for exemption under paragraph (1)(B), (1)(C) or (1)(D) of subsection (a) of this section for more than 2500 vehicles to be sold in the United States in any 12 month period, as determined by the Secretary.

(e) Any manufacturer applying for an exemption on the basis of paragraph (1)(A) of subsection (a) of this section shall include in the application a complete financial statement showing the basis of the economic hardship and a complete description of its good faith efforts to comply with the standards. Any manufacturer applying for an exemption on the basis of paragraph (1)(B) of subsection (a) of this section shall include in the application research, development and testing documentation establishing the innovational nature of the safety features and a detailed analysis establishing that the level of safety of the new safety feature is equivalent to or exceeds the level of safety established in the standard from which exemption is sought. Any manufacturer applying for an exemption on the basis of paragraph (1)(C) of subsection (a) of this section shall include in the application research, development and testing documentation establishing that the safety of such vehicle is not unreasonably degraded and that such vehicle is a "low-emission vehicle". Any manufacturer applying for an exemption on the basis of paragraph (1)(D) of subsection (a) of this section shall include in the application a detailed analysis of how the vehicle provides an overall level of safety equivalent to or exceeding the overall level of safety of nonexempted motor vehicles.

(f) The Secretary shall promulgate regulations within 90 days (which time may be extended by the Secretary by a notice published in the Federal Register stating good cause therefor) after enactment of this Act for applications for exemption from any motor vehicle safety standard provided for in this section. The Secretary may make public within 10 days of the date of filing an application under this section all information contained in such application or other information relevant thereto unless such information concerns or relates to a trade secret, or other confidential business information, not relevant to the application for exemption.

(g) For the purpose of this section, a "low-emission vehicle" means any motor vehicle which—

(A) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under the Clean Air Amendments of 1970 (42 U.S.C. 1857f-1) at the time of manufacturer to that type of vehicle.

(B) with respect to all other air pollutants

meets the new motor vehicle standards applicable under the Clean Air Amendments of 1970 (42 U.S.C. 1857f–1) at the time of manufacture to that type of vehicle.

Mr. HARTKE. Mr. President, the purpose of this amendment is to empower the Secretary of Transportation, based on very strict and succinct standards to temporarily exempt a motor vehicle from a motor vehicle safety standard.

In 1966, when Congress passed the National Traffic and Motor Vehicle Safety Act, it expressed a legislative policy that all motor vehicles utilizing the public roads must attain a minimum level of safety. Continued congressional support for the 1966 act is vividly demonstrated by this year's authorization proposal of $51,714 million.

Though Congress still subscribes to the concept that all vehicles should come within the purview of the standards, the practical application of the act has demonstrated that there is a need for a narrowly drawn, well-defined exemption authority. Such authority was provided in the original 1966 legislation but it expired in April 1971. The purpose of this amendment is to reinstate a new carefully defined, succinct, and limited authority to enable the Secretary of Transportation to temporarily exempt certain motor vehicles from compliance with the motor vehicle safety standards.

The amendment establishes four different categories of exemption. The first category is limited to a manufacturer whose total motor vehicle production in the most recent year of production does not exceed 10,000. In order to qualify for an exemption under this section, the manufacturer must have, in good faith, attempted to comply with each standard from which it requests exemption and show that further attempts would cause the manufacturer substantial economic hardship.

Unlike the first category, any manufacturer is eligible to apply for an exemption under the three remaining categories. However, there is a limitation that no more than 2,500 vehicles may be exempted under each of the provisions in any 12-month period. The basis for exemption under the second category is that such exemption would facilitate the development or field evaluation of new motor vehicle safety features which provide a level of safety which is equivalent to or exceeds the level of safety established in each standard from which an exemption is sought. The purpose of this provision is to enable manufacturers to experiment with innovative safety concepts but not endanger the health and safety of the motoring public.

The third category of exemption is designed not to stifle development and evaluation of low emission motor vehicles. It offers an exemption to a manufacturer whose vehicle is designed to meet this end, but which design would not unreasonably degrade the safety of the vehicle. The meaning of a "low-emission vehicle" as defined in subsection (g) of this section, is modeled after the like definition in the Clean Air Amendments of 1970.

The final category of exemption is applicable in a situation where requiring compliance with effective motor vehicle safety standards would prevent a manufacturer from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles. The rationale of such a provision is that it approaches the safety level of the vehicle from a systems perspective. Hypothetically, a vehicle which contains a passive restraint system in the three front positions prior to the date for which it is required may be eligible for an exemption under this section from a windshield standard requiring a flexible glass. The purpose of the latter standard presumably would be to protect a vehicle occupant from injuries resulting from impact with the glass in a crash. Since the passive restraint system would prevent such an impact, the windshield standard becomes obsolete and exemption from the standard would still provide the required level of safety.

In applying for exemption under any of the four categories of exemption, the Secretary must find that such temporary exemption would be consistent with the public interest and the objectives of the act. Subsection (e) of this section defines the minimum information which must be contained in an application for exemption. The section also enables the Secretary to define in an application any additional information which must be included as well as the timing and procedure to be followed. The exemption of a motor vehicle from any motor vehicle safety standard is discretionary with the Secretary based on the criteria which are outlined in this section. The Secretary shall require the permanent labeling of each exempted motor vehicle.

An exemption under the "economic hardship" category may be granted only upon a de novo showing that the application conforms to the requirements which were imposed on the original application. An exemption under the other three categories may be granted for a period of 2 years with renewal based on the same de novo showing required for the first category.

Finally, the Secretary is mandated to publish regulations within 90 days after the enactment of this act for applications for exemption under this section. Prior to granting any exemption, the Secretary must publish a notice of such application and provide an opportunity for comment. He may also make public, within 10 days of the date of filing an application under this section, all information contained in the application or other information which is relevant thereto unless the information concerns or relates to a trade secret, or other confidential business information, not relevant to the application for exemption.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Indiana.

The amendment was agreed to.

Mr. HARTKE. Mr. President, I ask unanimous consent that the Committee on Commerce be discharged from the further consideration of H.R. 15375, that the Senate proceed to its consideration, and that the text of S. 3474, as amended, be substituted therefor.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

H.R. 15375. An act to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize appropriations for the fiscal year 1973.

The PRESIDING OFFICER. Is there objection to the requests of the Senator from Indiana? Without objection, all after the enacting clause will be stricken, and the language of S. 3474, as amended, will be inserted in lieu thereof.

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

The bill (H.R. 15375) was read the third time and passed.

The PRESIDING OFFICER. Does the Senator from Indiana wish to have the Senate bill, S. 3474, postponed indefinitely?

Mr. HARTKE. Mr. President, I ask unanimous consent that the Senate bill be postponed indefinitely.

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

HOLDS ON BILLS

Mr. MANSFIELD. Mr. President, late last night, or early this morning, in response to a colloquy with the distinguished minority leader in connection with the schedule for the rest of that day, I made the following statement:

HOLDS ON BILLS

Mr. MANSFIELD. Mr. President, for the information of the Senate, holds on bills prior to October 2 will be called up at any time, whether the Senator who has a hold on the bill is here or not.

Mr. President, I wish to repeat that statement and amplify it by stating further that no Senator will be caught unaware, because he will be notified in time if he is in town, but if he is out of town he takes his chances; we will notify his office and do what we can, but we will not honor holds too long, because time is running out.

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. Mr. President, I have asked that the Senator repeat the statement today so that it will appear in two successive issues of the RECORD in order that all Senators may be advised of the change in policy. I thank the Senator.

Mr. MANSFIELD. May I iterate and reiterate that this applies to legislation on which there was a hold for bills that were carried on the calendar before October 2.

ORDER OF BUSINESS

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

Mr. MANSFIELD. I yield.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

H.R. 13915—PRIVILEGE OF THE FLOOR

Mr. COOK. Mr. President, I ask unanimous consent that John Yarmuth of my

staff be allowed the privilege of the floor during the discussion of H.R. 13915.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I do not expect to object, does the Senator wish the staff man to be on the floor during the entire debate on this bill?

Mr. COOK. Mr. President, I ask for the privilege for the day.

Mr. ROBERT C. BYRD. I thank the Senator.

ORDER FOR RECOGNITION OF SENATORS TO PAY TRIBUTE TO SENATOR COOPER ON WEDNESDAY, OCTOBER 11, 1972

Mr. COOK. Mr. President, I would like to have a discussion with the majority whip. Does the distinguished majority whip have any special orders for the recognition of Senators next Wednesday morning?

Mr. ROBERT C. BYRD. Mr. President, there are no orders entered for the recognition of Senators on next Wednesday.

Mr. COOK. I wonder if I might request of the leadership an order for the first hour on Wednesday morning, October 11, for the purpose of recognizing several Senators, including Senators HART, RANDOLPH, SCOTT, AKIN, CASE, JAVITS, and SYMINGTON, who wish to have a colloquy relative to the service of my senior Senator, the Honorable Senator COOPER, who is retiring from the Senate.

Mr. ROBERT C. BYRD. Mr. President, would the distinguished Senator phrase his request so that it will conform to the procedures we have followed over the past 2 years, to wit, to ask for not to exceed a certain amount of time for each Senator and in the sequence he wishes Senators to be recognized.

Mr. COOK. Mr. President, I ask unanimous consent that on Wednesday next, for not to exceed 1 hour, the following Senators, in the respective order shown be allowed 10 minutes for the purpose of expressing their appreciation to Senator COOPER for his long service to the Senate of the United States and to the Government of the United States: Senator AIKEN, Senator CASE, Senator HART, Senator SCOTT, Senator RANDOLPH, and Senator JAVITS.

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

Mr. COOK. I yield.

Mr. STENNIS. I just entered the Chamber in the last few minutes. There are others of us who would want to pay tribute to Senator COOPER.

Mr. COOK. I would only suggest to the Senator that Senators indicated would be recognized for 10 minutes each and I would think there would be a general discussion on that occasion and that the Senator from Mississippi will find ample time to make his statement.

Mr. STENNIS. I thank the Senator.

Mr. COOK. I thank the Senator from Mississippi.

Mr. COOK. Mr. President, I ask unanimous consent that that request be agreed to.

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

Is there further morning business?

HOUSE DENIED VOTE ON USE OF HIGHWAY TRUST FUNDS FOR MASS TRANSIT

Mr. WEICKER. Mr. President, through the use of a parliamentary maneuver, the House yesterday was denied a vote to stop the killing, pollution, traffic jams, and land desecration of our Nation's biways. Egged on by selfish private interests the House continued the tragic deception that concrete is the panacea for our transportation ills.

On September 19 by the overwhelming vote of 48 to 26, the Senate approved the Cooper-Muskie amendment which would have permitted the use of $800 million from the highway trust fund for all forms of mass transit. Even the Senate Public Works Committee agreed that the trust fund should be opened up for buses, bus lanes, parking lots, and other modern uses of concrete.

But the House was not even allowed to express its will.

Three-quarters of all Americans live in urban areas. They do not want more highways. They want buses, trams, subways, commuter rail cars. They want more parks, homes, and clean air; yet the House kow-towed to concrete.

Mr. President, this is a disgrace. We cannot continue to spend 75 percent of our transportation budget on highways and 5 percent on mass transit and seriously expect to move.

The next step for those who genuinely want to see America as a nation of safety, mobility, and transportation diversity is the joint Senate-House conference. I have every confidence that a solid majority of the Senate will reflect our decision on the Cooper-Muskie approach to transportation.

I can only say to these conferees, take a chapter out of the highway lobby's book and on Cooper-Muskie stick your feet in concrete.

To the American people, I can only say, "Make your views known. Tell the conferees on both sides that you want to move in America and your taxes are to be used for the safety, health, and mobility of your family and not as a spigot for the profits of the highway lobby."

And, again, to the American people and to my colleagues in both the House and Senate who see the urgency of balanced transportation I can only say, "No bill is better than a bill that has as its cost for fiscal year 1974, the $7 billion authorized plus 55,000 killed, 2 million disabled, 60,000 displaced from their homes, and 44.5 percent of our air pollution."

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON DEPARTMENT OF THE NAVY CONTRACTS AWARDED ON OTHER THAN A COMPETITIVE BID BASIS

A letter from the Commander, Naval Facilities Engineering Command, transmitting, pursuant to law, a report on Department of the Navy contracts awarded on other than a competitive bid basis, for the 6-month period ended June 30, 1972 (with an accompanying report); to the Committee on Armed Services.

REPORT RELATING TO GRANTS FINANCED WHOLLY WITH FEDERAL FUNDS

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report relating to grants financed wholly with Federal funds, for the period April 1, 1972, to June 30, 1972 (with an accompanying report); to the Committee on Finance.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Capability of the Naval Petroleum and Oil Shale Reserves to Meet Emergency Oil Needs," Department of the Navy, Department of the Interior, dated October 5, 1972 (with an accompanying report); to the Committee on Government Operations.

PETITION

A petition was laid before the Senate and referred as indicated:

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

The petition of Henry B. Pielach, and sundry other citizens of the State of Illinois, praying for the enactment of legislation relating to certain aquarium fish; ordered to lie on the table.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MOSS (for Mr. ALLOTT), from the Committee on Interior and Insular Affairs, with amendments:

S. 1441. A bill to designate the Flat Tops Wilderness, Routt and White River National Forests, in the State of Colorado (Rept. No. 92–1275).

By Mr. MAGNUSON, from the Committee on Commerce, with amendments:

S. 4037. A bill to amend the Sockeye Salmon Fisheries Act of 1947 to authorize the restoration and extension of the sockeye and pink salmon stocks of the Fraser River system, and for other purposes (Rept. No. 92–1276).

By Mr. MONTOYA, from the Committee on Public Works, with an amendment:

H.R. 16071. An act to amend the Public Works and Economic Development Act of 1965 (Rept. No. 92–1277), together with supplemental views.

By Mr. HARTKE, from the Committee on Veterans' Affairs, with an amendment:

S. 4006. A bill to amend title 38, United States Code, increasing income limitations relating to payment of disability and death pension, and dependency and indemnity compensation (Rept. No. 92–1278).

By Mr. FANNIN (for Mr. JACKSON), from the Committee on Interior and Insular Affairs, with an amendment:

S. 1928. A bill to amend the Wild and Scenic Rivers Act by designating a segment of the Saint Croix River, Minnesota and Wisconsin, as a component of the national wild and scenic rivers system (Rept. No. 92–1279).

EXTENSION OF TIME FOR PUBLIC WORKS COMMITTEE TO FILE REPORT AND SUPPLEMENTAL VIEWS ON H.R. 16071

Mr. MONTOYA. Mr. President, on September 28, 1972, the Committee on

Public Works ordered reported H.R. 16071, a bill to amend the Public Works and Economic Development Act of 1965. This bill extends the authorizations for that act through fiscal year 1974 and makes some other minor, substantive, and technical changes. I ask unanimous consent that the Committee on Public Works have until midnight tonight to file its report on H.R. 16071, together with supplemental views.

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

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. JACKSON, from the Committee on Interior and Insular Affairs:

John A. Busterud, of California; and

Beatrice E. Willard, of Colorado, to be members of the Council on Environmental Quality.

By Mr. SCHWEIKER, from the Committee on Armed Services:

Adm. John S. McCain, Jr., U.S. Navy, for appointment to the grade of admiral, when retired.

By Mr. SAXBE, from the Committee on Armed Services:

Maj. Gen. Alexander Meigs Haig, Jr., Army of the United States (colonel, U.S. Army), to be assigned to a position of importance and responsibility designated by the President, to be general.

By Mr. THURMOND, from the Committee on Armed Services:

Gen. Creighton W. Abrams, Army of the United States (major general, U.S. Army), for appointment as Chief of Staff, U.S. Army.

Mr. HARRY F. BYRD, JR. Mr. President, from the Committee on Armed Services I report favorably the nominations of nine flag and general officers in the Army, Navy, and Air Force and ask that they be placed on the Executive Calendar.

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

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

Vice Adm. Walter H. Baumberger, U.S. Navy, for appointment to the grade of vice admiral, when retired;

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, to be general;

Vice Adm. Frederic A. Bardshar, U.S. Navy, for appointment to the grade of vice admiral, when retired;

Gen. Ralph Edward Haines, Jr., Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of general;

Vice Adm. Harold G. Bowen, Jr., U.S. Navy, for appointment to the grade of vice admiral, when retired;

Gen. John Lathrop Throckmorton, Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of general;

Lt. Gen. Walter Thomas Kerwin, Jr., Army of the United States (major general, U.S. Army), to be assigned to a position of importance and responsibility designated by the President, to be general;

Maj. Gen. Bernard William Rogers, Army of the United States (brigadier general, U.S. Army), to be assigned to a position of importance and responsibility designated by the President, in the grade of lieutenant general; and

Adm. Charles K. Duncan, U.S. Navy, for appointment to the grade of admiral on the retired list.

Mr. HARRY F. BYRD, JR. Mr. President, in addition, I report favorably 320 nominations in the Navy in the grade of captain. 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:

Frederick S. Adair, and sundry other officers, for promotion in the U.S. Navy.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The ACTING PRESIDENT pro tempore (Mr. GAMBRELL) today signed the following enrolled bills and joint resolution, which had previously been signed by the Speaker of the House of Representatives:

H.R. 5838. An act to designate certain lands in the Lava Beds National Monument in California, as wilderness;

H.R. 9198. An act to amend the act of July 4, 1955, as amended, relating to the construction of irrigation distribution systems;

H.R. 11047. An act for the relief of Donald W. Wetring;

H.R. 13533. An act to amend the District of Columbia Redevelopment Act of 1945 to provide for the reimbursement of public utilities in the District of Columbia for certain costs resulting from urban renewal; to provide for reimbursement of public utilities in the District of Columbia for certain costs resulting from Federal-aid system programs; and to amend section 5 of the act approved June 11, 1878 (providing a permanent government of the District of Columbia), and for other purposes; and

H.J. Res. 1263. A joint resolution authorizing the President to proclaim October 30, 1972, as "National Sokol Day."

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. HARRIS:

S. 4066. A bill to impose an excise tax on the sale of wheat for export for which application for subsidy was made during the period beginning August 23, 1972, and ending September 1, 1972. Referred to the Committee on Finance.

By Mr. FANNIN (for Mr. ALLOTT):

S. 4067. A bill to authorize the Secretary of the Interior to convey certain land situated in the vicinity of Georgetown, Colo., to Frank W. Whitenack. Referred to the Committee on Interior and Insular Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HARRIS:

S. 4066. A bill to impose an excise tax on the sale of wheat for export for which application for subsidy was made during the period beginning August 23, 1972, and ending September 1, 1972. Referred to the Committee on Finance.

Mr. HARRIS. Mr. President, on July 8 of this year, the United States and the Soviet Union entered into an unprecedented trade agreement having to do with enormous amounts of wheat purchases.

I have been an advocate of increased trade with the U.S.S.R. and Eastern Europe and expanded world markets for Oklahoma and American farm products. As the facts come to light, however, in regard to the recent Soviet wheat deal, it has become clearer and clearer that the wheat farmer, who grew and harvested the wheat, gained least, and that a few giant grain exporters with direct lines to the USDA and its inside information profited at the wheat farmer's expense and at the taxpayer's expense.

Nationally, around 20 to 25 percent of this year's crop was sold before the price was pushed up by the massive Soviet purchases. In my State of Oklahoma, that had an especially hard effect, because we are what is called an early wheat State. Our wheat is harvested before that in most of the rest of the country. Had Oklahoma's farmers had the information, they would naturally have held their wheat for the higher price. In Oklahoma, an estimated 75 percent of all this season's wheat was sold before information came to light about the magnitude of possible sales. Over 50 percent of Oklahoma wheat was sold before July 15. Based on last year's crop, a conservative estimate of the resulting loss to Oklahoma wheat farmers is $47 million. Of that, $32 million was lost because Oklahoma farmers did not have the same information as the big wheat exporters. They therefore sold approximately 80 million bushels at 40 cents or more below the market price.

Exporters, on the other hand, bought wheat futures as soon as they found out about the sale and before the facts were generally known. It was fairly easy for them to find out, as compared with the farmers. When Clarence Palmby and Secretary Butz were in the Soviet Union back in April of this year, and returned here, I think, on the 14th of April, they knew then that, aside from the question of whether or not the Russians would be able to buy wheat with credit, the Russians were facing a disastrously short wheat crop. As a matter of fact, Clarence Palmby had himself followed the Russian crop, spending a couple of days going around through some of the Soviet wheat fields, and he saw what had happened as a result of a severe winter. It was well known that they would have to buy great quantities of wheat to anyone who had been there and surveyed the facts, as he and others within the United States Department of Agriculture had. They knew, too, that Canada was not going to be able to deliver the needed wheat because of its overtaxed port and transportation facilities. They knew Australian wheat production was down by 150 million bushels. They knew Argentina and Brazil had shown serious

crop reductions. They knew that quality deterioration and unusually, unprecedently high rains in Western Europe had reduced their wheat output, and that India had, as a result of a serious drought, seen a decrease in its own as well as Pakistan's and Bangladesh's ability to supply the wheat. So the Russians were going to have to come to us.

The exporters knew that, and others within the Department of Agriculture knew it, but the farmers did not know it. So the exporters moved into the wheat market. They pushed the price up slowly, and farmers sold instead of holding their wheat for a better price which the exporters knew was to come. Exporters bought Oklahoma wheat cheap, arranged their foreign sales, and then filed for the Federal export subsidy when the subsidy was at its peak in late August.

They had already made their sales, but they waited until the subsidy went up, as they knew it was going up, through the Department of Agriculture, and then they requested their subsidies.

An estimated 90 percent of Oklahoma wheat sold was sold at less than $1.60 a bushel. That same wheat would have sold for $2.14 a bushel had it been held by farmers until late August. In July, the big exporters were quietly going about buying up wheat for the sales they anticipated, and Russians were quietly buying more U.S. wheat at cheap prices. The exporters could file for the export subsidy on that wheat, not at the time of sale, but anytime up to the shipping date. They, therefore, waited until the price jumped up and filed when the subsidy was highest.

We made a bad deal with the Soviets on price. Knowing what we should have known and many did know about the Soviet wheat crop situation, we should have sold at a far better price. We therefore subsidized the Soviets at the taxpayers' expense by selling to them at a lower price than we could have received.

The Russians were happy, because they bought cheap. The exporters were happy because they got their subsidy on the higher price in effect before the wheat was actually shipped.

The people who suffered were the wheat farmers and the taxpayers—principally those wheat farmers in early wheat States like Oklahoma.

Another substantial loss to Oklahoma wheat farmers is still to come. The effect of the magnitude of the sale and the increased prices because of it will mean that the 5-month average of 1972 will probably reach $1.62 a bushel on wheat under the Federal price support program. The effect on the wheat certificate for those farmers who sold at substantially less than $1.62 will be disastrous. The loss to Oklahoma wheat farmers on their December price-support payments is estimated to be $15 million, in just the one State. Nationwide, the National Farmers Union has estimated that $68 million will be lost on the wheat certificates because of the wheat sale.

Mr. President, I do not think the wheat farmers in Oklahoma should have to pay for the increased subsidies given to a few big exporters. I do not think the farmers in Oklahoma should have to sit back and accept the losses to them because of the improper conduct of the USDA. I doubt that many Oklahoma wheat farmers find any comfort in Secretary Butz's interpretation that—

> Farmers didn't lose money because of early sales, they just didn't make the additional money they might have made.

I think it is time for us to put people in those positions in the U.S. Department of Agriculture who can fully operate with the interests of the farmers in mind.

There are other serious issues. One concerns the question of conflict of interest involving Mr. Clarence Palmby—who negotiated the Soviet wheat sale and then left the USDA to work for Continental Grain, one of the great gainers in this strange deal. There should be a thorough investigation of all possible conflicts of interest in regard to this whole matter.

Another issue involves the DISC law, which I opposed. The DISC law was enacted for the stated purpose of encouraging producers to export their products and not move their plants overseas. It was never the intent of the law—and it was a bad law, in any event, in my judgment—to give middlemen a tax loophold for selling wheat under a subsidy program. On September 29, the Treasury Department announced a proposed ruling making the grain exporter ineligible for a tax break under DISC. I am hopeful that the final ruling will likewise deny them a tax break under DISC. If so, I think public attention will have been the cause, and more public attention to this whole mess is what is needed. Action also is needed.

Mr. President, I am introducing today a bill that is aimed at making more equitable the events of the past months. The Export Wheat Sale Tax Act would tax at 100 percent the difference between the subsidy price at the time privileged exporters sold the wheat and the time they filed later on for the export subsidy, after it had gone up. The bill taxes only those exporters who had inside information from the USDA before it was publicly announced. Cargill Corp., Continental Grain, Bunge, Cook & Co., and Louis Dreyfus Corp.—a French company, which was paid millions of dollars of subsidy for a China wheat deal it made—received a complimentary telephone call from the USDA, informing them that there would be an immediate change of policy. All these corporations are privately held, so we know very little about them, except that they are owned by a few rich people—rich at the expense of American farmers, rich at the expense of American taxpayers.

All these huge grain companies received a complimentary telephone call from the United States Department of Agriculture, as came out at the hearings conducted by Representative Grant of Texas, to inform them that there would be an immediate change in policy with regard to the export subsidy.

Even if no details were given, this tipoff was enough to trigger increased activity in subsidy speculation.

What I hope to accomplish by this bill is to end the lax and loose policies on export subsidies that encourage speculation and in most cases work to the special advantage of the exporter.

If its principal purposes do not include looking after the interests of farmers, rather than the special interests of the big exporters, we ought to change the name of the Department of Agriculture.

I send to the desk the bill, which taxes away these ill-earned export profits. I ask that it be received and appropriately referred—and printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HARRIS. Further, A. V. Krebs of the agribusiness accountability project has prepared an excellent background report on the U.S.–U.S.S.R. wheat sale. This report, "Of the Grain Trade, By the Grain Trade, and For the Grain Trade" gives a summary of the events leading up to the sale, the events following the sale, and their effect on U.S. farmers and a history of the subsidy program. I ask unanimous consent that this report be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

EXHIBIT 1

S. 4066

A bill to impose an excise tax on the sale of wheat for export for which application for subsidy was made during the period beginning August 23, 1972, and ending September 1, 1972

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 "Export Wheat Sale Tax Act".

SEC. 2. (a) IMPOSITION OF TAX.—There is imposed on the sale of wheat for export (described in subsection (b)) a tax (determined under subsection (c)) which shall be due and payable 60 days after the date of enactment of this Act.

(b) TAXABLE SALES.—The tax imposed by subsection (a) applies to any sale of wheat for export—

(1) for which the contract of sale was made prior to the close of the business day of August 23, 1972,

(2) with respect to which an application for the payment of a subsidy was made to the Department of Agriculture during the period beginning on August 25, 1972, and ending on September 1, 1972, and

(3) determined by the Secretary of the Treasury or his delegate to have been made on the basis of information available within the Department of Agriculture and made available to the taxpayer before such information was publicly announced for the benefit of all persons engaged in the purchase and sale of wheat for commercial purposes.

(c) DETERMINATION OF AMOUNT.—The tax imposed by subsection (a) of any sale of wheat for export is an amount equal to—

(1) the difference between (A) the amount of the wheat subsidy per bushel in effect on the day of the sale of that wheat by the taxpayer and the amount of the wheat subsidy per bushel in effect on the day the taxpayer applied for the subsidy with the Department of Agriculture, multiplied by—

(2) the number of bushels of wheat sold for export by the taxpayer.

(d) ASSESSMENT AND COLLECTION.—The pro-

visions of subtitle F of the Internal Revenue Code of 1954 (relating to procedure and administration) shall apply to the assessment and collection of the tax imposed by subsection (a) as if that tax were a tax imposed by subtitle D of the Internal Revenue Code of 1954 (relating to miscellaneous excise taxes) under such regulations as the Secretary of the Treasury or his delegate may prescribe. The Secretary of Agriculture shall cooperate with the Secretary of the Treasury or his delegate in the assessment and collection of the tax imposed by subsection (a) and shall provide access to such information and records as the Secretary of the Treasury or his delegate may require to carry out his duties under this Act.

(e) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this Act.

EXHIBIT 2

OF THE GRAIN TRADE, BY THE GRAIN TRADE, AND FOR THE GRAIN TRADE

(An interpretive background report on the 1972 United States-Russia wheat sales by A. V. Krebs, corporate research associate, Agribusiness Accountability Project)

(NOTE.—The Agribusiness Accountability Project is a public interest research organization based in Washington, D.C. The Project is funded by the Field Foundation and sponsored by the Center for Community Change and the Project on Corporate Responsibility.)

INTRODUCTION

On July 8, 1972, the United States and Russia announced an unprecedented trade agreement.

The U.S. would give the Soviet Union three-year credit at six percent interest in amounts up to $500 million. In return, the Soviets would promise to buy a minimum of $750 million of grain, including a $200 million purchase the first year.

By September 1, 1972, however, over $1 billion of U.S. grain and nearly one-quarter of the nation's wheat crop had been sold to Russia, mostly for cash, in secret negotiations between Russian officials and six large U.S. grain exporters.

U.S. Secretary of Agriculture, Earl L. Butz, has hailed these sales as a "major breakthrough for peaceful coexistence between Russia and the U.S." But the favoritism and political intrigue surrounding these public and private negotiations suggest that the billion dollar transaction should more appropriately be termed the Great American Grain Robbery.

A systematic program by the U.S. Department of Agriculture in recent years to deny itself vital grain export information, a joint USDA-grain trade sabotage of the International Wheat Agreement (IWA) which sought to establish world minimum prices, a general, long-time USDA reverence for the grain trade's elite, and a 1971 feed grain sale to Russia in which USDA bought grain at inflated prices with taxpayers money so they could deliver it cheap to the multibillion dollar Cargill and Continental Grain corporations, all serve as background in this story of the Great American Grain Robbery.[1]

THE NEGOTIATORS

It was a pessimistic U.S. trade team, headed by Secretary Butz, Clarence D. Palmby, Assistant Secretary of Agriculture for International Affairs and Commodity Programs, and Clifford G. Pulvermacher, the department's chief foreign salesman, which returned from Moscow in early April, 1972. After discussing an increase in grain sales with the USSR and the possible extension of U.S. credit, the Russians flatly rejected Butz's offer.

The Russians sought a ten-year, two percent interest loan. The U.S., arguing that such a loan would be unfair to the country's long-time, established world customers, opted for the Commodity Credit Corporation's standard three-year credit terms at 6⅛ percent.

Palmby, who left USDA to join the Continental Grain Co. as Vice-President for International Trade, later admitted, "I, along with my colleagues from the U.S. government, returned to Washington on April 14, firmly convinced the USSR would *never* buy grain on *credit*." (Emphasis added.) While Palmby (and Pulvermacher) with an extensive international trade negotiating background may have been skeptical of a credit agreement, they certainly were aware that Russia desperately needed wheat, that the U.S. was in a singularly favorable position to supply that wheat, and that the Russians would therefore be faced with having to pay cash for that U.S. wheat. Palmby even spent a couple of days on his Russian trip traveling through the nation's wheat fields.

A severe Russian winter killed much of the season's wheat crop. Wheat replanted in the spring experienced a disastrous summer drought which also sharply curtailed that crop. The difficulties the Russians were having with their wheat crop was soon manifested on the world market as they began in the spring to default on sales contracts made previously to other world market customers.

On the international scene, Canada, who had sold wheat to Russia in the past, was logistically unable to deliver grain in significant quantities as its port and transportation facilities were already taxed to capacity. Australia's wheat production estimates were down by 150 million bushels. Argentina and Brazil showed sharp crop reductions. Quality deterioration and the heaviest rains in 125 years in Western Europe reduced that area's wheat outturn significantly. India experienced more drought which seriously interupted its self-sufficiency in wheat production and both Pakistan and Bangladesh were in real need of unknown quantities of wheat.

Meanwhile the United States was preparing to harvest a mammoth 1.6 billion bushels of wheat, of which over one billion bushels would be available for export that would exceed the 1965–66 record high by over 130 million bushels.

As the stage was being set for lucrative cash sales to the Russians by the grain trades' elite—Cargill Corp., Continental Grain Co., Bunge and Born, Louis Dreyfus, Cook and Co., Peavey and Garnack—several key individuals who were to play vital roles in the story of the Great American Grain Robbery were advantageously positioning themselves.

STARRING CLARENCE D. PALMBY

In March, prior to leaving on the Moscow trip, Michel Fribourg, the president of Continental Grain, contacted Clarence Palmby about coming to work for the world-wide grain trader. After what Palmby later described as "very limited conversations" he and his wife spent several hours in New York (headquarters for Continental Grain) looking at apartments and living conditions. "Somewhat by happenstance" on April 3 and 4 they found a $90–$100 thousand two bedroom cooperative apartment that was to be available in July. Palmby, in furnishing the coop with personal references, listed four top Continental executives.

"Mrs. Palmby and I both realized there was a gamble as to when we might occupy the apartment, but we both had absolute confidence that I could successfully and gainfully continue my career in the private international trade sector," Palmby later wrote in a letter to House Agriculture Grain Subcommittee chairman Rep. Graham Purcell (D–Tex.).

On May 9, two days prior to informing Sec. Butz of his intention to leave USDA, Palmby met in Washington with the Russian Deputy Minister of Foreign Trade. But no progress was reported on any sales agreement between the U.S. and Russia.

The same day that Palmby tendered his resignation, he later wrote to Rep. Purcell, he accepted Continental's offer. Earlier, before Purcell's subcommittee, Palmby said he received a firm offer from Continental, "as I recall, somewhere around the first part of May, in that area." On June 8, Palmby joined Continental.

Sec. Butz later told a group of Washington reporters that if he had known about Palmby's New York real estate purchase he would not have taken him on the Russian trip. "In our business you operate in a goldfish bowl," Butz said. "If I had known (about the coop purchase) when we went to Russia, I would not have taken Mr. Palmby on the team." Butz recalled he had discussed Palmby's future with the Assistant Secretary last February, as he realized that Palmby was "the most merchandisable person in the Agriculture Department."

"He sat in a key and critical position, his age was right, his experience was right, his contacts were right, and his finances were right.

"If I had been the manager of a large grain company," Butz said, "I would have come straight to him. Palmby knows people in the grain trade and all over the world."[2] As a former director of four agribusiness corporations—Ralston Purina, Stokely-Van Camp, International Minerals and Chemical and J. I. Case—Secretary Butz has been in position to know the value of such contacts.

Palmby's hope was not the only one between USDA and the grain trade. Replacing Palmby at USDA was Carroll G. Brunthaver, who prior to his Department of Agriculture appointment in 1969, was Associate Director of Research for an affiliate of Cook Industries. In early 1972, Claude Merriman, USDA's Export Marketing Service's (EMS) Assistant sales manager for commodity exports, retired. In June, Merriman became a consultant for Louis Dreyfus Corp. Merriman's successor, George S. Shaklin, came to EMS after serving for seven years as manager of the Washington, D.C. office of Bunge Corp. As noted above, EMS General Sales Manager, Clifford Pulvermacher, left USDA to take a job with Bunge.

AT WORK IN THE MARKETPLACE

As the world wheat situation was growing increasingly clear to a small, select group of shifting USDA and grain trade executives in Washington, New York and Minneapolis, farmers in Texas, Oklahoma, Kansas and other areas throughout the southwest were harvesting their wheat. Many of these wheat farmers, unaware of the rich rewards their crop would soon be reaping in the market place, were selling at $1.25–$1.35 a bushel.

The large grain companies, such as Cargill and Continental Grain, were also busy, buying the current wheat crop cheaply and storing the bulk in their massive elevators for later sale. Cargill's storage capacity is estimated at 180 million bushels, some 30 million bushels more than Continental's facilities.

On June 29, a Russian delegation headed by M. R. Kuzmin, Soviet First Deputy Foreign Minister of Trade, came to Washington to begin a series of meetings with U.S. officials. These sessions lasted until Presi- Nixon announced the two-nation, three-year credit agreement on July 8.

In Washington at the same time were officials of Exportkhleb, the Soviet state trad-

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Footnotes at end of article.

ing organization. A preliminary meeting took place between them and executives from Continental on the evening of June 30 at the posh Madison Hotel in Washington.

Clarence Palmby and a Continental official from the company's Paris office took a group of the Russians sightseeing in the nation's capital and to lunch in Alexandria over the weekend. Palmby claims, however, that no business was discussed with the officials at that time. The American exporters later claimed they were unaware that a Russian trade delegation was in Washington at the same time.[3]

Palmby also recalls that during June he sat in on policy meetings at Continental while Soviet crop conditions and other matters were discussed. He offered the benefit of his judgment, but said, "I've never negotiated with the USSR on the grain deal for Continental."[4]

On Monday, July 3, negotiations between Exportkhleb and Continental continued in New York. Two days later the Russians bought an estimated 147 million bushels of wheat from Continental at an agreed price of about $1.63 per bushel, free on board gulf ports. The sale involved some $240 million, more than the total dollar amount and double the amount of wheat the USDA said Russia would buy in the coming year. And this was all consummated three days before the U.S.-Russia agreement was signed and announced.

A review of the events throughout the summer of 1972 suggest that this agreement could well have been a smokescreen by the Russians to get wheat at cheap prices, since most of their subsequent buying was in that crop rather than feed grains, and for cash, not credit.

THE SELLERS

In Kinsley, Kansas on July 8, a few hours before the agreement was announced by President Nixon, wheat farmer Elmer Frick was selling his entire 1972 crop of 4,000 bushels for $1.27 a bushel.

Frick's plight was typical of farmers throughout the early harvest season. Eight weeks later, after the magnitude of the Russian sales began to be pieced together, those same bushels of hard red winter wheat would bring their producer $2.14 per bushel.

In Oklahoma, by July 15, over 50% of the state's wheat crop was harvested and sold. (Estimate based on last year's figures and this year's prices.) That figure went up to 75% by August 8. Some 90% of the state's farmers sold near 80 million bushels at prices below $1.50 per bushel—a loss approaching $47 million. Throughout the southwest and the early-harvesting midwestern states, 20–25% of the 1972 wheat crop was sold by the middle of July. Later Secretary of Agriculture, Earl Butz, in noting the loss these growers suffered, observed that, "Farmers didn't lose money because of early sales, they just didn't make the additional money they might have made."

During July the Russians continued to make large purchases of wheat from the grain trade's elite (See Figure 1).[5] No public announcement followed any of these sales.

TONNAGES BY COMPANY IN U.S.S.R. WHEAT SALES

	1st trip, June 29 to July 21	2d trip, July 31 to Aug. 18
Continental Grain Co., New York	5,000,000	None
Cargill Inc. Minneapolis	1,000,000	1,000,000
Louis Dreyfus Corp., New York	750,000	1,500,000
Cook Industries Inc., Memphis	600,000	300,000
Garnac Grain Co., New York	200,000	350,000
Bunge Corp., New York	None	600,000
Total	7,550,000	3,750,000

Footnotes at end of article.

At a July 8 press conference Secretary Butz noted that although the Russians would have to buy wheat beyond that already contracted from Canada, "they (the Soviets) have plenty of wheat for now."

THE BUYERS

Wheat future activity on the Kansas City Board of Trade increased dramatically throughout July. *The Wall Street Journal's* Burt Schorr reported on September 18 that an intensive investigation was being made by the Commodity Exchange Authority to determine whether exporters placed heavy order in the closing minutes of trading each day to boost closing prices and occasion a corresponding rise in the wheat export subsidy.

According to a trader for a large flour company, "suspicious last-minute purchases of September contracts occurred on several days in July." He cited, "one instance . . . when with three or four minutes of trading remained pit brokers handled orders totaling five million bushels."[6]

It was in July that the major grain exporters were adroitly going about their business of creating circumstances which would enable them to reap windfall profits in the coming weeks. Meanwhile the Russians quietly returned to the U.S. late in the month to buy more cheap U.S. wheat.

PROFITS: USDA STYLE

Crucial to the grain trade's scheme was USDA's export subsidy policy and its maintenance. The Department of Agriculture makes payments to wheat exporters as a means of keeping U.S. wheat export prices competitive in world markets when prices offered by other major wheat exporting nations are lower than U.S. domestic prices.

Through July and into August the domestic price of wheat started to rise, each day the subsidy growing more lucrative for those grain corporations that had bought wheat early from unsuspecting farmers.

Hard Red Winter	Domestic price f.o.b. vessel	Subsidy	Net or world
July 7, 1971	$1.69⅛	$0.02	$1.67⅛
June 28, 1972	1.64½	.01	1.63½
July 5, 1972[2]	1.69	.06	1.63
July 12, 1972	1.76½	.13	1.63½
July 19 1972	1.79¼	.15	1.64¼
July 26, 1972	1.77⅞	.14	1.63⅞
Aug. 2, 1972	1.80¾	.17	1.63¾
Aug. 9, 1972	1.96¼	.31	1.65¼
Aug. 16, 1972	2.04	.36	1.68
Aug. 23 1972[2]	2.14¼	.38	1.76¼
Aug. 30, 1972	2.14¼	.32	1.82¼
Sept. 6, 1972	2.18¼	.30	1.88¼
Sept. 13, 1972	2.25½	.26	1.99½

[1] July 8 announcement on Russian grain sale announced.
[2] Export subsidy policy change reported effective Aug. 24 all sales not previously registered eligible for increased subsidy. HWR Gulf $0.09.
Source: Daily cash prices USDA Agriculture Service, calculated U.S. Wheat Prices USDA, export marketing service.

Protests began to be heard that USDA, by maintaining the net export price while allowing the subsidies to increase, had the effect of artificially driving up domestic prices. It was during this period that USDA doggedly kept defending the subsidy program as essential to keeping U.S. wheat competitive with the world price, failing to recognize that the world price was the American selling price.

On Monday, August 7, the wheat market showed a sharp advance. However, USDA left the export subsidy level unchanged. By resisting market changes with corresponding changes in the export subsidy level, the Department signaled that there would be no basic change in its long-term policy of maintaining net U.S. export prices at levels that had existed for many months. Later, after the policy was in fact changed to a dual subsidy, the authoritative trade publication, *The Southwest Miller* noted: "This was in face of the fact that exporters making the huge sales to the Soviet Union *had been assured by the Department, prior to entering into the sales contracts, that the Department would protect them* on unchanged net export prices through subsidy adjustments that compensated for market changes." (Emphasis added)[8]

Preparing the Ground

Even before the Great American Grain Robbery, the ground was being prepared for the subsidy harvest reaped in the U.S.-Russian sales.

In 1967, at the instigation of the grain trade and with the blessings of USDA, the subsidy certification procedure was changed whereby the grain companies no longer had to have sold the grain before filing for their export subsidy. The new procedure of filing for subsidies anytime between the purchase and the shipping date opened the way for increased subsidy speculation in the grain trade.

Four years later, USDA and the grain trade teamed together to render the International Wheat Agreement (IWA) impotent. In 1971, after hearings on the weakened IWA, the U.S. Senate passed a "sense of the Senate" resolution directing the U.S. negotiators to go back to the International Wheat Council to seek agreement with other nations on minimum prices, reference wheats (wheats used as a basis for figuring relative minimum prices of other wheats) and basing points (various export and import shipping points). Clarence Palmby, chief U.S. negotiator for the U.S. delegation, testified at the ratification hearings that the U.S. was "not in favor of this resolution," as member countries could at any time "negotiate a pricing provision if such seems desirable and timely." Had a strong IWA been in effect in the summer of 1972, the Great American Grain Robbery would have died aborning.[9]

In the Fall, 1971 the grain trade received another able financial assist from USDA when exporters were told they no longer were required to register the country to which they were shipping when booking their sales for export subsidies. USDA also makes no effort to determine or verify how much grain companies actually pay for their wheat purchases before they apply for an export subsidy. It is in reality a "blind" subsidy payment to corporate interests.

Throughout July and August a good share of the Nation's wheat farmers were not only lamenting the cheap prices for which they had already sold their wheat to rich grain exporters, but they were also alarmed at what the rising domestic prices were going to do to their wheat certificate payments.

The Agricultural Act of 1970 at the urging of the Agriculture Department and the Nixon Administration, provided that wheat certificates paid to farmers on their share of domestic consumption would be calculated to reflect the difference between the average market price for the first five months of the marketing year, July 1 to November 30, and the parity price as of July 1—$3.02 per bushel. Prior to 1970 the calculation was made on the difference between parity and the price support loan rate.

That change now promises to affect seriously wheat farmers who sold their crop in the early summer of 1972 for less than $1.62 per bushel. The import of the Russian sales subsequently drove prices so high that the five-month average for 1972 will probably reach $1.62. Elmer Frick, who sold his wheat at $1.27, will lose 35 cents a bushel on his December price support payment. A total loss of over $68 million to those farmers has been estimated by the National Farmers Union.

It was in the second session of the 92nd Congress that Representatives Neal Smith (D-Iowa) and John Melcher (D-Mont.) introduced legislation which would have increased the government grain loans by 25 percent and established reserves of excess supplies to relieve a glutted market.

Since farmers would hesitate to sell wheat

below the government's loan rate, the Smith-Melcher bill would have had the effect, by raising the loan rate 25%, of establishing a $1.56 "floor" for wheat. Wheat farmer Frick's loss in 1972 might have been only six cents a bushel rather than 35 cents.

The Smith-Melcher bill was passed by the House 204–164, but was defeated 10–4 in an executive session of the Senate Agriculture Committee. Over the objections of Sen. Hubert Humphrey (D-Minn.), who supported the bill, Clarence Palmby was allowed to participate in the executive session as an "expert." Palmby, when he later left USDA, told a reporter that in his three years with the Department the accomplishment he took the greatest pride in was the defeat of the Smith-Melcher bill.[10]

In mid-August, 1972, with over one-third of the nation's wheat crop already sold, the U.S. Department of Agriculture deliberately passed up another opportunity to help the American wheat grower earn a better price for his crop. Burt Schorr, in the September 14, 1972 issue of the *Wall Street Journal*, reported that USDA suppressed a mid-August report which, after analyzing Soviet crop conditions, concluded that the outlook for Russian grain production had worsened from an earlier estimate. Secretary Butz and USDA later defended their actions by pointing out the report was based on the (on-the-spot) opinions of the U.S. Agricultural attache in Moscow and might, if released, be "misinterpreted" by American farmers. Some seven weeks later on October 3, the *Wall Street Journal* reported that the August report was still unavailable, although USDA said the October report "incorporates figures used in that (August) analysis."

NURTURING THE PROFITS

As the subsidies continued to swell during August, USDA became increasingly alarmed and finally determined that a dual subsidy program would have to be put into effect. The manner in which they choose to announce this new policy clearly exposes the genuine concern by the USDA for the financial well-being of the grain trade.

At approximately noon on August 24, EMS's Grain Division Director, Charles Pence, began placing calls to the grain trade's elite informing them that there would be a meeting at the department the next day to inform them that "there would be a change in export payment policy on sales of wheat," and that the U.S. could no longer maintain the present export subsidy level.

USDA's Carroll Brunthaver later told Congressman Purcell's House Subcommittee on Grains that he had no knowledge of Pence's "tip-off" calls. Rather, he said, he had asked Frank McKnight, EMS's Assistant General Sales Manager, on August 24 "to notify exporters immediately that a change had just been made in export policy; which, in effect, notified wheat exporters not to assume sales made after the close of business on the 23rd of August would necessarily qualify for export payments based on U.S. export prices that had prevailed for the previous ten months." [11]

Whether, in fact Pence made it clear to the few exporters he called that the new policy was retroactive to the close of business on August 23 is open to question. Brunthaver later testified that the decision to make the cutoff date for the special subsidy the 24th, rather than the 23rd, was not made until the 25th when USDA decided that some exporters (those who received no calls from Pence on the 24th) might not have been informed.

Pence also noted in a *New York Times* telephone interview that when he called the grain companies they "immediately began talking about whether there would be a two-tier system." He told them that he had no knowledge of this. But he conceded that "he had already heard from *sources in the trade* that this was what the department had in mind, *even before I knew it.*" (Emphasis added).[12]

"WE'VE GOT TO CALL AND WARN THE TRADERS"

With the domestic price of wheat around $2.10 and the subsidy a staggering 38 cents a bushel on August 24, USDA announced on the 25th that all sales made through August 24 (23?) and registered by September 1, would be eligible for a 38 cent subsidy, plus a nine cent retroactive supplement. For the previous few days before the August 25 announcement, USDA had not changed the export subsidy payment while the domestic price continued to increase. With the announcement of the two-tier policy, the Department felt it could not penalize those exporters who had abided by the old policy, so the retroactive supplement of nine cents was to bring the current world price plus the subsidy up to a level with the present domestic wheat price.

The second-tier payment policy was simply an early warning sign to the grain trade that they could no longer depend on the old subsidy policy and that the day of zero subsidy was at hand, which in fact came on September 21.

Despite the hand writing on the wall that the change in subsidy policy was doing little to cool off a hot market, it appears USDA still felt it necessary to stick by the program to the very end. Earlier in the same week that the zero subsidy was announced, Carroll Brunthaver was questioned on such a possibility by Rep. Melcher. "No," Brunthaver replied, "I don't think that it is in active consideration. No." [13]

While the Assistant Secretary was also unable to make up his mind in various public statements about whether the Pence calls had benefited the exporters or not, *Newsweek's* Rich Thomas uncovered one of the most revealing episodes in the entire story of the Great American Grain Robbery. "It took the White House Office of Management and Budget to blow the whistle. In a routine audit, director Casper Weinberger was startled by the burgeoning cost of the export subsidies. His crash investigation culminated in a showdown with Carroll Brunthaver . . . 'My God, you mean we suspend the subsidy?' Brunthaver exclaimed. 'We've got to call and warn the traders.' Weinberger icily insisted that a public announcement be made." [14]

During the House Subcommittee hearings, Rep. Melcher asked Brunthaver whether it was proper for USDA to give verbal assurances on policy to major exporters. "This involves millions of dollars," the Montana Congressman questioned, "is it customary to do it verbally?" Brunthaver told the committee he was simply guaranteeing the firms a continuation of longstanding policy.

REAPING THE HARVEST

During the week of August 25-September 1, some 282,047,694 bushels of wheat were registered for the special subsidy of 47 cents a bushel—85% of that wheat being booked for subsidy payments on September 1. The cost to the taxpayers—approximately $131.6 million.

One of the major grain exporters who scored a windfall in export subsidy profits with the announcement of the 47 cent policy was the Louis Dreyfus Corp. Sometime in mid-August after two or three days of talks with French representatives of Dreyfus, officials of the Peoples Republic of China agreed to buy over 14,500,000 bushels of American wheat.

Dreyfus subsequently registered one quarter of the sale on a day the subsidy was 29 cents a bushel. As for the remaining wheat the company said, the transaction was completed before 3:30 P.M. August 24th, thereby qualifying for the special 47 cent subsidy. Dreyfus, however, did not furnish its verifying information on the sale until September 11, as USDA allowed five additional business days to the exporters beyond September 1 to provide data verifying a sale on which a subsidy was claimed before August 24. The French firm received some $5,820,000 in subsidy payments on the China sale, nearly double the amount they would ordinarily have received if they had applied for a subsidy at the time of the sale.

By early September, the Russians had bought nearly 400 million bushels of wheat—half of those sales handled by the Continental Grain Co.—from the U.S. Domestic prices were near $2.20 per bushel, and exporters were still receiving over 25 cents a bushel subsidy payment.

Amid charges by Democratic Presidential candidate George McGovern, of USDA favoritism and the passing on of "inside information," the House Subcommittee on livestock and grains held a series of hearings in mid-September. It was at those hearings that USDA and Secretary Butz defended their actions in the past months.

Reverting to the U.S. Department of Agriculture's "trickle-down theory," Butz pointed how "the American taxpayer gains from this sale by paying less to store surplus wheat. The grain farmer gains from a stronger market and higher prices. Union members gain from expanded jobs and opportunities. The economy gains from this increased activity and from a sizeable contribution to our balance of trade." [15]

The Secretary did not address himself, however, to the fundamental fact of whether his department did everything it could to alert U.S. producers to the size and scope of Russia's wheat needs. Ignoring the facts of world wheat conditions in 1972, he told the committee that "it is accurate to say that the eventual size of the Soviet purchases caught everyone by surprise, including the Russians themselves." Noting that union members, specifically U.S. maritime workers, would gain from "expanded jobs and opportunities." Butz also overlooked the fact that of the 3.7 million tons of grain contracted for shipping by early September, 2.5 million tons had already been shipped in bottoms of third country ships.[16]

Identical bills in the House and Senate were introduced in mid-September to compensate the Southwestern farmers who would be likely to lose vital income on their wheat certificates because of the high five-month average in wheat prices which determines their December price support payment. The House bill was approved 23–10 on September 26. Three Republicans from wheat growing states despite intense pressures from the White House, joined Democratic supporters. The previous week the Senate Agriculture Committee defeated the bill in a 7–1 voice vote, with Sen. Humphrey casting the single yea vote (although he had the proxy of Sen. McGovern available for any record vote.

TRYING TO SQUEEZE OUT THE LAST DOLLAR

Grain exporters were also busy in Washington seeking to get another "subsidy" in the form of a tax break on their profits at an estimated cost to the taxpayers of $100 million.

Under a tax bill passed in December 1971, a U.S. company may set up a Domestic International Sales Corporation (DISC) to manage its receipts from exports. Taxes on half the profits of a DISC operation can be deferred provided they are used in the parent company's export business or remain in the U.S. as "producer's loans" to related or unrelated American producers. The entire thrust of this legislation was to slow down the drain of American funds and manufacturing skills to other countries. A member of the Senate Finance Committee which passed the legislation, Sen. Harry F. Byrd, Jr. (Independent-Va.), attacked the export-

Footnotes at end of article.

ers' tax break plea, pointing out: "in the Russian grain deal, there is no element of manufacturing skills or activities involved. To apply DISC benefits to this sale would be a distortion of the purpose of the law." [17]

The Treasury Department, however, can deny these benefits, if the profits are found to be derived from sales "accomplished by a subsidy granted by the United States or any instrumentality thereof." The grain trade argues that the subsidy clause is inapplicable to them since the subsidy program is an integral part of the general price support program for farmers. Despite a specific plea from Continental Grain Co., on September 29, the Treasury Department announced a proposed ruling making the grain exporters ineligible for a tax break under DISC on their profits.

CONCLUSION

There are several inescapable conclusions to be drawn from the history of the 1972 wheat sales, including:

1. The U.S. could have asked for and received a much higher price from Russia simply because it alone has the wheat the Soviets need. In the free enterprise system, the process is called supply and demand.

2. USDA has shown a systematic and diligent favoritism, bordering on reverence, for the grain trade elite, in both the marketplaces and the halls of government. Harry Graham of the National Farmers Organization describing the USDA's wheat policies as being "of the grain trade, by the grain trade, and for the grain trade."

3. While over $200 million of taxpayers' money was being spent in subsidy payments in a four-month period, the public was being deliberately denied information (under the guise of "trade secrets") by men and corporations who were depending on that money for personal gain and profit.

4. An agency mandated to protect the farmer—the U.S. Department of Agriculture—woefully neglected that job at precisely the time it could have served their common good (and could have served the taxpaying citizenry) by doing its job efficiently and in the public (not private) interest. USDA was found on the side of giant, grain corporations, aiding and abetting the Great American Grain Robbery of 1972.

FOOTNOTES

[1] See *The Great American Grain Robbery and Other Stories*. Martha M. Hamilton. Agribusiness Accountability Project. 1972.

[2] "Butz Rues Palmby's Grain Trip," by Nick Kotz, *The Washington Post*, October 5, 1972.

[3] "Ex-U.S. Aide Denies Wheat Deal Windfall," by Nick Kotz, *The Washington Post*, September 20, 1972.

[4] "Cargill, Continental Spokesmen Defend U.S. Trade Actions," by Jack Kiesner, *Feedstuffs*, September 25, 1972.

[5] *The New York Times*, September 29, 1972.

[6] "Agency Studies Wheat Market for Trades Aimed at Manipulating Export Subsidies," by Burt Schorr, *The Wall Street Journal*, September 18, 1972.

[7] Statement of the National Association of Wheat Growers before the House Agriculture Subcommittee on Livestock and Grains by Eugene Moos, President, September 18, 1972.

[8] "Two-tier Subsidy in Major Export Policy Shift," *The Southwest Miller*, August 28, 1972.

[9] *Op. cit., The Great American Grain Robbery and Other Stories.*

[10] "Palmby to Leave USDA for Post with Continental Grain," by Jack Kiesner, *Feedstuffs*, May 29, 1972.

[11] Statement by Carroll G. Brunthaver, Assistant Secretary, International Affairs, and Commodity Programs, United States Department of Agriculture before the Livestock and Grains House Subcommittee, September 18, 1972.

[12] "Butz, Aide Deny Knowing of Tip to Grain Exporters," by E. W. Kenworthy, *The New York Times*, September 15, 1972.

[13] "U.S. Drops Subsidy on Export Wheat," by E. W. Kenworthy, *The New York Times*, September 23, 1972.

[14] "$150 Million Blunder," *Newsweek*, October 2, 1972.

[15] *Op. cit., The Great American Grain Robbery and Other Stories.*

[16] "U.S.-Soviet Agreement on Grain Shipping Near," by Marilyn Berger, *The Washington Post*, September 13, 1972.

[17] *Congressional Record*, September 28, 1972, p. 32721.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1540

At the request of Mr. THURMOND, the Senator from Kansas (Mr. PEARSON) was added as a cosponsor of S. 1540, a bill to require a health warning on the labels of bottles containing certain alcoholic beverages.

S. 3070

At the request of Mr. HARTKE, the Senator from Georgia (Mr. TALMADGE), the Senator from Iowa (Mr. HUGHES), the Senator from California (Mr. CRANSTON), and the Senator from Ohio (Mr. SAXBE) were added as cosponsors of S. 3070, a bill to provide for the payment of pensions to World War I veterans and their widows subject to $3,000 and $4,200 annual income limitations; to provide for such veterans a certain priority in entitlement to hospitalization and medical care, and for other purposes.

S. 3449

At the request of Mr. JACKSON, the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 3449, a bill to authorize and direct the Water Resources Council to coordinate a national program to insure the safety of dams and other water storage and control structures, to provide technical support to State programs for the licensing and inspection of such structures, to encourage adequate State safety laws and methods of implementation there.

S. 3598

At the request of Mr. WILLIAMS, the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. MATHIAS), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Pennsylvania (Mr. SCHWEIKER) were added as cosponsors of S. 3598, the Retirement Income Security for Employees Act of 1972.

S. 3881

At the request of Mr. CHILES, the Senator from Minnesota (Mr. MONDALE) was added as a cosponsor of S. 3881, a bill to provide that meetings of Government agencies and of congressional committees shall be open to the public.

S. 4006

At the request of Mr. HARTKE, the Senator from Georgia (Mr. TALMADGE), the Senator from West Virginia (Mr. Randolph), the Senator from Iowa (Mr. HUGHES), the Senator from California (Mr. CRANSTON), the Senator from Wyoming (Mr. HANSEN), the Senator from Vermont (Mr. STAFFORD), the Senator from Ohio (Mr. SAXBE), the Senator from Minnesota (Mr. MONDALE), the Senator from Rhode Island (Mr. PELL), and the Senator from New Jersey (Mr. WILLIAMS) were added as cosponsors of S. 4006, a bill to amend title 38 of the United States Code increasing income limitations relating to payment of disability and death pension, and dependency and indemnity compensation.

SENATE RESOLUTION 376—SUBMISSION OF A RESOLUTION TO ESTABLISH A SPECIAL COMMITTEE TO INVESTIGATE THE FEASIBILITY OF IMPROVING THE EFFICIENCY IN THE CONDUCT OF SENATE HEARINGS

(Referred to the Committee on Rules and Administration.)

Mr. HART. Mr. President, certainly few days pass in the Senate without several of its Members complaining about the impossible schedule they are attempting to follow.

Anyone who has had more than an hour's contact with the Senate, would—in fairness I think—agree that as the years have passed the schedule has become humanly impossible.

Much of this is due to the weight of subcommittee and committee meetings which—especially when they are constantly interrupted by other business as they inevitably are—seem unending.

Each of us frequently faces a schedule card in the morning that will list three, four, or as many as five hearings, conferences, executive sessions or such committee business for the day. Most likely all are running concurrently.

Mr. President, the present committee hearing system I suspect made good sense when being a Member of Congress was a part-time job and when the world moved much more slowly.

Unfortunately, today's world cannot accommodate a Senate hearing system reflecting the world that was.

Therefore, I today introduce a resolution which would establish a special committee to investigate the feasibility of improving the efficiency of the Senate's hearings. In particular, this committee—consisting of 19 Members of the Senate—would be charged with examining the feasibility and desirabilty of adopting a Senate hearings officer system.

Let me explain a little as to how I conceive such a system might operate—and the advantages it would hold for making it possible for each of us to do a better job.

These are, of course, initial impressions—subject to rejection or more hopefully, improving by the special commission.

Basically, the function of the hearing officers would be to preside over hearings and to present a condensed report to members of the subcommittee—or committee—sitting en blanc.

The committee itself would have full discretion and responsibility for matters which would be assigned to the hearing officers—and at what point of the information-gathering process those matters would return to the subcommittee for further work or solution.

Hearings would be conducted, under

hearing officers, much as they now are when a Senator is presiding. In other words, majority and minority staff would present both sides of the questions.

When the report of the hearing officers is presented to the committee or subcommittee, minority and majority counsel would be responsible for time-limited, oral arguments. Hearings officers would be empaneled before the committee to respond to specific questions and to receive instructions for additional hearings or remand of the subject for additional work.

Senate hearing officers would be restricted to those matters specifically referred by the committees and subcommittees and would not have original jurisdiction for either legislative or investigate proceedings.

Mr. President, the advantages of this system, I think, are evident.

First, of course, it would give each of us hundreds of hours every session to devote to matters now getting too little attention. This may be floor work, research, meetings with constituents, or really delving into matters before the committees.

Second—and perhaps of first importance to the Nation—legislative and investigative hearings, which these days never are held simply because there is no Senator to chair, will be held. Further, the legislative process could be taken more easily to the people rather than reserved almost exclusively for Washington.

Not being able to hold hearings has been a real problem for all of us, I am sure. Perhaps the Senate Antitrust and Monopoly Subcommittee, which I chair, is as good an example, this year as any.

Two months of hearings were wiped out because of the Kleindienst matter which was before the full committee. Two more weeks were lost for the Democratic convention and two more for the Republican convention. Additional weeks were lost because the majority leader found it necessary to restrict severely hearings preceding these recesses—and the adjournment we are now trying to achieve—in order to have Senators on the floor.

Once adjournment is reached, the subcommittee will not be able to hold hearings until after the election because of other commitments by its members. The same may hold true until after the first of February next year.

So, it is entirely possible that from February 1972 to February 1973, the subcommittee staff would have only 4 or 5 months in which to schedule hearings.

Which brings up the third advantage of adopting a new hearing system—the more efficient use of committee staff. I would hesitate to estimate how many hours under the present system are wasted because of rescheduling of hearings due to conflicts in the presiding Senator's schedule or waiting in hearing rooms while we respond to vote calls or other duties.

To understand just how long and drawn out the hearings process can be, perhaps we should once more look at the Senate Antitrust and Monopoly Subcommittee.

An important study done by this group was that of economic concentration. Hearings spread over 7 years, 1964—70. Yet, they covered only 43 hearing days—something that could easily be handled by hearing officers in a few months if it were deemed desirable.

The fourth advantage of such a system would be that Senators would escape the tedium of sitting through the lengthy oral information-gathering process—and still have the advantage of summaries of the significant detail necessary to making responsible decisions.

Further—since I would hope the hearing officers would be allowed to depose witnesses and accept return of subpenaed material—we would be relieved from such journeys as the famous Dita Beard Denver trip.

We would be served by a professional staff of hearing officers—split into several panels, each gaining expertise in the subject matter it handles. The hearing officers might be appointed by the Democratic and Republican caucus at the beginning of each Congress and the panels would be organized in proportion to the representative memberships of the parties.

Mr. President, I recognize the irony in suggesting establishing another committee when the thrust of these remarks is to outline the committee burden Members now have.

However, I do not conceive that the work of this committee would be either heavy—or long lived. The resolution suggests a life of 8 months—reporting back in time to adopt the recommendations during the 93d Congress. Now, that may seem a short period of time but in some initial shopping around we have discovered that several organizations are ready and willing to do the research necessary to give a full picture of the pros and cons of the system.

Further, we do not necessarily have to think of this as a system to be adopted immediately across the board by the entire Senate committee system. I—as one subcommittee chairman—would entertain happily the idea of participating in a demonstration project.

It seems entirely practical to me that three or four committees and subcommittees might test out the hearing officer system before deciding whether the full Senate wants to adopt it.

So the information needed to develop a sound idea of the merits and the mechanics is not so difficult. It is my hope that we will move quickly to get the research underway.

Mr. President, on behalf of myself, the Senator from Hawaii (Mr. FONG), and the Senator from California (Mr. TUNNEY), I submit a resolution to establish a special committee to investigate the feasibility of improving the efficiency in the conduct of Senate hearings.

The resolution (S. Res. 376) reads as follows:

S. RES. 376

Resolved, That (a) there is hereby established a special committee of the Senate which shall be known as the Special Committee To Investigate Improvement In The Senate Hearing Process (hereinafter referred to as the "committee") consisting of nineteen Members of the Senate to be designated by the President of the Senate, as follows:

(1) one Senator from the majority party who shall serve as chairman:

(2) two Senators who are members of the Committee on Rules and Administration;

(3) two Senators who are members of the Committee on Banking, Housing and Urban Affairs;

(4) two Senators who are members of the Committee on Agriculture and Forestry;

(5) two Senators who are members of the Committee on Commerce;

(6) two Senators who are members of the Committee on Finance;

(7) two Senators who are members of the Committee on Government Operations;

(8) two Senators who are members of the Committee on Interior and Insular Affairs;

(9) two Senators who are members of the Committee on the Judiciary; and

(10) two Senators who are members of the Committee on Labor and Public Welfare.

One Senator appointed from each such committee under clauses (3)–(10) of this subsection shall be a member of the majority party and one shall be a member of the minority party.

(b) Vacancies in the membership of the committee shall not affect the authority of the remaining members to execute the functions of the committee. Vacancies shall be filled in the same manner as original appointments are made.

(c) A majority of the members of the committee shall constitute a quorum thereof for the transaction of business, except that the committee may fix a lesser number as a quorum for the purpose of taking testimony. The committee may establish such subcommittees as it deems necessary and appropriate to carry out the purpose of this resolution.

(d) The committee shall keep a complete record of all committee actions, including a record of the votes on any question on which a record vote is demanded. All committee records, data, charts, and files shall be the property of the committee and shall be kept in the offices of the committee or such other places as the committee may direct. The committee shall adopt rules of procedure not inconsistent with the rules of the Senate governing standing committees of the Senate.

(e) No legislative measure shall be referred to the committee, and it shall have no authority to report any such measure to the Senate.

(f) The committee shall cease to exist on June 30, 1973.

SEC. 2. It shall be the duty of the committee—

(a) to make a full and complete study and investigation of the extent to which the Senate investigative and legislative hearings can be conducted by Senate hearing officers who shall be professional-staff members appointed by the Senate in accordance with rules to be adopted by the full Senate based on the report and recommendation of this committee.

(b) to make recommendations with respect to the foregoing, including proposed Senate rules, improvements in the administration of existing rules, laws, regulations, and procedures, and the establishment of guidelines and standards for the conduct of Senate hearings.

(c) on or before January 31, 1973, the committee shall submit to the Senate for reference to the standing committees a final report of its study and investigation, together with its recommendations. The committee may make such interim reports to the standing committees of the Senate prior to such final report as it deems advisable.

SEC. 3. (a) For the purposes of this resolution, the committee is authorized to (1) make such expenditures; (2) hold such hearings; (3) sit and act at such times and places

during the sessions, recesses, and adjournment periods of the Senate; (4) require by subpena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents; (5) administer such oaths; (6) take such testimony orally or by deposition; and (7) employ and fix the compensation of such technical, clerical, and other assistants and consultants as it deemed advisable, except that the compensation so fixed shall not exceed the compensation prescribed under chapter 51 and subchapter III of chapter 53 of title 5, United States Code, for comparable duties.

(b) The committee may (1) utilize the service, information, and facilities of the General Accounting Office or any department or agency in the executive branch of the Government, and (2) employ on a reimbursable basis or otherwise the services of such personnel of any such department or agency as it deems advisable. With the consent of any other committee of the Senate, or any subcommittee thereof, the committee may utilize the facilities and the services of the staff of such other committee or subcommittee whenever the chairman of the committee determines that such action is necessary and appropriate.

(c) Subpenas may be issued by the committee over the signature of the chairman or any other member designated by him, and may be served by any person designated by such chairman or member. The chairman of the committee or any member thereof may administer oaths to witnesses.

SEC. 4. The expenses of the committee under this resolution, which shall not exceed $250,000 shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SURFACE MINING RECLAMATION ACT OF 1972—AMENDMENT

AMENDMENT NO. 1713

(Ordered to be printed and to lie on the table.)

Mr. JACKSON. Mr. President, I send to the desk an amendment in the nature of a substitute to S. 630, the Surface Mining Reclamation Act of 1972, and ask that it be printed. I also ask unanimous consent that the amendment be printed in the CONGRESSIONAL RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. JACKSON. Mr. President, over the past year the need to establish an environmentally strong and administratively realistic Federal policy with respect to the regulation of surface mining operations and the reclamation of mined lands has become a major issue of public concern. And properly so. Unregulated surface mining activities have imposed large social and environmental costs on the public at large in many areas of the country in the form of unreclaimed lands, water pollution, erosion, floods, slope failures, loss of fish and wildlife resources, and a decline in natural beauty. The impact of uncontrolled surface mining in many regions has been a stark, unjustifiable and intolerable degradation in the quality of life in local communities. These are costs which the Nation cannot continue to tolerate.

PARLIAMENTARY SITUATION

At the present time there are two very different bills pending before the Congress to establish Federal policy for the control, regulation, and reclamation of surface mining operations.

The first bill, H.R. 6482, the "Coal Mine Surface Area Protection Act of 1972," is on the House Calendar and apparently will be voted upon in the House early next week under suspension of the rules—a parliamentary procedure that limits debate and does not permit amendment.

The second bill, S. 630, the "Surface Mining Reclamation Act of 1972," was ordered reported by the Senate Interior and Insular Affairs Committee on September 13, 1972. The reported bill was the product of extensive hearings, field investigations, and executive sessions by the members of the Subcommittee on Minerals, Materials, and Fuels chaired by the distinguished junior Senator from Utah (Mr. Moss).

Unfortunately, the Interior Committee has had a heavy workload in this session. It also has proven difficult to obtain a quorum of the full committee as a result of the work load in other committees and on the floor.

On September 13, a day scheduled for full committee markup of S. 630, the committee found itself confronted with the announcement of the joint Senate leadership that major legislation not reported by Friday, September 15, would not be considered before adjournment. Although many members had not had an opportunity to participate in the subcommittee work on S. 630, the committee unanimously voted to order the measure reported to the floor in the form recommended by the subcommittee. The purpose of this action, of course, was to preserve the option and the opportunity of gaining enactment of surface mining legislation before Congress adjourns by having a reported bill on the Senate Calendar.

Mr. President, as the committee report on S. 630 notes, the bill as reported does not necesasrily reflect the views or the positions of all of the members of the committee on the many complex and difficult issues associated with the regulation and reclamation of surface mining operations. Members did not have an opportunity to offer amendments in committee. Senator Moss, Senator METCALF and I, for example, had each prepared a number of specific amendments for full committee consideration as early as July. Many of these amendments are set forth in Committee Print No. 3, a working document prepared on August 10 to facilitate the markup of S. 630 in full committee.

In view of this background, it was understood and agreed when S. 630 was reported on September 13 that individual members of the committee reserved their right to offer amendments on the floor when the bill was called up for consideration.

Mr. President, the amendment I send to the desk to be printed contains the major and perfecting amendments I would have offered in full committee had there been an opportunity to further consider the subcommittee's bill.

The amendment I propose builds upon the important work of the subcommittee and, in a number of respects, merely refines policies and concepts which were developed by the subcommittee's work on S. 632. This is true, for example, of those portions of the amendment which: First, place the initial and primary responsibility for surface mining control with the States, subject to Federal review and right of preemption if necessary to achieve the requirements of the act; second, establish a $100 million mined lands reclamation fund; and third, apply the requirements of the act to both coal and all other commercial surface mining operations.

There are other aspects of the amendment which go beyond the subcommittee bill or which propose policies different than those found in S. 630 as reported. These include: providing procedural safeguards to guarantee public notice, and insure the right of public participation.

Placing the burden of proof on the applicant for a surface mining permit to prove he can reclaim the land to socially useful purposes without permanent degradation of the environment and without imposing social costs on society generally.

Providing new tough performance standards which set in qualitative terms the objectives which must be achieved at all stages of the surface mining process and in reclaiming the land.

Requiring an in-depth study to determine the environmental, social and economic impacts—both positive and negative—of imposing on a national or regional basis outright prohibitions or quantitative prohibitions in the form of slope degree limitations.

Placing administration and enforcement of the act in a new office in the Department of Interior and avoiding conflicts of interest by prohibiting the Office from performing any coal or other mineral "developmental" or "promotional" functions.

Applying the requirements of the act to TVA and other public corporations, agencies, or publicly owned utlities.

Applying the requirements of the act to Federal and Indian lands.

Requiring the consent of the surface owner or a bond sufficient to indemnify him for any damages before a surface mining permit will be granted.

Authorizing reclamation research and demonstration projects.

Protecting parks, public areas, streams and lakes.

Permitting special exemptions by the President if necessary to deal with national emergency situations.

Insuring that electrical powerplants are not arbitrarily shut down.

Providing a preference right in reclamation contracts for operators and individuals whose operations or employment has been adversely affected by the act.

OBJECTIVES OF SURFACE MINING LEGISLATION

In order to approach the bills pending before the Congress and the amendments which may be offered to them from a common basis of understanding, I think it is important to set forth the general objectives which a sound Federal policy for surface mining operations must achieve.

First, surface mining operations must be prohibited in any area where the damages are irreparable, or where full reclamation of the lands involved is physically impossible.

Second, a uniform basis of Federal requirements applicable throughout the country which will establish a national standard for control of surface mining and thereby mitigate the economic inequities which occur when State regulatory efforts are widely divergent; and which will also protect the broader national interests where States are unable or unwilling to act effectively to control surface mining operations.

Third, the social and environmental costs associated with surface mining operations must be internalized and paid for by the operator as costs which are properly chargeable to the mining and should not be imposed upon present and future generations of society.

Fourth, surface mining operations which are necessary to provide the energy and mineral resources essential to the economic and material well-being of our society must be accompanied by the highest practicable degree of reclamation, which will return the disturbed lands to a condition capable of supporting the possible diversity of uses which are of equal or greater social value than the original uses.

Fifth, the statutory framework, the governmental institutions and the regulatory structure established to implement the policy must reflect, with the greatest degree of certainty possible, the standards which are to be met, and must also be designed to insure fairness, due process, and flexibility to cope with the unique conditions that are presented in different regions of the country.

CONSTRAINTS ON FEDERAL ACTION

Almost as important as the objectives to be achieved by a sound Federal policy are the constraints on the Federal Government's constitutional authority to develop and implement such a policy. The major limitations which must be recognized in regard to development of a surface mining policy are very real and deserve careful consideration.

First, the Nation is dependent on the energy and mineral products produced in surface mining operations.

At the present time 20 percent of the total energy consumed in the United States is supplied by coal, and half of all the coal is obtained by surface mining. Furthermore, coal supplies the fuel for over half of our electric power production. Surface mined coal already represents a disproportionately large share of the coal used for electrical generation and the greatest proportion of new surface mining of coal—especially in the West—will be connected with new electric generation capacity. At the same time, the Nation faces serious and growing constraints upon each of the other energy sources for electric power generation which will be practicable at least for the next two decades—hydroelectric, nuclear, gas, or oil. As a result, critical electrical energy shortages already loom as major public crises in a number of regions of the country.

The energy situation is coupled with the national dependence upon supplies of other minerals which are substantially obtained from surface mining, such as copper, phosphate, iron, sand and gravel, stone, clay, and metallurgical coal. The impacts of outright bans, or of arbitrary and inflexible standards which constitute effective bans, upon existing or imminent mining operations could have serious and lasting consequences which were never intended and which, in some instances, may be intolerable.

The problems presented, and the limitations which our dependency upon the products of surface mining impose on policy options are not simply economic. Particularly in the next few years, in the transitional period, they involve our capability to deliver vital social services such as electrical power for homes and schools, materials for transportation systems, and other necessary public requirements.

Second, beyond our physical dependence upon resources now produced in surface mining operations, sudden transitions in regulation, in technology, in mining methods, and in locating new operations in other regions of the country will have severe economic and social repercussions for many industries and communities which are now economically dependent upon surface mining. It is not honest to pretend that all of the jobs lost when surface mines are banned or made economically infeasible by adoption of a new Federal policy will quickly and painlessly be replaced by jobs in other regions or in other lines of work. History shows that regional socioeconomic systems are not that flexible. Transitions are difficult. Jobs will be lost. Mining operations will be closed and creditors may suffer.

It is clear that some dislocations must be sustained if the generally agreed upon objectives of a Federal policy are ever to be implemented and achieved. And it must be recognized that the economic, employment, and social dislocations which major policy changes will impose upon many of the people of coal producing regions are not inconsequential, even when weighed against the short- and long-range environmental benefits to be gained.

Third, the great dissimilarities among the types of mining methods, the equipment used, the physical and chemical properties of the soils encountered, and the climates of the different mining areas of the country make it difficult to develop procedures and specific standards for reclamation which will be generally appropriate. Specifications on slope limitations which may be the minimum necessary to insure stability in some soils will prove to be unnecessarily restrictive, arbitrary, and totally unreasonable in others. Restriction on drainage accumulations which might be suitable in a wet climate may actually reduce the chances for successful revegetation in a drier region. What constitutes the best standard or requirement for earthmoving, revegetation, and water quality control is tremendously variable, and is dependent upon the area, the specific site and the method of operation employed. Insuring the use of the best practices in each situation can only be achieved by establishing goals and performance standards for reclamation and providing enough discretion and latitude to tailor the specific methods to the specific needs to obtain the policy objectives desired.

Fourth, the primary role of the States in regulating and controlling activities within their borders which involve extensive use of State police power authority and major land use planning decisions which will shape the future of the State must be preserved. Surface mining is a form of land use and its regulation and control must be considered within the context of the broad demands and competing requirements upon the State's land resources.

In a constitutional sense, the primary authority and responsibility for the control of surface mining resides in the State. In an administrative sense, the success of effective surface mining control programs will depend on responsible and competent implementation by the States on a day-to-day basis, and in an institutional framework in which the role of surface mining can be evaluated and balanced against other activities subject to State administration, control, and decision.

Wherever possible, therefore, the Federal role should be only a supportive role, assisting the States in establishing and implementing effective programs and providing for those national concerns which cannot be handled at the level of State government.

This review of constraints on Federal action which must be considered in connection with the development and adoption of a Federal surface mining policy is not intended as an argument to move slowly or to defer adoption of a policy and strong Federal legislation. They are, however, constraints which must be considered and dealt with in a purposeful and intelligent manner.

The amendment I propose today is designed to achieve the objectives which I feel Federal surface mining and reclamation must achieve. It is also designed to approach rationally, the very real constraints which do exist.

MAJOR PROVISIONS OF THE AMENDMENT

The amendment draws heavily upon the important work of the Subcommittee on Minerals, Materials, and Fuels and upon the bill S. 630 as reported, but it reflects further analysis of issues raised by experts on surface mining in industry, environmental groups, Federal agencies, and State regulatory agencies. The amendment also draws upon the provisions of State laws—such as the State of Pennsylvania—which are being implemented and upon the work of the House Committee as well as other proposed measures and pending amendments.

The major provisions of my substitute amendment are as follows:

First, the Secretary of the Interior is authorized and directed to promulgate regulations covering surface mining of coal within 90 days of the date of enactment and for all other minerals subject to the act within 12 months

of the date of enactment. Appropriate administrative procedures including public notice, public hearings, and administrative and judicial review are provided for.

Second, a new office of the Department of the Interior, which must remain separate from the Department's promotional and developmental responsibilities regarding minerals, is established to administer the act.

Third, each State is required to promulgate and implement a State program for the regulation and control of surface mining which meets the requirements of the act and which provides for the establishment and enforcement of permit systems for surface mining and reclamation operations for coal and for other minerals. Procedures for Federal review and approval are provided including review by other Federal agencies and public hearings if requested.

Fourth, if a State fails to submit a State program covering surface mining of coal within 12 months of the promulgation of Federal regulations covering coal or a program covering surface mining of other minerals within 12 months of the promulgation of Federal regulations covering other minerals, or if a State fails to enforce an approved State program, the Secretary is authorized to promulgate and implement a Federal program for the regulation of surface mining within that State, and to enforce the Federal program.

Fifth, a moratorium is imposed on opening new surface mining operations for coal or significantly increasing existing operations until a State program has been approved as meeting the requirements of this act and a permit is obtained from the State. The Secretary is provided latitude, however, to approve new or expanded operations in certain instances where critical public services such as providing needed electrical power are involved.

The moratorium is designed to prevent new starts or accelerated operations until such time as the State assumes responsibility for a strong, properly staffed regulatory program which, at a minimum, meets the requirements of this act. The moratorium also serves as an incentive for the surface mining industry to support early development of State programs which meet the act's requirements.

Sixth, applicants for permits for surface mining operations are required to prepare a reclamation plan to accompany permit applications. The application must set forth in detail the methods which will be used to reclaim the mined area and meet the requirements of the act. Applicants are also required to post a performance bond adequate to insure the completion of the reclamation. Public notice of applications is required and the reclamation plan and other information must be made available to the public. A public hearing is required on an application if it is requested by persons having a valid legal interest, and the right of appeal of the regulatory authority's decision to a court of competent jurisdiction is granted.

The burden of proof in determining ability to reclaim surface mined areas in a manner that meets the requirements of the act is placed upon the permit applicant.

Seventh, release of all or part of a performance bond is contingent upon the regulatory authority's finding that reclamation has been accomplished in compliance with the act.

Eighth, the regulations which are promulgated by a State or by the Secretary must, at a minimum, require every permittee to meet certain criteria and performance standards in reclaiming the surface mining area. Principally, he must return all surface areas to a condition at least fully capable of supporting the uses which it was capable of supporting prior to any mining. Other criteria cover soil stability, preventing erosion, revegetation, protection of offsite areas, protection of the quality of surface and ground waters, handling of debris, use of explosives, and other aspects of the mining and reclamation process.

In general, grading to approximate original contour is required. Latitude is given to cover those situations in which the regulatory authority determines some other type of reclamation would be preferable to improve the utility of the reclaimed lands or because of unique circumstances at the site. Prior to the consideration of any exceptions to the general performance standard the Reclamation Plan and its justification must be presented in detail by the applicant and approved by the regulatory authority in the permit application review process.

Ninth, a modified set of criteria are provided in section 212(c) to recognize the kinds of operations, such as some open pit mines and rock quaries, in which large amounts of mineral resources other than coal are removed from a relatively small area over an extended period of time and where all of the reclamation criteria and standards are physically impracticable or impossible of achievement. These alternative criteria would only apply where there is no domestic alternative source of an essential resource. The best possible reclamation would, however, be required and public health and safety and air and water quality would be protected.

Tenth, the Secretary is authorized to make grants to the States to assist in a program of identifying and designating specific areas of the State as unsuitable for surface mining operations.

Eleventh, the Council on Environmental Quality is authorized and directed to conduct a detailed study of the impacts—social, economic, and environmental—of imposing general bans or slope degree limitations on surface mining and reclamation operations. The purpose of the study is to develop information necessary to achieve a knowledgeable understanding of the effects—both positive and negative—of imposing bans and prohibiting surface mining through the use of arbitrary slope limitations.

Twelfth, an "Abandoned Mine Reclamation Fund" is created in the Treasury with an initial appropriations authorization of $100 million. The Secretary is authorized to acquire, by purchase or donation, lands or interest in lands which have been affected by abandoned surface mining operations and not reclaimed. He is authorized to reclaim the lands and dispose of them pursuant to the provisions of the Surplus Property Act and to return the proceeds to the Fund. The Secretary is also empowered to make grants to the States for the purpose of acquiring and reclaiming abandoned surface-mined lands.

Mr. President, in the next few days I will have a detailed section-by-section analysis of the amendment printed in the record for the use and information of Members of the Senate.

Mr. President, I regret that time did not permit the circulation of this amendment to other Members of the committee and of the Senate for their review and comments prior to its submission. I do, however, welcome the support of all Members of this body.

EXHIBIT 1

AMENDMENT NO. 1713

(IN THE NATURE OF A SUBSTITUTE)

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Surface Mining Reclamation Act of 1972."

TITLE I—STATEMENT OF FINDINGS AND POLICY

SEC. 101. The Congress finds and declares that—

(1) extraction of minerals by mining operations is a significant and essential activity which contributes to the economic, social, and material well-being of the Nation;

(2) many unregulated mining operations result in disturbances of surface areas that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitat, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources;

(3) effective regulation of mining operations by the States and by the Federal Government in accordance with the requirements of this Act is an appropriate and necessary means to prevent the adverse social, economic, and environmental effects of mining operations; and

(4) because of the diversity of terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States in the proper exercise of their policy power authority.

SEC. 102. It is the purpose of this Act to establish a nationwide program to prevent the adverse effects to society and the environment resulting from surface mining operations; to assure that surface mining operations are so conducted as to prevent lasting degradation to land and waters; to assure that adequate measures are undertaken to reclaim surface areas as contemporaneously as possible with the surface mining operations; to assist the States in developing and implementing such a program; and, wherever necessary, to exercise the full reach of Federal constitutional powers to insure the protection of the public interest through the effective control of surface mining operations.

TITLE II—EXISTING AND PROSPECTIVE SURFACE MINING AND RECLAMATION OPERATIONS

SEC. 201. GRANT OF AUTHORITY: PROMULGATION OF FEDERAL REGULATIONS.—(a) Within ninety days after the date of enactment of this Act, the Secretary, in accordance with the requirements and the procedures of this Act shall develop and publish in the Federal Register regulations covering surface mining and reclamation operations for coal, and shall set forth in reasonable detail those actions which a State must take to develop a State program and otherwise meet the requirements of this Act.

(b) Not later than twelve calendar months following the date of the enactment of this Act, the Secretary, in accordance with the requirements of this Act and procedures set forth in this section, shall develop and publish in the Federal Register regulations covering surface mining and reclamation operations for other minerals, and shall set forth in reasonable detail those actions which a State must take to develop a State program and otherwise meet the requirements of this Act.

(c) Such regulations for coal and for other minerals shall not become effective until the Secretary has first published the proposed regulations in the Federal Register and afforded interested persons and State and local governments a period of not less than thirty days after publication to submit written comments. Except as provided in subsection (d) of this section, the Secretary shall, upon the expiration of such period and after consideration of all written comments and relevant matter presented, promulgate the regulations with such modifications as he may deem appropriate.

(d) On or before the last day of any period fixed for the submission of written comments under subsection (c) of this section, any interested person or any State and local government may file with the Secretary written objections to a proposed regulation, stating the grounds therefor and requesting a public hearing by the Secretary on such objections. Within fifteen days after the period for filing such objections has expired, the Secretary shall publish in the Federal Register a notice specifying the proposed regulation to which objections have been filed and for which a public hearing has been requested, and the date (which date shall be no later than thirty days after the date of publication of the notice pursuant to this subsection), time, and place of such public hearing wherein statements concerning the proposed regulation and objections thereto shall be received. To the extent possible, hearings pursuant to this section shall be held in the States and regions affected.

(e) Within sixty days after completion of any hearings, the Secretary shall issue a report setting forth his findings of fact and views on such objections and shall promulgate the regulations with such modifications as may be required. The regulations shall be effective thirty days after their publication in the Federal Register.

(f) The Administrative Procedure Act shall be applicable to the administration of this Act: *Provided*, That whenever procedures provided for in this Act are in conflict with the Administrative Procedure Act, the provisions of this Act shall prevail.

SEC. 202. OFFICE OF LAND USE POLICY, RECLAMATION, AND ENFORCEMENT.—(a) There is hereby established in the Department of the Interior the Office of Land Use Policy, Reclamation, and Enforcement.

(b) The Office shall have a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5315), and such other employees as may be required. The Director shall have the responsibilities provided for under this Act and such duties and responsibilities as the Secretary of the Interior may assign. Employees of the Office shall be recruited on the basis of their professional competence and capacity to administer objectively the provisions of this Act. Employees may be recruited from the United States Geological Survey, the Bureau of Mines, the Bureau of Land Management, and other departments and agencies of the Federal Government which have expertise pertinent to the responsibilities of the Office. No existing legal authority in the Department of the Interior which has as its purpose promoting the development or use of coal or other mineral resources, shall be transferred to the Office.

(c) The Secretary, acting through the Office, shall—

(1) administer the State grant-in-aid program for the development of State Programs for surface mining and reclamation operations provided for in title IV of this Act;

(2) administer the State grant-in-aid program for the purchase and reclamation of abandoned and unreclaimed mined areas pursuant to title III of this Act;

(3) administer the State grant-in-aid programs for the development of State land use planning processes and the designation of land areas unsuitable for surface mining operations pursuant to section 215 of this Act;

(4) administer the surface mining and reclamation research and demonstration project authority provided for in section 404 of this Act;

(5) develop and administer any Federal Programs for surface mining and reclamation operations which may be required pursuant to this title and review State Programs for surface mining and reclamation operations pursuant to this title;

(6) consult with other agencies of the Federal Government having expertise in the control and reclamation of surface mining operations or responsibilities for the administration of land use planning assistance programs and assist States, local governments, and other eligible agencies in the coordination of such programs;

(7) maintain a continuing study of the land resources of the United States and their use;

(8) cooperate with the States in the development of standard methods and classifications for the collection of land use data and in the establishment of effective procedures for the exchange and dissemination of land use data;

(9) develop and maintain a Federal Land Use Information and Data Center and make the information maintained at the Data Center available to the public and to Federal, regional, State, and local agencies conducting or concerned with land use planning and agencies concerned with surface mining and reclamation operations;

(10) assist the States in the development of State Programs for surface mining and reclamation operations and State land use planning processes which meet the requirements of this Act and, at the same time, reflect local requirements and local environmental conditions; and

(11) assist the State in developing objective scientific criteria and appropriate procedures and institutions for determining those areas of a State which, pursuant to section 215, should be included in the State land use planning process.

SEC. 203. SURFACE MINING OPERATIONS NOT SUBJECT TO THIS ACT.—(a) The provisions of this Act shall not apply to any of the following activities:

(1) foundation excavations for the purpose of constructing buildings and other structures;

(2) excavations by an agency of Federal, State, or local government or its authorized contractors for highway and railroad cuts and for the purpose of providing fill, sand, gravel, and other materials for use in connection with any public project if the Federal, State, or local government requires reclamation of the area affected;

(3) the extraction of minerals by a landowner for his own noncommercial use from land owned or leased by him;

(4) the extraction of minerals for commercial purposes and the removal of overburden in total amounts of less than one thousand tons in any one location (which may not exceed two acres) in any one calendar year;

(5) the extraction of minerals for the purpose of taking samples for quality testing, for assaying, or other purposes associated with mineral exploration in amounts of less than two hundred and forty tons in any one location (which may not exceed one acre);

(6) archeological excavations; and

(7) such other surface mining operations which the Secretary determines to be of an infrequent nature and which involve only minor surface disturbances.

(b) In promulgating regulations to implement this section the Secretary shall consider the nature of the class, type, or types of activity involved; their magnitude (in tons and acres); their potential for adverse environmental impact; and whether the class, type, or types of activity are already subject to an existing regulatory system by State or local government or an agency of the Federal Government.

SEC. 204. STATE AUTHORITY; STATE PROGRAMS.— (a) A State, to be eligible to receive financial assistance provided for under titles III and IV of this Act and to be eligible to assume full control over surface mining and reclamation operations on lands within any State shall—

(1) have appropriate legal authority under State law to regulate surface mining and reclamation operations in accordance with the requirements of this Act;

(2) provide sanctions under State law for violations of State laws, regulations, or conditions of permits concerning surface mining and reclamation operations which meet the requirements of this Act, such sanctions to include civil and criminal actions, forfeiture of bonds, withholding of permits, and the issuance of cease and desist orders by the State regulatory authority or its inspectors;

(3) have available sufficient administrative and technical personnel, adequate interdisciplinary expertise, and sufficient financial resources to enable the State to regulate surface mining and reclamation operations in accordance with the requirements of this Act; and

(4) submit to the Secretary for approval in accordance with the requirements of this Act—

(A) a State Program which provides for the effective implementation, maintenance, and enforcement of a permit system for the regulation of surface mining and reclamation operations for coal on lands within such State; and

(B) a State Program which provides for the effective implementation, maintenance, and enforcement of a permit system for the regulation of surface mining and reclamation operations for other minerals on lands within such State.

(b) The Secretary shall not approve any State Program submitted by a State pursuant to this section until:

(1) he has solicited the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State Program; and

(2) he has held a public hearing on the

State Program within the State, if one is requested.

(c) The Secretary shall, within four calendar months following the submission of any State Program, approve or disapprove such State Program or any portion thereof. The Secretary shall approve a State Program if he determines that the State Program meets the requirements of this Act.

(d) If the Secretary disapproves any proposed State Program, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State Program.

SEC. 205. FEDERAL PROGRAMS.—(a) The Secretary shall prepare and, subject to the provisions of this section, promulgate and implement a Federal Program for a State if such State:

(1) fails to submit a State Program covering surface mining and reclamation operations for coal within twelve months of the promulgation of the Federal regulations for such operations;

(2) fails to submit a State Program for surface mining and reclamation operations for other minerals within twelve months of the promulgation of Federal regulations for such operations;

(3) fails to resubmit an acceptable State Program within sixty days of disapproval of a proposed State Program: *Provided*, That the Secretary shall not implement a Federal Program prior to the expiration of the period allowed for submission of an initial State Program; or

(4) fails to enforce its approved State Program as provided for in this Act.

Promulgation and implementation of a Federal Program vests the Secretary with the full authority provided for in this Act for the regulation and control of surface mining and reclamation operations taking place on lands within any State not in compliance with this Act. After promulgation and implementation of a Federal Program the Secretary shall be the regulatory authority. In promulgating and implementing a Federal Program for a particular State the Secretary shall take into consideration the nature of that State's terrain, climate, biological, chemical, and other relevant physical conditions.

(b) Prior to promulgation and implementation of any proposed Federal Program, the Secretary shall give notice and hold a public hearing in the affected State.

(c) Permits issued pursuant to an approved State Program shall be valid but reviewable under a Federal Program. Immediately following promulgation of a Federal Program, the Secretary shall undertake to review such permits to determine that the requirements of this Act are not violated. If the Secretary determines any permit to have been granted contrary to the requirements of this Act, he shall so advise the permittee and provide him a reasonable opportunity for submission of a new application and reasonable time to conform ongoing surface mining and reclamation operations to the requirements of the Federal Program.

(d) (1) If a State submits a proposed State Program to the Secretary after a Federal Program has been promulgated and implemented pursuant to this section, and if the Secretary approves the State Program, the Federal Program shall cease to be effective within thirty days after such approval.

(2) Whenever a Federal Program is promulgated for a State pursuant to this Act, any statutes or regulations of such State which are in effect to regulate surface mining and reclamation operations subject to this Act shall, insofar as they interfere with the achievement of the purposes and the requirements of this Act and the Federal Program, be preempted and superseded by the Federal Program.

SEC. 206. MORATORIUM ON SURFACE MINING OPERATIONS FOR COAL PENDING STATE COMPLIANCE.—After the date of enactment of this Act, no person shall open or develop any new or previously mined and abandoned site for surface mining operations for coal on lands within any State, and no person shall significantly increase or accelerate existing surface mining operations for coal on lands within any State unless such person has first obtained a permit issued by the State regulatory authority pursuant to a State Program approved in accordance with the provisions of this Act: *Provided*, That the Secretary may approve such new or expanded surface mining operations if he finds: (1) that such operations are the only practicable source of a coal supply to support initial or continued operation of a thermal electric powerplant, metallurgical process, or other activity impressed with a public interest and having regional or national importance; and (2) firm plans for, and substantial legal and financial commitments in, such operations were in existence prior to the date of enactment of this Act; and (3) the provisions for reclamation to be done in connection with the surface mining operations offer every reasonable assurance that such reclamation can be made compatible with the requirements of this Act.

SEC. 207. PERMITS.—(a) After the expiration of the twelve-calendar-month period following the date fo promulgation of the Federal regulations no person shall engage in or carry out on lands within any State any surface mining operations for coal, unless such person has a valid permit from such State pursuant to an approved State Program, or from the Secretary pursuant to a Federal Program.

(b) On and after the expiration of the twenty-four-calendar-month period following the date of the enactment of this Act, no person shall engage in or carry out on lands within any State any surface mining operations for other minerals, unless such person has first obtained a permit issued by such State pursuant to an approved State Program or by the Secretary pursuant to a Federal Program.

(c) The term of any permit issued pursuant to this Act shall not exceed five years and shall carry with it a right of renewal if the permittee can demonstrate compliance with the requirements of an approved State Program or a Federal Program and the capability to implement the Reclamation Plan applicable to the surface mining operations covered by the permit. Prior to approving the renewal of any permit the regulatory authority shall review the permit and the surface mining and reclamation operations and may require such new conditions and requirements as are necessary to deal with changing circumstances.

(d) A permit shall terminate if the permittee has not commenced actual mineral production on the surface mining operations covered by such permit within three years of the issuance of the permit.

SEC. 208. PERMIT APPLICATION REQUIREMENTS: INFORMATION, PERFORMANCE BOND, INSURANCE, AND RECLAMATION PLANS.—(a) Each application for a permit under a State Program or Federal Program pursuant to the provisions of this Act shall include as a minimum the following information—

(1) the names and addresses of (A) the permit applicant; (B) every legal owner of the property (surface and mineral) to be mined; (C) the holders of any leasehold interest in the property; (D) any purchaser of the property under a real estate contract; (E) the operator if he is a person different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers and resident agent;

(2) the names and addresses of the owners of all surface area within five hundred feet of any part of the proposed site of surface mining and reclamation operations;

(3) a statement of any current or previous mining permits in the State held by the applicant and the permit numbers;

(4) the names and addresses of every officer, partner, director, or person performing a similar function;

(5) a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever held a Federal or State mining permit which has been suspended or revoked or has ever had a mining bond or similar security deposited in lieu of bond forfeited;

(6) such maps and topographical information as the regulatory authority may require including the location of underground mining activities in the area;

(7) a copy of the applicant's advertisement of the ownership, location, and boundaries of the proposed site of surface mining and reclamation operations, such advertisement shall be placed in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks; and

(8) such other information as the regulatory authority may require.

(b) Each applicant for a permit shall file with the regulatory authority as part of the permit application a performance bond on a form prescribed and furnished by the regulatory authority, payable to the United States or to the State and conditioned upon the faithful compliance with the requirements of this Act. The amount of the bond required for each permit shall equal the estimated costs of reclamation by a third party: *Provided*, That the amount of each bond may be adjusted if it is determined to be inadequate.

(c) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other State or Federal self-insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface mining and reclamation operations and entitled to compensation under the applicable provisions of State law. Such policy shall be for the term of the permit plus not less than eighteen months thereafter.

(d) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a Reclamation Plan which shall meet the requirements of this Act.

SEC. 209. PERMIT APPLICATION APPROVAL PROCEDURES.—(a) The regulatory authority shall notify the applicant for a permit within a period of time established by law or regulation whether the application has been approved or disapproved. If approved, the permit shall be issued. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified that the permit or any portion thereof has been denied, the applicant may request a hearing on the reasons for said disapproval. A hearing shall be held, within thirty days of the request. Within thirty days after the hearing the regulatory authority shall issue and furnish the applicant the written decision of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor.

(b) Each applicant for a permit shall have the responsibility of demonstrating to the satisfaction of the regulatory authority that reclamation as required pursuant to this Act

can and will be accomplished under the Reclamation Plan contained in the permit application.

(c) Any person having a valid legal interest which will be affected by the proposed surface mining and reclamation operations or any Federal, State, or local governmental agency having responsibilities affected by the proposed operations shall have the right to file written objections to any permit application within thirty days after the last publication of the advertisement pursuant to clause 208(a)(7). If written objections are filed, the regulatory authority shall hold a public hearing in the locality of the proposed surface mining and reclamation operations within thirty days of the receipt of such objections and after appropriate notice and publication of the date, time, and location of such hearing.

(d) A person having a valid legal interest which will be affected by the proposed surface mining and reclamation operations who has participated in the administrative procedures as an applicant, protestant, or objector, and who is aggrieved by the decision of the regulatory authority shall have the right of appeal for review by a court of competent jurisdiction in accordance with State or Federal law.

SEC. 210. RELEASE OF PERFORMANCE BONDS.—(a) The permittee may file a request with the regulatory authority for the release of the performance bond.

(b) The regulatory authority may release in whole or in part said bond if the authority is satisfied that reclamation covered by the bond or portion thereof has been accomplished as required by this Act and regulations promulgated and permits issued thereunder: *Provided, however,* That—

(1) no bond shall be fully released until all reclamation requirements of this Act are met, and

(2) an inspection and evaluation of the affected surface mining and reclamation operations is made by the regulatory authority or its authorized representative prior to the release.

(c) If the regulatory authority disapproves the application for release of the bond or portion thereof, the authority shall notify the permittee in writing, stating the reasons for disapproval and recommending actions necessary to secure said release. The permittee shall be afforded a reasonable period of time to take such corrective actions.

(d) If requested by any person having a valid legal interest which will be affected by the failure of the permittee to have complied with the requirements of this Act, the regulatory authority shall, within 30 days after appropriate public notice, hold a public hearing on the surface mining and reclamation operations covered by a performance bond. Such hearing shall be held after the release of 50 per centum or more and prior to the release of 90 per centum of such bond.

SEC. 211. REVISION AND REVOCATION OF PERMITS.—(a) Once granted a permit may not be revoked unless: (1) the regulatory authority gives the permittee prior notice of violation of the provisions of the permit, the State Program or Federal Program, or this Act and affords a reasonable period of time of not less than fifteen days or more than one year within which to take corrective action; and (2) the regulatory authority determines, after a public hearing, if requested by the permittee, that the permittee remains in violation. The regulatory authority must issue and furnish the permittee a written decision either affirming or rescinding the revocation and stating the reasons therefor.

(b)(1) During the term of the permit the permittee may submit an application, together with a revised Reclamation Plan, to the regulatory authority for a revision of the permit.

(2) An application for a revision of the permit shall not be approved unless the regulatory authority is fully satisfied that reclamation as required pursuant to this Act, can and will be accomplished under the revised Reclamation Plan. The revision shall be approved or disapproved within a period of time established by the State or Federal Program. The regulatory authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply: *Provided,* That any revisions which propose a substantial change in the intended future use of the land or significant alterations in the Reclamation Plan shall, at a minimum, be subject to notice and hearing requirements.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for a new permit.

(c) No transfer, assignment or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the regulatory authority.

SEC. 212. CRITERIA FOR SURFACE MINING AND RECLAMATION OPERATIONS.—(a) Each Reclamation Plan submitted as a part of a permit application pursuant to an approved State Program or a Federal Program under the provisions of this Act shall include a statement of:

(1) the condition of the land prior to any mining including:

(A) the uses existing at the time of the application and if the land has a history of previous mining the uses which preceded any mining;

(B) the capability of the site prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(2) the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses;

(3) the engineering techniques proposed to be used and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan for backfilling, soil stabilization, and compacting, grading, and revegetation, an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with the requirements set out in subsection (b) of this section;

(4) the steps to be taken to insure that the surface mining and reclamation operations comply with all applicable air and water quality laws and regulations and any applicable health and safety standards;

(5) the consideration which has been given to insuring that the Reclamation Plan is consistent with local, physical, environmental, and climatological conditions and current mining and reclamation technologies;

(6) the consideration which has been given to insuring the maximum effective recovery of the mineral resource;

(7) a time schedule for the completion of all stages of reclamation;

(8) the consideration which has been given to making the surface mining and reclamation operations consistent with all applicable State and local land use plans and zoning laws, ordinances, and regulations;

(9) all lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit: *Provided,* That any information required by this section which is not on public file pursuant to State law shall be held in confidence by the regulatory authority; and

(10) the results of test borings which the applicant has made at the area to be covered by the permit, including the location of subsurface water, and an analysis of the chemical properties including acid forming properties of the mineral and overburden: *Provided,* That this information shall not be publicly disclosed by the regulatory authority.

(b) Each State Program and each Federal Program shall include regulations which at a minimum require every permittee to:

(1) return all surface areas to a condition at least fully capable of supporting the uses which they were capable of supporting prior to any mining, which condition, however, shall not present any hazard to public health or safety;

(2) insure that backfilling, compacting, and grading shall be accomplished to achieve the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated: *Provided,* That alternative grading plans, including terracing, retention of stable highwalls or spoilbanks, or water impoundments may be permitted where they are specifically proposed in the Reclamation Plan for the purpose of achieving an environmentally sound condition and a desirable use for the reclaimed area, and are approved by the regulatory authority in advance of mining pursuant to the approval of the permit;

(3) insure that any highwalls, terraces, and spoil remaining at the conclusion of reclamation are stable, taking into consideration all of the physical, climatological, and other characteristics of the site;

(4) stabilize and protect all surface areas affected by the mining and reclamation operations to prevent immediate and permanent erosion and attendant air and water pollution, such stabilization and reclamation to include soil compaction, where advisable, and establishment of a stable and self-regenerating vegetative cover which, where advisable, shall be comprised of native vegetation;

(5) segregate and preserve topsoil and use the best available other soil material from the mining cycle to cover spoil material unless the permit applicant provides evidence in the Reclamation Plan sufficient to satisfy the regulatory authority that another method of soil conservation would be superior for revegetation purposes;

(6) insure the protection of offsite areas from slides or damage occuring during the surface mining and reclamation operations and that no part of the operations or waste accumulations will be located outside the permit area, and that any damage will be contained within the permit area;

(7) maintain the quality of water in surface and ground water systems both during and after surface mining and reclamation operations by:

(A) avoiding acid mine drainage by (i) preventing or retaining drainage from acid producing deposits, or (ii) treating drainage to acceptable standards of acidity and iron content before releasing it to water courses;

(B) conducting surface mining operations so as to minimize the contribution of silt to runoff from the disturbed area;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells to prevent acid drainage to ground and surface waters; and

(D) such other actions as the regulatory authority may prescribe;

(8) insure the control of surface operations incident to underground mining for the purpose of protecting the surface area, controlling mine refuse, and providing for the proper sealing of shafts, tunnels, and entryways and the filling of exploratory holes no longer necessary for mining;

(9) insure that all debris, acid forming materials, toxic materials, or materials con-

stituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface waters;

(10) insure that explosives are used only in accordance with existing State and Federal law and the regulations promulgated by the regulatory authority which, at a minimum, shall provide for:

(A) sufficient notice to local governments and individuals which would be affected by the use of such explosives;

(B) specific procedures for the protection of dwellings, other buildings and property; and

(C) specific limitations based upon the physical conditions of the site, so as to prevent injury to persons and damage to property outside of the permit area, including underground mining operations in the same vicinity;

(11) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as possible with the surface mining operations; and

(12) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this Act, taking into consideration the physical, climatological, and other characteristics of the site, and to insure the maximum effective recovery of the mineral resources.

(c) With respect to surface mining operations for other minerals in which (1) the amount of mineral removed is very large in proportion to the surface area disturbed; and (2) the surface mining operations take place on the same site for an extended period of time; and (3) there is no practicable method to return the area to conditions approximating original contour; and (4) there is no practicable alternative source of the mineral resource, the regulatory authority may propose and the Secretary may promulgate alternative regulations to those provided for in section 212(b) (1), (2), (4), and (5) for reclamation which, at a minimum, will:

(1) insure that all remaining slopes of highwalls and spoil will be permanently stable;

(2) insure that water and air quality standards applicable to the area to be covered by a permit will be observed;

(3) insure that public health and safety will be protected; and

(4) provide for the maximum practicable reclamation of the area to be covered by a permit to minimize adverse environmental impacts of the mining and to optimize the social, ecological, and environmental utility of the area.

SEC. 213. INSPECTIONS.—(a) The Secretary shall cause to be made such inspections of any surface mining and reclamation operations as are necessary to evaluate the administration of State Programs, or to develop or enforce any Federal Program, and for such purposes authorized representatives of the Secretary shall have a reasonable right of entry to any surface mining and reclamation operations.

(b) For the purpose of developing or assisting in the development, administration, and enforcement of any State or Federal Program under this Act or in the administration and enforcement of any permit under this Act, or of determining whether any person is in violation of any requirement of any such State Program or Federal Program or any other requirement of this Act—

(1) the regulatory authority shall require any permittee to (A) establish and maintain appropriate records, (B) make reports, (C) install, use, and maintain any necessary monitoring equipment, and (D) provide such other information relative to surface mining and reclamation operations as the regulatory authority deems reasonable and necessary; and

(2) the authorized representatives of the regulatory authority, upon presentation of appropriate credentials (i) shall have a right of entry to, upon or through any surface mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located; and (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method of operation required under this Act.

(c) The inspections by the regulatory authority shall (1) occur on an irregular basis averaging not less than one inspection per month for the surface mining and reclamation operations for coal covered by each permit and biannually for surface mining and reclamation operations for other minerals covered by each permit; (ii) occur without prior notice to the permittee or his agents or employees; and (iii) include the filing of inspection reports adequate to carry out the purposes of this Act.

(d) Permits issued under State Programs or Federal Programs and the permittees' Reclamation Plans shall be filed on public record with appropriate officials in each county or other appropriate subdivision of the State in which surface mining and reclamation operations under such permits will be conducted.

(e) Each permittee shall conspicuously maintain at the entrances to the surface mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface mining and reclamation operations.

(f) Any records, reports, or information obtained under this section by the regulatory authority which are not within the exceptions of the Freedom of Information Act (5 U.S.C. 552) shall be available to the public.

SEC. 214. FEDERAL ENFORCEMENT.—(a) Whenever, on the basis of any information available to him, the Secretary finds that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary shall notify the State regulatory authority in the State in which such violation exists. If such State authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure, the Secretary shall issue an order requiring such person to comply with the provision or permit condition.

(b) When, on the basis of Federal inspection the Secretary determines that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary or his inspectors may immediately order a cessation of surface mining and reclamation operations or the portion thereof relevant to the violation and provide such person a reasonable time to correct the violation: *Provided*, That such person shall be entitled to a hearing concerning such an order of cessation within three days of the issuance of the order. If such person shall fail to obey the order so issued, the Secretary shall immediately institute civil or criminal actions in accordance with this Act.

(c) Whenever the Secretary finds that volations of an approved State Program appear to result from a failure of the State to enforce such State Program effectively, he shall so notify the State. If the Secretary finds that such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce such State Program, the Secretary shall enforce any permit condition required under this Act with respect to any person by issuing an order to comply with such permit condition or by bringing a civil or criminal action, or both, pursuant to this section.

(d) Any order issued under this section shall take effect immediately. A copy of any order issued under this section shall be sent to the State regulatory authority in the State in which the violation occurs. Each order shall set forth with reasonable specificity the nature of the violation and establish a reasonable time for compliance taking into account the seriousness of the violation, any irreparable harmful effects upon the environment, and any good faith efforts to comply with applicable requirements. In any case in which an order or notice under this section is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(e) At the request of the Secretary, the Attorney General may institute a civil action in a district court of the United States for a restraining order or injunction or other appropriate remedy to enforce the purposes and the provisions of this Act.

(f) (1) If any person shall fail to comply with any Federal Program, any provision of this Act, or any permit condition required by this Act, for a period of fifteen days after notice of such failure, such person shall be liable for a civil penalty of not more than $1,000 for each and every day of the continuance of such failure. The Secretary may assess and collect any such penalty.

(2) Any person who knowingly and willfully violates a Federal Program, any provision of this Act, or any permit condition required by this Act, or makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act, or who knowingly and willfully falsifies, tampers with, or knowingly and willfully renders inaccurate any monitoring device or method required to be maintained under this Act, shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(g) Wherever a corporation or other entity violates a Federal Program or any provision of this Act, any director, officer, or agent of such corporation or entity who authorized, ordered, or carried out such violation shall be subject to the same fines or imprisonment as provided for under subsection (f) of this section.

(h) The penalties prescribed in this section shall be in addition to any other remedies afforded by this Act or by any other law or regulation.

SEC. 215. DESIGNATION OF LAND AREAS UNSUITABLE FOR SURFACE MINING.—(a) (1) The Secretary is authorized to make annual grants to each State for the purpose of assisting in the development of a State land use planning process capable of making objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of a State are unsuitable for all or for some types of surface mining operations.

(2) An area may be designated unsuitable for surface mining operations if—

(A) reclamation pursuant to the requirements of this Act is not physically or economically possible;

(B) surface mining operations or other major uses in a particular area would be incompatible with Federal, State, or local plans to achieve essential governmental objectives; or

(C) the area is an area of critical environmental concern.

(3) To be eligible for grants under this section a State must demonstrate it has developed or is developing a land use planning process which includes—

(A) a State land use planning and coordination agency;

(B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State

to support and permit reclamation of surface mining operations;

(C) a method or methods for implementing land use planning decisions concerning surface mining operations; and

(D) proper notice, opportunities for public participation, and measures to protect the legal interests of affected property owners in all aspects of the State planning process.

(4) Grants made pursuant to this section shall not exceed 80 per centum of the cost of developing and managing a State land use planning process in the first and second years and 60 per centum thereafter.

(5) In making grants pursuant to this section the Secretary shall consider the present and projected levels of surface mining operations, the need for areawide planning, and the size of the State.

(6) For each fiscal year following the enactment of this Act, there are authorized to be appropriated to the Secretary for grants to the States not more than $25,000,000 annually to carry out the purposes of this section.

(7) For purposes of this section the term "areas of critical environmental concern" means an area on lands within any State where uncontrolled or unplanned development—mining, or otherwise—could result in irreversible damage to important historic, cultural, environmental or esthetic values, or natural systems or processes, which are of more than local significance, or could unreasonably endanger life and property as a result of natural hazards of more than local significance.

(b) The Secretary is authorized and directed to conduct a review of the Federal lands and to determine, pursuant to the criteria set forth in subsection (a)(2), whether there are areas on Federal lands which are unsuitable for surface mining operations. When the Secretary determines an area on Federal lands to be unsuitable for surface mining operations he may withdraw such area or he may condition any mineral leasing or mineral entries in a manner so as to limit surface mining operations on such area.

(c) No permit application shall be approved for surface mining operations—

(1) on any land which is within one hundred feet of primary or secondary roads or lakes, streams, or tidal waters to which the public has access and use;

(2) if the surface mining operations will adversely affect any publicly owned park unless screening and other measures, approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park, are used, and the permit application shall so provide.

SEC. 216. FEDERAL LANDS AND INDIAN LANDS.—(a) The Secretary shall promulgate and implement a Federal Lands Program which shall be applicable to all surface mining and reclamation operations taking place pursuant to any Federal law on any Federal lands and Indian lands. The Federal Lands Program shall, at a minimum, incorporate all of the requirements of this Act and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal and Indian lands in question.

(b) The requirements of this Act and the Federal Lands Program shall be incorporated by reference or otherwise in any Federal mineral lease, permit, or contract issued by the Secretary which may involve surface mining and reclamation operations. Incorporation of such requirements shall not, however, limit in any way the authority of the Secretary to subsequently issue new regulations, revise the Federal Lands Program to deal with changing conditions or changed technology, and to require the lease, permit, or contract holder to conform any surface mining and reclamation operations to the requirements of this Act and the regulations issued pursuant to this Act.

(c) The Secretary may enter into agreements with a State or with a number of States to provide for a joint Federal-State Program covering a permit or permits for surface mining and reclamation operations on land areas which contain lands within any State and Federal and Indian lands which are interspersed or checkerboarded and which should, for conservation and administrative purposes, be regulated as a single management unit. To implement a joint Federal-State program the Secretary may enter into agreements with the States, may delegate authority to the States, or may accept a delegation of authority from the States for the purpose of avoiding duality of administration of a single permit for surface mining and reclamation operations.

(d) Except as specifically provided in subsection (c) this section shall not be construed as authorizing the Secretary to delegate to the States any authority or jurisdiction to regulate or administer surface mining and reclamation operations or other activities taking place on the Federal lands or Indian lands or to delegate to the States trustee responsibilities toward Indians and Indian lands.

SEC. 217. STUDY OF SLOPE LIMITATIONS.—(a) The Chairman of the Council on Environmental Quality is directed to conduct and to coordinate an in depth, interagency study to determine the advisability and the impacts of imposing, or failing to impose, for regional or nationwide application specific slope limitations as a means of regulating surface mining and reclamation operations for coal. The Secretaries of the Departments of the Interior, Agriculture, and Commerce, the Administrator of the Environmental Protection Agency, and the Chairman of the Federal Power Commission with the assistance of the heads of such other Federal agencies and agencies of State governments as the Chairman of the Council on Environmental Quality deems necessary or appropriate, shall participate in the study. The study shall, at a minimum, examine in detail the impacts of imposing—

(1) a prohibition on the permanent disposition of spoil on slopes with a grade exceeding ten, fourteen, and eighteen degrees from the horizontal;

(2) a total prohibition of surface mining operations on slopes with a grade exceeding twenty, twenty-six, thirty-two, and thirty-eight degrees from the horizontal;

(3) a total prohibition upon all surface mining operations, or specific types of surface mining operations such as auger or contour mining; and

(4) a requirement that the steepest contour of the highwall after terracing shall not exceed a slope with a grade of twenty-five, thirty-five, and forty-five degrees from the horizontal.

(b) In studying the impact of imposing the limitations and prohibitions set forth in subsections (a) (1) through (4) and with respect to each of the specified slope grade limitations contained therein determine the probable effect of each on—

(1) the total available domestic supply of coal resources which could be mined with existing technology and projected new technologies:

(A) by using underground and surface mining operations, and

(B) by using underground mining operations only;

(2) electrical power production system reliability and electrical powerplant coal supply in each of the regions of the country used by the Federal Power Commission in projecting supply and demand for electrical power;

(3) other major sectors of the economy using coal such as the metallurgical industry; and

(4) employment, local tax base, and levels of local government services in States and counties in which currently exist substantial surface mining operations.

(c) In studying the impact of imposing each of the limitations and prohibitions set forth in subsection (a) the Chairman shall also determine the impact of the proposed constraints on—

(1) improving the environment of the regions affected;

(2) improving the living conditions in the regions affected;

(3) improving water quality; and

(4) reducing the external social and environmental costs associated with surface mining operations.

(d) The study, together with specific legislative recommendations, shall be submitted to the President and the Congress no later than one year from the date of enactment of this Act.

(e) A second study of the impact of the prohibitions and limitations set forth in subsection (a), and the potential impacts thereof set forth in subsections (b) and (c), as applied to surface mining and reclamation operations for other minerals shall be conducted in the manner prescribed in subsection (a). Such study, together with legislative recommendations, shall be submitted to the President and the Congress no later than two years from the date of enactment of this Act.

(f) The Chairman of the Council on Environmental Quality is authorized to utilize independent consultants and contractors to undertake studies and to develop any background information or supplemental reports necessary to the preparation of the studies required by this section.

(g) There are hereby authorized to be appropriated to the Council on Environmental Quality $2,000,000 for the purposes set forth in this section.

SEC. 218. PUBLIC AGENCIES, PUBLIC UTILITIES, AND PUBLIC CORPORATIONS.—Any agency, unit or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government, which proposes to engage in surface mining operations which are subject to the requirements of this Act shall comply with the provisions of title II of this Act.

TITLE III—ABANDONED AND UNRECLAIMED MINED AREAS

SEC. 301. ABANDONED MINE RECLAMATION FUND.—(a) There is hereby created in the Treasury of the United States a Fund to be known as the Abandoned Mine Reclamation Fund.

(b) There is authorized to be appropriated to the Fund initially the sum of $100,000,000 and such other sums as the Congress may thereafter authorize to be appropriated.

(c) The following other moneys shall be deposited in the Fund—

(1) moneys derived from the sale, lease, or rental of land reclaimed pursuant to this title;

(2) moneys derived from any user charge imposed on or for land reclaimed pursuant to this title, after expenditures for maintenance have been deducted; and

(3) miscellaneous receipts accruing to the Secretary through the administration of this Act which are not otherwise encumbered.

(d) Moneys in the Fund subject to annual appropriation by the Congress, may be expended by the Secretary for the purposes of this title.

SEC. 302. ACQUISITION AND RECLAMATION OF ABANDONED AND UNRECLAIMED MINED AREAS.—(a) The Congress hereby declares that the acquisition of any interest in land or mineral rights in order to construct, operate, or manage reclamation facilities and projects constitutes acquisition for a public use or purpose, notwithstanding that the Secretary plans to hold the interest in land or mineral rights so acquired as an open space

or for recreation, or to resell the land following completion of the reclamation facility or project.

(b) The Secretary may acquire by purchase, donation, or otherwise, land or any interest therein which has been affected by surface mining operations prior to the enactment of this Act and has not been returned to productive or useful purposes. Prior to making any acquisition of land under this section, the Secretary shall make a thorough study with respect to those tracts of land which are available for acquisition under this section and based upon those findings he shall select lands for purchase according to the priorities established in subsection (1). Title to all lands or interests therein acquired shall be taken in the name of the United States, but no deed shall be accepted or purchase price paid until the validity of the title is approved by the Attorney General. The price for land under this section shall take into account the unrestored condition of the land.

(c) For the purposes of this title, when the Secretary seeks to acquire an interest in land or mineral rights, and cannot negotiate an agreement with the owner of such interest or right he shall request the Attorney General to file a condemnation suit and take such interest or right, following a tender of just compensation as awarded by a jury to such persons: *Provided, however,* That when the Secretary determines that time is of the essence because of the likelihood of continuing or increasingly harmful effects upon the environment which would substantially increase the cost or magnitude of reclamation or of continuing or increasingly serious threats to life, safety, or health, or to property, the Secretary may take such interest or rights immediately upon payment by the United States either to such person or into a court of competent jurisdiction of such amount as the Secretary shall estimate to be the fair market value of such interest or rights; except that the Secretary shall also pay to such person any further amount that may be subsequently awarded by a jury, with interest from the date of the taking.

(d) For the purposes of this title, when the Secretary takes action to acquire an interest in land and cannot determine which person or persons hold title to such interest or rights, the Secretary shall request the Attorney General to file a condemnation suit, and give notice, and may take such interest or rights immediately upon payment into court of such amount as the Secretary shall estimate to be the fair market value of such interest or rights. If a person or persons establish title to such interest or rights within six years from the time of their taking, the court shall transfer the payment to such person or persons and the Secretary shall pay any further amount that may be agreed to pursuant to negotiations or awarded by a jury subsequent to the time of taking. If no person or persons establish title to the interest or rights within six years from the time of such taking, the payment shall revert to the Secretary and be deposited in the Fund.

(e) States are encouraged to acquire abandoned and unreclaimed mined lands within their boundaries and to donate such lands to the Secretary to be reclaimed under appropriate Federal regulations. The Secretary is authorized to make grants on a matching basis to States in such amounts as he deems appropriate for the purpose of carrying out the provisions of this title but in no event shall any grant exceed 90 per centum of the cost of acquisition of the lands for which the grant is made. When a State has made any such land available to the Federal Government under this title, such State shall have a preference right to purchase such lands after reclamation at fair market value less the State portion of the original acquisition price.

(f) The Secretary shall prepare specifications for the reclamation of lands acquired under this title. In preparing specifications, the Secretary shall utilize the specialized knowledge or experience of any Federal department or agency which can assist him in the development or implementation of the reclamation program required under this title.

(i) In selecting lands to be acquired pursuant to this title and in formulating regulations for the making of grants to the States to acquire lands pursuant to this title, the Secretary shall give priority (1) to lands which, in their unreclaimed state, he deems to have the greatest adverse effect on the environment or constitute the greatest threat to life, health, or safety and (2) to lands which he deems suitable for public recreational use. The Secretary shall direct that the latter lands, once acquired, shall be reclaimed and put to use for recreational purposes. Revenue derived from such lands, once reclaimed and put to recreational use, shall be used first to insure proper maintenance of such lands and facilities thereon, and any remaining moneys shall be deposited in the Fund.

(j) Where land reclaimed pursuant to this title is deemed to be suitable for industrial, commercial, residential, or private recreational development, the Secretary may sell such land pursuant to the provisions of the Surplus Property Act of 1949, as amended.

TITLE IV—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. 401. DEFINITIONS.—For the purpose of this Act, the term—

(1) "Secretary" means the Secretary of the Interior;

(2) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(3) "Office" means the Office of Land Use Policy, Reclamation, and Enforcement established pursuant to section 202;

(4) "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and any other place outside thereof, or between points in the same State which directly or indirectly affect interstate commerce;

(5) "surface mining operations" means—

(A) activities conducted on the surface of lands in connection with a surface mine or surface operations incident to an underground mine, the products of which enter commerce or the operations of which directly or indirectly affect commerce. Such activities include excavation for the purpose of obtaining coal or other minerals, by contour, strip, auger or open pit mining, dredging, quarrying, in situ distillation or retorting and leaching; and the cleaning, concentrating, or other processing or preparation (excluding refining and smeltering), and loading for interstate commerce of crude minerals at or near the mine site. Such activities do not include the extraction of minerals in a liquid or gaseous state by means of wells or pipes unless the process includes in situ distillation or retorting; and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include land affected by mineral exploration operations which substantially disturb the natural land surface, and any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, working, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(6) "surface mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of such operations;

(7) "lands within any State" or "lands within such State" means all lands within a State other than Federal lands and Indian lands;

(8) "Federal lands" means any land owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands;

(9) "Indian lands" means all lands included within Indian reservations, or lands held by the United States in trust for Indians, including restricted allotted lands over which the Secretary exercises supervisory control;

(10) "State Program" means a program established by a State pursuant to section 204 to regulate surface mining and reclamation operations for coal or for other minerals, whichever is relevant on lands within a State in accord with the requirements of this Act and regulations issued by the Secretary pursuant to this Act;

(11) "Federal Program" means a program established by the Secretary pursuant to section 205 to regulate surface mining and reclamation operations for coal or for other minerals, whichever is relevant on lands within a State in accordance with the requirements of this Act;

(12) "Federal Lands Program" means a program established by the Secretary pursuant to section 216 to regulate surface mining and reclamation operations on Federal lands and Indian lands;

(13) "Reclamation Plan" means a plan submitted by an applicant for a permit under a State Program or Federal Program which sets forth a plan for reclamation of the proposed surface mining operations pursuant to section 212;

(14) "State regulatory authority" means the department or agency in each State which has primary responsibility at the State level for administering this Act;

(15) "regulatory authority" means the State regulatory authority where the State is administering this Act under an approved State Program or the Secretary where the Secretary is administering this Act under a Federal Program;

(16) "person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization;

(17) "permit" means a permit to conduct surface mining and reclamation operations issued by the State regulatory authority pursuant to a State Program or by the Secretary pursuant to a Federal Program;

(18) "permit applicant" or "applicant" means a person applying for a permit;

(19) "permittee" means a person holding a permit;

(20) "Fund" means the Abandoned Mine Reclamation Fund established pursuant to section 301;

(21) "other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form;

(22) "backfilling to approximate original contour" means that part of the reclamation process achieved by grading from a point at or above the top of the highwall to a point at or below the toe of the spoil bank in which the maximum slope shall not exceed the

original average slope from the horizontal by more than five degrees, and no depressions capable of collecting water shall be permitted except where the retention of water is determined by the regulatory authority to be required or desirable for reclamation purposes; and

(23) "terracing" means grading to the extent necessary to insure that the steepest contour of any remaining highwall is permanently stable and will not erode, and grading to the extent necessary to insure that the table portion of the restored area shall not have depressions which hold water, except where the retention of water is determined by the regulatory authority to be required or desirable for reclamation purposes.

SEC. 402. ADVISORY COMMITTEES.—(a) The Secretary shall appoint a National Advisory Committee for surface mining and reclamation operations for coal and a National Advisory Committee for surface mining and reclamation operations for other minerals. Each Advisory Committee shall consist of not more than seven members and shall have a balanced representation of Federal, State, and local officials, persons qualified by experience of affiliation to present the viewpoint of operators of surface mining operations, consumers, and persons qualified by experience or affiliation to present the viewpoint of conservation and other public interest groups, to advise him in carrying out the provisions of this Act. The Secretary shall designate the chairman of each Advisory Committee.

(b) Members of each Advisory Committee other than employees of Federal, State, and local governments, while performing Advisory Committee business, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime. While serving away from their homes or regular places of business, members may be paid travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons intermittently employed.

SEC. 403. GRANTS TO THE STATES.—(a) The Secretary is authorized to make annual grants to any State for the purpose of assisting such State in developing, administering, and enforcing State Programs under this Act: *Provided*, That such grants shall not exceed 80 per centum of the total costs incurred during the first year; 70 per centum of the total costs incurred during the second and third years; and 60 per centum each year thereafter.

(b) The Secretary is authorized to cooperate with and provide assistance to any State for the purpose of assisting it in the development, administration, and enforcement of its State Programs. Such cooperation and assistance shall include—

(1) technical assistance and training, including provision of necessary curricular and instruction materials, in the development, administration, and enforcement of the State Programs; and

(2) assistance in preparing and maintaining a continuing inventory of surface mining and reclamation operations for each State for the purposes of evaluating the effectiveness of the State Programs. Such assistance shall include all Federal departments and agencies making available data relevant to surface mining and reclamation operations and to the development, administration, and enforcement of State Programs concerning such operations.

SEC. 404. RESEARCH AND DEMONSTRATION PROJECTS.—(a) The Secretary is authorized to conduct and promote the coordination and acceleration of research, studies, surveys, experiments, and training in carrying out the provisions of this Act. In conducting the activities authorized by this section, the Secretary may enter into contracts with, and make grants to qualified institutions, agencies, organizations, and persons.

(b) The Secretary is authorized to enter into contracts with, and make grants to, the States and their political subdivisions, and other public institutions, agencies, organizations, and persons to carry out demonstration projects involving the reclamation of lands which have been disturbed by surface mining operations. Such demonstration projects may include the use of solid and liquid residues from sewage treatment processes.

(c) There are authorized to be appropriated to the Secretary $5,000,000 annually for the purposes of this section.

SEC. 405. ANNUAL REPORT.—The Secretary shall submit annually to the President and the Congress a report concerning activities conducted by him, the Federal Government, and the States pursuant to this Act. Among other matters, the Secretary shall include in such report recommendations for additional administrative or legislative action as he deems necessary and desirable to accomplish the purposes of this Act.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for administration of this Act and for the purposes of section 403 for the fiscal year ending June 30, 1973, the sum of $10,000,000; for each of the next two succeeding fiscal years, the sum of $20,000,000; and $30,000,000 for each fiscal year thereafter.

SEC. 407. TEMPORARY SUSPENSION.—(a) The President of the United States is hereby authorized to suspend for a period not to exceed ninety days any requirement of this Act concerning surface mining and reclamation operations when, he determines it necessary to do so because of (i) a national emergency, (ii) a critical national or regional electrical power shortage, or (iii) a critical national fuels or mineral shortage.

(b) Any action by the President pursuant to subsection (a) shall be based upon findings and recommendations of the Director of the Office of Emergency Preparedness. In preparing findings and recommendations for the President, the Director shall solicit the views of the Secretary of the Interior, the Chairman of the Council on Environmental Quality, and the Chairman of the Federal Power Commission.

(c) Any action taken by the President pursuant to this section shall be followed by a report to the Congress within five days on the nature of the emergency, the action taken, and any legislative recommendations he may deem necessary.

SEC. 408. OTHER FEDERAL LAWS.—(a) Nothing in this Act shall be constructed as superseding, amending, modifying, or repealing existing State or Federal law relating to mine health and safety, and air and water quality.

(b) Nothing in this Act shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface mining and reclamation operations on lands under their jurisdiction.

(c) To the greatest extent practicable each Federal agency shall cooperate with the Secretary and the States in carrying out the provisions of this Act.

SEC. 409. STATE LAWS.—(a) No State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this Act.

(b) Any provision of any State law or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface mining and reclamation operations than do the provisions of this Act or any regulation issued pursuant thereto shall not be construed to be inconsistent with this Act. Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.

SEC. 410. PROTECTION OF THE SURFACE OWNER.—In those instances when the surface owner is not the owner of the mineral estate proposed to be mined by surface mining operations the application for a permit shall include the following:

(a) the written consent of, or a waiver by, the owner or owners of the surface lands involved to enter and commence surface mining operations on such land, or, in lieu thereof,

(b) the execution of a bond or undertaking to the United States or the State, whichever is applicable, for the use and benefit of the surface owner or owners of the land, to secure the payment of any damages to the surface estate, to the crops, or to the tangible improvements of the surface owner as may be determined by the parties involved or as determined and fixed in an action brought against the permittee or upon the bond in a court of competent jurisdiction. This bond is in addition to performance bonds required for reclamation by this Act.

SEC. 411. (a) In the award of contracts for the reclamation of abandoned and unreclaimed mined areas pursuant to title III and for research and demonstration projects pursuant to section 404 of this Act the Secretary shall develop regulations which will accord a preference to surface mining operators who can demonstrate their surface mining operations, despite good-faith efforts to comply with the requirements of this Act, have been adversely affected by the regulation of surface mining and reclamations operations pursuant to this Act.

(b) Contracts awarded pursuant to this section shall require the contractor to afford an employment preference to individuals whose employment has been adversely affected by this Act.

SEC. 412. SEVERABILITY.—If any provision of this Act or the applicability thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972—AMENDMENTS

AMENDMENTS NOS. 1714 AND 1715

(Ordered to be printed and to lie on the table.)

Mr. RIBICOFF (for himself, Mr. JAVITS, and Mr. PERCY) submitted two amendments intended to be proposed by them jointly to the bill (H.R. 13915) to further the achievement of equal educational opportunities.

ADDITIONAL STATEMENTS

BROOKVILLE, PA., AREA HIGH SCHOOL CONCERT CHOIR SELECTED FOR GOODWILL TOUR

Mr. SCOTT. Mr. President, Pennsylvania's young people have again brought great honor to the Commonwealth. The Brookville, Pa., Area High School concert choir has been selected by the American Youth Symphony and Chorus to represent the United States in an Euro-

pean good will tour in July of next year. This is quite unusual, for until now, the American Youth Symphony and Chorus has been composed of students from all parts of the United States, with only a nucleus of members from the chosen director's chorus.

Mr. Richard Reed, of the Brookville school system, who was selected as next year's director got an overwhelming response from interested Brookville students when he asked for applications. Sixty-five Brookville students qualified—the total number of members needed.

Mr. President, this is an outstanding accomplishment for any community and for any school, but for a town and school the size of Brookville to succeed makes it all the more remarkable.

I offer Richard Reed and the Brookville Area High School concert choir my heartiest congratulations and best wishes for their upcoming trip.

NATIONAL AMATEUR SPORTS FOUNDATION

Mr. GRAVEL. Mr. President, last Wednesday I introduced a bill to establish a National Amateur Sports Foundation to strengthen and expand the development of amateur sports in the United States. I have today received an enthusiastic letter of endorsement of this legislation from Bill Toomey, 1968 Olympic gold medalist in the decathalon and world record holder until this year for that event. I think Senators will find his letter of interest, and I ask unanimous consent that it be printed in the RECORD.

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

SEPTEMBER 29, 1972.

Hon. SENATOR MIKE GRAVEL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR GRAVEL: I would like to congratulate you and Senator Strom Thurmond on your National Amateur Sports Foundation Act of 1972.

The problems and failures associated with the 1972 United States Olympic effort have manifested the myriad complexities that are characteristic of sport in this country at all levels. I say at all levels because the Bill seems to further the development of sport for every segment in the nation and this factor is one I feel to be of the highest priority.

We tend to forget those among us who contribute in a positive vein to the image of our country, both here and abroad, and as a nation, we seem to neglect the recognition deserved by this positive portion of our population. So-called Olympic failures are really only symptomatic of greater problems such as the lack of interest in sport and all-around physical well-being.

The administrators of sport in American society have become too segmented and consequently impotent in their ability to deal with the growing problems and needs of institutions and individuals.

The American public has been deluded into thinking that there have been no problems in our competitive sport picture. The successes of our past athletic achievements are rather obvious. These successes, however, were mainly due to the large reservoir of outstanding athletic talent that was fostered and developed on the local level, not because of judicious administrators.

American society is witnessing a change in attitude by the youth of the nation towards both competitive sport and physical fitness. In fact, we have become receptively oriented in our life-style and we now seem to be a nation of passive spectators.

It seems to me that this intrinsic passive attitude will only continue under the present situation and this is one reason I feel that the introduction of the National Amateur Sports Foundation Act of 1972 becomes so much more than just a gesture to appease an irate public. It could indeed have ramifications that would be far-reaching, not only for the present but for the future of many many American generations.

I suppose there are some who look upon sport and recreation as superfluous ingredients to a creative existence, but a careful study of the world scene would seem to indicate that other nations of diversified ideologies have designated sport as having the highest national priority. The development of Olympic champions is not the only reason to devote time and money to sport; rather, they are just a part of an entire program that must be created, supported and developed into a viable concept with goals and directions pertaining to all age levels and segments of our diverse and complex population.

This is also the time for us to work at preventing social and physical problems rather than waiting until the problems manifest themselves. The Foundation would have the ability to be a catalyst for athletic facilities, especially in less privileged areas; to improve and promote physical education programs; to assist in programs that may be cut or phased out by providing financial and legal assistance, and to promote health education through the development of a much needed sports medicine research facility.

The ability of sports to promote international understanding has been somewhat under-estimated in this country. In my travels for the State Department and the Peace Corps into all parts of the world, it has been rather evident that sport and recreation is perhaps one of the strongest communication devices that we have at our disposal. Sport is truly the international language understood by all peoples throughout the world.

It is therefore with great joy and enthusiasm that I embark on a venture to help in any way possible with the planning and promotion of this Bill with all possible energy.

Yours truly,

WILLIAM A. TOOMEY.

WELFARE REFORM: THE END OF THE ROAD

Mr. RIBICOFF. Mr. President, there is nothing I can add to the eloquent editorial in this morning's Washington Post which I ask unanimous consent to have printed at this point in the RECORD.

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

WELFARE REFORM: THE END OF THE ROAD

Let us draw an analogy. It will only require a little rearranging of dates and sequences. We will suppose that it is 1964 and that the historic Civil Rights Act is before Congress, having reached one of those unique moments when, after a long and hardfought battle, it suddenly becomes possible to enact legislation that had no chance before. It is one of those rare moments, as well, that is not likely to occur again soon. President Lyndon B. Johnson favors the program and well understands the importance of the moment. But he is running against Senator Goldwater who opposes civil rights legislation, and even though he enjoys an out-of-sight lead over Mr. Goldwater, the President does not care to risk one single vote to the "white backlash" he has been hearing about. So he withdraws his support from the legislation he sponsored and quietly contrives to kill it for the sake of protecting the size of his prospective election victory—not the victory itself, mind you, but merely its magnitude.

That, of course, is not what happened in 1964. It is what happened in 1972. The President was Richard Nixon, not Lyndon Johnson, and the historic program dealt with economic, not racial equity. Thus on Wednesday, with Mr. Nixon's blessing and his help, the Senate laid to rest the innovative and imaginative and—yes—supremely important welfare reform legislation he had himself brought before the Congress three years ago. Welfare reform—the phrase has become something of a mind-stopper in itself, a couple of hackneyed red-flag words that suggest to some a "dole" for the lazy and to others nothing more than a complicated and boring subject that has something to do with a lot of black mothers of small children who should either be getting more money or less . . . or something. Yet what we were dealing with here was a fundamental reordering of this nation's attitude toward its own poor, toward its own obligations as an industrialized society, toward its own commitment to simple equity. The question—Mr. Nixon raised it in the first place three years ago—was whether we would provide a low but decent income for those among us who cannot work and guarantee as well a decent income for those at the bottom of the economic ladder who can work—and do. Mr. Nixon, relishing the effects of Senator McGovern's initial and clumsy venture into this area and desirous of preserving his own advantage for the short term, decided that the answer was, no.

As has come to be administration custom, he never said so out loud. Rather he rejected the few bills that were within the ambit of his original proposal and had a chance of passage, bills that his own top aides had worked on and/or urged him to support. He clung to one instead that had been gutted of its original purpose by the passage of time and the inroads of congressional alteration, one that he knew was doomed because neither moderate Democrats nor Republicans of practically any variety could in conscience support it. When this signal was given from the White House, it became plain to everyone who has cared about and supported Mr. Nixon's program (as it once existed) that what he wanted was not a bill, but an issue. Who, after all, within the electorate is in favor of welfare recipients? How many divisions do the poor have?

The anti-honor roll should of course be extended. If you were to sift back over the past three years looking for those who had defaulted or otherwise contributed to the final debacle, you would have to mention those Democratic liberals in Congress who, at the beginning, did not pitch in or help at all—even though they provided the bill's principal support in the showdown in the Senate this week. You would give a much more important place to former Senator John Williams of Delaware who, as ranking Republican on the Senate Finance Committee, organized his fellow Republicans and led the fight against reform for the first year. You would save a special award for Democratic Chairman Russell Long of the Finance Committee, who managed to keep the measure locked up for roughly two of the three years it was before Congress. A proper historical accounting would have to take note as well of such disparate factors as the hostility of the National Welfare Rights Organization which declined to support any measure within the realm of fiscal practicality, and the incompetent testimony of former HEW Secretary Robert Finch who, in the spring of

1970, dealt the bill a terrible blow with his inability to explain or defend it on the Hill. His successor, Mr. Richardson both understood the legislation better and fought for it with more conviction. As in other matters of great social moment, he lost. One only hopes to be spared, this time around, the Secretary's eloquent rationalization of what happened and how it's probably all for the best.

But when you have finished accounting for the principal obstacles, human and institutional, that got in the way of genuine welfare reform, you are left with a fairly simple set of facts: That the courage and commitment of some men and women of both parties and in and out of government brought that reform to the point where it could easily have been enacted, that the chance will not soon come again, that the President by refusing to support a passable version of his bill in the Senate killed reform, and that he did so for the sake of a marginal political benefit he did not even need. Mr. Nixon likes "firsts." We will ungrudingly offer him one: Never has anyone in high political office sold out so much for so little.

A TRIBUTE TO GEN. EARLE E. PARTRIDGE

Mr. DOMINICK. Mr. President, at the annual meeting of the Aerospace Corp. Board of Trustees, September 8, 1972, Gen. Earle E. Partridge, USAF (Ret.), a charter trustee and one of the most distinguished members of the Board, retired after more than 12 years of dedicated service. I feel particularly privileged in making these remarks because General Partridge is also one of our most respected and admired military leaders as well as a much beloved constituent of our home State of Colorado.

In recognition of the outstanding contributions he has made to our Nation's security and to the advancement of our aerospace technology during his tenure as a trustee of the Aerospace Corp., Air Force Secretary Robert C. Seamans, Jr. presented General Partridge with the Exceptional Service Award, the highest award that the Air Force can present to a civilian.

Among the attendees who witnessed the after-dinner ceremonies held in Washington, D.C., in addition to Secretary Seamans, were the Honorable Grant L. Hansen, Assistant Secretary of the Air Force for Research and Development; Gen. John D. Ryan, Air Force Chief of Staff; Jack L. Stempler, general counsel to the Air Force; Lt. Gen. John W. O'Neill, recently retired Vice Commander of the Air Force Systems Command, Lt. Gen. Edmund F. O'Connor who succeeded General O'Neill at AFSC and Maj. Gen. James McCormack, USAF (Ret.), chairman; Dr. Ivan A. Getting, president; Dr. Allen F. Donovan, senior vice president, technical and Robert T. Jensen, secretary and general counsel of the Aerospace Corp. The dinner guests also included most of the distinguished members of the Aerospace Corp. Board of Trustees.

A brief review of General Partridge's achievement prior to his becoming an Aerospace trustee in 1960 reveals why he was able to bring so much valuable professional experience to the Aerospace Board.

Earle E. Partridge was born in Winchendon, Massachusetts in 1900, enlisted in the U.S. Army engineers and served in France during 1918–19. He attended Norwich University, Northfield, Vermont in 1919 and 1920, graduated from the U.S. Military Academy with a B.S. degree, and was commissioned 2nd Lieutenant, Army Air Service in 1924. He graduated from the U.S. Army Primary and Advanced Flying Schools in 1925; from the Air Corps Tactical School in 1937; and the Command and General Staff School in 1938.

General Partridge instructed at Air Corps Tactical School from 1938 to 1940, then after duty with the headquarters of the Army Air Corps in 1941, and the Joint Strategic Committee of the U.S. Joint Chiefs of Staff in 1942, was promoted to Brigadier General.

During later years of World War II, he held various executive and command assignments including duty in Northwest Africa with the 12th Bomber Command and the Northwest African Strategic Air Forces, in Italy with the Eighth Air Force. He was promoted to Major General in 1944, and in that grade commanded the Fifth Air Force in Japan and Korea from 1948 to 1951.

In 1951, he was promoted to Lieutenant General and placed in command of the Air Research and Development Command until 1953. Upon his promotion to grade of General, he was appointed to command the Far East Air Forces, 1954–55.

Named to command the air defenses of the United States with headquarters at Colorado Springs, Colorado in 1955, General Partridge's assignment broadened in 1957 to include responsibility for all the air defenses of North America, as commander of the North American Defense Command.

Accompanying the Air Force Exceptional Service Award to General Partridge was the following citation which was read aloud prior to presentation of the medal by Secretary Seamans:

CITATION TO ACCOMPANY THE AWARD OF THE EXCEPTIONAL AWARD TO EARL E. PARTRIDGE

General Earle E. Partridge, USAF, (Ret.), distinguished himself by exceptionally meritorious public service to the United States from July 1959 to September 1972. During this period, General Partridge devoted himself to aiding the United States Air Force in applying the full resources of modern science and technology to the problems of achieving those continuing advances in military aviation, ballistic missiles, and space systems which are basic to national security. He continued to apply his broad experience in Air Force matters as an advisor to many federal and governmental agencies and as a charter member of The Aerospace Corporation's Board of Trustees and the Board's Executive Committee. He also served as a member of the Board's Compensation, Nominating and Technical Committees and the Space Systems Committee for the Seven Year Appraisal of The Aerospace Corporation. His efforts constitute an exceptionally outstanding contribution in support of the Air Force's participation in the national defense and space programs, thereby reflecting great credit upon himself and earning for him the sincere gratitude of the United States Air Force.

Mr. President, as a U.S. Senator from the home State we both share and as a former Air Force officer well aware of the outstanding record of service to our Nation that Gen. Earle E. Patridge has so selflessly contributed I would like to add my own congratulations as well as my personal gratitude to this great man for all that he has done for our country and for his fellow Americans.

VOTE ON H.R. 1

Mr. CHILES. Mr. President, at 1 o'clock this morning, after much soul searching, I voted against the final passage of H.R. 1.

The Finance Committee has done a world of work. It has been working on the bill for almost a year in endless meetings, and I think there are a lot of good features in the bill. The title IV portion dealing with welfare reform is an exception, however.

I think the committee was forced to come out with the welfare reform section too quickly because we were getting close to the end of the session. Then, too, they had a fight within the committee on different proposals—the President's family assistance plan, Senator RIBICOFF's program which gave more guaranteed income than the President's plan, and committee chairman Senator LONG's workfare proposal.

I have been against the guaranteed income idea because I felt it would kill incentive for people to work whether it was the Nixon or the Ribicoff plan. The workfare concept, I think, would be much better. But the Finance Committee just was not able to work out provisions that fit together, so what the committee proposed to the Senate just would not stand up to scrutiny. As a result, nothing could get a majority of support, and then the Senate moved to what is supposed to be a study program or test plan to try out the Nixon, the Ribicoff and the Long ideas. However, in the pilot approach they put many new changes that were not going to be just tests but would become permanent fixtures in law. The Senate never really discussed most of these provisions: even last night we adopted amendments on which there had not been discussion on the Senate floor and consequently were not understood by most of the Senators.

All this was objectionable to me.

But I guess the major reason I was compelled to vote against the bill was what I learned during my campaign in 1970. As I campaigned, I found more and more that the guy who really was not represented was the wage earner of this country, the man making $3,000 to $12,000 a year. He was and is paying a disproportionate share of taxes, especially payroll taxes, and the bill passed by the Senate just makes that situation so much worse. Rather than addressing itself to correcting that problem, this bill goes the other way. Figures I got just yesterday show that a person earning $12,000 a year is going to have a 54-percent increase in payroll taxes by 1974. In other words, he or she will be paying $21 per month more than now.

This is a terribly regressive tax. And the guy who is shouldering the load in this country does not have the depreciation allowances or the depletion allowances or the charitable foundation or a deferred income plan. All he has is the burden.

Now, there are many good services in this bill, additional benefits that are needed: but I think those benefits should be paid out of general revenue because they come in the category of welfare, not social security. The Senator from Wis-

consin (Mr. NELSON) had two amendments yesterday which would have provided necessary funds for increased benefits—one would have taken away the assets depreciation range; the other would have taxed people who are paying no tax at all—but they were rejected.

So, until we reach the point where we are willing to come to grips with the inequity built into social security taxing, we should not pile on an additional burden.

I talked and talked about this problem in 1970. I introduced my own social security-welfare reform plan to achieve this. I have introduced amendments and I have supported other amendments to this end, but I had to face the fact, as H.R. 1 came to a final vote, that its passage meant that the guy paying all these taxes would continue to get it in the neck. We are going in the wrong direction, and I had to vote "no."

DANGEROUS LANGUAGE IN SPENDING CEILING BILL

Mr. ERVIN. Mr. President, Congress should be wary in its consideration of H.R. 16810, the spending ceiling bill now pending before the House of Representatives, because it contains language which would give the President an unconstitutional line-item veto over this year's appropriation acts.

Subsection 201(a) of the bill would establish a spending ceiling of $250 billion for the current fiscal year. To enforce this ceiling, subsection 201(b) provides:

> The President shall, notwithstanding the provisions of any other law, reserve from expenditure and net lending, from appropriations or other obligational authority heretofore or hereafter made available, such amounts as may be necessary to effectuate the provisions of subsection (a).

In other words, subsection 201(b) would authorize the President to cut any expenditures or obligations he feels necessary to keep Federal spending within the $250 billion ceiling. If this language becomes law, the Congress for the first time will have established a line-item veto power in the President although the Constitution provides only that the President may veto entire acts of Congress. It also will have given congressional credence to the highly questionable practice of executive impoundment of appropriated funds.

Mr. President, I fully support a balanced Federal budget and fiscal responsibility by both Congress and the Executive. I have consistently voted against appropriations which I thought unwise and extravagant, and I will continue to do so.

The real issue presented by the spending ceiling bill, however, is not whether Federal expenditures will be kept within a responsible level; it is whether we will give the President the power practically to rewrite appropriations bills already passed by Congress.

The Judiciary Subcommittee on Separation of Powers, of which I am honored to serve as chairman, conducted hearings in March 1971 on the practice of Executive impoundment of appropriated funds. As a result of those hearings, I introduced S. 2581, a bill which provides for procedures whereby the Congress can reassert its control over the appropriations process.

The gist of the administration's testimony at the subcommittee's hearings was that appropriations acts merely establish ceilings within which the Executive can spend on the particular program authorized, and that the Executive can impound funds it did not feel should be spent.

It will be recalled that the Nixon administration has impounded as much as $12.7 billion in funds that have been lawfully appropriated by the Congress. If this sum can be impounded without specific legislative authority such as contained in the spending ceiling bill, then I do not see the need for Congress to pass the language of subsection 201(b) of H.R. 16810.

In short, as I said earlier, such an action would give congressional credence to impoundment of funds, a practice that has been criticized by Members of both Houses of Congress on both sides of the aisles.

The language of subsection 201(b) also would solidify the power of the Office of Management and Budget. As the distinguished Senator from Minnesota (Mr. HUMPHREY) wrote in an article appearing in the Washington Post of October 3, OMB has acquired:

> A growing power and influence . . . over budgetary decisions which were formerly the prerogative of Congress. The spending ceiling is nothing more than a device to augment this power and place it in the hands of persons not responsible to any electorate.

Indeed, as the subcommittee learned during its hearings, OMB is the agency which decides which funds shall be impounded in which programs. Furthermore, information about impounded funds has been very slow in seeping from within the inner sanctum of the OMB to the Congress—and in some cases even to the agencies whose programs are affected.

As Senator HUMPHREY points out in his article, the administration's spending ceiling bill seems to be inspired by election-year politics—to label the Congress as spendthrift in its appropriations and the President, in contrast, as frugal.

Admittedly, Congress should exercise the power of the purse with frugality, but it should also approach any expansion of Executive power with the same tight fist. The present language in the spending ceiling bill would be a "spendthrift" grant of Executive authority, and the Congress should guard its prerogatives jealously when considering this legislation.

Mr. President, I ask unanimous consent that Senator HUMPHREY's article be printed in the RECORD.

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

[From the Washington Post, Oct. 3, 1972]

IS IT A DOMESTIC "TONKIN GULF"?

(By Hubert H. Humphrey)

After nearly four years of fiscal mismanagement, the Nixon administration is now preparing an election year argument to tell the American people that a Democratic Congress is to blame.

The scenario has been carefully constructed. Here it is: Congress has been on an inflationary spending spree. The President courageously calls the nation's attention to this and then demands a halt to carefree congressional spending. He proposes a $250 billion celing on federal expenditures and then asks the Congress to give him blank check authority to cut any programs above this limit. He knows that he has 535 members of Congress over a barrel. Either they consent to his plan and hand over to the White House unprecedented authority to control appropriations or he will label them all "spendthrifts." In an election year, being labeled a spendthrift is to be blamed for inflation, budget deficits, and high taxes.

Richard Nixon dispatches his Treasury Secretary to the influential Ways and Means Committee to make them an offer they can't refuse. They don't refuse. The spending ceiling seems on its way to approval. White House lobbyists are already walking the halls of Congress spreading the word that a vote against the ceiling is a vote for a tax increase. But the plain fact is that, on the contrary, the administration's spending ceiling is an election year ploy; a perversion of present fiscal management; a cover-up of a failure to halt inflation; a protective shield for an oversized military budget; a way to erase the social progress of the 1960s; and an outright theft of congressional authority.

Perhaps the greatest danger a spending ceiling poses is not what it will do to individual programs and millions of people that it will affect, but what it will do to the relationship between Congress and the Executive Branch. A spending ceiling places unprecedented power in the hands of the Chief Executive. In effect, it tells Congress: There is no need to scrutinize the budget, there is no need to appropriate funds, indeed, there is little or no need for Congress. The public has been alarmed at the erosion of congressional authority in the field of foreign policy. Now the President asks us for a domestic Gulf of Tonkin resolution.

The Nixon request is a natural outgrowth of the way the administration conducts this nation's fiscal affairs. Consider for a moment the growing power and influence of the Office of Management and Budget over budgetary decisions which were formerly the prerogative of Congress. The spending ceiling is nothing more than a device to augment this power and place it in the hands of persons not responsible to any electorate.

How well does the charge that Congress has overspent stand up to examination? The answer is: not at all. For the past four years the Congress has cut the President's budget requests by over $16 billion. This year alone Congress has already eliminated $4.4 billion of presidential spending. This represents careful, prudent budget review by Congress—not a spending spree. In fact, the Congress has never failed in the past 25 years to cut a President's budget.

The public must not forget that the President has the initial responsibility for the creation of the budget. Whether the presidential budget will be lean or fat is his decision to make. The Congress has the right not only to reduce a President's budget, but to change his budgetary priorities. This is what members of Congress are elected to do and this is certainly what this Congress has done.

Do we need a spending ceiling to fight inflation? There are more effective ways, I believe to control inflation. We should have begun inflation control four years ago—instead of on August 15, 1971—with wage and price guidelines that had bite. Since we did not, inflation control can best be achieved now through a truly effective wage-price mechanism covering those large firms that have

a significant impact on the economy. A spending ceiling is only a ruse and cannot substitute for the needed mechanisms to halt inflation. Much of the reason for deficit financing and inflation is the slow-down of the economy, causing reduced revenues and higher welfare costs.

If the Nixon administration were serious about controlling inflation it would move forcefully in such areas as ending wasteful procurement practices, improving inadequate anti-trust enforcement and revising weak regulatory practices.

If a spending ceiling were to be enacted what programs would likely be eliminated? Just looking at Richard Nixon's veto record gives the clearest indication of what programs this administration considers expendable: education, health care, job creating and training programs and other social service programs that benefit the poor, the hungry and the elderly. It is clear that the spending ceiling offers the administration a convenient way to eliminate or cripple programs relating to human needs without leading a politically unpopular frontal assault on them.

To be sure, the Nixon administration has its budgetary sacred cows such as military procurement and defense spending that won't be cut one nickel. Added to this list must be other generally recognizable untouchables such as interest on the public debt. Medicare, social security and some subsidies. Aside from the vulnerable social service programs, it is likely that the brunt of any cutbacks would be in grants to state and local governments—badly needed programs like water and sewer grants, anti-pollution control funds and transportation aid. It would be ironical if the spending ceiling and revenue sharing came into effect at approximately the same time. The Nixon administration would then be a promoter of a federal funny money game giving revenue with the right hand and taking it back with the left.

It is the responsibility of the Congress to be frugal with the taxpayer's dollar, to search out waste and not to overspend. I am confident that it can continue to do these things without Executive Branch interference or handing the President an item veto over our appropriations.

GRANT FROM NATIONAL ENDOWMENT FOR THE ARTS TO NORTHEAST PENNSYLVANIA PHILHARMONIC

Mr. SCOTT. Mr. President, true responsiveness to the multifaceted needs of the flood victims in the Commonwealth of Pennsylvania has been seen again in the $15,500 grant from the National Endowment for the Arts to the new Northeast Pennsylvania Philharmonic.

Nancy Hanks, Chairman of the National Endowment, in announcing the grant said:

Because of the devastation of Wilkes-Barre caused by Hurricane Agnes, the council recommended that a Federal grant be made this year to assist the Northeast Pennsylvania Philharmonic in its inaugural year.

I feel certain this grant will give the flood victims a real lift—both culturally and emotionally. I ask unanimous consent that the article in the Philadelphia Inquirer describing the grant be inserted in the RECORD.

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

NEW ORCHESTRA IN FLOOD AREA GIVEN $15,500

WILKES-BARRE.—A grant of $15,500 to the new Northeast Pennsylvania Philharmonic was announced Wednesday by Chairman Nancy Hanks of the National Endowment for the Arts.

The orchestra represents a merger of the former Scranton and Wilkes-Barre Philharmonic Orchestras which was decided upon in part because of the floods in the wake of Hurricane Agnes.

"The National Council on the Arts at its recent meeting in Washington was enthusiastic to learn of the cooperative effort of the two communities to provide more music for the region, particularly in this difficult time," Miss Hanks said in a prepared statement.

"Because of the devastation of Wilkes-Barre caused by Hurricane Agnes, the council recommended that a Federal grant be made this year to assist the Northeast Pennsylvania Philharmonic in its inaugural year."

A portion of the grant will be used to help in replacing part of the music library wiped out by the floods.

The National Endowment for the Arts is an independent agency created in 1956 to encourage and assist the nation's cultural resources.

FHWA'S NEW GUIDELINES AND PHILOSOPHY OF ROADBUILDING

Mr. MOSS. Mr. President, during the month of September, the Federal Highway Administration will send to the States new and tougher guidelines for environmental protection in the design and construction of highway projects.

Called "general process guidelines," these procedures are issued in response to the 1970 Highway Act, which set July 1, 1972, as the completion date for drawing up more comprehensive Federal environmental standards.

The guidelines, which call for greater public participation in planning and more attention to local community values, while fixing greater responsibility on State highway departments, were developed at a July 1971, environmental workshop held by the Highway Research Board in Washington, D.C.

It was the feeling of the 150 experts on air and noise pollution, aesthetics, ecology, sociology, and transportation who attended the workshop that a comprehensive overall plan for all of America might tend to "straitjacket" local planners who face unique problems. Therefore, the guidelines place responsibility on the States to develop "action plans" which identify social, economic, and environmental effects of highway building. These plans must then be approved by the FHWA before highway projects are funded.

I am certain that this will not be the last step in our effort to insure highway planning which will accord safety and efficiency while preserving environmental values. Indeed, we should say that we are just beginning to realize the importance of environmental considerations in highway planning.

The last 5 years have seen a dramatic shift in attitude with regard to roadbuilding. I sense a growing agreement among planners, highway builders, Government leaders, and designers in many fields that highways can and should be assets to our environment.

Traditionally, there have been three stages in development of highways. The first stage emphasized construction of roads. The primary objective was mastering technology necessary to construct a road over mountains, long expanses of prairies and rivers. Advantage was taken of every highway, advantage nature could offer—with little consideration of the effect on nature.

The second stage in the historical development of road systems stressed economy, efficiency, and safety. Planners and Government officials were interested in the straightest, fastest road at the least economic cost. In this stage, technology had advanced to the point where natural barriers no longer posed the formidable challenge they had in stage one. While this was a great step forward technologically, it led to serious attendant problems. Our environment was all the more susceptible to the increased power of new technology. It was plowed under, chewed up, and bulldozed away. Meandering streambeds gave way to the superstraight superhighway. Panoramic vistas were sliced in two by arrows of asphalt. Somehow we had lost sight of the true purpose of technology which is to complement nature and thus to enhance man's existence. In our rush to satisfy our need for efficiency and economy we were sacrificing one of our most basic values and greatest natural gifts: the beauty of our earth.

In stage three the effort in highway building is aimed at balancing speed and efficiency with those environmental qualities which protect and give beauty to man. Presently, we are engaged in seeking that balance. We are making the transition from stage two to stage three. It is well that we do so, in many areas of the country, to delay longer will handicap our future ability to preserve nature.

The question now is; not how to build the straightest road at the least cost, but how to build a highway system that does the least damage to the ecosystem and produces the highest net social benefit. As the noted ecologist, George Cornwell has said:

The issue is not preserving nature at the expense of man, but rather maintaining a functional, fragile biosphere upon which all life depends. Hopefully today's talented transportation architects soon will provide effective individual mobility at a much reduced environmental cost.

I think there is some basis to believe that this hope is not in vain. Evidence of a changing attitude in road building is witnessed across the country in the Nation's schools for civil engineers. Here there is widening enrollment in popular environmental and ecology-related courses. Young engineers realize that road location is the single most important ecological consideration. They realize that "road watching" is a delight and that a highway is or can be a work of art which adds to the beauty of natural surroundings.

In the 20th century we cannot say we will build no more roads and then hide our heads in the sand. I think we need access to our scenic wonders and our recreation areas.

This is the type of beautiful, often wild, country that rejuvenates the soul and gives a rebirth to those senses which are dulled by urban life. This is the

implicit definition of the word "recreation."

And yet, we cannot fully enjoy the beauty of southern Utah, or mountain majesty of northern Utah or anywhere else if we find in our places of recreation the same things we seek to flee from in our urban areas. Indiscriminate, ill-planned roads can ruin these areas. If we do not open up certain recreational areas, through intelligent environmentally-protected road building, off-the-road vehicles will find their own way to them at a much greater environmental damage.

Let me stress that certain areas should always remain wilderness protected areas. But those areas which can be entered by vehicle ought to be assured the greatest care modern planning can provide.

Mr. President, I salute the effort of the Federal Highway Administration to adopt guidelines which will guarantee this protection. Let us not stop here, though, in our effort to infuse environmental considerations into highway planning. Let us press on with even greater determination and commitment.

EMERGENCY CORONARY CARE

Mr. WILLIAMS. Mr. President, I am pleased to have heard the colloquy between the Senator from Florida (Mr. CHILES) and the distinguished Chairman of the Appropriations Subcommittee on HEW (Mr. MAGNUSON) at the time of our consideration of the HEW funds—CONGRESSIONAL RECORD, October 3, 1972, pages 33427–33433. That colloquy removes any doubts regarding the Federal funding of emergency medical systems based on municipal or nonprofit rescue vehicles, communications or attendants. I ask unanimous consent to have printed in the RECORD an excellent article from the March 1970, Medical Opinion, written by Dr. Mortimer L. Schwartz, of Maplewood, N.J., who is also chairman of the National Committee for Early Coronary Care, describing just such an emergency care system:

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

MOBILE CORONARY-CARE UNIT

(By Mortimer L. Schwartz, M.D.)

I had a conversation with Lawson McDonald, consultant to the National Heart Institute, in August, 1967, in London. That talk stimulated me to begin a mobile coronary-care unit for the people in the community of Newark, New Jersey.

The project took more time and energy than I had originally anticipated, but by May, 1969, I was able to visit J. Frank Pantridge, originator of the Mobile Coronary-Care Unit in Belfast, Northern Ireland, to crystallize final plans. A six-bed modern coronary-care unit at the Martland Hospital of the New Jersey College of Medicine and Dentistry had already been in operation since June 1, 1967. A New Jersey State Department of Health grant (of $4,500) provided the funds for the purchase of the battery-operated equipment needed, and on July 10, 1969, a team of physicians was ready to deliver emergency care to patients with acute myocardial infarction. We started on a limited basis—four hours a day on weekdays. But, in less than a month, the mobile unit, carrying three cardiology residents and an ambulance driver, was available eight hours a day, five days a week.

The police receive the original calls, filter them, and relay information to the Martland Hospital telephone operator within minutes of the initiation of the distress call. "Coronary Ambulance" is announced on three extensions: the coronary-care unit, on the tenth floor, where personnel immediately head for the elevator; the elevator, which is moved directly to the tenth floor to pick up the physicians; the ambulance station, where a driver enters the cab. The unit's departing physicians load the ambulance with the portable equipment—electrocardiograph, monitor-defibrillator, and suction apparatus. This takes four minutes.

Within ten minutes after leaving Martland Hospital, the team reaches the patient. If myocardial infarction is suspected and the heart rate is above sixty beats per minute, and if heart block and severe failure are not present, lidocaine is administered as a bolus of 50 to 100 mg intravenously, followed by an infusion of 1 mg/cc/min. If the heart rate is less than 50 per minute, 0.4 mg of atropine sulfate is administered intravenously. Similar doses are repeated two to four times at three-minutes intervals if bradycardia and/or heart block persist. The usual measures of oxygen administration and therapy for acute pulmonary edema are, of course, instituted—as is the use of the drugs necessary for relief of pain. If ventricular fibrillation is present, 400 watt-seconds of energy are immediately applied.

After stabilization, the patient is brought to the hospital. We do not believe there is any urgency in returning to the base—we stress that the patient, once reached, is already under the care of the staff.

In four-and-one-half months, 131 calls for the mobile coronary-care unit were made. On thirteen occasions, there was no patient at the scene. Among those patients we reached, sixty-one were female, fifty-seven male. The women averaged fifty years of age, the men fifty-five. Calls were classified as "coronary type," "other justifiable," or "crank." The numbers were about equal in all three categories.

We haven't really had enough experience to say statistically signficant things about the finer aspects of mobile units, but Dr. Pantridge was at the New Jersey College of Medicine as visiting professor on December 15, 1969, and he presented his data on 2,500 calls made during a four-year period. His incidence of "crank" or "lunatic" calls had fallen to 6 percent. In Belfast, a local MD initiates the call and a cardiologist filters it for him. There were over 1,000 documented myocardial infarctions in the Pantridge series, out of the 2,500 calls. In our series, there have been only eleven out of the 131. But I suppose that, in the initial six months of operation, a low yield is to be expected.

There are several reasons for our conviction of the importance of the mobile coronary-care concept: in this country, some 600,000 persons annually die of fatal coronary attacks, the two-thirds of these, 400,000, who never arrive alive at a hospital can be reached by mobile coronary-care units. The units can lower mortality from 35 to 17 percent by prevention and treatment of arrhythmias. Fatal ventricular fibrillation is twenty-five times more likely to occur in the first four hours after an acute myocardial infarction than afterwards. Our mobile unit has already resuscitated one patient with ventricular fibrillation.

The forty-four patients with coronary-type symptoms waited more than three hours, just under four, before calling for assistance. Public education ought to lower that figure considerably. The mobile unit takes knowledgeable, skilled personnel with modern equipment and drugs directly to the patient in about sixteen minutes from the time the call is initiated. We expect to halve this figure when we get our own already-loaded ambulance and a direct "hot line" from the physician or his patient to the coronary unit.

The patient, once reached, is, for all practical purposes, in the coronary-care unit. Any person trained in cardiopulmonary resuscitation techniques, standing by, could place the patient on a firm surface for external cardiac compression and, if necessary, could begin assisted pulmonary-ventilation while waiting for the mobile unit.

We intend to extend service to a 24-hour day for a seven-day week. The latter change awaits our own ambulance and drivers and, sad to say, adequate police protection. We will replace two of the three cardiac residents with a senior medical student and a nurse. Other paramedical personnel, properly trained, might possibly be substituted for them in the future, but legal barriers would have to be bridged.

We also anticipate an increase in the number of cases of acute myocardial infarction that will be brought to the hospital, and that will require many more beds. The Belfast group initially had an eight-bed coronary-care unit, but it has had to expand to thirty-eight beds. The increase here should be to about twenty-eight beds if the Newark pattern follows that of Belfast.

What do you think it would be in your area?

ELEVENTH TRIENNIAL CONGRESS OF AMERICANS OF UKRAINIAN DESCENT

Mr. ROTH. Mr. President, I take great pride in saluting the Ukrainian Congress Committee of America and all Ukrainian Americans on the occasion of the 11th Triennial Congress of Americans of Ukrainian Descent. One thousand delegates will be attending this important gathering in New York City from October 6 through October 8.

These delegates are the representatives of more than two and a half million Ukrainian Americans who are Americans because they or their forefathers came to this country seeking personal and political liberty, religious toleration, social justice, and a chance to improve the economic conditions of their lives. They have been a vital force in our national life, joining with millions of other Americans to build and participate in our political, social, and economic institutions. They have shared in America's trials and they are sharing in its greatness.

Ukrainian Americans are proud of their contributions to America. They also remain proud of Ukraine—a great land, as large and as populous as France or Britain, which was the cradle of Slavic civilization during the period of the Kievan state. While helping to build a new land, Ukrainian Americans have not forgotten this ancient country, so rich in heritage and tradition. Through the Ukrainian Congress Committee of America, Ukrainian Americans are supporting the efforts of their brothers in Ukraine to achieve the full measure of freedom they enjoy here. The UCCA has helped to keep alive the awareness of all Americans to the plight of the Ukrainians and other oppressed minorities in the Soviet Union.

The Ukrainian Congress Committee of America has been a powerful advocate

of freedom and independence for Ukraine. It has also been a strong supporter of American democracy and freedom. These are important efforts, worthy of the utmost support and encouragement of all Americans.

THE WATERGATE "GAG RULE"—FAIR TRIALS AND FREE SPEECH

Mr. ERVIN. Mr. President, on October 4, 1972, Judge John J. Sirica, Chief U.S. District Court Judge for the District of Columbia, issued an order in the so-called Watergate case which has caused great concern on the part of many citizens. This order, issued in response to a defense motion and pursuant to rule 100 (10) of the District Court, is designed to protect the integrity of the judicial process in connection with the disposition of the criminal charges in the Watergate case.

My own concern about this order does not arise from any disagreement with the purpose underlying its issuance. Judge Sirica is quite right in describing the Watergate case as "widely publicized and sensational in nature." Some restrictions on public disclosure of information by the parties to this case and others involved is absolutely essential if the Constitution's mandate for a fair trial is to be honored. Especially in view of the highly charged political atmosphere surrounding this case, effective steps must be taken to permit the court, the jury, and other officers of the court to fulfill their constitutional responsibilities.

My concern with this order arises, rather, from the sweeping, all-inclusive language of the order and its possible threat to first amendment freedoms. Judge Sirica's order enjoins a large and ill-defined list of persons from "making any extrajudicial statements to anyone, including the news media, concerning any aspects of this case which are likely to interfere with the rights of the accused or the public to a fair trial by an impartial jury." Those expressly enjoined from such conduct are:

(1) The Department of Justice, the Office of the United States Attorney, the Federal Bureau of Investigation, and all other law enforcement agencies, and all persons acting for or with them in connection with this case in behalf of the United States, (2) the seven defendants, their attorneys, and all persons acting for or with them in connection with this case, and (3) all witnesses and potential witnesses including complaining witnesses and alleged victims, their attorneys and all persons acting for or with them in connection with this case.

Mr. President, I have little quarrel with the order's first two categories of persons enjoined from the stipulated conduct. Certainly, parties to this criminal proceeding and others functionally connected with it can and should be prohibited from conduct which would jeopardize the integrity of the judicial process and violate constitutional strictures. The scope of persons who might be encompassed by the third category, however, is so broad as to raise serious questions about the impact of this order on the first amendment's guarantee of freedom of speech and freedom of the press. Inasmuch as there has as yet been no occasion for the court to define more exactly the categories of persons listed in the order, it is not possible to know what the court's intentions are with respect to the actual scope of its order. While I am confident that Judge Sirica is as jealous of first amendment freedoms as I and that he will implement this order with a view toward balancing effective law enforcement the first amendment considerations, the order's expressed application to "all potential witnesses including complaining witnesses and alleged victims, their attorneys and all persons acting for or with them in connection with this case" may very well chill free speech and undermine freedom of the press respecting this case. While our courts are constitutionally required to administer the processes of justice according to the principles of the Constitution, they are equally required to guard against abridgment of those precious liberties enshrined by our Founding Fathers in the Bill of Rights.

One of the great lessons of history is that freedom of speech and freedom of the press can be endangered and abridged as effectively by indirect means and intimidation as by direct restrictions and overt censorship. Lovers of liberty have learned that they must secure freedom from subtle dangers as well as from its avowed enemies. We must not forget that the first amendment was meant to protect freedom for the weak and cowardly as well as for the strong and courageous.

The Watergate case presents unusual difficulties in balancing the prerequisites of a fair trial with protection for free speech and freedom of the press. Not only is there great public interest in the trial of the seven defendants, but the administration of justice in this case is itself inextricably connected with this year's Presidential election. Whatever one's view of the case and the events surrounding it, no one can deny that the "Watergate" case has become one of the important political issues in the campaign. Any order restricting publication of information about the proceedings of this case should be drafted and applied in a way to allow the greatest possible range of public debate consistent with the fair and effective disposition of the pending criminal charges. Especially when the American people are choosing their national leaders, they must be protected from government interference with a robust and knowledgeable discussion of the issues facing the country.

Public interest in and concern about the "Watergate bugging" has recently been evidenced by the near-successful effort by the House Committee on Banking and Currency to launch a full-scale investigation of the matter even while criminal charges were pending against seven defendants allegedly involved in the bugging. Mr. President, I doubt that a day has passed over the past several months without some story concerning the events surrounding this case being printed in the major newspapers of this country. Public opinion polls indicate that this affair, along with other matters, has undermined even more the public's confidence in government and government officials. Whatever may be the final disposition of the criminal proceedings associated with the "Watergate bugging," the American people and those who present themselves for public office have a right to consider and to debate events which bear directly upon the quality and integrity of this Nation's leadership.

It may be necessary in this instance to choose between assuring an absolutely "fair" trial and protecting the public's right to know about important matters bearing upon the election of the President. I hope that such a choice is not necessary. I believe that judicious handling of the case can achieve a reasonable balance between these two conflicting concerns. If such a balance is not possible, I am compelled to state that the American public's debate over and decision respecting the election of a President must be given the greatest possible protection. There could be no greater threat to our political freedom than to place a muzzle on candidates for high public office concerning matters about which the citizenry is vitally interested.

I ask unanimous consent that the order by Judge Sirica be printed in the RECORD.

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

[U.S. District Court for the District of Columbia: Criminal No. 1827–72]

UNITED STATES OF AMERICA v. GEORGE GORDON LIDDY, ET. AL.

ORDER

This matter having come before the Court on the motion of the defendant Everette Howard Hunt, Jr., for an order pursuant to Rule 100(10) of this Court enjoining extrajudicial statements in consideration of the widely publicized and sensational nature of this case; and

It appearing to the Court that neither the United States nor any of the co-defendants of the defendant Hunt objects to the entry of this order,

It is by the Court this 4th day of October, 1972,

Ordered, that all parties to this case, specifically

(1) The Department of Justice, the Office of the United States Attorney, the Federal Bureau of Investigation, and all other law enforcement agencies, and all persons acting for or with them in connection with this case in behalf of the United States, (2) the seven defendants, their attorneys, and all persons acting for or with them in connection with this case, and (3) all witnesses and potential witnesses including complaining witnesses and alleged victims, their attorneys and all persons acting for or with them in connection with this case,

Are hereby enjoined until further order of this Court from making any extrajudicial statements to any one, including the news media, concerning any aspects of this case which are likely to interfere with the rights of the accused or the public to a fair trial by an impartial jury; and

It is further ORDERED

That for purposes of this order the term "extrajudicial statement" shall include any statement which is not made during the course of judicial proceedings in this case, except that nothing in this order shall preclude the parties and their attorneys and their agents from conducting appropriate interviews with potential witnesses or conferring among themselves in preparation for the trial.

JOHN J. SIRICA,
Chief Judge.

NATIONAL GROWTH POLICY PLANNING ACT

Mr. HARTKE. Mr. President, the need for planning at the national level has been recognized for some time, yet little action has been taken. Time is short. Unless Congress takes drastic action to manage the growth rate of the Nation's population, pollution, depletion of natural resources, and industrial output, urban and rural problems will become insurmountable.

This spring, I introduced legislation to stimulate a national debate over the future growth of the country. That bill the Hartke National Growth Policy Planning Act of 1972, S. 3600, is meant to be a simple approach to consolidating the mass of complex and disoriented Federal programs into some sort of policy and planning framework that would provide guidance on a long-range basis. I have come to believe, however, that an even more comprehensive piece of legislation will be necessary and I have begun to draft such a bill.

I hope to encompass in this new legislation, a national body to help plan growth, grants to other levels of government to plan for growth, restrictions on the relocation of government and corporate facilities, the creation of a national development corporation, a national land bank, a national development bank, metropolitan development corporations, and a consolidation of Federal programs and planning. Congress and the Nation must consider the pressing urgency of the need for a debate over the future growth of the Nation and what controls, limits, or goals might be instituted to do just that in the near future. Mr. President, I have numerous letters on the Hartke legislation on national growth (S. 3600) and ask unanimous consent to have some of them printed in the RECORD.

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

WASHINGTON UNIVERSITY,
INSTITUTE FOR URBAN AND
REGIONAL STUDIES,
St. Louis, Mo., September 15, 1972.

Senator VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: I was very pleased to receive a copy of S. 3600 and appreciate your solicitation of my comments on it. I am extremely sympathetic to the formal organization of a means for stipulating national growth policy, in general, and, in fact, have written a number of things myself which have dealt with what I see as a critical need for a national urban policy. Accordingly, I certainly would support S. 3600, even in its present form, and would earnestly hope for its successful passage.

Having said that, let me indicate, I hope in a constructive spirit, a number of serious criticisms I would have to make of its present provisions. The main problem, as I see it, is that it rests very heavily on the establishment of state-wide zoning in each of the fifty states as a mechanism for both formulating and controlling growth policy. While zoning does have a place, and could be a useful development policy tool at a state level, I do find that such heavy reliance on it is somewhat shortsighted and would rob the policy of much of its potential effectiveness.

There are two problems in such heavy reliance on zoning, both related to conceiving "success" as a convergence on an estimated desirable static state at some time fairly far in the future. First of all, this places a great deal of reliance on our ability to anticipate the future when I think there should be more emphasis on how do we make current decisions in light of large amounts of uncertainty. Second, relying on conformity to the state plan as an enforcement mechanism is extremely rigid, in that only outright prohibition is possible as a limiting device. The problem is that there will always be large numbers of exceptional cases in which the seriousness of deviation is not so great as to warrant prohibitive invocation through police powers or withholding of funds. My own preference tends much more to viewing planning as an ongoing capability for bringing information to bear and establishing somewhat more flexible criteria for public investment decision making. Let me immodestly suggest looking at Leven, Legler, and Shapiro, *An Analytical Framework for Regional Development Policy,* for some elucidation of this viewpoint.

True, your bill does call for the coordination of the various state plans by a National Growth Planning Board which is a very useful step. I think that that could clearly prevent outright foolishness or clear uncoordination, but politically it is not likely that it would move us very far toward anything like an optimal strategy.

Essentially what I would like to see added is a provision that the National Growth Planning Board would itself be directed to devise a national strategy to which it is hoped that the state policies could be made to conform, with due provision for maintenance of states' rights with regard to internal considerations. Obviously in this case by a national strategy I do not mean a national land use plan, but rather a statement of objectives for growth policy, criteria for development decision making by Federal agencies, and criteria for resolving regional conflict in development decisions at all levels where a legitimate Federal interest was involved.

While there is no reason to expect the text of the bill to indicate such, I would hope that in any hearings or committee deliberations due regard would be taken of the very important work already being done by existing groups relevant to particular points in the bill. For example, Resources for the Future has a long and rather commendable history of dealing with Section 202(1) and (2). The Economic Development Administration already contains an apparatus for dealing with Section 103(4) over a limited range of activities. Similarly, the Housing and Urban Development Act of 1966, Title II, Section 204, also provides for assistance grant review. The activities of the Advisory Committee for Intergovernmental Relations duplicate a variety of things in S. 3600 in somewhat more general ways. Finally, the Environmental Protection Agency is clearly involved with a number of responsibilities that would be shared by the National Growth Planning Board. If I were making any decisions in this regard, I should like to know more about the effect of the bill on these existing planning and research operations.

In Section 102(b) I am somewhat troubled by possible conflicts in stated objectives. In particular between "intelligent and balanced use of the nation's resources" and "to all underdeveloped regions". I would be equally concerned about the establishment of criteria for item 3 of that same paragraph.

I feel that there is a danger that provisions of Section 104 are sufficiently loose so that as a practical matter all that might happen is the Federal underwriting of existing state planning agencies to simply continue doing what they are doing, the only difference being that there will be a national board to iron out any glaring inconsistencies in their plans.

Section 107(a) clearly is a very critical one. Potentially it could have very great impact on the coordination and improvement of Federal policy decisions. Unfortunately, however, if "the plan" indicated in paragraph (a) is simply a set of fifty state zoning plans whether Federal agencies are operating "in accordance" with it is likely to wind up as a very murky matter. I would much prefer seeing the National Growth Planning Board having to certify that there was accordance with the national plan, subject to review by a hearing board or Congressional or Presidential specification of allowable exception.

I realize that some of the comments that I have to make cannot be dealt with very practically, but others I think might be worth more serious consideration. If you think that it would be useful to your efforts to gain passage for the bill I certainly would be pleased to make myself available for further comment or conversations with you or your staff.

Sincerely yours,

CHARLES L. LEVEN, *Director.*

HUGH DOWNS,
September 4, 1972.

Hon. VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: Many thanks for the copy of the National Growth Policy Planning Act of 1972, S. 3600. The need for planning at the national level and the proper role of the federal government in this complex matter has been recognized for sometime, but it requires the kind of action you've taken to bring into being effective machinery for mapping the nation's future. Hopefully we may see in it the seeds of some sense of direction for citizens who thirst for a quality of life and who are alarmed at the deterioration of their surroundings, the erosion of their morale, and a feeling of paralysis.

Perhaps such an agency could, in addition to coordinating proposed activities of other federal departments, make good use of the findings of some excellent Presidential Commissions appointed to study various national problems from drugs and violence to population dynamics and see to it that the excellent work done by these Commissions is not simply lost.

I have recently undertaken, as Co-Chairman of a Citizens Committee, to help bring to the attention of the public, and to keep in the attention of policy-makers, the findings and recommendations of the recently dissolved Rockefeller Commission on Population Growth and the American Future. The Commission's work was thorough and its findings and recommendations sensible and temperate, but because it dealt with some unavoidably controversial elements, and because of press inadequacies and distortions, its reception at the official level was less enthusiastic, at least publicly, than it should have been. Our hope is to correct these distortions, stimulate discussion, and proceed in relating this material to the American people in the belief that America is not unwilling to face facts about itself—that we in the long haul mature enough to look to the quality of our living in realistic terms, and to develop the ethic and the cultural attitude that will guide and support statesmen who propose needed remedial action.

If, within the life span of this Committee, we can be of help to a National Planning Board, we would be most gratified.

It is particularly impressive to see the stress in this bill on the interrelatedness of our problems and the need for holistic and synergic approaches to them. If it works as it is apparently designed to, it should serve as a model for agencies at all levels.

Yours sincerely,

HUGH DOWNS.

SUBURBAN ACTION,
White Plains, N.Y., September 12, 1973.
Senator VANCE HARTKE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HARTKE: I have just read of your bill calling for federal assistance to states for developing growth policies and plans. Would you please forward to me a copy of the bill and any other material you have introduced into the record describing the purposes of the bill. I would be particularly interested to know if the bill deals with the issue of mandating requirements for open communities in the suburbs and whether it calls for government and private corporations to be responsible for seeing that their workers will be adequately housed when these facilities are constructed by them.

Sincerely yours,
PAUL DAVIDOFF, *Director.*

SOCIAL SCIENCE RESEARCH COUNCIL,
Washington, D.C., September 5, 1972.
Hon. VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: This is in response to your request for comments on S. 3600. This bill represents a most welcome and needed initiative. The objectives of this legislation must be achieved if the United States is to get from here to the year 2000 in a satisfactory fashion.

In addition to the "Limits of Growth" which you cite—a work that is global in focus—there is a detailed analysis and a set of recommendations on growth-related problems in the United States in the Report of the Commission on Population Growth and the American Future. I am having a copy of that Report sent to you. Chapter 14, National Distribution and Migration Policies, is particularly germane to S. 3600. For a quick view, page 144 and the top of page 145 present the Commission's analysis of on this subject. The rest of the report includes analysis of resource, environmental, and governmental problems associated with growth, and recommendations for population policy to help resolve these problems.

I welcome the attention given research in the bill. We spend billions of dollars on programs affecting growth without building in scientific measures of impact or evaluation of alternatives. To be successful, growth policy must involve a continual learning process. However, Section 202 should provide a far broader charter for research than it does. Research on the impacts of governmental programs on growth, the various social, environmental, governmental, and economic problems associated with different growth patterns, and policy analysis, all are needed if the Board is to do its job. Without a broad research program of its own, the Board will lack the general knowledge it needs to evaluate and approve the specific plans submitted to it.

If you have not already done so, I believe it would be worth your while to obtain the views of:

Mrs. Sara Mazie, Task Force on Land Utilization and Urban Growth Policy, 1715 K Street, N.W., Washington, D.C. 20006.

As a research director for the Population Commission, Mrs. Mazie had primary responsibility for the analysis of growth policy issues and drafting of recommendations. I also suggest:

Dr. Peter A. Morrison, Rand Corporation, Santa Monica, California.

Dr. Jerome Pickard, Appalachian Regional Commission, 1666 Connecticut Avenue, N.W., Washington, D.C. 20235.

Dr. Morrison and Dr. Pickard were the Population Commission's principal consultants on population distribution.

Please accept my commendation and best wishes on this legislation. If I can help, let me know.

Sincerely yours,
ROBERT PARKE,
Executive Director.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., July 25, 1972.
Hon. JOHN L. MCCLELLAN,
Chairman, Committee on Government Operations, U.S. Senate.

DEAR MR. CHAIRMAN: By letter dated May 25, 1972, you requested our views concerning S. 3600, 92d Congress, which, if enacted, would be cited as the "National Growth Policy Planning Act."

Sections 106 and 204 of the bill deal with the review of growth policy plans submitted for the Board's approval by State or interstate agencies participating in the Federal grant-in-aid program. The provisions of these sections appear to be generally inconsistent and to require clarification.

Section 106 would provide that the Board, after obtaining the comments on a proposed growth policy plan from those Federal agencies having significant interest in or impact upon growth within the State or region concerned, review and approve the plan if it conforms to certain criteria stated in the bill. If the Board determined that it could not approve the plan, it would submit the plan for independent review by an ad hoc hearing board, established by the President, which would determine the plan's acceptability.

Section 204 would authorize the Board to revise a growth policy plan with regard to (1) the efficiency of the plan in achieving growth in the area involved, (2) the effect of the plan on the Nation's physical resources, and (3) the contributions which the plan would make in attaining the Nation's economic, social, and environmental goals. This section makes no provisions for independent review of the Board's determination, for obtaining the views of the State agency submitting the plan, nor for comments by interested Federal agencies.

Section 105(c)(2) enumerates certain authorities a planning agency must have in order to retain its eligibility for grants. We note that the word "must" is used in all subsections of section 105(c)(2), except subsection (b) where "may" is used. This is called to your attention in case the word "may" was used through oversight.

The bill would allow considerable discretion to the Board in the allocation of grant funds—which would be authorized annually in amounts of not more than $300 million—among State and other eligible planning agencies.

Section 108(b) would provide for the allocation of grant funds in accordance with regulations of the Board which take into consideration the amount and nature of resource base populations, the pressures resulting from growth, financial needs, and other relevant factors. The bill neither describes these factors nor states the weight to be given to each of them in making allocations to planning agencies. Also the bill does not provide for the possible reallocation of funds in the event that an eligible planning agency has not been established in a State or a State agency is unable to use the funds allocated to it by the end of the fiscal year for which the funds were allocated.

The committee may wish to clarify the conditions under which grant funds may be allocated and reallocated among States and other eligible planning agencies.

Section 110 provides for maintenance of and access to financial records of recipients of grants. The committee may wish to specifically provide for maintenance of and access to financial records of grant recipients, whether they receive such grants directly or through an agency other than the Board. Cf. section 309 of the bill.

Section 112 states that, after the end of three fiscal years following the issuance of implementing regulations by the Board, no Federal agency shall undertake any new action, or financially assist any State-administered action, which may have a substantial adverse environmental impact or seriously affect substantial growth in any area not covered by a growth plan submitted in accordance with the act. This sanction could be temporarily suspended by the President under certain conditions, provided that "a schedule for the area concerned, acceptable to the Board, is submitted." The meaning of the term "schedule for the area" is not clear and is not explained in the bill.

We suggest that the bill be amended to clarify what is meant by a "schedule for the area."

Section 304(a)(4) would authorize the Board to employ and fix compensation of such personnel as it deems advisable. The bill contains no provisions regarding the qualifications, maximum compensation or pay scales of the personnel so employed.

The committee may wish to include limitations on the Board's authority to employ personnel similar to those generally applicable to independent agencies in the executive branch of the government. If it is considered desirable to exempt the Board from the provisions governing appointments in the competitive service and the classification laws, we suggest that, as a minimum, the bill require that the Board, after consultation with the Civil Service Commission, establish uniform fair rates of pay for comparable services, giving recognition to the responsibilities and qualifications required. We suggest also that the bill provide that employees should not be paid at a rate in excess of that spefied by law for grade GS–18 and that employees be subject to the Standardized Government Travel Regulations.

Attached is a list of editorial and technical changes which the committee may wish to consider.

Sincerely yours,
R. F. KELLER,
Deputy Comptroller General
of the United States.

Enclosure.

LIST OF CHANGES

Technical and editorial changes suggested for S. 3600, 92d Congress:

On page 3, line 5, the word "and" should be inserted after "utilities,".

On page 13, line 5, a comma should be inserted after the word "shall."

On page 13, line 10, the word "representatives" probably should be "representation."

On page 22, line 20, the word "subjects" should be "projects."

On page 23, line 22, the reference to "section 203" should be to "section 303."

On page 38, line 13, the word "and" should be deleted.

ADVISORY COMMISSION ON
INTERGOVERNMENTAL RELATIONS,
Washington, D.C., June 26, 1972.
Hon. JOHN L. MCCLELLAN,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for our views on S. 3600, "To establish a national growth policy to provide for the creation of a National Growth Policy Planning Board; and to provide Federal assistance to States for growth policy planning."

The Advisory Commission on Intergovernmental Relations in its 1968 report, *Urban and Rural America: Policies for Future Growth,* called for an articulate national growth policy with the Federal, State and local governments, along with the private

sector, joining in a concerted effort to mitigate certain adverse effects of current and projected urbanization trends. In that report, the following recommendations were adopted:

To help assure the full and wise application of all governmental resources consonant with the economic and social health of both rural and urban areas and of the Nation as a whole, the Commission recommends the development of a national policy incorporating social, economic, and other considerations to guide specific decisions at the national level which affect the patterns of urban growth.

The Commission recommends that the President and the Congress assign executive responsibility for this task to an appropriate executive agency. The Commission also recommends that the Congress provide within its standing committee structure a means to assure continuing systematic review and study of the progress toward such a national policy.

The Commission further recommends that the executive and legislative branches, in the formulation of the national policy, consult with and take into account the views of State and local governments . . .

The adoption of these policy positions prompted the drafting of the proposed "Balanced Urbanization Policy and Planning Act of 1969" (H.R. 13217 and S. 3228) and the support we subsequently accorded to Title I of H.R. 16647 and S. 3640 (91st Congress, Representative Ashley and others, and Senator Sparkman, respectively).

We sanctioned Title VII of the Housing and Urban Development Act of 1970 and continue to believe that it constitutes a significant first step in launching a process at the national level that will begin to identify and grapple with the dynamics of urban growth and to hammer out the components of a conscious and concerted national policy.

The following comments are those of the staff only, although some of the discussion relates to those general policy positions of the Commission stated above:

The purposes of the bill are not inconsistent with ACIR's basic position on the need for a national growth policy. Yet, some reference might be made in Part I relating this bill to Title VII, Part A, of the Housing and Urban Development Act of 1970 which assigns certain responsibilities to the President in the development of a national growth policy. For example, S. 3600 might be amended to make clear that its purpose is to provide an institutional framework to implement Title VII of the Housing and Urban Development Act.

We are concerned that possible conflict, overlap, or duplication may occur between the planning grants proposed in Section 104 and those now being carried out in the Department of Housing and Urban Development's comprehensive planning assistance (701) program and Title V of the Public Works and Economic Development Act of 1965. A substantial amount of HUD funds have gone to States for statewide planning studies and Title V funds have been utilized by multistate regional commissions for development studies and plans of the region. The Appalachian Regional Development Act of 1965 also provides funds for State development studies and plans as well as special studies of the Appalachian region. Finally, consideration also should be given to other bills now being considered by Congress, such as the national land use policy bills introduced by Senator Jackson (S. 632), the Administration (H.R. 4432, S. 992) and Congressman Aspinall (H.R. 7211). The bill expanding the Title V regional commission program (S. 3381), introduced by Senator Montoya, also might be considered. If any of these proposals are enacted, there may be areas of possible conflict with S. 3600.

Section 105 (c), as we understand it, would require substantial legislative action in nearly all the States if they expect to retain eligibility for grants after the end of three fiscal years. We wonder if the three year period is long enough to provide for the development of the State plan and its approval by the National Growth Planning Board as well as to secure passage of implementing legislation. We are doubtful that all this can be accomplished in most States within a three year time span. The development and approval of the State plan, in most instances, would require at least two years for completion. New legislation for the designated State agency to implement the approved plan, then, would have to be enacted within the remaining year, which might be difficult to achieve within a single legislative session in a number of States. Extension of the grant eligibility period to four or five years might be more realistic.

Finally, Section 108 authorizes the Board to make grants to eligible agencies for developing growth policy plans. This authority essentially involves acceptance of the project grant approach and, as such, gives wide discretion to the Board. The absence of an apportionment formula, an interstate agency allocation formula, or even a simple proviso that no more than a certain percentage of allocated funds may be spent in any one State, tends to broaden the discretion of the Board. In short, the provisions of this section constitute a rather imprecise statement of Congressional intent.

We appreciate the opportunity to review and comment on this bill.

Sincerely,

WM. R. MACDOUGALL,
Executive Director.

STATE OF MONTANA,
OFFICE OF THE GOVERNOR,
Helena, June 23, 1972.

Hon. VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: I endorse your National Growth Policy Planning Act, S. 3600, as detailed in your communication of May 26.

As Governor of Montana, I have advocated the implementation of policies to voluntarily redistribute the population of this country. Our population is concentrated along the sea coasts and major inland waterways. And this imbalance has resulted in a terrible accumulation of environmental and social problems in these areas. At the same time the interior regions of the country, such as Montana, are suffering from problems related to a lack of economic development.

We need plans and policies and programs to assure Americans a right to a decent environment and adequate employment no matter where they happen to live in this country. And I believe your National Growth Policy Planning Act will be an essential first step in the direction of better utilization of the environment and improved economic balance between urban and rural America.

Sincerely,

FOREST H. ANDERSON,
Governor.

STATE OF CALIFORNIA,
GOVERNOR'S OFFICE,
Sacramento, June 26, 1972.

Hon. VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: Thank you for sending us a copy of S. 3600, the National Growth Policy Planning Act. It has been read and considered with interest. My principal concern about this bill is that it would provide for an activity which would appear to duplicate efforts formulated under a possible national land use act.

The emphasis of growth planning in California has been on land use as the best possible focal point. Within my executive offices, the Office of Planning and Research has broad responsibilities for advising me on environmental planning, land use and open space needs across the State. They have taken the lead in preparing an "Environmental Goals and Policy Report." In undertaking these studies, it has been found that all aspects of growth planning discussed in your legislation must be viewed from the perspective of land use. In this regard, they have been conducting a multiphase land use policy study designed to produce a series of comprehensive and specific land use policies and implementation procedures.

We have been following the various national land use legislation introduced in Congress and are pleased to see a national dialogue on this subject. We hope that out of the Congressional effort will come legislation that encourages broader State responsibilities in land use regulation and that there will be provision for growth direction, not just growth restriction or exclusion. This would be preferable to legislation creating a separate National Growth Planning Board with grant-making powers that require creation of similar semi-autonomous agencies at regional and State levels, each with such extensive authority. It would seem advisable to incorporate the growth policy approach of your bill into the land use policy legislation now under consideration.

Again, thank you for informing us about your efforts in this area and for giving us the opportunity to comment.

Sincerely,

RONALD REAGAN,
Governor.

POPULATION STUDIES PROGRAM,
DUKE UNIVERSITY,
Durham, N.C., September 6, 1972.

Senator VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: Dr. Joseph J. Spengler has passed your letter on to me and the enclosed material from the Congressional Record.

The proposed legislation goes to the heart of one of our major concerns in this country and you are to be commended for introducing it in the Congress. It is timely, enlightening and sufficiently comprehensive to achieve a major change in the ways in which we conceive of our environment. The sole reservation is the seeming lack of emphasis on the demographic base, which of course is the crux of any consideration of population distribution, economic development and national growth planning. Although we often assume that adequate research and training are provided on population distribution, composition and growth, the fact of the matter is that these concerns have been sadly neglected in our major emphasis on family planning assistance. One cannot be, nor should not be, considered without the other. The Report of the Commission on Population Growth and the American Future bears eloquent testimony to the interaction of these two factors. By no means should this be considered criticism of your proposed legislation, for I am sure that such demographic studies would be a critical input into the topics that are being considered.

A final observation would seem warranted. I would hope that any such national growth policy planning board would carefully consider and evaluate the many efforts that have gone on throughout the world in attempting to manage their environments. From my own experiences in Western Europe, I personally feel that many countries do a more sensible job in creating an adequate living space and style than we do in the United States. The lessons to be learned from these experiences would seem to be worthwhile examining, of course considering the differences in the types of situations and problems that we both are dealing with.

This legislation deserves the wholehearted support from a wide spectrum of Americans. My sincere best wishes on its successful enactment.

Sincerely,

GEORGE C. MYERS, *Director.*

STANFORD RESEARCH INSTITUTE,
Arlington, Va., August 4, 1972.

Hon. VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: I appreciate the opportunity to comment on your proposed National Growth Policy Planning Act of 1972, S. 3600. Legislation of this type is long overdue. Of course, my remarks are personal and do not reflect the position of SRI.

For too long we have permitted our national development to be the result of a series of unrelated decisions on relatively narrow problems, whether they were at a business or governmental level, without having the foresight or, for that matter, the capacity to consider the effects those decisions would have on the community as a whole. The result has been, as you point out, an imbalance in population growth, a depletion of natural resources, and physical and aesthetic pollution of our environment. A number of national polls have indicated increasing discontent with existing conditions and the projected effects of urban trends. The realm of choice for Americans among alternative environments is decreasing rather than increasing.

Some effective institutional mechanisms are required if the nation is to have a coordinated policy of growth at the national, state and local levels. A national growth planning board, such as is proposed in your bill, could become such a mechanism. However, for a national growth policy to become truly effective, the question of articulating national goals toward which a national growth policy is to be directed cannot be avoided. This set of goals cannot be a mere rhetorical statement but must be based on a careful evaluation of the values of Americans, their aspirations and hopes for the future, and the best available knowledge as to what policies are most conducive to achieving a "good" society in which each citizen can hope to obtain a sense of fulfillment and self-realization. Unless some such goals are made explicit, it may prove difficult to develop the support or motivation necessary to successfully implement a national growth policy.

There appears to be emerging a national consensus on the need to direct America's growth. This feeling is advancing at a quicker pace than the perception of our political decision-makers for such a requirement. I commend you for your early leadership in proposing the National Growth Policy Act of 1972. Those political leaders willing to launch these initiatives have an opportunity to enhance the operation of our federal system in an age of increasing interdependence and technical complexity and to address what is becoming a primary concern of our time—the need to preserve man's freedom in the determination of his future.

Should there be any way in which I could lend further assistance please let me know.

Sincerely,

CHARLES WILLIAMS,
Deputy Director, Center for the Study of Social Policy.

UNIVERSITY OF CALIFORNIA,
PUBLIC POLICY RESEARCH ORGANIZATION,
Irvine, Calif., September 12, 1972.

Senator VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: S. 3600 is long overdue. We are all so busy scrambling for a living, for more sales, for more production, for more efficiency, for more amenities. for another notch up the status ladder, that we can not take time to think about the long run consequences of what we are doing. Some of those things are downright suicidal. We MUST begin to sort those things out and begin to do something about them. The longer we wait the more painful the reckoning will be; of course, if we wait long enough, the reckoning will become impossible and our children can just jump over the cliff. Not a pretty heritage.

Sincerely,

ALEXANDER M. MOOD, *Director.*

CENTER FOR URBAN AND REGIONAL STUDIES, THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL,
September 8, 1972.

Hon. VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: Thank you for your letter of August 31 and the copy of the legislation you recently introduced, The National Growth Policy Planning Act of 1972. I was not aware of your proposal, but it is directly relevant to my interests in two ways.

First, as you probably know, the governors of the southern states, at the instigation of Governor Terry Sanford (now President of Duke University), have created the Southern Regional Growth Policies Board, an agency whose objectives and purposes are precisely those expressed in your bill. It would benefit directly from passage of this legislation.

Recently, the Board has decided to locate its headquarters in this area in the Research Triangle Park where, among other things, it can effectively utilize the resources represented by the area's four major universities. In addition, it has just selected its Executive Director, Dr. William Bowden, now President of Southwestern University at Memphis. I know Dr. Bowden would be interested in your proposal; he can be reached c/o The President's Office, Duke University.

I am also interested in your proposal because of its relevance to a paper I must prepare for the annual conference of the American Institute of Planners in Boston in October. At that conference and at its Government Relations and Planning Policy meeting in Washington in February, AIP will be developing policy positions across a wide range of national issues including organization for planning at the Federal level and National Development Policy. We will certainly give careful study to your proposal in the context of these deliberations.

Please keep me informed as action on your bill proceeds.

Sincerely yours,

JONATHAN B. HOWES, *Director.*

DILIGENT INTEREST OF SENATOR MATHIAS IN BEHALF OF PROFESSIONAL FIREFIGHTERS

Mr. SCOTT. Mr. President, the International Association of Firefighters has recently adopted a resolution commending the "diligent and constant interest" which the distinguished Senator from Maryland (Mr. MATHIAS) has exhibited in behalf of the professional firefighter. Citing the outstanding job done by Senator MATHIAS, the resolution lists his many legislative accomplishments in the interest of the professional firefighter.

I ask unanimous consent that the letter from the International Association of Firefighters and their resolution be printed in the RECORD.

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

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
Washington, D.C., August 23, 1972.

Hon. CHARLES "MAC" MATHIAS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: I would be remiss as an International Officer if I did not bring to your attention that the Fire Fighters in Maryland and Washington, D.C. made known at our recent Convention in Los Angeles the outstanding job that you have done on behalf of Fire Fighters.

Brother Al Rader, Business Agent of Local 36, I.A.F.F., AFL–CIO, Washington, D.C., Brother Ed Heckrote, President of Local 734, I.A.F.F., AFL–CIO, Baltimore, Md. and Brother Pete O'Connor, President of Local 964, I.A.F.F., AFL–CIO, Baltimore, Md., all three of these fine labor leaders from your area, expounded on the progress that has been made for the Fire Fighters in their local unions through your efforts, and I want to add my sincere thanks on behalf of these locals, as they are in my District.

Far too often Fire Fighters have found themselves without friends, but after hearing from these Local Officers, there is no doubt that the 900 delegates in Convention will never forget the name of Senator Mathias.

If there is anything that I can ever do to help you in any way, please do not hesitate to call.

With kind personal regards, I remain,

Sincerely yours,

RAYMOND M. HEMMERT,
Fourth District Vice President.

RESOLUTION HONORING THE HONORABLE CHARLES MCC. MATHIAS, JR.

Whereas: The Honorable Charles McC. Mathias, Jr., Senior U.S. Senator from the State of Maryland, has during his term of office, exhibited diligent and constant interest in his support of the professional fire fighter, and,

Whereas: He is the author of an excellent article titled "Fire Fighter on Capitol Hill" (5 pages) appearing in the current issue of the "Journal of Insurance" which vividly depicts the potential of fire and its inherent hazards of death and injuries to fire fighters and the citizenry of the United States and Canada: also the inadequacy of protective clothing and equipment, masks, etc., available to the profession today, and

Whereas: He has cooperated, to the fullest, with the Legislative Department of the I.A.F.F., whenever called upon, and

Whereas: He has sponsored and/or promoted legislation in the interest of the professional fire fighter, that would:

Create a National Fire Academy to serve as a National center for fire research and education.

Authorize $75 million for fire research and safety programs over the next three fiscal years.

Authorize the Commerce Department to pay 90% of the cost of training, and up to 90% of Fire Science Programs.

Provide aid of up to 90% of the total cost, so local fire departments can purchase new fire fighting equipment.

Establish a National Fire Data and Information Clearing House, within the National Bureau of Standards.

Amend the Hazardous Materials Transportation Control Act of 1970 to require the placarding of certain vehicles transporting hazardous materials in interstate commerce.

Amend the Flammable Fabrics Act to extend its provisions to construction materials used in the interior of homes, offices and other places of assembly or accommodation, and additionally authorize establishing of toxicity standards.

Whereas: The enactment of this legislation would redound to the best firemanic interests

of all I.A.F.F. members in the United States and Canada, therefore be it,

Resolved: That the delegates duly convened in the 31st convention in Los Angeles, California, August 14–19, 1972, express their recognition of the talents and attainments of this outstanding benefactor, exercised in behalf of the professional fire fighter, and be it further,

Resolved: That the International Association of Fire Fighters, through its principal officers, present to Senator Mathias an appropriate memento, including a copy of this resolution, as a token of our sincere appreciation.

OPERATION TOPSY

Mr. FULBRIGHT. Mr. President, the late 1950's and early 1960's witnessed a sharp expansion in the spread of American officialdom overseas. Much of the expansion occurred as a result of increases in the foreign aid program and the implementation of it by sending more and more American advisers to the four corners of the earth.

Throughout that period Brazil was often cited as a prime example of the expanded American presence abroad and there was a rather popular story about it that served to illustrate how ridiculous the situation actually was. The story had it that during the ambassadorship of Ellis Briggs, the State Department decided the Embassy in Rio needed a science attaché. Upon learning of this decision and faced with an Embassy which was already overstaffed, the Ambassador reportedly wired back to Washington these memorable lines:

The American Embassy in Rio de Janeiro needs a science attaché the way a cigar-store Indian needs a brassiere.

Neither the Ambassador's judgment nor his prose served to reverse the Department's decision. The Embassy got a science attaché.

Mr. President, I suppose this story was passed on to John Tuthill by the time he assumed the post of U.S. Ambassador to Brazil in 1966. To his credit, however, he chose to disregard the outcome. Rather, he moved in the opposite direction and during his tenure in Brazil, was able to reduce the size of the Embassy staff by some 200 employees. Since his departure, 200 additional employees have been taken off the Embassy's rolls and the official U.S. presence in Brazil currently stands at about 500, excluding Peace Corps volunteers.

While it is inconceivable to me that even this number can be justified, I recognize that considerable progress has been made in this particular case and that much credit is due to the efforts of Ambassador Tuthill and Mr. Frank Carlucci, who at that time served as the Embassy's executive officer.

The initial reduction in force that took place in Brazil occurred as the result of Operation Topsy and many of the details which surrounded it are contained in an article by the same name appearing in the fall issue of Foreign Policy. The article was written by Ambassador Tuthill, thus affording a firsthand description of the problems which he encountered and overcame to bring about a significant reduction in the number of Americans stationed in Brazil.

At the outset of the article, Ambassador Tuthill identifies the reason for the reduction:

Operation Topsy came about because of a political judgment.

And he explains the basis for such a judgment in these terms:

By 1966, in almost every Brazilian office involved in administering unpopular tax, wage or price decisions, there was the ubiquitous American adviser. Brazilians were at first grateful for the U.S. support. Then followed a brief period of virtual indifference which soon turned to annoyance at the presence of U.S. officials throughout an increasingly unpopular government.

The association of the U.S. government in the formulation and administration of these policies was so close that criticisms of the government involved criticisms of the United States as well. Critics invariably linked the U.S. government to the Brazilian government in attacks upon developments in Brazil.

It seemed evident, therefore, that the U.S. government was overextended, especially in AID. It was also overextended in the military field, where the military advisory group had billowed up to about 150 officers and men. Here was an area which was even more sensitive politically because U.S. military aid seemed to indicate support for the military regime as such. . . .

Mr. President, following up the Ambassador's rather pointed comments on the size of the military advisory group, I should also like to quote from that portion of the article which relates the military's response to "Operation Topsy." Ambassador Tuthill writes:

Perhaps the most interesting reaction was that of the Military Assistance Advisory Group. The Commanding General immediately announced that the military group had already been cut down to mere "bone and muscle." He stated that there was "no fat" in his organization of 150 officers and men. When faced with the requirement of describing which parts of his mission would have to be cut to accommodate a 50 percent reduction in personnel, he prepared an interesting memorandum—designed, no doubt, to demonstrate that some of the prerequisites of an Ambassador would disappear with the reduction in personnel. Specifically, he said that with such a cut in personnel, three of the four military planes assigned to Brazil would have to be withdrawn, hangar space would have to be given up, the PX and APO would have to be closed, and that, in addition, office space supplied by the Ministry of Defense for his group would have to be given up. I could not believe my eyes. I assured the General orally that I did not need one—let alone four—military planes. The commercial Brazilian lines were perfectly adequate. Obviously, if we gave up planes we would give up hangar space. As for the PX, I have never visited it, had no intention of doing so and was quite prepared to see it closed. The APO presented more of a problem because of the delays and uncertainties of the Brazilian postal system. However, if it had to go, in order to make the overall program a success, other arrangements could be made. The State Department pouch, while slow and cumbersome, could be used to replace certain types of mail. In any event, the General had demonstrated convincingly that the military aid mission could be substantially reduced.

Mr. President, I am convinced that many of the conditions cited by Ambassador Tuthill exist throughout the overseas Federal bureaucracy. Earlier this year the Committee on Foreign Relations called attention to this situation and recommended the following action, first, a 10-percent reduction in Government personnel stationed overseas, and second, a fixed ceiling on the number of State Department personnel abroad. I very much regret that the Senate rejected this recommendation, and I suspect that it did so, not because of the merits of the issue, but because of the various and sundry pressures exerted on members by the Federal bureaucracy. In contrast to this decision by the Senate, the Tuthill article is encouraging. It proves that it is possible to reduce our overseas presence to more realistic and manageable levels.

I strongly recommend the article to the Senate, and I ask unanimous consent that it be printed in the RECORD together with an excerpt from the committee's report on the Foreign Relations Authorization Act of 1972.

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

EXCERPT FROM THE FOREIGN RELATIONS AUTHORIZATION ACT OF 1972, SENATE REPORT 92–754, pages 68–69

SECTION 504 PERSONNEL REDUCTION

This section requires that by June 30, 1973, the total number of U.S. government personnel assigned abroad, other than personnel of the Department of State (including reimbursable personnel carried on the Department's rolls), members of the Armed Forces not assigned as attaches or to military aid activities and volunteers in the Peace Corps, be reduced by at least ten percent from the current levels. In addition, the amendment places a worldwide ceiling of 6,000 on the number of State Department personnel (including reimbursable personnel assigned to the Department) who can be stationed overseas at any one time.

According to the recent information available to the Committee, there are some 26,000 U.S. personnel overseas under the jurisdiction of diplomatic mission chiefs. Of this total, State Department personnel engaged in regular Department related activities number 3,409 or about 13 percent. If to this total are added those carried on the Department's rolls as reimbursable personnel, those whose duties actually are in behalf of other agencies such as A.I.D., U.S. Information Agency, and others, the State Department total increases to 5,809—but even this amount represents only 22 percent of the total.

By comparison there were:

5,047 AID personnel;

4,650 Defense Department personnel (excluding members of the Armed Forces);

8,372 Peace Corps personnel;

1,069 USIA personnel;

1,527 other Executive Branch personnel including Justice, Agriculture, Commerce, HEW, NASA and EXIM Bank.

In other words, for every State Department employee overseas there are four more employees from other government agencies. This situation indicates that our overseas missions have developed into miniature foreign policy establishments, drawn along the lines of Washington itself. Those Executive Branch agencies (other than State) which have a foreign-policy input in Washington—ranging from the Department of Defense to the Department of Agriculture—also have their representatives overseas, the only difference being that the representation is on a smaller scale.

This provision would begin to reverse this situation and start to reduce the number of government employees overseas to a more manageable level, while at the same time enhancing the power of the State Department to regain better control over our missions abroad.

This mandatory reduction reflects the Committee's concern over the proliferation of government personnel abroad. It recognizes that some reductions have been made in the last several years, but believes that substantially greater reductions could be made which result in the more efficient and effective conduct of foreign affairs. This reduction should also have a favorable impact on the government's fiscal condition and our balance of payments problem.

The Committee views the ten percent reduction required as a minimum figure and expects that serious efforts will be made to reduce the overseas bureaucracy much further. The Committee will follow the implementation of this directive closely and expect to give careful study to the results during its consideration for authorization legislation for FY 1974. In addition, the Committee will expect the Department of State to provide a detailed justification in the FY 1974 presentation material for all U.S. personnel in each U.S. mission abroad to which 50 or more Americans are assigned.

OPERATION TOPSY

(By John W. Tuthill)

Operation Topsy resulted in considerable budgetary and balance-of-payments advantage for the U.S. government. These benefits, however, were not the basic reason for its being. Operation Topsy came about because of a political judgment.

U.S. government personnel in Brazil had increased steadily since the spring of 1964, when the corrupt and ineffective Goulart regime was overthrown and General Castelo Branco was proclaimed President af Brazil. By mid-1966, there were 920 U.S. citizens, plus about a thousand Brazilian employees in the American mission.

This number did not include the 510 Peace Corps volunteers. While Operation Topsy was to involve all major U.S. government agency operations in Brazil including the professional staff of the Peace Corps, it did not include the volunteers. This was the only important exception to the cut in personnel, and it was based upon my conviction that a huge country like Brazil could easily absorb several hundred Peace Corps volunteers, who were engaged in useful work, often in remote parts of Brazil.

Castelo Branco, who was put in office by the military, nevertheless was an extraordinary head of government. Intelligent, trained to public service and of unquestioned integrity, his interest was to bring his country out of the disorder, the lack of growth, and the corruption that had existed during the immediately preceding years of the Quadros and Goulart regimes.

After years of corruption, drift and inflation (at rates up to and above 100 percent a year) the American government welcomed with enthusiasm—some thought with *excessive* enthusiasm—the Castelo Branco government. The result was a staggering expansion of the role and personnel of the American government between 1964 and 1966.

The U.S. government assured Castelo Branco of a very considerable increase in economic aid along the lines of the Alliance for Progress. Previously, U.S. aid had pretty much been limited to local "islands", within Brazil, in an effort to be of help to the Brazilian people, but at the same time, to avoid giving support to a corrupt and inefficient government. In addition—and this of course was more controversial—the U.S. government agreed to increase its military aid and implicitly to increase the number of military advisers in Brazil.

Like most governments, the U.S. government is hard to move. However, once the governmental mass begins to move, it is extremely difficult to change its direction. It is also almost impossible to prevent bureaucratic interests from exploiting any opportunity to increase personnel.

Brazil, during that period, represented an almost perfect example of the lack of management policy in U.S. government operations abroad. It would be wrong to assume that in the United States there is any overall political plan in deciding who should be sent to a country like Brazil, and what he should do. Appropriations for the Departments of Defense, State, CIA, U.S.A.I.D. and the U.S. Information Agency are all handled independently in a wild scramble for funds. It would be sheer dumb chance if these uncoordinated requests for government funds by independent departments and agencies resulted in a rational and comprehensive assignment of personnel to a country.

The staffing of Brazil in 1966 illustrates in textbook fashion what is wrong with our system of assigning personnel abroad and the appropriation of funds to various departments and independent agencies. Once the basic political decision to support the government of Brazil was made, the various agencies and departments, and individuals, who had always yearned to live in Brazil, joined the bandwagon. The bandwagon became overloaded.

It did not take much perception to note this in 1966. My first reaction to this situation was to start seeking ways and means to reduce the size of the U.S. Mission, which had 430 AID employees, over 200 military officers and men, and large CIA, U.S.I.S. and other contingents in Brazil. I decided, as a starter, to look for the most ineffectual man in the most useless position in the Mission.

THE LEAST USEFUL FELLA

There could have been no more naive approach than this. After consultation with various colleagues who had served longer in Brazil than I, we decided upon a particular individual in a position which, if it had any reason at all for existing, could easily have been filled—and better filled—by a Brazilian. We checked both the ineffectiveness of the man and the usefulness of the position in a number of ways, and then made the decision that this position should be removed and the man should go elsewhere.

The occupant of the position, who had been in Brazil for 15 years or more, did not want to leave. His wife and children did not want to leave. His boss did not want him to leave. The offices in Washington who received his reports and whose existence depended—at least in part—upon this flow of bits and pieces, did not want him to leave. A long process began.

I do not know exactly how much time and effort this "personnel action" required. I do know that Frank Carlucci, the Executive Officer of the Embassy, and I spent hours on this subject in an effort (1) to obtain approval from Washington to eliminate the job and (2) to be fair to a perfectly decent individual. In any event, six to twelve months went by before we triumphed by the elimination of the position (as one to be filled by an American) and the departure of the individual for his homeland.

I decided that this was not a good way to go about reducing staff.

My main objection to the size of the staff was political. I had in mind not simply the question of the "American presence," although obviously this was an adverse element. My concern went deeper.

When the Castelo Branco government came into power, it initiated sweeping reforms, not only of policies, but of personnel. While the government was fortunate enough to attract a considerable number of excellent technicians, there were grave shortages of personnel qualified to handle the difficult economic and financial problems, which faced the government. At the same time, the U.S.A.I.D. program, which had been modest, increased to about $300 million per year. With the increase came American personnel.

The result was that, by 1966, in almost every Brazilian office involved in administering unpopular tax, wage or price decisions, there was the ubiquitous American adviser. Brazilians were at first grateful for the U.S. support. Then followed a brief period of virtual indifference which soon turned to annoyance at the presence of U.S. officials throughout an increasingly unpopular government.

The association of the U.S. government in the formulation and administration of these policies was so close that criticisms of the government involved criticisms of the United States as well. Critics invariably linked the U.S. government to the Brazilian government in attacks upon developments in Brazil.

It seemed evident therefore, that the U.S. government was overextended, especially in AID. It was also overextended in the military field, where the military advisory group had billowed up to about 150 officers and men. Here was an area which was even more sensitive politically because U.S. military aid seemed to indicate support for the military regime as such, rather than support of a government which was simply doing sensible things.

I think it fair to say that Castelo Branco associated his government excessively with the U.S. government in the public mind. In his public pronouncements, he gave not only credit but solid support and sometimes even praise for the U.S. government. His Foreign Minister publicly stated that "what is good for the United States is good for Brazil."

This was too much of a good thing. It tended, in the public image, to give Brazil a political dependence on the United States which exaggerated the reality of the relationship.

ENTER COSTA E SILVA

Castelo Branco was a nationalist in the sense that his efforts were wholeheartedly aimed at creating a stronger and independent Brazil. He was not, however, a nationalist in a cheap jingo sense. Yet, despite his firm political control, a growing nationalism in Brazil was evident. This lay below the surface but became clearly visible to all after Castelo turned over the presidency to another general in the spring of 1967.

The new President, Costa e Silva, was the next senior military man in Brazil, which apparently seemed sufficient reason to the military—who decide such things in Brazil—to make him President. In many ways, Costa e Silva reflected the military, and some of the non-military, better than Castelo. In his public pronouncements, as well as in his private statements, he made it quite clear that Brazil would find its own way and that it would resist any actions by other governments—which essentially meant the United States—when they infringed upon its rights and authority. Costa e Silva reversed Castelo's tendency to exaggerate the American role. He clearly intended to understate the American role.

As Costa e Silva and members of his government (especially the military) gave voice to nationalistic sentiments, I made sure that these were reported in detail to Washington. The U.S. government was made to realize that it was dealing with a regime with a different orientation than that of Castelo. The stage was set by the summer of 1967 for a basic reappraisal of U.S. government operations in Brazil.

Recalling the time and effort involved in the "reduction in force" of one government employee the year before, it seemed to me that a more drastic and sweeping solution was required. Accordingly, I drafted a telegram to Washington pointing out (1) the nationalistic orientation of the Costa e Silva regime, (2) the fact that the ubiquitous American official in Brazil had become a spe-

cial irritant, and (3) the irrational expansion of the American mission that had taken place since the inauguration of the Castelo government.

THE SHOCK TREATMENT

I argued, on political grounds, that the U.S. government organization in Brazil required drastic change: that the U.S. government should continue a substantial—if somewhat changed—economic aid program in Brazil but that the time had ended for the bulk of American advisers spread all over the country. I requested authority to insist that the head of every U.S. government department or agency operating in Brazil be required to advise me exactly what operations he would have to give up, if he was faced with a 50 percent reduction in personnel. I stated that I doubted that a full 50 percent reduction would be required and did not favor an across the board reduction by this or any other arbitrary percentage. However, I did wish, by *shock treatment*, to insist that the military and civilian heads of various departments of the Embassy be forced to reappraise their operations. The possibility of a 50 percent reduction, like the sight of the gallows, would clarify the mind.

At a meeting of the "country team," a draft copy of my proposed message to Washington was circulated. The general reaction was one of despair. Only in one case, where the head of an agency (John Mowinckel, head of U.S.I.S.) had recently arrived and had been appalled at the number of personnel under his supervision, did I receive any support. I told the members of the country team that I would not send the message to Washington until after 48 hours' consideration, during which time I would welcome their suggestions. I made it quite clear, however, that I would decide whether to send this or some revised message.

While the first reaction of the heads of various sections of the Embassy was generally unfavorable, the opposition increased after consultation with staffs and wives. After 48 hours, I reviewed the comments by members of the country team and rejected practically all of them. The message went out—with a few grammatical corrections—essentially the way I had originally drafted it.

In more than a quarter of a century in the U.S. government, I have sent many messages to Washington, most of which have not only not been answered, but have not created as much as a ripple. In the case of this message, I received a reply from Secretary of State Dean Rusk within 48 hours. He said, in effect, "go ahead." Subsequently, in Washington, Secretary Rusk told me that the effort to make some sense out of the U.S. government organization in Brazil, if necessary by a reduction of up to 50 percent in the various agencies and departments operating in Brazil, had not only his support but the support of the "entire cabinet and one man above the cabinet."

Before describing the events which led to a 32 percent personnel reduction, it is perhaps useful to describe the reactions of the heads of the various agencies and departments in Brazil and their supporting offices in Washington.

Of the roughly one-thousand government employees in Brazil, about 40 percent were involved in the AID program. Another 22 percent were military, being primarily the Military Advisory Assistance Group and, to a lesser extent, the Military Attachés. The balance of about 20 percent consisted of State Department, U.S.I.S., CIA, plus miscellaneous smaller numbers from the Treasury Department, Department of Interior and miscellaneous offices. The Military also included various military research or scientific groups established in Brazil outside of the Military Advisory Group and the Military Attachés. These groups handled the exchange of scientific information and research personnel on a regional basis.

Perhaps the most interesting reaction was that of the Military Assistance Advisory Group. The Commanding General immediately announced that the military group had already been cut down to mere "bone and muscle." He stated that there was "no fat" in his organization of 150 officers and men. When faced with the requirement of describing which parts of his mission would have to be cut to accommodate a 50 percent reduction in personnel, he prepared an interesting memorandum—designed, no doubt, to demonstrate that some of the perquisites of an Ambassador would disappear with the reduction in personnel. Specifically, he said that with such a cut in personnel, three of the four military planes assigned to Brazil would have to be withdrawn, hangar space would have to be given up, the PX and the APO would have to be closed, and that, in addition, office space supplied by the Ministry of Defense for his group would have to be given up. I could not believe my eyes. I assured the General orally that I did not need one—let alone four—military planes. The commercial Brazilian lines were perfectly adequate. Obviously, if we gave up planes we would give up hangar space. As for the PX, I had never visited it, had no intention of doing so and was quite prepared to see it closed. The APO presented more of a problem because of the delays and uncertainties of the Brazilian postal system. However, if it had to go, in order to make the over-all program a success, other arrangements could be made. The State Department pouch, while slow and cumbersome, could be used to replace certain types of mail. In any event, the General had demonstrated convincingly that the military aid mission could be substantially reduced.

The Military Attaché's office presented a different problem. A Military Attaché need not be simply decorative. I am aware that one of my fellow Ambassadors (a lady Ambassador) in Europe, several years before, had described what she wanted in terms of a Military attaché, in terms of height, amount of grey hair and a number of decorations. She was obviously thinking entirely in terms of representational activities. The fact is, that a Military Attaché—or rather I should say certain Military Attaché, be they Army, Navy or Air—can be useful. What is essential, however, is that they not only be competent regarding defense intelligence, but that they also be attuned to political aspects of military problems. In Brazil, I had the good fortune of having a Military Attaché (Major General Vernon A. Walters, now Deputy Director of CIA), who had served as liaison officer with the Brazilian army in Italy during World War II. He was not only on intimate terms with the Brazilian military but also had finely tuned antennae for political problems as well. Furthermore, he was able to distinguish between purely military problems and political issues. He was an invaluable member of the country team. He was a participant in all discussions of substantive policy issues. While I frequently disagreed with his political judgment, I valued his intelligence and respected his integrity.

Military assistance groups and special research groups presented additional problems. I was quite aware that a certain amount of liaison is necessary in terms of tank, aircraft, naval tactics plus a certain amount of contact on various research projects. But I objected very strongly to the belief that this liaison function required large numbers of U.S. military permanently located in Brazil. I felt that it would be much more effective—and also much more economical—to have experts come to Brazil from time to time to discuss these problems or to have Brazilian experts visit the United States in order to discuss the issues with U.S. experts. A Brazilian officer interested in tank tactics would obviously learn more in a short period of time in a specialized U.S. headquarters than through day to day contact with one officer, or several officers, stationed in Brazil. The same theory ran throughout my attitude towards personnel permanently located in the country. In effect, U.S. operations abroad could and should be adjusted to the jet age rather than to the era of sailing ships.

AND THEN THE CIA

The CIA "station chief" expressed sympathy for reduction in the American establishment in Brazil, but not the CIA contingent. I pointed out that if the entire rest of the establishment were to be reduced by something between 25 percent and 50 percent, with the CIA establishment remaining unchanged, obviously this would alter upward the percentage of CIA employees in Brazil and presumably would increase the relative responsibility of the CIA in Brazil. I stated that I was prepared to hear any argument designed to demonstrate that the CIA required a larger proportion of U.S. personnel in Brazil and that the CIA should have a larger policy role in Brazil.

Going to the substance of the matter, I questioned the need for the then current size of the CIA establishment in Brazil. Again, like the Military Attachés, a few good CIA men can be extremely helpful to an Ambassador in a country such as Brazil. Governments for centuries have sent intelligence officers abroad. The existence of the CIA, Le Deuxiéme Bureau, the British Intelligence is no secret. Intelligence officers assigned abroad are presumably officially known and assigned to collaborate with the intelligence agency in the foreign capital.

I am in favor of such assignments. The conspiracies of the twentieth century are, for the most part, international in nature. The U.S. intelligence services and the intelligence services of friendly countries should be in close and intimate contact exchanging information on movement, plans and objectives of the various conspiracies actual or potential.

A question sometimes arises, however, as to the scope of their activities. As the late John F. Campbell described so eloquently in his book *The Foreign Affairs Fudge Factory*, one of the most worrisome aspects of CIA operations abroad is "recruiting." Very substantial risks are taken—in terms of the U.S. political posture in the various countries—for a very questionable and small possible gain. In certain countries, there probably are real advantages in having paid agents. The advantages of such arrangements, however, appear to be much less than its advocates proclaim.

This can become a kind of infection in intelligence services. They should not be left to themselves. There should be a clear reason, in the eyes of the Ambassador, as to the areas in which the CIA is engaged in recruiting.

In any event, it was finally made clear that any reduction in force would include the CIA. Furthermore, arrangements were made to assure that, despite the existence of separate channels of communications, all messages involving interpretations of Brazilian developments or political judgments would be shown to me or my representative *before* being sent to Washington. This included both CIA and Defense.

ON TO AID

My first draft telegram was greeted by the AID Director in Brazil with silence. There was never any explicit opposition; nor was there any expression of support. Nevertheless, the AID Director played the game. By the time I left in January 1949, the AID mission had been reduced by almost 30 percent. In the details of the negotiations as to where that cut would be made, the individual section heads in the AID mission argued vigorously against cuts and for their personnel.

Cutting AID was technically easier than cutting the other sections of the Embassy. A large percentage of the AID personnel were "contract personnel," not regular government employees. Instead, they were hired on a contract (usually two years) for a specific job. It was extremely difficult to supervise such hiring in Washington. While some of the contract employees turned out to be extremely useful, many were hopeless misfits when serving abroad. Linguistic, climatic and cultural differences were so great that in many cases such people became a burden to the administration of the AID program and the administration of the Embassy, without making an important contribution. In any event, it was relatively easy to reduce the number of such people by simply assuring that their contracts would not be renewed when they expired.

One of the largest cuts of the AID mission was in agriculture. As I recall, there were some 148 American employees in that section. The head of this section resisted any reduction.

Later, when the agricultural section had been reduced to 86, I heard the same man explain to a Washington visitor that the agricultural section of AID was much more effective with the reduced number of personnel. I listened to this explanation with great interest. Afterwards, I asked him why he had resisted the reduction so vigorously. He said that he had known all along that a large number of his technicians were useless. However, he did not have the heart to send them home when many of them were enjoying their stay in Brazil. However, once the decision had been made and *someone else* was prepared to be labeled the "son of a bitch" who had made the decision, then he could proceed effectively. I told him I was delighted to play that role.

Still later, after a change of the head of the AID mission, the new mission chief told me that I had still not cut the agricultural section of the AID mission sufficiently. He said that most of the people left were technicians of limited value on policy issues. He was sure that with the change in orientation of the AID program he could do more effective work with six or seven agricultural economists, with broad policy orientation, than with the 80 or so on hand. I admitted to him that I had not gone far enough and suggested that he might wish to go further. Subsequently, I believe he did, but unfortunately he had to proceed on a piecemeal basis which was more difficult.

The State Department presented special problems. While the State Department only contributed between 10 percent and 15 percent of the total personnel in Brazil, it was supposed to handle both central administrative issues, man the consulates and shape over-all policy. It was clear, however, that as a State Department employee, I could not exclude my own Department. State Department was included. There were several ways of doing this.

One obvious way—although not so obvious to some—was to reduce the size of American consulates scattered around Brazil. These consulates were by and large self-contained. They had their own administrative staffs, hired office space, local employees, direct communications with the Department, and so on. They were little feudal kingdoms.

What we wanted from the consulates, was contact with the local Brazilian authorities and participation in the major policy operations of the U.S. government in Brazil. I found that their participation basis U.S. policy was limited. I must admit that I was conditioned by a remark of a Consul years earlier, who had said to me "Tuthill, if the American government had a consulate situated in the middle of the Sahara desert, the Consul could be busy eight hours a day, six days a week, just responding to administrative inquiries from the U.S. government."

There seemed to be a way to correct this. Basically, I took an idea which I understood had been used in a preliminary form in Mexico. I suggested that the American Consul in various posts should be taken off the State Department mailing list. This would relieve him of administrative work, paying of locals, hiring, renting office space, etc. All administrative matters, including his pay, could be handled through the Embassy in Rio. The Consul would visit Rio more frequently, he would get instructions from the Ambassador and members of his staff, and he would in turn be expected, within his consular district, to represent State, AIM, U.S.I.S. and the Military Assistance Program. Naturally, this required some changes in personnel.

With these changes, we initiated a system whereby a two or three man office could be reduced to one man—that is one American official, who would rent a living place for himself and his family, hire a local secretary, and a chauffeur who was also a jack-of-all-trades. His office space would be negligible, his participation in basic operations substantial. This was initiated at a couple of consulates.

I decided to close one consulate altogether. I was told that the Governor of the state and the Mayor of the city would take this as a slight. I visited them and found that they were hardly aware that we had a Consul in their capital. They were quite content to let the U.S.I.S. library represent American interests.

Some other reductions in State Department personnel were possible within the Embassy itself. The administrative section was reduced as were the political and economic sections. Futhermore, the Executive Officer position at the Embassy was abolished. This was an interesting decision because the Executive Officer—Frank Carlucci [1]—was in effect my Executive Officer for the whole Topsy exercise. He was the one who worked out the details, gave me the hard analysis and hammered out the decisions. At an early stage, he decided that his own job could be abolished, provided that the Ambassador and the Deputy Chief of Mission did a little more work themselves. I agreed and his job disappeared.

There were one or two areas which I did not question. The Treasury Department had two officers and a secretary, all of whom were doing exceedingly useful work. They were left unchanged. The Department of Interior had a Minerals Attaché who seemed of doubtful value in terms of the essential work of the Embassy. It appeared evident, however, that the Department of Interior was prepared to put up a defense in depth in order to retain this position. I decided that it was better to aim at the huge targets—AID, U.S.I.S., CIA, Defense, State—than to waste time and energy in an effort to eliminate one man.

One other job involving the U.S. government in Brazil did not seem to come within my authority, namely that of the representative of the Library of Congress. I suppose he was doing useful work. In any event, it seemed to me that, unless I was prepared to take on the entire U.S. Congress, I would be well advised to avoid this particular issue. I suppose he is still there—collecting books, I presume.

In order to convert the general plan into a specific proposal, I suggested the formation of a working party. The members of the working party would be selected from the major agencies and departments in Washington. Each member would be chosen or approved by me. I only wanted persons who agreed with the general thesis that, because of growing nationalism in Brazil, the United States needed to establish some priority in its interests and to structure the American government organization in Brazil along lines designed to achieve these policy objectives. In other words, I wanted to reverse the process which had led to the Topsy-like structure, which no one, in a sober moment, could conceivably defend as being properly designed to meet U.S. interests.

[1] Carlucci subsequently became Director of the Office of Economic Opportunity, and is presently Deputy Director of the Office of Management and Budget.

BACK TO WASHINGTON

It was important to recognize that the buildup of personnel in any foreign country stems, to a considerable extent, from vested interests in the government departments and agencies in Washington. Hundreds of people at various jobs in Washington depend for their very existence on a flow of information back and forth from embassies abroad. Presumably, this information is of interest to them. My experience is, however, that the largest quantity of it is of peripheral interest to the Ambassador and to the people concerned with policy issues.

I thought it best to go to Washington myself for the selection of the working group which I wanted to have in Brazil for a period of five or six weeks. The selection was excellent. In each case, the department or agency clearly understood the significance of the Cabinet decision to reduce personnel and sent me a good man.

I was most anxious to keep up the momentum and insisted that the working party, or task force, be assembled as quickly as possible. This was done, and within a matter of weeks, work had begun on details of the exercise. We started with the question which was put to the head of every section of the Embassy and to every group working in Brazil. Faced with a 50 percent cut in personnel, what functions would have to be dropped?

In retrospect, it probably would have been better had we kept to our original scenario, namely that first one should describe, in general terms, the reasons for an Embassy in Brazil and the establishment of some order of priorities. It became evident, however, that if the carefully selected task force started writing theoretical papers, time would be consumed and personnel would remain at their posts. Accordingly, somewhat reluctantly, I decided to limit the analysis by the task force to questions of efficiency rather than involving them in an exercise on changed directives.

I was, and remain, convinced that increased travel between Brazil and the United States could take care of most of the technical advisory work of the military group. As for the work on general strategy, the effective point of contact for the Brazilian Military is the U.S. Joint Chiefs of Staff, not the personnel of the military group. Accordingly, occasional meetings between the head military planners in Brazil and representatives of the Chiefs of Staff would seem to fill this requirement. Nevertheless, I decided to skip this broad issue and merely to cut the less useful military personnel.

As for U.S.I.S., State Department and CIA, as indicated above, there were no further difficulties. Fairly substantial cuts were made in each of these organizations without any damage to their effectiveness. On the contrary, I am convinced that in every case effectiveness was increased by the reduction.

Once the recommendations of the task force had been sent to Washington, the game was up. While there was a review of our recommendations in Washington, not a single one was altered, as I recall.

Briefly, what we had recommended was a reduction by June 1969 of about 32 percent of total personnel assigned on duty in Brazil. This would mean that about 306 American employees would be returned to the United States—or elsewhere. Throughout the exercise, I pointed out that I did not want a crash program. I wanted personnel to be phased out to the extent possible as their assignments terminated. I did this both for efficiency and the welfare of the individuals concerned. Ac-

cordingly, we set two targets for the reduction—the first target June 30, 1968 and the second and final target June 30, 1969. When I left Brazil in January 1969, over 200 personnel had actually left Brazil. It was quite clear that the final target could be reached by the June 30, 1969 date.

A word seems appropriate as to Washington reactions beneath the Cabinet level. In the State Department I had nothing but solid support from Under Secretary of State Nicholas Katzenbach, and the Deputy Under Secretary in charge of administration, and the officer in charge of Brazilian affairs. During the exercise, when I needed support from State, I got it.

In other departments there certainly were more misgivings, AID, U.S.I.S., Defense and others were less involved in basic U.S. policies and were less convinced by the rationale behind the whole plan. In the face of a sweeping proposal with Cabinet approval, however, they grumbled but were unable to do anything about it.

There was serious unhappiness in AID. The AID agency is always faced with the problem of annual appropriations and justification for its programs. The Congress or, I should say, certain members of the Congress, are only too anxious to hear criticisms of the program, especially if it involves excessive personnel or poor projects. Accordingly, I happened to please some members in Congress whom I would not normally have been interested in pleasing. At the same time I made life more difficult for some members of AID than I would have wished.

A contributing factor to this unhappiness was the way the matter was handled by the press. It become known that a drastic reduction was under way. The press besieged me and other members of my staff for information.

After the decision had been made to achieve the cut, a lawyer working in the AID mission in Brazil presented me with a framed instruction (unclassified) from the U.S. government. I hung it on the wall in my office where various newspaper reporters saw it. The instruction was one from Washington, which was entitled "Rats, bats and noxious birds." The AID instruction pointed out that there was destruction of food crops in various countries from these creatures and suggested ways and means by which technicians could consider trying to get this under control. The AID lawyer who gave me the framed report felt that not only was the title amusing but that perhaps it illustrated the type of instruction from Washington which I was opposed to.

The reporters, who only became aware of the program after the amusingly titled instruction had been framed, came to the conclusion that it was this message that precipitated Operation Topsy. This was incorrect. I had never heard of this instruction until after the decision for the cut had been made and spelled out in detail. Furthermore, I must confess that there is justification for technicians exchanging information on ways and means to stop the ruining of crops by "rats, bats and noxious birds." In any event, I could appreciate the irritation of the AID Director who was about to go before the Congress to ask for new funds when there was publicity on that one particular instruction from his agency.

MANY "TOPSYS"?

After the plan had been spelled out in detail and had been approved by Washington, I was invited to participate in a meeting held at the Under Secretary level to discuss the possible applicability of this plan in other embassies. Members of the Interdepartmental Committee asked a number of searching questions. Some, however, were not too brilliant. The deputy head of one of the major agencies turned to me and said "It's all right, Mr. Ambassador, for you to send these people back to Washington, but what are we to do with them here?" I suggested that that was his problem, not mine.

The discussion, however, ranged over the possible applicability of the plan elsewhere. I agreed with the Under Secretary of State that (1) our staffs throughout the world are excessively large; (2) that they are organized on the basis of the capricious decisions as to appropriations from the Congress, and (3) that something should be done about it. I warned, however, against the assumption that all missions everywhere should take a cut and, if so, one in the same proportion. I even went so far as to say that there might well be certain missions—certainly not many—where there could appropriately be an increase in personnel. I argued against an across-the-board cut.

I did, however, argue vigorously for an instruction to all ambassadors to make a hard appraisal of the operations of the U.S. government in the country to which they were accredited, together with the assumption that probably there were too many people and many of them were doing wrong or unnecessary things.

This concept is basic to my approach to foreign operations of the U.S. government. It is hopeless to expect efficient operations if our ambassadors in various countries are not sufficiently qualified and sufficiently determined to do the detailed work and to make the hard decisions. There simply is no way of organizing the representation of the American government abroad if the Ambassador is not prepared to play the major role in deciding on priorities and the size and scope of the mission.

Nevertheless, the U.S. government decided on an across-the-board cut of personnel in its missions abroad. The so-called "BALPA" program—cutting 10 percent—followed shortly after "Topsy." This in turn was followed by the "son of Balpa" which took off another 10 percent, followed in turn by "OPRED" which accounted for another 8 percent, and in the spring of 1972, by "OPRED II" which required further across-the-board cuts. "Topsy" certainly led the way for these programs. While I would have preferred a more selective program, I suppose that the across-the-board cuts were about the best that could be accomplished—given the inadequate "management" of the U.S. overseas operations.

WAS ANYTHING LEARNED?

What lessons can be drawn from this experience? There are several:

1. On the highest level, the U.S. government—Democratic or Republican—is usually ready to support vigorously a proposal for reduction in personnel abroad. Part of this comes from the conviction that there is an excessive "American presence" and a vague feeling that this encourages additional commitments and annoys foreigners. If the Ambassador will take the initiative in acting, he can be confident of support from Washington.

2. Opposition to staff reductions comes from the lower bureaucratic levels in Washington. These are the people who send out instructions and choose the personnel. Their *raison d'être* depends upon a network of foreign operations.

3. Most senior officers abroad are only too happy to cut staff provided they can place the blame on someone else. Everyone knows pretty well the areas of excessive personnel but people, short of the Ambassador, are reluctant to clean house simply within their own sections. It is unpleasant, old friends disappear, trouble is created, at the same time other parts of the U.S. government continue unchanged. All of this can be altered if the Ambassador will take the responsibility.

4. I would say, probably without exception, that foreign governments would welcome such action once they understand it. Obviously, the Brazilian government would not have welcomed it had they thought that this would mean a reduction in economic aid. I assured the President of Brazil that it meant no such thing but that it would mean some changes in the way we handled aid. It would require giving more responsibility to Brazilians and taking it away from Americans who had hung on too long.

5. In developing countries, action is required to remove those American technicians who are sincerely convinced that they can do any number of technical jobs better than indigenous personnel. Some rule should be established which would require American technicians to train technicians in Brazil or other developing countries, rather than to plan to spend their lifetime doing the things themselves. There should be some type of built-in liquidation of the jobs of U.S. technicians in foreign countries.

6. In order to do the job properly and at the same time to do all the other things that Ambassadors are supposed to do, it is essential that there be one man in the Embassy with the vision, the toughness and the ability to spell out the program and to interpret accurately to the Ambassador the pros and cons of the various decisions. Fortunately, there was such a man at the American Embassy in Rio—Frank Carlucci.

There was no reduction in Brazilian personnel in Operation Topsy. In fact, in many cases where Americans were performing useful functions that could be performed by Brazilians, it was my intention to upgrade the Brazilian personnel. Doubtless, in various countries there are an excessive number of "locals" but this should not be the main target.

The program in Brazil was not complete. In order quickly to obtain approximately a one-third cut in personnel I did not have the time to spell out a comprehensive program of U.S. government priorities in Brazil. Perhaps one of my successors will do so.

(NOTE.—Everybody seems to talk—or write—about the bureaucracy, but, like the weather, nobody does anything about it. A faceless and pervasive force, it overwhelms people, and few ever confront it.

(One man who did was John W. Tuthill, a career Foreign Service Officer who came to the simple conclusion that in Brazil, where he was appointed Ambassador in 1966, there were too many official Americans. His remarkable attack on the "system," or systems, had far-reaching consequences for it helped set in motion successive rounds of personnel cuts throughout the world—by both the Johnson and Nixon Administrations—which have actually resulted in an over-all reduction in U.S. officials overseas. Here, for the first time, Ambassador Tuthill tells his own story. He called his project "Operation Topsy," because, as he puts it, "it sought to deal with an organization that had not been constructed on the basis of a comprehensive decision of the U.S. Government, but had 'jest growed.' "—The Editors.)

(EDITORS' NOTE.—What has happened to the size of the American mission since John W. Tuthill left Brazil in January 1969?

(According to official figures from the State Department, the cutback in personnel has continued steadily, linked directly to the reduction in American bilateral aid and military assistance programs. On January 1, 1972, there were 527 Americans in the mission in Brazil, compared to 719 in January 1969, and 920 in June of 1966. AID was down to 208 Americans, a reduction of over 50 percent. The military group (which does not include the Marines guarding the Embassy or the Military Attachés) had only 54 officers and men, a reduction of about two-thirds. The over-all drop was about 47 percent, from June 1966.

(The AID reduction in personnel was impressive, but it did not come close to match-

ing the drop in American bilateral aid to Brazil. In Fical Year 1966, U.S. loans and technical assistance to Brazil, exclusive of the Food for Peace, had totaled $240 million; in the fiscal year just ended there were no loans, and technical assistance was only $10 million.)

(By Frank Carlucci, Associate Director, Office of Management and Budget, June 19, 1972)

On one of his Topsy forays into Washington, Jack Tuthill asked me to accompany him so we could walk 'back to back' down the corridors. Topsy didn't win us any popularity contests, but popularity is seldom a goal for a public servant of Jack Tuthill's caliber.

For Topsy is a case study of a spirited Foreign Service Officer fighting for change, even if it meant taking on the establishment that had nourished him to ambassadorial rank. It meant exercising a higher loyalty to the policy mission assigned him by the President than to the parochial interests he had lived with so many years. We need more FSO's like him.

Topsy was neither a personnel nor a budget exercise. It was an effort by a perceptive and forceful Ambassador to get a grip on his Embassy and to move it in concert toward a goal. This goal was to stop doing things for Brazilians and to concentrate instead on areas in which we could help Brazilians build the institutional capacity to do things for themselves.

Such a policy requires fewer Americans and a different way of doing business. It means top-down management instead of a bottom-up, client-oriented approach. Too frequently, our ambassadors preside over a collection of agencies which exert pressure on them to support their positions in Washington.

Topsy was one Ambassador's effort to set policy, run his Embassy and represent the United States in the host country instead of acting as a Washington advocate for U.S. agencies and their constituencies in Brazil.

Jack Tuthill was not content to be a high level political and economic reporting officer. He was a foreign affairs manager who translated political judgments into administrative decisions. State is actively encouraging its ambassadors to move in this direction, and has recently made some progress in overcoming the institutional resistance that was typified by the middle level bureaucratic reaction to Topsy.

There is high level support for this kind of change. Jack notes the support of President Johnson. President Nixon was equally interested. When he swore me in to my present job, he recalled Topsy—he had visited Brazil at the time—and asked me if the Embassy didn't function better afterwards. I had no hesitation in agreeing with him that it did.

FOREIGN TRADE AND INVESTMENT ACT

Mr. HARTKE. Mr. President, unfair foreign competition and the growth of foreign industries have combined to price many American goods out of the market. The Hartke solution to America's trade dilemma revolves around a complete overhaul of our foreign trade posture. The Hartke Foreign Trade and Investment Act of 1972 will change our tax, tariff and quota laws to keep American jobs at home and insure fair competition in the international market.

The Nixon administration position has consisted of large doses of rehtoric and a rather small change in the value of the dollar. At best, devaluation of the dollar will provide long-term relief in a world of fair competition—but it promises precious little help in the short run for beleaguered industries or unemployed workers.

A recent article in The New York Times has pointed up the pressures on New York City that often compel it to buy foreign products. Lowered prices of highly subsidized foreign producers make it almost impossible for the city to place all its contracts with local industries. This is not a case of global efficiency—but another example of how the largely open American economy has been trapped by existing trade practices.

The final paragraph of the article provides and excellent summary of our current situation. Speaking on foreign trade, the deputy mayor of New York said:

The United States has helped develop the productive capacity of many foreign countries, turning them into competitors of American companies. What is a little unfair about the situation . . . is that many foreign Governments subsidize companies exporting goods by paying their duties and so putting them in a more competitive position, vis-a-vis American producers.

Mr. President, because of the timely nature of the article, 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:

ECONOMICS MAKE CITY TURN TO FOREIGN SOURCES FOR EQUIPMENT PURCHASES

(By Max H. Seigel)

The city's Department of Water Supply needed butterfly valves and was looking around for a manufacturer to supply them. The lowest American bidder, Westinghouse, asked $11-million. A Japanese company said it could do the job for $10-million. The contract went to Japan.

The city needed extensions for lights. Because the lowest American bid was $115,000, the contract went to a company that could do it for $100,000—in Mexico.

The city needed arm extenpunching, on which the lowest American bid was $450,000, was awarded to a concern that could manage it for $150,000 less—in Kingston, Jamaica.

As a giant consumer, purchasing $170-million in goods and services each year, New York City is finding itself in an increasingly frustrating dilemma.

It must, to begin with, get the best deals possible on its buys to save the taxpayers' money. But this often means giving the contract to a foreign company, which deprives national and sometimes local companies of much-needed business.

ADDS TO JOBLESSNESS

Some foreign companies can undercut their American competitors because of cheaper favorable tax situations and, often, Government subsidies.

But by using them, the city is in effect exporting money and contributing to unemployment at home at a time when the national economy is so lethargic that a "buy American" drive is under way, and the local economy is so shaky that the Lindsay administration is fighting to keep businesses in the city.

The problem, according to Deputy Mayor Edward K. Hamilton, who used to be Director of the Budget, is in balancing considerations given to taxpayers, local industry and labor and underdeveloped countries.

"Our first obligation," Mr. Hamilton said yesterday, "is to the city, to get as low a price as possible. When prices are nearly the same, we have an obligation to the businesses of New York."

Legally, the city course seems clear. The Department of Purchases, which enters into contracts for 35,000 items as well as various services each year, acts under Section 343 of the City Charter, which provides that a contract must be awarded to the lowest bidder who meets the specifications.

EXCEPTION MADE

Section 343 of the City Charter, however, also provides that the Board of Estimate may by a two-thirds vote set aside a low bid if it is "not in the best interest" of the city.

On infrequent occasions the city has availed itself of the powers of the Board of Estimates under Section 343. At a meeting last month, the board was asked to set aside a bid for a key-punch contract submitted by a New Jersey company so that it could be granted to a newly formed minority company here in New York.

The result was submitted by the Human Resources Administration's Department of Social Services, which said it would benefit the city to encourage the development of such companies. The board approved the request.

Last year a similiar request, this one involving a labor contract, also came before the board. The members voted to cancel the low bid submitted by a company from Malta and to award it to an American company.

Stanford D. Garelik, president of the City Council and a member of the Board of Estimate, explains the reluctance of the Department of Purchase to come before the board as possibly motivated in part by politics.

"The Lindsay administration just wants to avoid surrendering its authority in this field," he declared, "and I can't say that I blame it. But when they get a hot potato and they want to share responsibility, then they come to the board."

PROBLEM IS SEEN

Deputy Mayor Hamilton denies that the administration's motives are at all political. He points out that the board, which already has a crowded calendar involving too much detail, would be delayed even more in dealing with many other projects, many of them of importance to the city.

And Marvin Gersten, the Commissioner of Purchases, sees constant referring of contracts to the board as imposing a severe judgmental problem on his department.

"What standards do we use for deciding on referral? And what will the board do if we refer 10,000 contracts to it? Commissioner Gersten adds that, in adidtion to these problems, the Corporation Counsel has advised him that the department may face a series of lawsuits challenging the basis for discarding one bid in favor of another.

In veiw of the Lindsay administration's repeated exhortations to business to stay in New York, city officials make no bones about their hopes of letting contracts locally.

"But what's a local company?" Mr. Gersten asks. "Recently, we awarded two contracts to the Propper Manufacturing Company of Long Island City—one for surgical blades and the other for thermometers. The surgical blades, it turned out to their surprise, were made in England, and the thermometers, in Japan." But the bidder is a New York concern, employing local people. He is not the manufacturer, only the distributor.

POLICE ORDER CITED

"Very often," Commissioner Gersten added, "bids are won by local distributors for foreign firms."

Sometimes the items sought are not produced in this country and the Department of Purchases must go abroad.

Recently it received a request from the Police Department for a large number of scooters.

None fitting the specifications are made here. And the Department of Purchases

turned to the two big companies in the field——Lambretta and Vespa. Lambretta won the contract and then disclosed that it had shut down its operations in Italy but had a subsidiary in Northern Spain.

A skeptical Department of Purchases asked for a model to be sent over. It was found to be excellent. Then a team of men—one from the Department of Purchases, one from the Controller's office and one from the agency involved, was sent to Spain to see if the plant could produce the requirements of the contract. In this case, they found a modern efficient plant.

UNITED STATES HAS FORMULA

On-site inspection is often carried out by the city to make sure of contract deliveries. Often the seller pays the expenses. But from time to time the city has to foot the bill.

No one has any quarrel with this kind of purchase or any other involving a foreign monopoly. Some criticism arises when a local company loses out by a narrow margin to one elsewhere in the United States or overseas.

The Federal Government meets this contingency through what is known as its 6–12 formula. This provides that a contract go to an American company when its bid is within 6 per cent of the low bid of a foreign concern. And the American company, if it is located in a distressed area, will get the bid if its price is within 12 per cent of the lowest foreign bidder.

The state continues to rely on what is called "Rule 10," a law passed in 1931, at the height of the Depression, which says that preference must be given to American-made goods.

BILL THWARTED

The city's position in this area appears to be ambivalent. Deputy Mayor Hamilton says: "Giving more protection to local manufacturers tends to put a floor on the economics of the manufacturer. It tends to reduce the incentive to make him more efficient."

But Mr. Gersten says the city has submitted to the State Legislature several times, only to have it lie untouched—a proposed law that would give a contract to a New York State company if it came within 5 per cent of the lowest bid.

Pending approval of such legislation or any other that would give preferential treatment to local businessmen, the city is helping them only with advice. Deputy Mayor Hamilton says: "We make sure everyone knows of the bids being advertised, and we teach them how to make out bids and submit them."

In a wider sense, the Deputy Mayor sees the problem as one "a country faces when it becomes successful in the foreign economic development business."

The United States has helped develop the productive capacity of many foreign countries, turning them into competitors of American companies. "What is a little unfair about the situation," he adds, "is that many foreign Governments subsidize companies exporting goods by paying their duties and so putting them in a more-competitive position vis-a-vis American producers."

ANNOUNCEMENT BY SENATOR DOMINICK OF REVENUE SHARING GRANTS TO STATE AND LOCAL GOVERNMENTS IN COLORADO

Mr. DOMINICK. Mr. President, the Joint Committee on Internal Revenue Taxation has recently made available the dollar allocations that local and State governments would receive under the revenue sharing legislation approved by the House-Senate conference committee.

There are several cities in Colorado not specifically mentioned in this report. For example, Northglenn in Adams County, Lakewood in Jefferson County, and Security-Widefield in El Paso County are not listed. During the time the revenue sharing bill was being considered, Senator LONG and I engaged in a short colloquy in order that there could be no misunderstanding that the bill provides that all governmental units are to be involved whether or not they are specifically listed. Finally the bill provides for a distribution to all communities even though those towns with a population of less than 2,500 persons are not listed in this report.

Under the conference bill, Colorado would receive $54.6 million in revenue sharing funds. This money will be divided between the State and local governments with $18.2 million going to the State and $36.4 million allocated to the local governments.

Mr. President, I ask unanimous consent that the data outlining Colorado's allocation be printed in the RECORD.

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

REVENUE SHARING FOR COLORADO

[In dollars]

Total State grant to all locals	36,416,247
Amount returned to Colorado State government	0
Adams County area	2,137,123
Adams County govt	1,471,822
Total to all cities over 2,500	649,550
Total to all cities under 2,500	15,752
Total to all townships	0
City of Arvada (part)	8,996
Aurora City	217,998
Brighton City	49,169
Commerce City	107,178
City of Thornton	111,737
Westminster City	154,471
Alamosa County area	273,245
Alamosa County govt	128,613
Total to all cities over 2,500	142,994
Total to all cities under 2,500	1,630
Total to all townships	0
Alamosa City	142,994
Arapahoe County area	1,546,065
Arapahoe County govt	607,368
Total to all cities over 2,500	923,070
Total to all cities under 2,500	15,626
Total to all townships	0
Cherry Hill Village Town	15,195
City of Englewood	366,673
Greenwood Village Town	8,507
City of Littleton	161,779
Sheridan City	24,871
Aurora City (part)	346,044
Archuleta County area	65,381
Archuleta County govt	48,792
Total to all cities over 2,500	0
Total to all cities under 2,500	16,589
Total to all townships	0
Baca County area	135,737
Baca County govt	113,114
Total to all cities over 2,500	0
Total to all cities under 2,500	22,623
Total to all townships	0
Bent County area	155,330
Bent County govt	122,898
Total to all cities over 2,500	32,432
Total to all cities under 2,500	0
Total to all townships	0
Las Animas City	32,432
Boulder County area	1,369,754
Boulder County govt	585,616
Total to all cities over 2,500	753,416
Total to all cities under 2,500	38,723
Total to all townships	0
Boulder City	590,677
Lafayette City	23,364
Longmont City	115,416
Broomfield City	23,959
Chaffee County area	225,597
Chaffee County govt	124,028
Total to all cities over 2,500	67,895
Total to all cities under 2,500	33,675
Total to all townships	0
Salida City	67,895
Cheyenne County area	57,319
Cheyenne County govt	49,805
Total to all cities over 2,500	0
Total to all cities under 2,500	7,514
Total to all townships	0
Clear Creek County area	84,745
Clear Creek County govt	67,627
Total to all cities over 2,500	0
Total to all cities under 2,500	17,117
Total to all townships	0
Conejos County area	187,697
Conejos County government	152,464
Total to all cities over 2,500	0
Total to all cities under 2,500	35,233
Total to all townships	0
Costilla County area	73,945
Costilla County government	73,021
Total to all cities over 2,500	0
Total to all cities under 2,500	924
Total to all townships	0
Crowley County area	73,825
Crowley County government	56,367
Total to all cities over 2,500	0
Total to all cities under 2,500	17,459
Total to all townships	0
Custer County area	26,793
Custer County government	25,217
Total to all cities over 2,500	0
Total to all cities under 2,500	1,576
Total to all townships	0
Delta County area	365,682
Delta County government	280,530
Total to all cities over 2,500	43,225
Total to all cities under 2,500	41,926
Total to all townships	0
Delta City	43,225
Denver County area	12,189,871
Denver County government	0
Total to all cities over 2,500	12,189,871
Total to all cities under 2,500	0
Total to all townships	0
Denver City	12,189,971
Dolores County area	39,257
Dolores County government	33,604
Total to all cities over 2,500	0
Total to all cities under 2,500	5,553
Total to all townships	0
Douglas County area	95,239
Douglas County government	84,899
Total to all cities over 2,500	0
Total to all cities under 2,500	10,340
Total to all townships	0
Eagle County area	106,362
Eagle County government	83,131
Total to all cities over 2,500	0
Total to all cities under 2,500	23,251
Total to all townships	0
Elbert County area	93,370
Elbert County government	88,091
Total to all cities over 2,500	0
Total to all cities under 2,500	5,279
Total to all townships	0
El Paso County area	2,054,383
El Paso County government	779,507

REVENUE SHARING FOR COLORADO—Continued

[In dollars]

Total to all cities over 2,500	1,254,912
Total to all cities under 2,500	19,964
Total to all townships	0
Colorado Springs City	1,162,761
Fountain Town	30,000
Manitou Springs City	54,151
Fremont County area	440,317
Fremont County government	258,227
Total to all cities over 2,500	149,015
Total to all cities under 2,500	33,075
Total to all townships	0
Canon City	120,140
Florence City	28,875
Garfield County area	265,945
Garfield County government	179,008
Total to all cities over 2,500	43,612
Total to all cities under 2,500	43,325
Total to all townships	0
Glenwood Springs City	43,612
Gilpin County area	30,430
Gilpin County government	23,149
Total to all cities over 2,500	0
Total to all cities under 2,500	7,281
Total to all townships	0
Grand County area	67,447
Grand County government	47,667
Total to all cities over 2,500	0
Total to all cities under 2,500	19,780
Total to all townships	0
Gunnison County area	181,286
Gunnison County government	97,616
Total to all cities over 2,500	76,749
Total to all cities under 2,500	6,921
Total to all townships	0
City of Gunnison	76,749
Hinsdale County area	3,759
Hinsdale County government	3,637
Total to all cities over 2,500	0
Total to all cities under 2,500	121
Total to all townships	0
Huerfano County area	157,650
Huerfano County government	121,857
Total to all cities over 2,500	31,506
Total to all cities under 2,500	4,287
Total to all townships	0
Walsenburg City	31,506
Jackson County area	41,232
Jackson County government	34,611
Total to all cities over 2,500	0
Total to all cities under 2,500	6,621
Total to all townships	0
Jefferson County area	1,317,090
Jefferson County government	1,045,653
Total to all cities over 2,500	266,862
Total to all cities under 2,500	5,176
Total to all townships	0
City of Arvada (part)	200,756
Edgewater Town	17,456
Golden City	48,650
Kiowa County area	48,539
Kiowa County government	43,398
Total to all cities over 2,500	0
Total to all cities under 2,500	5,141
Total to all townships	0
Kit Carson County area	180,138
Kit Carson County government	138,203
Total to all cities over 2,500	25,570
Total to all cities under 2,500	16,365
Total to all townships	0
Burlington Town	25,570
Lake County area	198,128
Lake County government	149,870
Total to all cities over 2,500	48,258
Total to all cities under 2,500	0
Total to all townships	0
Leadville City	48,258
LaPlata County area	387,003
LaPlata County government	139,810
Total to all cities over 2,500	247,193
Total to all cities under 2,500	0
Total to all townships	0
Durango City	247,193
Larimer County area	1,200,386
Larimer County government	695,521
Total to all cities over 2,500	473,613
Total to all cities under 2,500	31,252
Total to all townships	0
Fort Collins City	318,132
Loveland City	155,481
Las Animas County area	376,639
Las Animas County government	289,280
Total to all cities over 2,500	79,084
Total to all cities under 2,500	8,275
Total to all townships	0
Trinidad City	79,084
Lincoln County area	115,690
Lincoln County government	79,264
Total to all cities over 2,500	0
Total to all cities under 2,500	36,426
Total to all townships	0
Logan County area	450,990
Logan County government	288,419
Total to all cities over 2,500	146,249
Total to all cities under 2,500	16,322
Total to all townships	0
Sterling City	146,249
Mesa County area	1,105,314
Mest County government	622,793
Total to all cities over 2,500	482,521
Total to all cities under 2,500	0
Total to all townships	0
Grand Junction City	482,521
Mineral County area	18,803
Mineral County government	16,591
Total to all cities over 2,500	0
Total to all cities under 2,500	2,212
Total to all townships	0
Moffat County area	156,096
Moffat County government	113,524
Total to all cities over 2,500	40,210
Total to all cities under 2,500	2,362
Total to all townships	0
Craig City	40,210
Montezuma County area	309,847
Montezuma County government	180,673
Total to all cities over 2,500	103,051
Total to all cities under 2,500	26,122
Total to all townships	0
Cortez City	103,051
Montrose County area	439,364
Montrose County government	270,189
Total to all cities over 2,500	121,822
Total to all cities under 2,500	47,352
Total to all townships	0
Montrose City	121,822
Morgan County area	444,281
Morgan County government	326,181
Total to all cities over 2,500	113,447
Total to all cities under 2,500	4,653
Total to all townships	0
Brush City	67,252
Fort Morgan City	146,195
Otero County area	562,733
Otero County government	382,897
Total to all cities over 2,500	151,584
Total to all cities under 2,500	28,253
Total to all townships	0
La Junta City	64,584
Rocky Ford City	87,000
Ouray County area	36,984
Ouray County government	23,799
Total to all cities over 2,500	0
Total to all cities under 2,500	13,186
Total to all townships	0
Park County area	52,271
Park County government	49,610
Total to all cities over 2,500	0
Total to all cities under 2,500	2,661
Total to all townships	0
Phillips County area	81,360
Phillips County government	66,603
Total to all cities over 2,500	0
Total to all cities under 2,500	14,756
Total to all townships	0
Pitkin County area	87,196
Pitkin County government	57,500
Total to all cities over 2,500	0
Total to all cities under 2,500	29,696
Total to all townships	0
Prowers County area	317,167
Prowers County government	229,689
Total to all cities over 2,500	69,407
Total to all cities under 2,500	18,071
Total to all townships	0
Lamar City	69,407
Pueblo County area	2,828,570
Pueblo County government	1,345,060
Total to all cities over 2,500	1,473,606
Total to all cities under 2,500	9,904
Total to all townships	0
Pueblo City	1,473,606
Rio Blanco County area	115,834
Rio Blanco County government	104,863
Total to all cities over 2,500	0
Total to all cities under 2,500	10,970
Total to all townships	0
Rio Grande County area	251,045
Rio Grande County government	183,942
Total to all cities over 2,500	47,884
Total to all cities under 2,500	19,220
Total to all townships	0
Monte Vista City	47,884
Routt County area	157,698
Routt County government	111,245
Total to all cities over 2,500	0
Total to all cities under 2,500	146,454
Total to all townships	0
Saguache County area	91,552
Saguache County government	77,645
Total to all cities over 2,500	0
Total to all cities under 2,500	13,907
Total to all townships	0
San Juan County area	19,880
San Juan County government	12,957
Total to all cities over 2,500	0
Total to all cities under 2,500	6,922
Total to all townships	0
San Miguel County area	46,625
San Miguel County government	29,854
Total to all cities over 2,500	0
Total to all cities under 2,500	16,772
Total to all townships	0
Sedwick County area	81,457
Sedwick County government	65,391
Total to all cities over 2,500	0
Total to all cities under 2,500	16,066
Total to all townships	0
Summit County area	55,163
Summit County govt	37,624
Total to all cities over 2,500	0
Total to all cities under 2,500	17,539
Total to all townships	0
Weller County area	79,328
Weller County govt	55,008
Total to all cities over 2,500	0
Total to all cities under 2,500	24,319
Total to all townships	0

Washington County area	132,771
Washington County govt	104,455
Total to all cities over 2,500	0
Total to all cities under 2,500	28,316
Total to all townships	0
Weld County area	1,920,310
Weld County govt	1,284,900
Total to all cities over 2,500	458,665
Total to all cities under 2,500	176,744
Total to all townships	0
Evans Town	14,488
Greeley City	444,177
Yuma County area	204,395
Yuma County govt	178,096
Total to all cities over 2,500	0
Total to all cities under 2,500	26,299
Total to all townships	0

THE ROTH SOCIAL SECURITY SURVIVOR BENEFIT AMENDMENT

Mr. MONDALE. Mr. President, last evening during considration of H.R. 1, the junior Senator from Delaware (Mr. ROTH) proposed an excellent amendment concerning social security survivors' benefits. It was designed to help thousands of widows in this country who are denied the opportunity to claim their children as dependents on their income tax returns because the social security survivors' benefits these children receive provide more than half of their support. Mr. ROTH's amendment correctly provided that a child's social security benefits will not be taken into account in determining whether the child receives more than half his support from the taxpayer claiming him as a dependent.

The present system—which Mr. ROTH's amendment changes—places a particular hardship on lower- and middle-income families. If a widow has a high income she has little difficulty proving that the survivors' benefits constitute less than half the support of her children, and she can count them as dependents. But if her income is not high, she may be denied the chance to claim her children as dependents. This is one of the most discriminatory provisions in our tax code, and must be changed.

When the rollcall vote was taken on the Roth amendment last evening and I voted in favor of the motion, I was under the enormous impression that the motion was on the merits of the issue. Shortly later I discovered that the motion was actually a motion to table the Roth amendment, and that I should have voted "no."

I support the Roth amendment and voted for it on final passage. It is long overdue. I am delighted that the motion to table was defeated, and the amendment was adopted. I believe this explanation will clarify any confusion about my position on this issue which might arise from the rollcall vote last evening.

REMOVAL OF CULTURAL ORGANIZATIONS FROM ELIGIBILITY FOR THIRD-CLASS BULK MAIL RATES

Mr. JAVITS. Mr. President, there has been increasing concern with respect to any action by the U.S. Postal Service that would remove cultural organizations from eligibility for third-class bulk mail rates.

In 1965, Congress established the National Foundation of the Arts and the Humanities, and in subsequent years has provided a Federal funding for the arts—at the rate of $32.8 million for fiscal year 1973. It would seem illogical for the Federal Government on the one hand to encourage arts through subsidy, and on the other hand to stand by while extra financial burdens are imposed upon them.

The Chairman of the National Foundation of the Arts and the Humanities, Nancy Hanks, has written a letter to the Postmaster General and to the manager of the Mail Classification Division concerning this matter. I ask unanimous consent that this correspondence be printed in the RECORD.

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

NATIONAL COUNCIL ON THE ARTS,
NATIONAL ENDOWMENT FOR THE ARTS,
Washington, D.C., September 29, 1972.

Hon. ELMER T. KLASSEN,
Postmaster General, U.S. Postal Service, Washington, D.C.

DEAR MR. KLASSEN: During its meeting in Washington, September 22–24, the National Council on the Arts requested that I bring to your personal attention its very strong objection to any action by the U.S. Postal Service that would remove cultural organizations from eligibility for third-class bulk rates.

The National Council on the Arts, established by Congress, is appointed by the President of the United States and is composed of outstanding citizens and artists as you will see in the enclosed listing.

The Council asked me also to bring to your attention the President's request of May 26, 1971 asking government departments and agencies "to look into new ways in which their agencies can more vigorously assist the arts and artists, . . ." While the Postal Service is no longer a Cabinet department of government, the Council believes that the proposed regulation, which would be critically damaging to large and small cultural organizations all over this country, is directly contrary to the President's wishes. The full text of the President's message is enclosed.

I have written a detailed formal letter on this matter to Mr. Darwin E. Sharp, Manager, Mail Classification Division. That letter is enclosed, but at the urging of the Council I am writing you directly. If a conversation between us would be of assistance in resolving this matter, I would be more than happy to meet with you at your convenience. I'm also sure that Len Garment would be happy to join us, if you would think that helpful. My telephone number is 382–6361.

Thank you for your personal consideration.

Sincerely,

NANCY HANKS,
Chairman.

NATIONAL COUNCIL ON THE ARTS,
NATIONAL ENDOWMENT FOR THE ARTS,
Washington, D.C., September 29, 1972.

Mr. DARWIN E. SHARP,
Manager, Mail Classification Division, Finance Department, U.S. Postal Service, Washington, D.C.

DEAR MR. SHARP: At the request of the National Council on the Arts and on behalf of the National Endowment for the Arts (NEA), I wish to submit the following comments on the Postal Service's proposed eligibility standards published in the August 26, 1972, *Federal Register* relating to nonprofit organizations qualifications for special third-class bulk mail rates.

The proposed regulations provide specific definitional criteria for the eight categories of organizations eligible under present federal law for the special third-class rates. We strongly concur with the cultural organizations which have expressed to you their view that the proposed criteria relating to the definition of the category of "educational" organizations are much too narrow and restrictive, and fail completely to recognize or take into consideration the essential educational contribution made by the thousands of nonprofit cultural organizations in this nation.

As you may know, under our enabling legislation, the Congress has directed NEA to foster American creativity, and to develop and enhance public knowledge and understanding of the arts by supporting projects of cultural and artistic significance. Under this mandate, the Endowment's constituency includes the fifty State Arts Councils, hundreds of community arts councils and organizations, and the nation's symphony orchestras, museums, dance and theatre companies. It is on behalf of all these organizations that this letter speaks.

Initially, let me express agreement with the statement in the *Federal Register* that under the proposed regulations an Internal Revenue Service exemption for a nonprofit organization or association, while not controlling, will still be considered as evidence of qualification for the preferred bulk postal rates. *Every* organization or association supported by the National Endowment for the Arts is, as required by our legislation, recognized by the IRS as a tax-exempt nonprofit organization, donations to which, as well, are allowable as charitable contributions under Section 170(c) of the Internal Revenue Code of 1954, as amended. These organizations rely heavily on Federal appropriations to enable them to serve their communities, including the schools, effectively. Any increase in postal rates for such organizations would ultimately critically affect their ability to serve their communities and, therefore, would constitute action contrary to the purposes of the National Endowment for the Arts.

The crux of the matter, of course, lies in the Service's proposed definition of the organizational category of "educational". It is interesting to note in this connection that the *Federal Register* notice states that the proposed definitions "are based on long-standing administrative interpretations made through the years." As you know, the Post Office has up to now granted the special third-class rates generally to the nation's cultural organizations. Further, if these definitions are promulgated into law, they would differ most significantly from the administrative interpretation of "educational" used by the Internal Revenue Service. In IRS Publication 557 (6–71), relating to qualification of organizations for tax-exempt status under Section 501(c)(3) of the Code, the IRS sets forth its definition of "educational" as follows:

Indeed, it is difficult to understand the reason for the restrictiveness of a definition of "educational" which speaks in terms of the "mental, moral, or physical powers and faculties," but omits reference to the "esthetic" powers and faculties of mankind. From the earliest times, even before the Greek philosopher Plato defined the ultimate objects of knowledge to be the "True", the "Good", and the "Beautiful", the rightful place of the esthetic in the education of man has been unquestioned. Some writers maintain, indeed, that the knowledge gained from the arts is of the highest and most significant kind. And, it is a fact that all institutions of public learning (other than specialized schools of training) have, since ancient times, had as a fundamental objective in the education of their student charges the development of the esthetic powers and faculties. The Postal Service's proposed regulations, if

I may, acknowledge the importance of the "True" (i.e. the "mental" faculties), the "Good" (i.e. the "moral" faculties), but unexplainably, not the "Beautiful" (i.e. the "esthetic" faculties).

In light of the foregoing, I respectfully request that the proposed 39 CFR 134.5(b)(2) be revised to correct the above-described deficiency. Our suggested revision would provide as follows (original language bracketed, suggested new language italicized):

"(2) Educational. A nonprofit organization whose primary purpose is to [instruct in] *provide knowledge of* any or all of the mental, moral, *esthetic,* or physical powers and faculties. Educational organizations include, but are not limited to schools, colleges, universities, seminaries, conservatories, *symphony orchestras, dance and theatre societies, museums, state and community cultural organizations, similar organizations* and other educational institutions."

Such a revision would also have the effect of rendering the definition of "educational" truly consistent with the long-standing administrative interpretation presently held by the Internal Revenue Service, and would ensure that our nation's cultural institutions will be treated by the Postal Service in the same manner as are other educational organizations dedicated to improving the quality of life of our people and the general well being of our nation.

Sincerely,

NANCY HANKS,
Chairman.

BROADCASTERS AND COMMUNITY RESPONSIBILITY

Mr. HARTKE. Mr. President, I ask unanimous consent to insert in the RECORD a report given to the Board of Trustees of the Broadcasting Foundation of America by its president, Mr. Seymour N. Siegel, who for many years was head of New York City's Municipal Broadcasting System. Mr. Siegel calls to our attention a rich mine of social information residing in the files of the Federal Communications Commission. These files, which are a public record but largely unused, are accumulated by the Federal Communications Commission as broadcasters, in renewing their licenses, conform with the requirement known as, "the ascertainment of community problems, needs, and interests."

It is clear from Mr. Siegel's report that this mass of information illuminates what the public itself thinks our Nation's major problems are, and by inference in what areas it demands governmental action. These files apparently represent a reflection of the peoples' will and deserve examination at policymakers and all those who execute policy.

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

WHAT'S WRONG WITH NEW YORK?—BROADCASTERS'—EYEVIEW OF THE COMMUNITY THEY SERVE PROVIDES POTENTIALLY MAJOR SOCIAL INFORMATION BONUS DIVIDEND

(By Seymour N. Siegel)

Within the past several months, 54 radio and television broadcasting stations in metropolitan New York have been going through, what was for some, a traumatic process; license renewal procedures. Part of the preparation for submitting an application for the renewal of a broadcasting station license to the Federal Communications Commission is what is known as "the ascertainment of community problems, needs and interests." This entails eyeball-to-eyeball meetings with numerous community leaders on the part of the individual program decision-makers at each broadcasting station. It is an FCC-imposed requirement that station managers personally meet with, and talk over, community problems with leaders in education, medicine, law, the clergy and politics, as well as social, health and welfare agency managers. This must be done in the same ethnic mix which is called for by the census tracts.

It guarantees that the operators of broadcasting stations have personally exposed themselves to the views of community leaders and groups, who in turn, have at least one opportunity in every three years, to sensitize managers of the electronic media to the individual problems, needs and interests of their constituencies. Community leaders get to know at least one decision maker at each station and presumably would call on him or her if ever there seemed to be a need for air time.

As a result of these numerous personal meetings and conferences, each broadcaster draws up a profile of what he considers to be the major problems of New York and the surrounding metropolitan area. He then decides what programs he will present in the next three years to meet these community needs through broadcasting. On the basis of these promises he may get his license to broadcast renewal. His promises are subjected to close scrutiny the next time around, especially by potentially competing citizens groups. As one wag has put it "you build yourself a box, and the Commission nails you into it."

This procedure must be completed within the immediate six months prior to the date to file a renewal application. The first several months of 1972 have been busy ones, indeed, for New York broadcasting managers, who had simultaneously to mind the store, and subject themselves to a kind of masochistic exercise when many of the younger, more activist, sometimes self-appointed, so-called community leaders did not hesitate to give them the benefit of their ideas.

Many of the broadcasters were happy to have an opportunity for face-to-face meetings with top community figures. Most station managers do not live in the city and do not vote there. Most of their martini and luncheon time is spent with their peers and with advertising agency people in clubs or posh restaurants or at their desks. Daily communication removes a great many of them from the city's night time life, and week ends in the country preclude getting a handle on the core of the city's problems. There is also a definite pecking order among the stations, and most broadcasters feel that they do not enjoy the social and political contacts with the community, which their opposite numbers on the newspaper side are reputed to have. Most will tell you they found the ascertainment process an exhilarating experience. They learned something about the nuts and bolts of city life and are making determined efforts and good-faith commitments to help meet some of these problems.

Though most of the top level of politicians, educators, professional men and women and community leaders presumably presented identical views to different station managers, the broadcasters place varying values on such views and made different judgments on what is wrong with New York. The results, taken together, are a concentrate of urban pathology. As social scientists, the broadcasters could make their surveys but the question immediately arises as to how effective broadcasting could be in meeting what are in many instances essentially social problems.

Channel 2 (WCBS Television) for example, considers that there are 15 major problem areas in the greater New York metropolitan community. With 13 decision makers in the station's management personally interviewing almost a thousand community leaders, the Columbia Broadcasting System flagship station presented the following problem areas in alphabetical order, if not in order of community-expressed priority.

1. Arts and culture. The writer of the station's application considered the problems of the insuring of the viability and survival of the arts in the face of New York's reputation as a communications and publishing capital. He considered the major national cultural institutions in the city and the need to strengthen long-term financing of cultural institutions. The effects of crime, prostitution and urban blight on the Broadway Theatre, the public budget crunch and its effect on the curtailment of library and museum services and the general lack of economic support for the arts were emphasized.

2. Crime, justice and penology. Drug-related crimes, especially burglary and mugging was underlined. The increase in lawlessness and the growing acceptance of petty criminality and mounting violence is seen as a heavy tax on the police force. The greatest frustration seemed to be the inability of the law enforcement agencies to deal with "crime in the streets." The corruption of some of the police and some public officials and the clogging of the courts were viewed with deep concern. The failure to provide equal justice to the poor and the existence of brutalizing conditions in prisons and jails were considered as failures of our society.

3. The drug epidemic seemed to be the most alarming problem, as symptomatic of a broader social malaise. Drug users in the school population were held responsible for downgrading of education received by all of the citizens. The drug traffic is seen as pervasive and destructive in its effect on the quality of life for all citizens. Likewise it is the facilitative influence in the corruption of police and other public servants. Many community leaders, according to the CBS profile, sought to deal with the drug problem as a medical, rather than a criminal problem, and advocated legalization of both hard and soft drugs.

4. Great concern was expressed about problems of the economy. Both business and labor leaders are worried about competition from abroad and the inability of American industry to match costs and prices for imported goods. Chronically high unemployment precludes utilizing the talents of youth, veterans and minorities. The inordinate power and restrictive policies of unions were cited as causative factors. The rise of consumerism is perceived as meddlesome and irresponsible by some leaders and seen by others as long overdue. Worry was expressed by the growing inefficiency of American industry and the lack of competence in the economy.

5. The educational system was a cause of great dissatisfaction as many leaders were reported to have pointed to the general societal misinterpretation of the nature of education and its role in a democracy. Many doubts were expressed concerning the quality of education provided by the system. The failure to teach basic skills such as reading and arithmetic, the failure to motivate students to participate fully in the life style of the American majority and the rising tax costs of education were the basis of a taxpayers revolt. The declining productivity and the increase of unionization of teachers were items of great concern. Educational bureaucracy was considered top-heavy and debilitating. Political meddling in district school boards has been brought about by both decentralization and not enough of it. The failure of teachers to understand the life style and legitimate aspirations of inner-city students was cited.

The need for more relevant vocational, educational emphasis was expressed by several interviewees. A better relationship between private and public colleges and uni-

versities was pointed out as a current problem.

6. Ecological and environmental problems and needs predominated in a group of community leaders. Conservation of air quality and water resources received a great deal of attention. An immediate problem of considerable and growing importance was the matter of solid waste disposal. The mounting problem to balance energy generating with consumer needs received a high priority. The development of manufacturing and transport in such a manner as to bring about less destruction of natural resources was given more than passing attention. Conservation efforts in preserving wetlands, seashore and green belts around the metropolitan area were objectives of general concern.

7. In the area of government and politics there was universal concern for how the structure and financing of the system affect individuals. The conflicts of interest between city and state, ambiguities of Federal jurisdiction in urban areas, relationships between the inner city and the suburbs and the relationship of political parties to government and the citizen appeared to be a source of considerable concern.

A lack of parity in financing and influence among the political parties, their frequent failure to delineate issues or to field the best qualified candidates with a vision extending beyond personal or parochial, political or patronage considerations, were the concern of most good government people.

The ostensible lack of communication and coordination among the 1400 disparate political entities in the region and the consequent lack of regional planning was highlighted as an outstanding need.

The mounting costs of government, especially due to union pressures, was the basis of considerable concern. New York City's Pension Plans were described as highly inflationary and unduly burdensome on the taxpayer. Inadequate budgetary controls over city expenditures and resultant poor planning was frequently mentioned.

A great many leaders called for local government and political parties alike, to become more responsive, more accessible and more accountable.

A need for campaign-spending reform, financial disclosure laws and strong conflict-of-interest statutes was forcefully mentioned. Coordination at all government levels was indicated frequently as a matter of concern and new watchdog structures were called for. New independent agencies were suggested to perform the investigative function of regulatory agencies and to monitor government spending.

8. In the field of public health, grave concern was expressed that, despite the much vaunted leadership of the United States in scientific research, its record in the delivery of health care and medical services to its citizens rank far below that of many other industrial nations. In the inner cities, the infant survival rate seems to be far below national averages and disease rates and the availability of health services are likewise below average. While attention is being paid to dramatic surgical techniques, such conditions as poor nutrition, inadequate dental care, preventive medicine, venereal disease, sickle cell anemia and lead poisoning go almost unnoticed. The high cost of medical services as well as the lack of availability of hospitals, clinics or private care in many areas was remarked upon. There is a shortage of funds and personnel for the care of the mentally ill, the retarded, the handicapped, the aged and those with long term illnesses. Abortion reform laws have already over-burdened the hospital system and the costs of abortion must be reduced. The shortage of physicians, nurses and paraprofessionals as well as the lack of support of bio-medical research, are important problems.

9. Housing was perceived as a major problem throughout the metropolitan area. Low and middle income housing seems to be in chronic short supply. The pressures of population, the exodus to the suburbs and the failure of the city to establish an effective program to hold back deterioration were cited as important. Concern was expressed over the rent strike movement and the radicalization of residents of upper income. The unionization of service employees, mounting real estate taxes and tenant disaffection, all play a role in the increasing abandonment of existing housing by landlords seeking desirable return on their investments. Fear of low-income public housing and restrictive zoning practices are factors inhibiting new housing outside the city. The lack of overall housing policy for the city and the region, a need to reconsider zoning policy, to inhibit unplanned urban sprawl, to break down de facto segregation in the suburbs, to provide adequate housing for the elderly, all were seen to have high priority.

10. Welfare and poverty were recognized as critical problems. The inability of the city to sustain the enormous burden of welfare costs laid upon it and the negative effect on the city's ability to deliver other services all emphasized the need to transfer the cost of welfare as a national problem to the Federal government.

11. Race relations seem to be the single most important problem facing the metropolitan area and the country as a whole. The growing polarization among the races due to the rise of the level of expectations on the part of Blacks and Puerto Ricans in the late Sixties which was not matched by rapid enough change, was pointed to as the cause.

The Vietnam war was mentioned by many leaders as having diverted both funds and attention from the problems of the cities. The nation as a whole and its individual citizens lack a sense of long term commitment to the solution of the problem according to many community leaders.

Tightened economic conditions have brought about evidence of White backlash because of the seeming upward movement of minority groups which, some community leaders said, were apparently receiving preferential treatment. The need for a greater understanding by one group with another was called for. Specific issues such as busing, scattersite housing and one acre zoning all seemed to have a racial component.

12. The panel generally expressed dissatisfaction with the quality of life in the city. City life was described as abrasive, graceless and alienated. The apathy of individuals or groups towards the needs of other segments of the society was remarked upon. The breakdown of moral and ethical values and the inability of citizens to cope with change were items of some import. Some leaders spoke of the necessity to counteract what they described as a growing parochialism and isolationism. They called for a development of the awareness of the global nature of certain problems, and of a world outside, consistent with New York's increasing role as an international center. There was widespread recognition of the need to develop leadership at the community level to re-connect people with the institutions which shape their lives and to work toward the empowerment of the powerless.

13. With an uncertain economy, the need for increased governmental services, the burden of welfare and the rising costs in education, taxation was perceived as a major problem. Local taxation sources, chiefly the property tax, and the sales tax seemed to be close to their limits. Revenue sharing by the federal government was felt to be essential. Specific tax reforms to close tax loop holes and to do away with regressive taxes and to provide tax relief for the elderly and for those who bear the burden of the cost of higher education was called for. Concern was expressed over the effect of recent court decisions declaring local property taxes unconstitutional when they result in inequality in the educational system. The efficacy of alternative revenue producing systems such as off-track betting and city lotteries was questioned.

14. The need for a coordinated system of transportation was cited by many. Inadequacy of service, maintenance and equipment had an adverse effect on mass transit and was considered to present a major problem. Increased fares and the defeat of the New York State Bond issue generates the necessity to find alternates to use as a support of mass transit. Other problems came to the force, including airport ground travel inadequacies, air traffic control and the necessity to solve the 4th jet port dilemma, and the decline of the New York waterfront.

15. The liberalization of New York's Divorce laws, the effect of abortion reform changes and attitudes toward the historical role of the sexes, particularly among the young, and the increased activity of the Womens' Liberation movement have all tended to increase the awareness of the necessity for re-examining the status of women in the society. Community leaders mentioned the necessity for assuring equality of employment opportunity for women, or increasing day care facilities and for working toward the greater participation of women in public life.

Channel 4 (WNBC-TV) interviewed only about 350 Community Leaders, but in addition employed the R.H. Bruskin Associates of New Brunswick, New Jersey to conduct a survey among the public, seeking to ascertain whether a problem was very serious, serious or no problem at all. The research firm set forth the following categories of problems from which a statistical sample of residents of the metropolitan area made choices:

1. Vietnam
2. Air pollution
3. Conservation of natural resources
4. Taxes
5. Safety in the streets
6. Care of the aged
7. Community health problems
8. Rent control
9. Welfare programs
10. Drugs in the schools
11. Quality of education
12. Adaption and foster care
13. Consumer information and protection
14. Employment
15. Womens' rights
16. Gun control
17. Juvenile crime and vandalism
18. Non-violent protests
19. Union wage demands
20. Television service
21. Strikes by public employees
22. Cost of medical and hospital care
23. Rehabilitation of narcotic addicts
24. Acceptance of Puerto Ricans
25. Pornography and obsenity
26. Cooperation in city and local government
27. Noise pollution
28. Urban and regional planning
29. Pollution control
30. Ghetto living conditions

As a result of the station's ascertainment efforts, the following local, national and international problems seem to be of the greatest concern to the needs and interests of the public served by Channel 4.

1. In the field of narcotics, the control of drug traffic, drugs in the schools, rehabilitation of narcotic addicts and the use of marihuana were all considered top priority.

2. In the field of urban and regional planning, items such as transportation, municipal services, city, state and federal government relationships were picked.

3. In the area of crime, juvenile vandalism,

violence, safety in the streets, organized crime, gun control and the possession of explosives were mentioned.

4. In the field of health and welfare, rising medical and hospital costs, care of the aged, welfare programs, consumer information and protection, were high-lighted.

5. In the area of ecology and the environment, the pollution of air, water and noise, the disposal of garbage and waste and the conservation of natural resources, were emphasized.

6. In the field of the economy, the lack of job opportunities and unemployment, the rising cost of living, and taxes were the items to watch.

7. Costs of education, its quality and the lack of facilities took most attention in general.

8. In the field of housing, the lack of public housing, continued existence of Ghetto conditions as well as increased rentals were the major concerns examined in the survey.

9. Minority employment and business opportunities, the very acceptance of minorities, equal rights, and minority identities all came up in problems having to do with race or ethnic divisions.

10. Insofar as Southeast Asia is concerned the conflict in Laos, Cambodia and Vietnam as well as the prisoners of war issue and the problems of returning veterans were all mentioned.

Channel 4 in its program proposals to meet all of these problems remains, wedded to the more traditional program breakdown which was required in renewal applications of past years.

NBC's proposal to meet community problems were in the areas of public affairs, instructional programming, agricultural, and religious programming.

In the public affairs sector WNBC–TV will continue to present "Open Circuit", with the Chairman of the New York City Human Rights Commission, Eleanor Holmes Norton. There will continue to be presented "Man in Office", "Direct Line", "Speaking Freely", "Station to Station", and "Not for Women Only", and the station will continue to present documentaries and network originations such as "Meet the Press", "Today", "Comment" and "Chronology".

In the educational or instructional area the program proposals to meet community needs include "Library Lions" (The New York Public Library), "Zoorama" (in cooperation with the San Diego Zoo), "See for Yourself" a children's program (using the Bank Street College of Education as the consultant). "Take a Giant Step", "Mr. Wizard", and "Watch Your Child".

To meet the needs of agricultural viewers, "Across the Fence", offered Saturday mornings, and "Agriculture U.S.A." produced by the NBC station in Los Angeles will be offered.

In the religious field "TV Sunday School", "TV Hebrew School", "The Maryknoll World", and "From Now On" are designed to meet these needs.

At Channel 7 (WABC–TV) about thirty-two executives interviewed community leaders. Everyone from the Vice-President and General Manager to Account Executives were involved in meeting with some 371 leaders. In addition a personal interview survey was commissioned by a research organization, community affairs luncheons with civic, governmental and minority leaders were held, and numerous letters were sent to a cross section of community leaders. Furthermore, requests were made on the air to viewers asking that they inform the station of community problems of concern. WABC–TV also pointed out in its application that personnel in the station were members of local organizations and professional groups. The station also made an intense analysis of mail and telephone calls from viewers.

Local problems in order of priority were identified by Channel 7 as:—

1. Crime
2. Housing
3. Drugs
4. Education
5. Unemployment
6. Transportation
7. Racism
8. Taxes
9. Money
10. Welfare
11. The environment

State problems included again, in order of priority:—

1. Finances and taxes
2. Education
3. Welfare
4. Crime
5. The relationship between state and city
6. Revenue-sharing
7. Drugs
8. Housing
9. Mass Transit
10. Unemployment
11. Discrimination and racism
12. Urban affairs

National problems were headed by:—

1. The Vietnam War
2. New priorities
3. Welfare
4. The economy
5. Revenue-sharing
6. Racism
7. Urban affairs
8. Unemployment
9. Crime
10. Education
11. Drug abuse
12. The credibility gap

Responses from Blacks and Puerto Rican leaders were analyzed separately, and significant differences in emphasis seemed to be apparent. These leaders agreed that crime, drugs, housing, education, unemployment and poverty were the most important problems in the metropolitan area. White leaders, on the other hand, felt that these could be solved with additional resources, mainly, money. White leaders emphasized revenue-sharing at State and National levels and stressed the need for "reorientation of our priorities." The minority leaders characterized the important problems as crime, housing, drugs, education, unemployment and poverty as surface manifestations of basic and insidious problems of racism. "The System" is exclusionary and exploitive. Minority distrust explains concerted drives toward "community control" of schools, welfare programs and other essential services. The more moderate, pleaded for the establishment "to give us the resources but let us do it ourselves." Among the militants, the statement became a demand "to rectify historical grievances" and to do it now. The overriding concern of inner-city groups revealed a deep feeling about the problems of the deteriorating urban ghettos, including crime, housing, drugs, education, unemployment and racism. They feel they are underrepresented and outvoted in state legislatures.

Insofar as the perception of National problems are concerned, the most basic concern was the Vietnam War. The need for new priorities, welfare, the economy, and revenue sharing are almost equally vehement in the expression of these leaders. In the Fall of 1971, Herbert Kay Research Inc. conducted a survey of the general public for WABC–TV where some 2200 adults who were 18 years or older, and were heads of households, were offered a list of 31 problems from which to choose what were "especially serious" problems.

Here an area probability sample was employed, and the ethnic mix approximated the census. For example 9% were German Americans, 8% were Puerto Ricans, 12% were Irish Americans, 16% were Italian Americans, 13% were Jewish, 3% were Polish Americans and 39% were none of these. The most important national problems from the point of view of the ethnic groups were listed as the Vietnam War, inflation and the cost of living, drugs and narcotics, race relations, crime in the streets and unemployment.

Inflation and the cost of living were mentioned most frequently by those least likely to suffer from its effects. Whites and college graduates singled this out more often than non-whites or persons of lesser education.

The most important state problems were listed as taxes, drugs, crime in the streets, and the high costs and abuses of welfare followed by unemployment, pollution, race relations, corrupt politicians, and other social problems.

In New York City, drugs are most frequently mentioned, followed by crime in the streets and taxes. Most pressing problem to the white sample were taxes.

Insofar as local area problems were concerned, drugs, dope, crime in the streets, high taxes and other social welfare problems were mentioned.

An interesting subdivision of the study was a section devoted to the public reaction to government services. The public was asked whether or not the government was doing a job well, poorly or didn't know. The most negative public response was in the areas of welfare, recreation for teen-ageds, old-age care, recreation for the elderly, the courts, public schools, parking facilities, jails and subways and buses.

In New York City, only fire-fighting and parks and museums were considered by this sample as being handled well by the municipality.

WABC's profile of the area's problems contains considerable dramatic hyperbole.

"Local governments are experiencing growing inabilities to fund necessary basic services locally", says the report. "Services in general have deteriorated markedly and there seems to be a pervasive attitude that the quality of life has declined significantly. All major areas of life seem to be affected. Educational levels in the area schools continue to drop at a disturbing rate. Unemployment remains high. Drug abuse is reaching epidemic proportions. Housing is shockingly and disgracefully inadequate. Crime, much of it drug related, continues to increase. There's an increasing tendency on the part of dissident groups to consciously ignore the orderly process of lawful behavior. Mass transportation is inadequate and what exists is far from acceptable".

"Pollution, particularly, air pollution is a serious problem in the metropolitan area. Area welfare rolls are rising at an alarming rate. Health care for many residents, particularly the poor and mentally ill are shamefully inadequate. Tensions persist among area minorities. Corruption has been discovered in several sectors of municipal government. All these problems continue to affect the people residing in the metropolitan area".

The basic theme which permeates the thinking of persons from all levels of society concerns "the quality of life". In these difficult times, fundamental soul-searching appears to be taking place and many people are asking the questions "Where are we?" "Where are we going?" "Why?".

Significantly the answers are often based on philosophical considerations and are articulated most often as a need "to reorganize our priorities as a nation, as a state, as a city and as individuals." Specific problems such as crime, drugs, unemployment and housing are viewed merely as symptomatic of a far deeper illness.

"As a practical matter it is visible symptoms with which we must often deal, but in doing so, we cannot lose sight of the fact that they are all interrelated to, and are part of an overall and more basic malaise."

Insofar as drugs are concerned, this is a two-fold problem. The first aspect is drug abuse, and the effects on the individual. The other dimension is the resultant criminal activity of addicts desperately in need of substantial sums to support their habit. "The New York City area has the dubious distinction of being the drug capital of the country."

"The Federal Bureau of Narcotic estimates that thefts for illicit drugs reach billions of dollars a year. The solution to various dimensions of the drug problem must be found and implemented soon as the price for our failure both in terms of human suffering and in crimes commtited by drug users is too high to continue paying for it."

"The cost of eliminating slums should not be viewed as a burden," but rather as an investment in the health and welfare of all the people of the community. In view of the dissension among federal, state and city housing administrators, the enormous complexity of the problem and the economics of residential construction in New York, "the housing situation will undoubtedly get worse in the New York metropolitan area before it gets better," says the WABC report.

"Insofar as education is concerned, the problems of the educational system must be solved if the future of our society is not to be jeopardized". Even more energy must be expended in coping and remedying the defects in the areas of our educational systems.

"The old method of running transportation systems in greater New York are not working, and new ways will have to be found to keep mass transportation and people on the go".

In urban areas fear for one's own personal safety has become virtually a way of life. The same fear is reaching out into suburban areas. "Crime knows no geographical boundaries".

The rate of unemployment in the New York City area (6.7% for whites, and 7.6% for blacks) is considered very serious indeed. It is interesting to note that of the 570,000 jobs at the three levels of government include an increase of 160,000 government jobs since 1960. The salary scales for municipal employees in New York City have reached or surpassed their equivalence in private industry, according to the survey.

The funding and taxation available to local government is insufficient to meet the bills, There is no doubt that local, state, and government taxes will go higher, but the big question is how this is spent. The essential challenge of government is to determine the priorities in the spending of money.

In order to clean the streams, get pure drinking water, freshen the air, and dispose of the trash, $10,000,000,000 will be needed in the next twenty years which means $25 for each man, woman and child in the region.

Racial issues are obviously of considerable concern. "Equality per se does not now exist in the metropolitan area". Hostility and bitterness toward whites predictably follows. Increasing militany is seen from increasing numbers of black leaders.

"Much needs to be done by men of good will to rectify real injustices". The process of changing the hearts and minds of people is a long and difficult one. Society must change the actions and outward manifestation of human prejudice wherever possible by example, normal suasion and the enforcement of law.

The financial drain of welfare payments continues to be a major budgetary problem for both state and New York City. The problem is a growing one and solution must be found.

"The centralization and creation of super agencies have resulted in deterioration insofar as the response of government is concerned". Increasing cynicism by the public toward government is an obvious phenomenon.

"The Vietnam War has long been a devisive force in the community."

Inflation in the New York area has exceeded the national average. The wage earner is squeezed and sees "no light at the end of the tunnel".

The WABC report points out that outward migration is not new and population movements from the inner city to the suburbs seems to have leveled off. The Kerner report on civil disorders warned about two Americas. "The City is becoming Black and suburbia becoming predominantly White". "New York City", says the report, "is rapidly becoming the haven of the very rich and the very poor.

"There is no denying that much business is moving out, adding to the city's unemployment problem". Middle income residents face soaring rents, rising transportation costs, increased taxes of all types, air and water pollution, and a growing crime rate . . . "more than a million on welfare at the present time, and its cost is a growing burden".

"Traffic throttles city life. Mass transportation is inadequate and getting worse. Drug abuse and the resultant increase in crimes have driven citizens out of the city limits. Serious defects in urban education systems cause consternation among city-dwelling parents. The way of life is the product of industrialization and consequent urbanization of our society. Urban life is unquestionably undergoing a period of neglect".

WNEW–TV (Channel 5) authorized a general survey by the Opinion Research Corporation of Princeton, New Jersey. This was a telephone interview type of survey involving 2000 individuals in 18 counties. The results of public choice almost monotonize what community leaders have been saying to other stations.

"Hard drugs are moving to the suburbs . . . There is too much drug abuse . . . Drugs force children to steal . . . There is too much drug addiction in the area.

Increase in crime and a lot of robberies, robbing and mugging, breaking into people's homes, juvenile delinquency and an increase in the number of burglaries in the area were all underlined.

Taxes are too high . . . Property and school taxes altogether too high . . . Taxation is not fair to those who have no children in school . . .

Schools are crowded. Not enough money is available to spend on education; too many schools for the amount of people and they want more. A split session in High School is still not big enough to handle all the children. The improvement of schools is an important need; financial aid to schools and school finances are matters of great concern.

Housing has become a problem among middle class people. The high rents in apartments generally, and there is the complaint that there is plenty of housing for low-income families but not sufficient housing for middle and high income families.

Insofar as air and water pollution is concerned, the water is getting more and more polluted . . . There is contaminated water and it tastes disgusting . . . Water pollution and the damp burning of refuse is a pair of ecological problems which bother the public.

Public transportation is sadly lacking where there are no trains or buses. Transportation needs without an automobile leaves people lost.

Garbage collection and sanitation pick-ups are not carried out neatly. There are inadequate facilities, the lack of cleanliness, and there is the general criticism that the Sanitation Department is not doing its job.

Unemployment, police protection, the high cost of living, and racial problems as well as the high cost of renting, local government and the need for better administration and the elimination of political corruption are all mentioned.

When asked whether or not these various problems are going to get better, or get worse, or stay the same, in almost all cases the majority of respondents felt that the problems were going to get worse.

A subdivision of a survey was devoted to youth and young people who are in grade school and high school. Among these very young, the top 5 problems were drugs, pollution, crime, traffic problems and recreation.

WNEW's community leaders survey involved some 761 leaders from 27 counties.

WNEW–TV set forth a wide variety of comparative computer-generated tables by various breakdowns. In essence, the application is a veritable statistical abstract. There are 41 tables and all sorts of combinations and permutations. In a way these are ponderous sets of figures which delineate concerns along demographic dimensions, but provide extremely valuable comparisons.

The most serious local problems according to the WNEW community leader survey, are the economy, drugs, crime, housing, education, government, youth, transportation, ethnic problems, growth, apathy, welfare, health, communication and ecology.

Economy is the number one problem, and ranks well above the average, with Blacks and at the local government level. Drugs are a significant concern to females, Blacks and Spanish-speaking communities. Crime is the major concern of governmental leaders at all levels. Housing is a major concern of Blacks and Puerto Ricans. Education is a major concern of Puerto Ricans. The writer of the WNEW application emphasizes that the mounting drug problem compounded by its move to the suburbs and the ever-increasing crime rate are the major concerns of the people and their community leaders. For the community leaders, the economy dominates all other considerations. The third ranking most serious local problem for the general public is taxes—too many and too high—and the tax structure.

On problems at the state level, there's a unanimity of thought on the most important problems and needs. Taxes are too high—they are a major concern involved with the economy. The lack of funds and the plague of fiscal problems which present a financial conflict to government is a big frustration. Drugs, and crime, along with environmental protection, public transportation, and schools stack up as major issues for the general public. Women leaders view problems of housing, welfare and health as far more pressing State problems than male leaders.

On the National level, the War, of course, is the major issue. The economy and inflation rates second.

WNEW–TV proposes to meet most of these problems through the presentation of *"Midday Live"* where the general manager of the station appears regularly. There is a monthly program entitled, *"Alternatives"*.

WNEW will continue to offer *"Wonderama"*, the *"David Suskind Show"*, and *"You, The Citizen,"* a monthly special.

With regard to the radio stations operating in the New York metropolitan area, the community surveys reflect almost a uniformity of common concern. A wide range of problems exist which are by no means restricted to crime, drug addiction and the usual catalogue. These problems are real and important and the stations do not minimize them. There are also great needs culturally and in entertainment, which the stations hope to meet by their programming.

WHN is proposing a one hour a week program touching crime, drug abuse, human relations, environment, economic problems, health problems of the aged, cultural and recreational facilities, etc. This program is planned twice a week to be carried at 11 p.m.

to midnight. The other method started by WHN is in the form of one minute public service announcements, five minute reports, and news reporting.

WADO proposes to continue broadcasting for the Spanish-speaking community, primarily, and does not intend to meet the larger communities' needs.

WLIB suggests that it continue broadcasting primarily to the Black community on such matters as ghetto resident problems, Black views, human resources administration reports, community action forum on housing, problems in public education, telephone conversation programs, drug abuse and news specials.

WQXR, the radio station of the New York Times, proposes a five minute point-of-view program to broad spectrums of groups, organizations and interests allowing them to express their views. Another program proposed by WQXR is "Insight", a nightly half-hour news and public affairs analysis, and it also proposes to carry the "Casper-Citron Interview" program. The majority of its schedule will continue to be classical music and news from the New York Times.

WOR will continue its current series of concentrating one day a month for a day long broadcast on one New York community. "Rambling With Gambling", which is a talk show, "The Martha Deane Show", "The McCanns At Home", "The Arline Francis Show" are all interview discussion programs. Jack O'Brian's "Critics Circle", is an interview discussion program. The station serves Long Island with a weekly discussion featuring officials from nearby counties.

WHOM is basically a Spanish-oriented station with the theme "The Unique Romantic Sound" and it proposes "Unfinished Business" community leaders express their views on local community problems. It offers also "Community Billboard", items of interest to the Latin American community; "The People's Voice" where day-to-day problems are discussed; "Moral Rescue", which is a youth participation program; and "Puerto Rican Panorama", a round table discussion on the Commonwealth and Puerto Rican residents in New York.

At WEVD the foreign language programming will continue in Yiddish, Hebrew, Italian, Japanese, German, Lithuanian, Greek, Polish, Gaelic, Scandinavian, Turkish and others. The station proposes to continue with "Victor Riesel Interviews", a weekly discussion with leading National and State figures on health problems. The station offers "Ombudsmen" which is a program of interviews on the City conducted by Assemblyman Seymour Posner of the Bronx. "You and the Law", is a bi-monthly series, "Science", is a monthly survey; "Speak Out", is a monthly report under the auspices of the State Division on Human Rights.

At WABC-Radio, the proposal is for a heavy diet of top 40 Rock Music, News every half-hour, and such programs as "Report Card 72" and "School Scope" which is a weekly series of an instructional nature for young students; "Attention New York", a 15 minute weekly program with commentary and interview on minority problems; "Perspective New York", a weekly half-hour program reporting on significant events. The WABC-Radio Press Conference where newsmen question top newsmakers from the Tri-State area, and "Conference Call" a three hour Sunday Night program discussing subjects of concern to young adults provide the public service offerings suggested by WABC.

WNBC-Radio proposes to regularly serve the need for information on actions of the National, Legislative, Judicial, and Executive branches of the Federal Government; United States Military and Diplomatic action outside the United States; the activities of the United Nations; and the exploration of outer space. The station proposes to devote 3 hours a week to such topics as are concerned with the problems of Latin American communities, the "WNBC Suburban Report", "These Are Your Schools"; "The Soul of Reason", which is a discussion of Black Urban problems; and it also proposes a series of Mini-Docs which are one minute vertical documentaries. A five minute program on religious problems is entitled "In Contact". The largest percentage of programming projected seems to feature middle-of-the-road music and sports.

WNEW-Radio also offers middle-of-the-road music and news on the half-hour. It proposes to continue its weekly program "News-Closeup" and offers one minute reports and vignettes on minority problems and needs. It has an extensive ski reporting service and financial reporting service. Short reports on developments in the Arts and Sciences are contained in a series of programs entitled, "Yale Reports".

WCBS is proposing a continuation of its continuous News Format. It also proposes to broadcast "Community Report" which are short reports five times a week on social problems. It offers a report on the drug scene which is a three-minute report every day and it continues its policy of offering editorials and the broadcast of replies to such editorials. It offers a program entitled "What's New in Business?" which is a Sunday Morning Report. It also is proposing two-minute reports entitled, "Consumer Inquiry" and it will continue to present "Washington Week", a weekly review of events from the Nation's Capital as well as the "Eric Severeid Analysis". A program designed for the young wife and the homemaker is entitled, "Today's Woman".

WMCA is suggesting the continuation of its telephone talk shows on a wide range of subjects which permit listeners and radio personalities to discuss in detail matters of concern to those on the phone.

WBNX will continue to offer Spanish programs including music, news interviews, and community affairs as well as Italian programs and does not suggest any traffic coverage.

WINS will continue to offer its continuous news from the Associated Press, The United Press International, The Police Wire and Weather Sources.

WPOW is on a 50 hour a week schedule because of its limited license and offers morning religious programs in English while afternoon hours are devoted to foreign language programs, including Polish, Greek, Czech, Ukrainian and it involves large quantities of music, talk, interviews and public affairs.

WWRL will continue to present Soul Music, Rhythm and Blues, and Jazz, as well as news and traffic reports intermittently.

There would appear to be an amazingly high degree of correlation between the conclusions of the broadcasters and the results of professional studies by academic social scientists and social workers. For example, from the conclusions of the latest and deepest study under the auspices of the prestigious Community Service Society of New York, the following brief quotation is almost precisely parallel to the judgments of New York's broadcasters. It also may provide an explanation of the results obtained by the license renewal surveys.

"The primary trend in New York City is one of increasing deterioration . . . the situation in New York City is not only a matter of persons with problems, but rather one of whole areas with social ills. Most of these ills, for example, the concentration of drug addiction, of poverty, of separated women, and high proportions of births out-of-wedlock, are not recent in origin . . . such afflicted areas have existed for at least twenty years . . . many of the areas have been badly afflicted for a longer time . . ."

"The social problems of New York City are worsening; they are reaching crisis proportions . . . large portions of the city are steadily deteriorating; more and more children are being born out of wedlock and entering a peer environment characterized by drug abuse and other deviant behavior".

"They enter a school system they fear and distrust, or what is even worse, they do not enter the system in any meaningful way, rarely attending school physically or mentally. When age, boredom or failure causes them to break what little commitment there was to the school system, they go on. Some try without skills or reading ability to enter a job market no longer needing unskilled workers; some just go to the street and try to "make it" in other ways. For those who find work, if they are Black or Puerto Rican, there is still the problem of finding a place to live. The problem of residential segregation is severe in New York City; if there is insufficient income, the problem of finding a residence is almost insolvable; without money, marriage also becomes a luxury. The cycle begins again and still another generation of babies will be born out-of-wedlock".

"The failure and resentments recently seen in attempts at 'community control' and 'participation of the poor' have just begun to reveal the surface peak of the iceberg which is social disorganization".

"There is a relationship between lack of political participation in the larger society and poverty ghettoization. Those neighborhoods with the greatest need do not register to vote. Non-voting is but a symptom of a general lack of participation in community life in ghetto areas. The traditional way into the system for an ethnic minority is enlightened block voting, and this traditional way needs encouragement".

When the Federal Communications Commission made community needs-ascertainment a requirement for broadcast license renewal, it wrought much better than it knew. No other federal agency has created a social information system of the magnitude and extent of the timely reports from the entire country on a continuing basis fathered by the Communications Commission. No matter how critical one might be about the details of the procedure, and there are many reservations about the great duplication of effort in the major markets, the end result, if taken together represents a continuous temperature-taking of American society not otherwise available.

Most political leaders have created their own internal communication systems with their constituencies. The sorrow and pity of it all however, is that the Congress, the managers of the Presidential political campaigns, local and state office holders, state and local governments allow this truly major gathering, tabulation and analysis effort to lie as a fallow mother lode buried on the shelves of storage areas in the Federal Communications Commission in Washington.

What is even stranger is the failure of normally highly promotional-minded broadcasters to use the product of this resource expenditure and this major effort for residual uses other than license renewal, however vitally important that is. There appears to remain a residual reluctance, among station staffs, at least, to reveal the contents of an application because of the legitimate fear of competing strike applications. The easiest way to have an instant meeting with the general managers of most stations is to walk in off the street and request an opportunity to inspect the public file.

But, the ingenuity of individual broadcasters in the ascertainment process, the numerous outside professional surveys and the overall conclusions as well as the various combinations and permutations of social statistics produced by a Metromedia Channel 5 in New York for instance, could be one of the single most valuable tools for Government, for Legislators, and for those with power to correct societal problems. No greater public service could be rendered by broad-

casters, above the use of their facilities to hammer away with editorials and informational broadcasting to the community about the community, then to specifically and affirmatively distribute the end products of their ascertainment surveys to their Legislators, Governors and Social Health and Welfare agencies. For political campaign issues and for social research by the academic community, there would seem to be no greater untapped, neglected, major social-information resource than the public files of the broadcasters of the United States.

Seymour N. Siegel is President of The Broadcasting Foundation of America, and was a long-time Director of Municipal Stations WNYC and WNYC–TV. He is also a Visiting Professor of Mass Communications at Emerson College in Boston and an Adjunct Professor of Telecommunications at City University in New York.

CRIME IN BOSTON

Mr. WILLIAMS. Mr. President, the Subcommittee on Housing for the Elderly, of which I am chairman, has just returned from Boston where the issue of crime and security is a primary concern of elderly service organizations and elderly citizens alike.

Mr. Nixon may be pleased that the crime rate has increased only 1 percent since last year, but there are many people in Boston—especially the elderly—who are more afraid today than they have ever been in their lives.

It is clear to me that the Federal Government must make a far greater commitment to security—especially for public housing. The local governments, no matter how willing, cannot provide enough assistance. The Boston city government and the Boston Housing Authority together have contributed nearly $3 million in 1972 for security services. While this commitment has helped in many areas, it falls far short of providing what is urgently needed. Local housing authorities, many facing bankruptcy, cannot be asked to solve this problem unless the Congress and the administration are willing to lead the way with funding and technical assistance.

Mr. President, I ask unanimous consent to have inserted in the RECORD an article from the New York Times describing our hearing in Boston.

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

[From the New York Times, Oct. 4, 1972]

BOSTON ELDERLY TELL OF TERROR—SENATORS HEAR OF ASSAULTS IN PUBLIC HOUSING UNITS

BOSTON, October 3.—When 70-year-old Mary Bell—that is not her real name—returned one evening to her small apartment in one of the public housing projects here following dinner with friends she was not surprised to find that the hallway lights were out again and the elevator was broken.

Nor was she surprised when she was attacked and robbed as she reached the top of the darkened staircase leading to her floor. Her assailant was later identified as a 12-year-old heroin addict.

The story of Mary Bell was one of several told to a Senate Subcommittee on Housing for the Elderly as it held a hearing here yesterday on the adequacy of Federal response to the housing needs of older Americans.

Some committee members hope that testimony from that hearing detailing brazen daylight assaults on and robberies of the elderly—sometimes in their homes—will persuade the Nixon Administration that the operating subsidy from which public housing draws money for crime prevention is not the place to cut the Federal budget.

SUBSIDY COSTS ESTIMATED

Private experts on public housing have estimated that operating subsidies needed for public housing next year will exceed $300-million. The program now has an appropriation of $170-million.

The Department of Housing and Urban Development maintains that there is not enough administrative control over costs that local housing authorities charge to the Federal Government.

Before the hearing, the subcommittee's chairman, Harrison A. Williams, Jr., Democrat of New Jersey, and Senator Edward M. Kennedy, Democrat of Massachusetts, toured the Mission Hill public housing project in the Jamaica Plain section of the city.

There they were shown jimmied mailboxes, reflecting efforts to steal the elderly residents' biweekly assistance checks, and the broken windows and twisted security screens through which burglars gain entry and escape with their booty.

A few Roman Catholic residents told how they went to mass in groups, sometimes numbering 25 or more, because of fear of assault.

Others told the Senators that they went to the store in groups or limited their trips to the mailbox to once a week.

STAY IN AFTER DARK

Some said that they did not go out after 7 P.M., the time the project's seven-man security force left.

"As a result of this situation, nobody wants to come into public housing areas," Mrs. Thelma Peters, a 16-year resident of the Columbia Point public housing complex in South Boston and president of its Tenant Council, told the subcommittee.

"Doctors won't make house calls, stores won't deliver goods, cabs won't make calls, movers are afraid to come in, sometimes the ambulance won't come and the undertaker is afraid to come to remove the deceased."

The subcommittee was also told that assailants trying to gain entry posed as policemen or maintenance men or as representatives from one of the agencies providing services to the elderly.

When a visitor knocked at the door of an elderly couple, a frightened voice cried out after a few moments, "Please, go away, we don't have anything, please leave us alone."

There have been several deaths and many broken bones as a result of attacks on the elderly in public housing here. Often, the assailants are known by the victims. Often they are residents.

ELDERLY FEAR REPRISALS

But the elderly, victimized because of their advanced age and physical limitations, fear reprisals by their assailants, who, when caught, are sometimes released on bond within 24 hours.

Mrs. Ellen Ferrie, president of the Golden Age Club at the Bromley Heath housing project and a 13-year resident of that community, told the subcommittee that she had been robbed four times. The first time was about a year ago when she was on the way to a mailbox in mid-afternoon, and the fourth time a couple of weeks ago when she was accosted on her doorstep.

The subcommittee was told by Marshall Stein, an aide to Senator Edward W. Brooke, Republican of Massachusetts, that the assault rate in the Bromley Heath project was 783 per cent higher and the burglary rate 590 per cent higher than the national average, based on a 1971 survey.

Only a handful of elderly residents of housing projects attended the hearing. The poor showing, according to Mrs. Peters, reflects the fear of the residents to talk about the problem.

Last year, Boston spent $2.5-million for a special 65-man patrol force for the housing projects.

EXPLANATION OF BUCKLEY AMENDMENT TO H.R. 1

Mr. BUCKLEY. Mr. President, I understand that there has been some concern expressed last night and in today's press as to what was contained in my amendment yesterday to H.R. 1. The distinguished chairman of the Finance Committee confirmed last night that my amendment merely restored certain provisions that were originally a part of the legislation reported by the Finance Committee, and, further, made it clear in his discussion with the distinguished Senator from Michigan (Mr. HART) that he was willing to follow the will of the Senate on each of the several items contained in my amendment and that he would have been happy to vote on each of them individually.

The text of the amendment as adopted appears in today's RECORD. The items contained therein are nothing more than several valuable provisions which were approved overwhelmingly by the Finance Committee and which have been a matter of public record for some time. They were deleted by virtue of the substitution of the Roth amendment for title IV of the committee bill

It was only as a result of the careful examination of the exact provisions of the Roth amendment by two members of my staff that I became aware of the fact that these important reform provisions had somehow been eliminated from the bill reported out by the Finance Committee even though, quite frankly, I was a cosponsor of that amendment. On reviewing the record of the debate accompanying the Roth amendment, I found that it was nowhere mentioned that a side effect of a proposal to provide for experimentation in testing the principle competing proposal for welfare reform that these other provisions would be stricken.

It was therefore my purpose in offering my amendment to remedy what I had concluded to be an oversight; and after having spoken to my colleagues about its provisions and after hearing the debate last night, it was clear to me that most Members of the Senate then present had no knowledge of the fact that the provisions which I was restoring had in fact been deleted. In other words, it was not my intention to—nor did I—introduce new material. Rather, its effect was to correct what seemed to me to be a legislative oversight.

I can deeply appreciate the concern of the Senator from Michigan (Mr. HART) and I am also sure that as he reviews the RECORD he will appreciate that there was no indulgence in legislative sleight of hand. I will say, quite frankly, that I share his general concern when totally novel proposals are introduced in the form of amendments in the late hours when vitally important legislation is being considered—amendments which

the members of the committee have not had an opportunity to consider or evaluate. I respectfully suggest that my amendment does not fit such a category. I further suggest that the distinguished chairman of the committee was doing no more, when he accepted my amendment, than accept the opportunity to restore the bill to that form which most of the Members present who had studied the original proposal assumed was in all their State programs, it might as well take them over totally and pay for them as well. But Governor Reagan of California and later Governor Rockefeller of New York doggedly continued to search for an effective approach to the welfare crisis. They both found that, given the original intent of Congress, and with a reasonable amount of flexibility in developing State programs, the States could mount an effective attack against the welfare crisis. By their efforts they have demonstrated that it is possible for the States to institute substantive and salutary welfare reforms which would correct or prevent abuses, result in fiscal savings, and make available additional benefits to those who are truly and legitimately in need.

The bill as finally adopted provides that flexibility and preserves the reforms so carefully recommended by the Finance Committee.

INDIAN EDUCATION PROGRAM

Mr. FANNIN. Mr. President, today I submitted to the Labor-HEW Appropriations Subcommittee a request for funding title IV of the Higher Education Act, the Indian education program.

In brief, I requested an appropriation of $1 million to set in motion the work of the National Advisory Council on Indian Education and to organize and operate the new Office of Indian Education.

In my opinion this appropriation is both fiscally responsible and responsive.

Senators are urged to join me in supporting this request as I consider it vitally important that we begin, in this fiscal year, to implement title IV. If we postpone implementation until the 1974 budget year much time will be lost.

I ask unanimous consent to have printed in the RECORD my statement to the Appropriations Committee.

Also, I ask to have printed in the RECORD letters from various Indian tribes which are supporting the funding of title IV this year.

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

1973 SUPPLEMENTAL APPROPRIATION
OCT. 6, 1972

Mr. Chairman:

I am here today to urge your consideration of funding for Title IV of the Higher Education Act (P.L. 92-318), the Indian Education Program.

The enactment of Title IV represented a major step in the efforts to strengthen the capacity of the Federal government to serve the educational needs of Indian citizens. This Congressional effort is a combination of work begun in 1967 with the establishment of the Special Indian Education Subcommittee. This Subcommittee, of which I was a member, worked to identify solutions for the correction of the very apparent and real deficiencies in our Indian education programs. The final report issued by the Subcommittee urged expanded Federal funding for Indian education, and Title IV of the Higher Education Act represented an initial step in realizing that objective.

With the approval of Title IV by the President, those of us on both sides of the aisle who worked for so many years to achieve this legislative mandate awaited its implementation.

Regrettably, we were soon to learn that the Office of Education would not request any funds in this fiscal year for funding Title IV, but would postpone such requests until the 1974 budget cycle.

This decision, in my estimation, is a serious mistake, as it would only postpone the implementation of this vital effort. This decision is a disappointment, not only to me personally, but to the countless Indian Tribes who quite rightly felt that the Federal government had, at long last, set in motion a major effort to strengthen Indian education. To now witness yet another delay is, I am sure, very disappointing to our Indian citizens. Yet, for reasons of budget consideration, the decision to delay funding of Title IV is clearly understandable; and as one who believes strongly in fiscal responsibility, I can well appreciate the decision. Nevertheless, I am convinced, Mr. Chairman, that a plan does exist whereby the Congress and the Administration can serve the twin goals of developing a quality Indian education program and the very evident need for fiscal restraint within this budget year.

The plan I am proposing consists of appropriating $1 million to set in motion the work of the National Advisory Council on Indian Education as established under Part D of the Act and to organize and operate the new Office of Indian Education. This proposed appropriation should be allocated as follows:

Advisory Council	$150,000
Salaries and Expenses (Office of Indian education)	450,000
Planning and studies	400,000

I have chosen this course of action on the basis of the following reasons:

First, in the face of a clear desire to control spending, an appropriation for Title IV should be both responsible and responsive. I believe this proposal meets that test.

Second, this appropriation would provide the necessary funds to enable the Office of Education to prepare for the full and effective implementation of Parts A, B, and C of the Act.

In the absence of a professional staff to concentrate its energies on the Administration of those programs established under this Act, it would be a serious mistake to attempt to fund these programs in whole or in part in the remaining months of this fiscal year. Funding programs without a competent staff to manage them could very well result in damaging the credibility of this vital and essential effort.

Third, if we are to achieve the objectives that Congress intended under this Act, Congress and the Office of Education must have a clear idea of what resources will be needed to realize, as fully as possible, those objectives. Without a staff available to provide the necessary data and computations to support a budget request, the Congress would be merely gambling that the funds would be appropriate and relevant.

Finally, in the absence of a budget request, it would be wrong for Congress to make that budget determination on its own. Title IV provides for the establishment of a National Indian Education Advisory Council to advise the Indian Education Office and its organizational leadership as to funding priorities and programs.

It would be far preferable for the Congress to enact a budget for Title IV that had the approval of the Advisory Council. If we are to insure full Indian participation in the operation of his program, the Advisory Council should be consulted as to the budget for Title IV. Until that time, it would not be in the best interests of the Indian community, nor in the spirit of Indian self-determination, for Congress to determine the character of this particular budget without such participation.

Mr. Chairman, for these reasons, I can only support an appropriation for this fiscal year which will lead to the organization of a staff equipped to implement, beginning in 1974, the various programs under Title IV.

I would like to appear here supporting a budget request which would cover all the programs under Title IV, but I am of the firm opinion that full funding of Title IV, at this time, would be a mistake.

The implementing agency is not yet in a position to administer such funds if appropriated, and the National Indian Education Advisory Council has not had a chance to make its recommendations known conerning this budget, an activity which I consider to be of utmost importance.

With these thoughts in mind, I hope that the Committee will adopt my proposal as the best way to insure continued progress in meeting this commitment and to avoid the possibility of postponing well into fiscal year 1974 the implementation of this Act. By postponing implementation, nothing will be gained and much will be lost, a situation which would be quite detrimental.

In closing, Mr. Chairman, I appreciate once again your courtesy in hearing me; and I hope that the Committee will act favorably on the funding of this vital program.

PAUL FANNIN,
U.S. Senator.

TEMPE, ARIZ., *Sept. 28, 1972.*

Senator PAUL FANNIN,
Capitol Hill,
Washington, D.C.:

The National Indian Training and Research Center strongly urges you to support funding for title 4, Public Law 92-318 dealing with Indian education and presently before Appropriations Committee of Congress. Don Wanatee is our representative in Washington, D.C., and will contact your office with additional information funding for the Indian education legislation is urgently needed now to improve education of Indian children and to assure the future growth of Indian people.

FRANCIS MCKINLEY,
Executive Director, National Indian Training Research Center.

PHOENIX, ARIZ., *Sept. 28, 1972.*

Senator PAUL FANNIN,
Capitol Hill,
Washington, D.C.:

We the Indian Development District of Arizona Inc., strongly urge you to support funding for title IV Public Law 92-318 which deals with Indian education and presently before the Appropriations Committee of Congress.

INDIAN DEVELOPMENT DISTRICT
OF ARIZONA.

HAVASUPAI TRIBAL COUNCIL,
Supai, Ariz., September 28, 1972.

Hon. JOHN RHODES,
Congressman, House Appropriations Committee, House Office Building, Washington, D.C.

DEAR CONGRESSMAN RHODES: We applaud the passage of P.L. 92-318, the Indian Education Act. For too long our people have been lost in the shuffle, and our education shows it. Our Indian people have the lowest education level and the highest drop-out rate of any group in America. We feel the enactment of P.L. 92-318 can change all this for us. No

longer would we stand helplessly by; we would have a voice in changing the schools that have failed our people.

But our hopes mean nothing if Congress does not appropriate the funds to carry out P.L. 92-318. We hope you will vote to appropriate all the funds required to carry out the Indian Education Act.

We appreciate the past considerations you have made of the Supai people and all the other Indian people.

Sincerely,

OSCAR PAYA,
Chairman, Havasupai Tribal Council.

EMBARGO ON IMPORT OF AMERICAN FROZEN ORANGE JUICE CONCENTRATE INTO GREAT BRITAIN

Mr. GURNEY. Mr. President, for years the British Government embargoed the import of American frozen orange juice concentrate into Great Britain. This was a particularly irksome problem, and when American Presidents and British Prime Ministers met this subject was usually on the agenda. President Kennedy discussed it with Prime Minister MacMillan when they met at Bermuda. The United States properly pointed out that the British restriction was an outright violation of GATT.

The British conceded that this restriction, which was originally put into effect for balance-of-payment reasons, was really maintained to protect limited West Indian citrus production, very little of which went into frozen concentrated orange juice. Finally, the British Government suggested to our Government, that American interests "work something out with the West Indies," and the restriction could be terminated. This suggestion was passed on to representatives of private processors in the Florida citrus industry. A complicated and lengthy negotiating period with West Indian representatives and the British Government ensued.

At long last, on March 11, 1964, the British Government did remove the restriction to admit American frozen orange juice concentrate. Restrictions were maintained on all other forms of citrus, however, and only this year was frozen grapefruit concentrate removed from the quota list. In both the orange and grapefruit concentrate situations, private American processors agreed to help market some of the West Indian crop, to the extent that feasible production and supply situations were achievable.

At the time the orange restriction was removed in 1964, the American negotiators were led to believe that since no tax or duty were applicable to fresh oranges, no duty or tax would be applicable to frozen orange juice concentrate. That tax statement, the British Government now avers, was not in their notes at the time.

When the first shipment of Florida frozen orange concentrate was made to England in 1964, purchase tax—which is a sales tax at the wholesaler's level—of 15 percent was applied. This subsequently was increased to 22 percent and is now 18 percent.

Despite repeated representations by the Department of State in Washington, by the American Embassy in London, by British distributors of American citrus and by both the Johnson and Nixon administrations, this inequitable, discriminatory, and unfair tax is still in effect.

There is no British tax on milk, no tax on fresh oranges, and supposedly no tax on food. But there certainly is a tax on Florida frozen concentrated orange juice and there is a very real danger that when the British convert to the value added tax in April of next year, that the inequity of taxing orange juice but exempting the fresh orange will continue.

I rise to protest this absurdity, and to ask our British friends to remove this tax in next year's finance bill.

This inequity was widely discussed in England this summer. Let me read an advertisement which appeared in the London Times on Monday, July 10, 1972. It states:

CAN VAT BE ALLOWED TO MAKE THE SAME OLD MISTAKE?

VAT is to be a fair tax—fairer than Purchase Tax. That is the intention, and the promise. Already its fairness is in question on a number of major issues, as the letters to the editor in this newspaper illustrate; but at least, essential foods will not be taxed. Or will they?

In common with other basic foods, fresh oranges and grapefruit will be zero-rated. But the juice of these fruits, in which all their food value is concentrated, will carry VAT. That is the proposal.

This is a nonsense inherited from Purchase Tax and its failure to distinguish between "luxuries" and essentials. Frozen fruit juices—pure, natural juices squeezed straight from the fruit with nothing added, only water taken away—were lumped together with squashes, cordials, fizzes and other fruity-named frivolities. But then, as we all know, Purchase Tax was full of unfair anomalies which the fairness of VAT is intended to put right.

There is still time—but only just—to make sure that it does.

This is not the only issue to be debated before VAT becomes law. Or even perhaps the most important. But justice should not only be done and be seen to be done: it should also be consistent.

With Purchase Tax rightfully removed, prices for frozen fruit juices could and would come down. With VAT imposed, they cannot. At 14p, a can of quick-frozen concentrate costs about 2p more than it would without tax.

Yet again the housewife's food budget will be strained. Unnecessarily and unfairly, due to a past misunderstanding.

Issued in the interest of fairer food prices by the National Association of Frozen Food Producers.

On July 11, 1972, the House of Commons debated an amendment to the then pending VAT legislation, the amendment having the effect of zero-rating all "pure natural fruit juices or concentrates thereof" in the value added tax, treating juices the same as all foods, untaxed. The debate, which appears in column 1481 through 1487 of the Hansard, the House of Commons official report of Parliamentary debates for that date, was joined in by Conservative and Labor Party spokesmen. No individual MP spoke against it, other than the government spokesman, the Minister of State, Treasury. His main argument was that all items taxed under the purchase tax had to be carried over into the value added tax, even by mistake, to reduce the VAT rate. Regrettably he talked of a 110-million pound tax loss: The amount involved in all pure fruit juices in the U.K. is but a fraction of that, 4 million pounds at the outside.

But regardless of amount, the thing is a clear and simple inequity. It means, if you please, that caviar from Russia is not taxed in the U.K., but orange juice from Florida is. I find the debate on this matter interesting. I hope my colleagues will, too. Mr. President, I asked unanimous consent that the pertinent columns of the debate as they appear in the official Hansard report appear at this point in my remarks:

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

Sir Stephen McAdden (Southend, East): I beg to move Amendment No. 35, in page 108, line 26, at end insert:

"Pure natural fruit juices or concentrates thereof".

The House has been moving at a fairly rapid pace through the Amendments, and I have no desire to slow down the pace. I shall make my point shortly, and I hope that the Government will recognise the force of the argument and accept it without delay.

I regard—as I think that most people outside the House do—pure fruit juice as a nutritional food. Although my remarks are concerned mainly with orange juice, they apply equally to grapefruit juice. There may be some fruit juices which are not nutritional and have no food value. If so, they can be spelled out and deleted from the reference which I am claiming for natural fruit juices.

There is no doubt that orange and grapefruit juices have a high nutritional value and are entitled to be regarded as food. Oranges are so regarded, because they are zero-rated. If oranges are zero-rated, it seems in all logic that if an orange is squeezed, the liquid extracted from it and the surplus water removed, the product which is then supplied to the customer to add water and reconstitute it is just as much entitled to be treated as food as the orange itself. I cannot understand the logic which attempts to treat it differently from the orange itself.

This will probably be of benefit to many people. In these days when one has to be careful about one's interests, perhaps I should declare an interest, in that I am Chairman of the Anglo-Israel Parliamentary Group. It may be that this provision will be of benefit to the people of Israel. I do not think that that detracts from the argument. It will also benefit the people of Jamaica, of Honduras and vent of the United States who send us some concentrated pure orange juice and also, I do not doubt, grapefruit juice. The basic point is that it is food, and the Government are committed not to tax food. That being so, there seems to be no sense or reason in taxing pure orange juice.

Quick-frozen concentrated orange juice consists only of the unadulterated natural solids of the fresh orange. It contains no additives or preservatives of any kind. It is obtained by pressing the orange immediately after harvesting and then partially eliminating the natural water content. The consumer by replacing the "lost" water is producing the same effect as he would by squeezing a fresh orange. The vitamin content is retained by the quick-freezing process, thus maintaining the food value of a fresh orange. I am sure that my Hon. Friend would find it difficult to explain to his wife why she can buy a fresh orange without VAT, but if she dares to buy frozen orange juice she cannot do so without paying VAT.

This pure concentrate of fruit juice is not to be confused with orange squash and things of that kind which, whilst they make a refreshing and palatable drink, do not pretend to have anything like the nutritional value of pure orange and grapefruit juices. That pure fruit juice is regarded as a food is evidenced by the fact that most people drink it at breakfast. It is part of their breakfast diet. I hope that my hon. Friend will accept the case that I have made and accordingly zero-rate natural fruit juices.

The argument may be advanced that these juices were formerly subjected to purchase tax and therefore they ought to be subject to VAT. I do accept that. As they say in China: "Two wrongs do not make a right." I do not agree that because they were subject to purchase tax they ought to be subject to VAT. I hope that my hon. Friend will see the force of the argument and appreciate that natural juices are of high nutritional value and have been wrongly subjected to purchase tax. We cannot argue about that now, but this is the time to put the matter right and see that they are zero rated for VAT.

Mr. DALYELL. It is a pity that the hon. Member from Southend, East (Sir S. McAdden) did not have the wind to read on. He and I have the same brief. He left out a rather choice sentence. The brief continues:

"This product is in reality the orange itself with the unwanted materials removed and should, we believe, be classified as a food."

I do not know what the unwanted materials are; nevertheless, we can guess. This is a fairly convincing brief that we have from Mr. E. Hall, of the National Association of Frozen Food Producers.

Sir S. MCADDEN. The unwanted materials are the skin, the pitch and so on.

Mr. DALYELL. Obviously the hon. Member for Southend, East is a great expert on the natural orange. But the brief continues:

"As a food, oranges themselves are zero-rated, there can surely be no good reason for treating the frozen concentrated juice any differently. Without the present or proposed tax, the major companies concerned would reduce the retail price by 2p per 6¼ fluid ounces."

I think that most of us who served on the Standing Committee do not produce briefs in which we do not believe. I believe in this one. There is a good case for it. We look forward to what the Minister has to say.

Mr. CHARLES MORRISON (Devizes). I support my hon. Friend the Member for Southend, East (Sir S. MacAdden) on this Amendment.

The first occasion on which I attended a Conservative Party Conference was in 1963, when it took place in Blackpool. I remember arriving, rather late at night, at a boarding house a long way down the shore from the conference centre. The next morning I came down to breakfast. I looked at the menu. It started off with three possibilities: fruit juice, cereals, and porridge. I asked for fruit juice. What arrived at the table was a small glass of lukewarm, very dilute orange squash. Literally, it left a nasty taste in the mouth. It gave me a rather unfortunate first insight in Blackpool.

Until I became aware of the purchase tax regulations, indeed, until this Bill was published, that was the only occasion I have known when orange squash has been muddled and bracketed with orange juice. I cannot help wondering whether there is not some connection between the two events. My right hon. Friend the Chancellor is extremely well advised and not least, he has the assistance in his deliberations of my Hon. Friend the Member for Blackpool, South (Mr. Blaker). Could it be that he, too, believes what might well be a popular Blackpool fallacy: that orange squash and orange juice are one and the same and should be treated similarly? Could that be the source of the advice to the Chancellor on the Bill?

The fact is that orange squash is not normally drunk for breakfast, but sometimes orange juice is and it is drunk as such as an alternative to, but in the same bracket as, porridge or cereals. Therefore, I believe that it is a food and should be treated as such in relation to value added tax. For that reason, I hope that my hon. Friend the Minister will be able to make a concession on this point.

Mr. BRIAN WALDEN (Birmingham, All Saints). It will not come as any surprise to the hon. Member for Southend, East (Sir S. MacAdden) that nothing whatsoever would persuade me to touch this noxious stuff, least of all the argument that it would do me good. All the exciting things in life are the things that do not do one good. Nevertheless, I shall be very interested to hear the Government's case on this point.

I think that the brief is right. To all intents and purposes this is the orange. It is difficult to explain—not in the case of squash; I accept that—but in the case of pure juice why there should be a differential treatment here. As I anticipate that the Minister will make a concession, the Opposition need say no more about it.

Mr. IAN LLOYD (Portsmouth, Langstone). I have one observation on the Amendment, which obviously refers to a matter of great pith and moment. Clearly what we are talking about is the progress in the container which is used to transport orange juice, the progress from that provided by nature to that invented by man. The last thing that my right hon. Friend the Chancellor would want to do is to blacken the container.

Mr. NOTT. In moving his Amendment, my hon. Friend the Member for Southend, East (Sir S. MacAdden) said that he hoped that either I or himself would have no difficulty in explaining this matter to our respective wives. I cannot give him that assurance, because all of us have certain difficulties on occasions in that direction. But I hope that I shall make good progress in explaining to the House the reason why we cannot accept the Amendment.

Hon. Members will all have received this particular brief, as I have. It arrived on the famous breakfast table which has been referred to. As the sponsors of the Amendment—if I may describe them as such—have sponsored a large, extensive advertisement in The Times recently, this matter merits a full reply.

The object of the Amendment is to zero-rate pure natural fruit juice. My hon. Friend made the point that its effect would be to relieve from tax certain items which are already taxed. In this way, it would change the present borderline between taxed and untaxed foods. As the House will know, the decision to tax at the standard rate of food and drink currently subject to purchase tax was taken principally for revenue reasons. To zero-rate all such items would have led to revenue losses of about £110 million in a full year, and thus it would have led to a rise in the rate of value added tax.

At a time when the Government were introducing a comprehensive tax on consumer expenditure, it would have been inappropriate to remove from tax goods already subject to purchase tax, for by doing so we would have set off widespread claims for relief from others concerned with purchase-taxed food.

Fruit juices are aimed at the breakfast table market. I noted with interest—I cannot say "with sympathy" in view of the experiences of my hon. Friend the Member for Devizes (Mr. Charles Morrison) at his boarding house of Blackpool—that the ice cream and potato crisps industries have also based their claim for relief on the fact that their products are increasingly used as part of breakfast, although not necessarily so, or at any rate part of a main meal.

The House will appreciate that if we had removed any one item from among the group of foods now subject to purchase tax, the continuity of the move from purchase tax to VAT would have been broken. I appreciate that the claim is made—particularly by the Americans, as I understand it—that concentrated juice is similar in all ways to fresh fruit. No preservatives or other adulterants are added to the juice, and only water is extracted. My hon. Friend the Member for Southend, East made that point.

For a number of years representations have been made on this subject, through advertisements in the press and letters to Members of Parliament, which we have all had recently, attempting to obtain purchase tax relief for this industry. I should point out that last year the rate of purchase tax on these items amounted to 22 per cent. The current rate of purchase tax on food is 18 per cent of the wholesale value. On average, this is equivalent, in terms of VAT, to about 12½ percent in retail terms. My right hon. Friend's proposal to recommend a rate of 10 per cent will lead to yet another reduction in the rate of taxation on these foods. I am sure that would bring satisfaction to the industry.

As the House has been told on many occasions the overriding effect of the Chancellor's proposal for the reform of indirect taxation will be to reduce the burden of tax on food in this country. SET is being abolished when VAT is introduced and SET fails to some extent on the distribution of food.

My right Hon. Friend, the Chancellor has already reduced the rate of purchase tax on these foods, and the introduction of VAT will lead to further reduction in tax. As we cannot have a broken line appearing between the purchase tax foods for one separate item I hope my hon. Friend will see fit to withdraw his Amendment.

7.30 P.M.

Mr. BRIAN WALDEN. The Minister of State's reply puzzles me. At one stage I thought that when it was said that orange juice was an absolutely natural foodstuff with the water taken out the Minister of State would say that it was not, but he did not. He referred to VAT and SET and the rates of purchase tax. I wonder he did not say that if the economy grew by 5 per cent people would be able to buy more anyway. He has turned the Amendment down flat on the ground that the situation is better than it was before. I am sure that the Hon. Member for Southend, East (Sir S. McAdden) is under no illusions about the reply and I still do not understand why the Minister says we cannot draw the line here. Why? It seems a very sensible place to draw a line since he has not disproved the fact that it is a food.

Mr. GEORGE WALLACE (Norwich, North). One point has been completely overlooked. Orange juice is not necessarily consumed at breakfast. It is also a very nutritional food containing vitamin C, which is an important factor in children's health. There is in my constituency a factory owned by a very well known manufacturer of baby food and baby food juices. The products are subject to tax. The Government has said they are not taxing food, but they are taxing baby food. That should be borne in mind. I hope that the Minister of State's reply will not be accepted.

Sir S. MCADDEN. In view of what my hon. Friend the Minister of State has said, and while I do not accept his argument completely, I beg to ask leave to withdraw the Amendment.

Amendment, by leave, withdrawn.

Mr. President, I have had an opportunity to review the official British Government explanation of the value added tax in a book entitled "VAT: Scope and Coverage" Customs and Excise Tax Notice No. 701, dated August 1972, and I

am amazed. On page 27 of that publication, under the heading "Zero Rate," is a section entitled "Fruit and vegetable juice concentrates suitable for use in manufacturing processes." Exactly opposite that exempt category is a heading "Standard Rate," and listed there are "Fruit and Vegetable Juices." It could well be that the British housewife is a manufacturer when she adds three parts of water to get her orange juice concentrate, as you and I do. But certainly she ought not be discriminated against, either in the United States or in any other country, by exempting the fellow who manufacturers a drink concoction and by taxing a housewife and her children.

I am making the strongest representations to our Departments of State and Agriculture. I cannot believe that this Boston tea partylike tax can be any more popular in the United Kingdom than it is here. Incidentally, there is a little twist of irony in all this: tea is not taxed under either purchase tax or value added tax. But orange juice is. Can it be that our friends across the sea are finally exacting tribute for what happened in Boston Harbor 200 years ago.

In any event, I am very hopeful that now the whole VAT legislation is out of the way, the British Government will use the additional power it gained in the recently enacted value added tax legislation, to administratively remove this inequity and cause of dispute between our two governments by granting frozen concentrated orange juice a zero rating.

I believe that the original GATT violation has simply been transformed into an internal tax. If further conversations, which I hope the State Department will have with the United Kingdom, do not result in the elimination of this inequity, I shall seek higher U.S. duties on Scotch whisky. The British have been avoiding higher taxes on this item by shipping it in barrels; maybe we ought to take a look at that situation. I dislike trade retaliation, but I also dislike trade discrimination.

The British press and the United States are in agreement about this obvious inequity as is clearly demonstrated by the following excerpts from British newspapers and magazines:

[From Super Marketing, July 14, 1972]

OF JUICE AND POSTMEN IN VAT DISPUTE

This seems to have been a profitable period for the Post Office. Letters have been flowing into the House of Commons and other destinations like a snowstorm, filling the coffers of the Royal Mail while putting forward the views of the grocery industry.

The subjects contained in the envelopes are not new. In fact, many people within and without the industry may well be getting a little weary of them.

VAT, open date stamping, planning permission, all the old familiars have been given yet another airing.

The latest batch of letters, posted only this week to give postal deliverymen an unseasonal preview of Christmas, went out to each Member of Parliament.

Man with more than 600 pen-friends is Ernest Hall, Chairman of the National Association of Frozen Food Producers and the leading gleam in Birds Eye.

His message? Do not let VAT be applied to pure concentrated fruit juice. Hall's message should not be dismissed because it comes from the manufacturing side of the industry.

The protestations on behalf of fruit juices can and must be applied equally to the rest of the foods market where it contains items not yet classified as food.

There can be no doubt that VAT will descend, albeit at zero rating on the food industry next April. And already ancilliary industries are moving in to their own advantage and rightly so.

NO CLEAR LINE

But the industry most concerned cannot yet make any definite plans because there has been no clear line from the Government as to what is or is not a food. Or what does or does not qualify for the zero rating.

Going back to Mr. Hall's fruit juice. At present it carries a high Purchase Tax of 18%. If that was wiped out (preferably) or even reduced (probably) with the transition to VAT, how much more would retailer be able to sell.

Hall's mailstorm could have a second effect. If the British Parliament reduced all foods to a zero-rating, and defines them clearly, this could well lead to our new EEC partners moving in the same direction.

Would this, in turn reduce the cost of the currently imported foods from Europe with which our retailers are making a reasonable profit?

As far as we can see, the more letters that are written on this and other subjects of concern to this industry, the more likely results will be obtained.

[From the Grocer, July 15, 1972]

GOVERNMENT SAYS NO TO VAT PLEAS FOR NATURAL FRUIT JUICE

Senior members of the National Association of Frozen Food Producers were "disappointed but, above all, bewildered" by the Government's flat rejection on Tuesday of an amendment to the Finance Bill section on food asking for natural fruit juices to be zero-listed for VAT.

John Nott, Treasury Minister, said the amendment was unacceptable. Its effect would be to relieve from tax items which were already taxed and in this way it would change the borderline between taxed and untaxed foods.

The decision to tax at the standard rate all food and drink currently subject to purchase tax was taken principally for revenue reasons. To have zero-rated all such items would have led to a revenue loss of about 110 million in a full year and thus to a rise in the rate of VAT.

So the amendment was withdrawn by its mover, Conservative MP, Sir Stephen McAdden, who had earlier differentiated between pure juices and squashes, and pointed out that with its high vitamin C content, orange juice was as much a food as milk.

This was among the many points made earlier this week by the NAFFP which took a full page in "The Times" on Monday, and sent letters signed by Chairman Ernest Hall to all MPs pointing out "a serious and unhappy anomaly entailing a tax on food."

Echoing the reasoning of The Grocer's frozen foods expert, Robert Michael, (issue June 17), the letter and the advertisement detailed the purity of natural juices and their concentrates and how zero-rating could drop the retail price of a 6¼ fl oz can by 2p to 12p.

It also showed how frequent representations have been made over a period of years to correct what was believed to be "an accident of legislation" and claimed that the advent of VAT was the ideal time to correct this.

Tuesday's events in the House of Commons have left the NAFFP temporarily without impetus. Graham Kemp of Birds Eye told The Grocer that the Association was not sure what to do. "We pulled out all the stops on this, and it now seems we have been talking to a brick wall. Orange juice will just go on being expensive."

The fresh orange juice market in the United States has shown how big the potential is in Britain—a potential that is not being realised, the British companies feel, because of the high price, "At 12p, it could really take off," they say.

It is not clear whether NAFFP will now give up the fight. It is felt that American interests might well keep enthusiasm going here, but certainly Mr. Nott's "No" was a real setback to hopes of cheaper fruit juices.

FROM DR. STUART SANDERS TO THE TIMES OF LONDON DATED JUNE 30, 1972

SIR: From all accounts the provisions for value-added tax now being discussed in Parliament are full of anomalies of a fiscal or commercial character. I am not particularly interested in these. What does interest me greatly is the projected tax on food represented by the apparent intention to apply VAT to pure fruit juices.

To anyone familiar with the nutritional value of these juices, which derives from their vitamin C content, this must seem quite deplorable. Any tax which adds to the cost of a pure food of direct benefit to national health must be considered a very bad tax indeed.

Yours faithfully,

STUART SANDERS.

In an article appearing in the London Observer for Sunday, September 17, 1972, was an article entitled, "What's VAT?—Frances Cairncross Answers Questions on the Tax That Is Worrying Everyone." The following significant statements appear:

Will there be all kinds of loop holes and anomalies with VAT?

Some are already apparent. There is the "fish and chips" problem: if you buy fish and chips and eat it in the shop, it counts as a "meal in a restaurant" and is liable to VAT. If you eat it outside the shop, it is food and tax-free.

There is the orange juice problem: if you buy tinned or bottled orange juice, you pay VAT on it as a soft drink, but if you buy your own oranges and squeeze them at home, you pay no VAT.

To me, it is all inexplicable. As far as I am concerned, the British have reneged on the intent of the 1964 understanding. It is ridiculous to tax orange juice but to exempt fresh oranges, milk, tea, and other foods. Orange juice is not a luxury; it is a necessary part of the diet. It certainly is more beneficial to the health of the people of England than Scotch whisky is to the people of the United States.

I hope we can resolve this problem without further difficulty.

PRAIRIE DOG POISONING

Mr. WILLIAMS. Mr. President, on February 8, 1972, President Nixon issued Executive Order No. 11643 restricting the use on Federal lands of chemical toxicants for the purpose of killing predatory animals or birds and the use of chemical toxicants which cause any secondary poisoning effects for the purpose of killing other animals and birds.

Subsequently, William D. Ruckelshaus, Administrator of the Environmental Protection Agency, suspended the use of strychnine, cyanide and sodium fluoroacetate—1080—for use in predator control. In his announcement, Mr. Ruckelshaus stated:

Cyanide, strychnine and 1080 are among the most toxic chemicals known to man. They act quickly, spreading through an entire animal, crippling the central nervous system. These poisons are toxic, not only to their targets, but to other animals and wildlife.

As one who is opposed to the use of toxic chemicals to control wildlife and a cosponsor of legislation to prohibit their use on Federal lands, I applaud the action taken by the President and the Environmental Protection Agency.

However, in direct contravention to these actions, the Department of the Interior continues its use of toxic chemicals to control predators. One particular case in point is the prairie dog control program. During the past decade over 1 million acres of prairie dog towns were treated annually by spreading grain treated with strychnine alkaloid, which is among the poisons listed in the President's order. In 1972, approximately 200,000 acres were treated in this manner. This poisoning campaign against prairie dogs is carried out in 10 States: Montana, Wyoming, Colorado, New Mexico, Oklahoma, Texas, Nebraska, North and South Dakota, and Utah.

According to the Department, there is no evidence that predator control is decimating prairie dog populations. However, at least one species, the Utah prairie dog, is endangered and conservationists fear that if this poisoning continues, a serious reduction in prairie dog populations will result, perhaps to the extent that they will be unable to recover.

Another equally disturbing consequence of the prairie dog control program is the inadvertent killing of other forms of wildlife, some of which are either rare or endangered. For instance, the black footed ferret, which is in grave danger of extinction, lives in close association with prairie dogs. The ferret depends upon the prairie dog for its food and shelter in the burrow systems. Prairie dog control programs are extremely hazardous to the black footed ferret due to the danger of secondary poisoning and the elimination of its food supply. Yet prairie dog poisoning continues throughout the ferret's range.

The Department of the Interior contends that no ferrets are killed by poisons intended for prairie dogs. However, the ferret is a highly elusive animal and extremely difficult to sight. It is highly doubtful that the ferret has not been affected by predator control programs, either directly or indirectly.

Mr. Tom Garrett, wildlife conservation director of Friends of the Earth, whose outstanding contributions to the field of wildlife conservation are well known, has called upon the Department of the Interior to discontinue the prairie dog poisoning program in a recent letter directed to Assistant Secretary Nathaniel Reed. I fully support Mr. Garrett's efforts.

Mr. President, I ask unanimous consent to have printed in the RECORD the complete text of Mr. Garrett's letter to Assistant Secretary Reed.

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

FRIENDS OF THE EARTH,
Washington, D.C., September 1, 1972.

Secretary NATHANIEL REED,
U.S. Department of the Interior,
Washington, D.C.

DEAR SECRETARY REED: Despite the recent reforms in predator control stemming from the President's Executive Order of February 8, 1972, widespread poisoning of prairie dogs by the DWS continues.

Mr. Ruch and Mr. Jackson have advised our office that poisoning of these ground squirrels will continue at about the same rate as in the past several years. They indicate that the DWS expected to "treat" approximately 200,000 acres of "dogtown" with poisoned grain this year. The poisoning is being conducted by spreading grain treated with strychnine alkaloid ($C^{21}H^{22}N^2O^2$) which is admittedly a secondary poison, and among poisons prohibited for predator control in the President's Order.

FOE strongly protests continuation of this poisoning campaign on the following grounds:

1. The population of prairie dogs in the United States which may have once numbered in the billions, is probably under 1% of its original figure. The species has been extirpated from all but a small portion of its original range. During that past decade prairie dogs have become rare in most parts of the West. The poisoning campaign conducted by the DWS has been responsible for most of this startling decline.

Therefore, to continue to poison at a rate which has produced a rather rapid eclipse of the animal in a few years is sure to result in its complete disappearance from all except those few points where it is protected, within a comparatively short time.

Due to their compelling and elaborately structured social bonds, prairie dogs cannot rapidly expand their range. The constraints this imposes on expansion of range has been especially noted by John King and other students. It would probably take this species . . . were it no longer molested . . . many hundreds of years to re-establish itself throughout its former habitat.

Prairie dogs are almost uniquely susceptible to poisoning. It is arithmetically demonstrable that the poisoning of prairie dogs on a current scale cannot be long sustained by the present population.

2. The elimination of the prairie dog will inevitably bring about the extinction of the rare black-footed ferret, and places the future of the burrowing owl in doubt, along with other forms dependent on dogtown habitat.

We have little faith in the assertion that careful surveys are conducted of dog towns for the presence of ferrets prior to poisoning. McNulty found poisoning being conducted in localities where ferrets had been actually observed. Moreover, the ferret is fossorial, nocturnal and elusive. Aside from distinctive trenches which he apparently may or may not dig, there are no reliable signs of his presence. There is virtually no chance of spotting a resident ferret during a cursory examination of a dog town.

Mr. Jackson, of the DWS, has recently advised us that the DWS knows of no ferrets in Oklahoma, where prairie dogs are now being poisoned. However, a careful study by four scientists led by James Lewis of the University of Oklahoma uncovered fifty four highly probable sightings by reliable individuals, and several hundred more possible sightings. A debate raged earlier this year in the Oklahoma legislature concerning the ferrets. A bill, introduced in the legislature to restrict poisoning in order to save them was unhappily squelched.

Lewis and his fellow scientists believe that occasional families of ferrets may still occur in Oklahoma, Texas, Kansas, and Colorado, as well as in the three South Dakota counties where their presence has been confirmed. Considering the results of the Oklahoma survey, we are disposed to expect that this may be correct, despite the negative reports of these involved in poisoning.

If, however, the poisoners are allowed to continue their work, they will eventually be correct in their claim that there are no ferrets. Whether or not ferrets now occur in these states, they soon will be gone.

The case of the burrowing owl, which uses "dog holes" as habitat is less clear cut. But there is considerable agreement that these little raptors, which were formerly such a delightful feature of the prairies, are now rare in most of their range.

3. We consider the use of secondary poisons against prairie dogs, or any other ground squirrel, to be a violation of the spirit of President Nixon's Executive Order. Animals especially adapted to the existence of prairie dogs will disappear along with them without regard to the manner in which they are destroyed. But the use of the secondary toxicants against any mammal in the field widens the swath of destruction, to include numerous predators and scavengers. Poisoning of ground squirrels in this manner can easily result in loss of endangered animals, such as the kit fox, and other birds and mammals protected by U.S. law or through international agreement, including bald eagles and other raptors.

Conservationists have been unanimous in applauding President Nixon's courageous action in moving to curb certain excesses of the DWS. Yet some of the worst and most inexcusable programs undertaken by that service are continuing unabated. That this should be so seems incompatible with the philosophy embodied in the President's environmental message.

Secretary Reed, Friends of the Earth hereby respectfully requests that you act to establish an indefinite moratorium on the poisoning of prairie dogs on public lands.

Should our request be negatively considered, we shall, without diminution of our gratitude for previous and current initiatives on behalf of reform by officials serving in the Bureau of Sport Fisheries and Wildlife, act as effectively as possible. We shall attempt to alert the public and the Congress, as well as the conservation leaders throughout the country to this situation, and we shall certainly explore legal recourse which may be available.

For countless eons the plains of North America have been inhabited by burrowing rodents, of approximately prairie dog size. A well known example is Epigalus, the little horned rodent of the Miocene, who apparently existed in vast numbers, and left evidence of a perfectly spiralling burrow. At the present time, social burrowing forms evolved from several families of rodents inhabit the temperate grasslands of Central Europe (Susliks) and South America (Viscachas), occupying the niche of the prairie dog in North America. It is correct to say that such forms are, and almost always have been an integral feature of this biome. Some students believe that the activities of these animals in dredging subsoil minerals to the topsoil are responsible for the high mineral content of grassland soils, and thus for the exceptional nutrient qualities of the grasses.

Mr. Secretary, the buffalo, by deliberate United States military and economic policies is gone from the plains, relegated to a few pastures and reservations, and to a subarctic forest in the Northwest territories. The grey wolf is gone; the plains sub-species that followed the buffalo apparently gone forever, through the work of the Biological Services. We are in this decade confronted with the real possibility that the prairie dog and its dependent species will be brought to an end, again as a deliberate policy of the U.S. government.

The economic reason why this should hap-

pen is absent. The present prairie dog populations are having negligible economic impact. The poisoning program is continuing blindly, through internal inertia.

Friends of the Earth does not believe that civilized man should be permitted to destroy for the flimsiest of reasons, species perfectly adapted to their environment, which preceded him in North America by, very possibly, millions of years. We shall strive to prevent such a crime from being consumated.

Respectfully,

TOM GARRETT,
Wildlife Conservation Director.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. All time for morning business has expired.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate H.R. 13915, which the clerk will report.

The assistant legislative clerk read the bill by title, as follows:

A bill (H.R. 13915) to further the achievement of equal educational opportunities.

CLOTURE MOTION

Mr. MANSFIELD. Mr. President, at the request of the distinguished Senator from South Carolina (Mr. HOLLINGS) and as majority leader, I send to the desk a cloture motion and ask that it be read.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The assistant legislative clerk read the cloture motion, as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (H.R. 13915), an act to further the achievement of equal educational opportunities.

1. William Proxmire.
2. Ernest F. Hollings.
3. Lloyd Bentsen.
4. Lawton Chiles.
5. David H. Gambrell.
6. Herman E. Talmadge.
7. B. Everett Jordan.
8. W. B. Spong, Jr.
9. Jennings Randolph.
10. John Sparkman.
11. Strom Thurmond.
12. Robert P. Griffin.
13. Clifford P. Hansen.
14. Edward J. Gurney.
15. Bill Brock.
16. Bill Roth.
17. Robert Dole.
18. Paul J. Fannin.
19. Howard H. Baker.
20. John Tower.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be laid aside temporarily and that the Senate go into executive session to vote on the treaty which was discussed earlier today.

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

EXECUTIVE SESSION—CONVENTION ON INTERNATIONAL LIABILITY FOR DAMAGE CAUSED BY SPACE OBJECTS

The Senate resumed the consideration of Executive M—92d Congress, second session—the Convetnion on International Liability for Damage Caused by Space Objects.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the resolution of ratification on Executive M, 92d Congress, 2d Session, the Convention on International Liability for Damage Caused by Space Objects? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Louisiana (Mrs. EDWARDS), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Rhode Island (Mr. PELL), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Virginia (Mr. SPONG) are necessarily absent.

I also announce that the Senator from Wyoming (Mr. MCGEE), and the Senator from Maine (Mr. MUSKIE) are absent on official business.

I further announce that, if present and voting, the Senator from Louisiana (Mrs. EDWARDS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Rhode Island (Mr. PELL), and the Senator from West Virginia (Mr. RANDOLPH) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Delaware (Mr. BOGGS), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Hampshire (Mr. COTTON), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. GOLDWATER), the Senator from Wyoming (Mr. HANSEN), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. MILLER), the Senator from Ohio (Mr. TAFT), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Delaware (Mr. BOGGS), the Senator from Massachusetts (Mr. BROOKE), the Senator from Nebraska (Mr. CURTIS), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. MILLER), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The yeas and nays resulted—yeas 67, nays 0, as follows:

[No. 537 Ex.]

YEAS—67

Aiken	Fulbright	Pastore
Allen	Gambrell	Pearson
Anderson	Gravel	Percy
Bayh	Griffin	Proxmire
Beall	Gurney	Ribicoff
Bellmon	Hart	Roth
Bennett	Hartke	Saxbe
Bible	Hruska	Schweiker
Brock	Hughes	Scott
Buckley	Inouye	Smith
Burdick	Jackson	Sparkman
Byrd, Harry F., Jr.	Javits	Stafford
Byrd, Robert C.	Jordan, N.C.	Stennis
Case	Jordan, Idaho	Stevens
Chiles	Magnuson	Stevenson
Cook	Mansfield	Symington
Cooper	Mathias	Talmadge
Dole	McClellan	Thurmond
Dominick	Mondale	Tunney
Ervin	Montoya	Weicker
Fannin	Moss	Williams
Fong	Nelson	Young
	Packwood	

NAYS—0

NOT VOTING—33

Allott	Eastland	McGovern
Baker	Edwards	McIntyre
Bentsen	Goldwater	Metcalf
Boggs	Hansen	Miller
Brooke	Harris	Mundt
Cannon	Hatfield	Muskie
Church	Hollings	Pell
Cotton	Humphrey	Randolph
Cranston	Kennedy	Spong
Curtis	Long	Taft
Eagleton	McGee	Tower

The PRESIDING OFFICER (Mr. SYMINGTON). On this vote the yeas are 67 and the nays are 0. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. 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.

UNANIMOUS-CONSENT AGREEMENT ON S. 3995

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as S. 3995, a bill to provide Federal loan guarantee assistance for certain common carriers, is called up and made the pending question, there be a time limit of 20 minutes thereon, to be equally divided between the Senator from Washington (Mr. MAGNUSON) and the distinguished Republican leader or his designee; that the time on any amendment thereto, debatable motion, or appeal be limited to 10 minutes; and that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

FEDERAL ASSISTANCE FOR CARRIERS OF EXPRESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the unfinished business be temporarily laid aside at this time; that the Senate proceed to the consideration of Calendar No. 1103,

S. 3995, and that the unfinished business remain in a temporarily laid aside status until the disposition of S. 3995, on which there is a time agreement.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3995) to provide Federal loan guarantee assistance for certain common carriers.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

Mr. ROBERT C. BYRD. Mr. President, it is my understanding that the distinguished assistant Republican leader wanted to have a yea-and-nay vote on this bill, and if so, he might wish to ask for the yeas and nays at this time.

Mr. GRIFFIN. Mr. President, I ask for the yeas and nays on final passage of the bill.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, the respective cloak rooms are on notice and will notify Senators on both sides of the aisle that there will be a yea and nay vote within 20 minutes from now.

Mr. GRIFFIN. Mr. President, may I ask the distinguished majority whip, is the time running?

Mr. ROBERT C. BYRD. Yes.

Mr. GRIFFIN. Would it be possible to have a quorum call at this point, without the time being charged against either side? The Senator from Washington is not on the floor, and I have some staff people on the way, and we are not quite ready to proceed.

Mr. ROBERT C. BYRD. Yes.

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be taken from the agreed upon time for the bill.

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

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

PRESENCE OF STAFF MEMBERS ON FLOOR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for 1 minute without the time being charged.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, on behalf of the distinguished Senator from Illinois (Mr. PERCY), that Mrs. Julia Bloch be given the privilege of the floor this afternoon during debate on the education bill.

May I say in this respect that I hope that requests will not too often be made for the floor privilege for members of staffs covering the entire debate on a bill which is expected to require more than 1 day of debate.

During debate on H.R. 1, there were many Senators who asked the privilege of the floor for their staff members during the entire debate covering several days. That was a very complicated and complex bill and the leadership felt that Senators should be accommodated as much as possible and there was no objection to such requests because of the extreme complexity of the bill.

I would hope that staff people would not feel this is a way to open the door to the Senate floor. Senators managing a bill, or who are ranking members on a bill or who are the chief opponents of a bill, of course, will need staff help on the floor from time to time, and they will have every cooperation; but I hope that every reasonable restraint will be exercised in the interest of keeping the floor and the Chamber clear of staff as much as possible.

I hope that we do not get back to the old days when the rear corners on both sides of this Chamber were filled with staff members, some of them sitting on the floor and others lined up around the walls of this Chamber, so much so that it was difficult for Senators to get to their own seats and it was impossible to maintain order and decorum.

The leadership has had reserved, through the Sergeant at Arms, the corner gallery, to the right of the Presiding Officer's chair as we face the chair, and arrangements have been made for staff members to occupy that gallery and to take notes there if they wish. I would therefore hope that Senators would ask their staffs to utilize that gallery, rather than coming on the floor unless, as I say, a Senator is managing a bill, or is a chief opponent of a bill, is the ranking member on a bill, or is calling up an amendment and for such reasons should have his staff member on the floor.

I hope we will not resort to the use of blanket consents as were allowed on H.R. 1 except when necessary. I emphasize that I do not have reference to Senators who are managing bills on both sides of the aisle and so on.

Having said that, Mr. President, I have presented my unanimous-consent request on behalf of the Senator from Illinois (Mr. PERCY).

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

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished Senator from New York (Mr. JAVITS), who is the ranking member on the Labor and Public Welfare committee, I ask unanimous consent that Roy Millenson, Len Strickman, and Patricia Shakow be given the privilege of the floor during consideration of H.R. 13915.

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

Mr. GRIFFIN. Mr. President, I make a similar unanimous-consent request with regard to Larry Myers and Dave Clanton.

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

Who yields time?

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum, without the time being charged——

Mr. ROBERT C. BYRD. Mr. President, would the Senator let us proceed with other business? I understand that the distinguished Senator from Indiana (Mr. HARTKE) will manage the bill on behalf of the distinguished Senator from Washington (Mr. MAGNUSON) and Mr. HARTKE is on his way to the floor now.

Mr. HART. Mr. President, if the Senator will withhold that request, I ask unanimous consent that Burton Wides be given the privilege of the floor during debate on the pending business.

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

Mr. ALLEN. Mr. President, reserving the right to object, I hope that the acting majority leader will be in a position soon to bring this bill up. The request was made some 15 minutes ago that the bill be allowed to come up at this time, and since then we have had nothing but quorum calls. So I would hope, with all due deference to the acting majority leader—of course it is not his fault, and I do not charge fault to anyone—I would like to go on with the bill, in order that we can get to the unfinished business.

Mr. ROBERT C. BYRD. Mr. President, the Senator's position is well taken and the leadership will endeavor to press forward as rapidly as possible. I am sure that the distinguished Senator from Indiana (Mr. HARTKE) will be here momentarily, and then the pending measure can be proceeded with. Immediately thereafter the Senate will resume consideration of the unfinished business.

Mr. President, with respect to the unfinished business today, I ask unanimous consent that there be a 5-hour limitation for debate on the education bill today, the time to be equally divided and controlled by the distinguished Senator from Alabama (Mr. ALLEN) and the distinguished Senator from New York (Mr. JAVITS).

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

FEDERAL ASSISTANCE FOR CARRIERS OF EXPRESS

The Senate continued with the consideration of the bill (S. 3995) to provide Federal loan guarantee assistance for certain common carriers.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered, and 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. Who yields time?

Mr. GRIFFIN. Mr. President, in view of the fact that half of the time is allotted to me as an opponent of the measure, and although the Senator from Indiana is on the way to the floor, I suggest an absence of a quorum and ask unanimous consent that the time be charged equally to both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARTKE. 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. HARTKE. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk proceeded to state the amendment.

Mr. HARTKE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 6, strike Section 5, and insert the following:

SMALL PARCEL STUDY

SEC. 5. The Secretary shall undertake a study of the small parcel surface transportation problem to determine the appropriate role of common carriers eligible for assistance under this Act as well as other carriers engaged in the surface transportation of small parcels. Within eighteen months after enactment of this Act the Secretary shall report on the findings of such study to the Commission and the Congress. Within thirty days thereafter the Commission shall undertake appropriate proceedings for the purposes of reviewing such report; such proceedings to be completed within a reasonable time in no event to exceed one year. In future proceedings involving carrier certification related to small parcel transportation the Commission shall give appropriate consideration to the Secretary's report and the Commission's review of such report.

Mr. HARTKE. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 3 minutes.

Mr. HARTKE. Mr. President, the purpose of this amendment is to make the bill conform more closely with the intent of the committee at the time the bill was under consideration. It does not deal with the loan provision. It deals with the small parcel study.

At the time the bill was passed by the committee, it was the intent of the committee that we have the Department of Transportation make a study of this matter, report back to the Congress and the Interstate Commerce Commission, and then appropriate action could proceed. In the drafting of the bill, the language indicated that the Department of Transportation would make the study and that the Interstate Commerce Commission would have to implement that decision without regard to what it said and what its effect would be within 1 year.

The amendment merely goes back to the original intent and requires that the Department of Transportation conduct the study and then report back to Congress and to the Interstate Commerce Commission which will give it appropriate consideration. This amendment does not apply to the heart of the bill; it deals with a part of the bill. It deals with the whole question of trying to take some action with respect to the movement of small parcels.

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

Mr. HARTKE. I yield.

Mr. AIKEN. Who are the principal owners? What has been the average dividend paid over the last 5 years? Who are the officers, and what have been their salaries?

From a hasty reading of the bill, I assume that dividends will not be increased beyond the average of the last 5 years, and that the officers shall not have their salaries increased.

If the officers get a salary of $200,000 or $300,000 a year, and if the business is in the condition it is reported to be in, I think we ought to know who the officers are, what their salaries are, and what the dividends have been over the last 5 years.

Mr. HARTKE. I would hope that we could act on the amendment without regard to the disposition of the entire bill. The amendment is concerned only with the study.

Mr. AIKEN. I think we ought to know what the bill provides, what the officers have been paid, who owns the business, who are the principal stockholders, and what dividends have been paid over the last 5 years. I think we ought to have that information. If there is any doubt about having that information before passing the bill, we will be subject to justifiable criticism for making payments to a bankrupt corporation which is being mismanaged. I should like that information. I could not vote for the bill otherwise.

Mr. HARTKE. I can give the Senator an answer in terms of what is contained on page 21 of the report. The information is contained in a letter from the Chairman of the Interstate Commerce Commission to me, as chairman of the Surface Transportation Subcommittee:

As shown in Appendix II to attachment 1, 97.6 percent of the stock in REA is held by REA Holding Corporation. The remaining shares in REA are held by the Florida East Coast Railroad Company, Chicago.

The PRESIDING OFFICER. Under the agreement, the Senator has 5 minutes on his amendment. He has 1 minute remaining.

Mr. AIKEN. That gives some of the information. Is there any information about dividends?

Mr. GRIFFIN. Mr. President, has time been allocated on this particular amendment?

The PRESIDING OFFICER. The time is limited to 5 minutes to a side.

Mr. GRIFFIN. I will not say much about the amendment. I am opposed to the proposed legislation. The amendment offered by the Senator from Indiana does not make the bill any worse; it probably helps it to some extent. But it does not go to the particular concern that I have about the bill. My concern goes to other sections of the bill, so I would not interpose any objection to this amendment, which probably, to some extent, is a clarifying amendment or an improvement as an amendment to the bill.

Mr. AIKEN. Mr. President, I have just one more question. It is possible that the record of the hearings would give some of the information I seek. Have the hearings been printed and are they available?

Mr. HARTKE. Yes; the hearings themselves are contained in the hearings on S. 2362, an overall transportation bill, of which the REA bill was once a part. This part of the bill was separated from the overall provisions.

Mr. AIKEN. How did it happen to be separated? Of course, the REA was in a difficult condition.

Mr. HARTKE. The bill was separated because unless some action was taken it was felt that the company would go into bankruptcy.

Mr. AIKEN. But are printed hearings on this proposal available?

Mr. HARTKE. Yes.

Mr. AIKEN. I would rather see the bill go over until next week. Perhaps we would have a chance to look at the hearings. The amendment may be entirely justifiable, but we do need the information.

The PRESIDING OFFICER. (Mr. CHILES). Is there further discussion of the amendment? If not, as many as favor the adoption of the amendment say "Aye"; those opposed, "No." (Putting the question.) In the opinion of the Chair, the amendment fails.

Mr. HARTKE. Mr. President, I ask for reconsideration of the vote by a division.

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

Those in favor of the amendment please stand and be counted; those opposed, please stand and be counted.

The amendment is agreed to.

Who yields time?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

Mr. DOMINICK. Mr. President, will the distinguished majority leader withhold his request?

Mr. MANSFIELD. Yes.

Mr. DOMINICK. Mr. President, may I ask the Senator from Michigan if he will yield me time? Two minutes?

Mr. GRIFFIN. Mr. President, if I am recognized, I will yield 2 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. GRIFFIN. I yield 2 minutes to the Senator from Colorado.

Mr. DOMINICK. I merely wish to ask some questions about the bill. Frankly, I had never heard of it before I came into the Chamber. As I understand, it provides Federal loan guarantees for certain common carriers of express, according to the title. May I ask the Senator from Michigan some questions on that point?

Mr. GRIFFIN. First, let me say to the Senator from Colorado that I, too, am opposed to the bill.

Mr. DOMINICK. So am I, if I read the bill correctly.

Mr. GRIFFIN. If the Senator wants enlightenment about the reasons for the bill or the merits of it, I am not the proper one to address the question to. The questions should be addressed to the chairman of the committee (Mr. MAGNUSON) or possibly to the manager of the bill, the Senator from Indiana (Mr. HARTKE).

Mr. DOMINICK. Let me see whether

a colloquy between the Senator from Michigan and me cannot bring out some of the points that concern me.

First of all, the title reads:

To provide Federal loan guarantee assistance for certain common carriers of express.

As I read the bill hurriedly, it seems to me that the bill is almost specifically designed to apply to the REA Express alone. Is that correct?

Mr. GRIFFIN. That is correct. It is my understanding that despite the broader title of the bill, the proposed legislation would in purpose and in practical effect apply to only one company—REA Express.

Mr. DOMINICK. REA.

The PRESIDING OFFICER. The 2 minutes yielded to the Senator from Colorado have expired.

Mr. GRIFFIN. Mr. President, I yield 2 additional minutes to the Senator from Colorado.

Mr. DOMINICK. The REA Express, as I understand, is a private company engaged in a profitmaking commercial venture. Is that correct?

Mr. GRIFFIN. Yes, that is correct.

Mr. DOMINICK. So here we go again on a Lockheed type of bill. Is that correct?

Mr. GRIFFIN. The Senator is absolutely correct. It is Lockheed loan legislation on a somewhat smaller scale. The junior Senator from Michigan objected to and voted against the Lockheed loan proposal, so I cannot see how in good conscience I can support this bill, because the same principle applies.

Mr. DOMINICK. The Senator from Michigan persuaded me that he was right about the Lockheed deal, and I joined him in being opposed to it. I will join him again on this bill. I think it is a terrible proposal.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time for the quorum call not to be charged to the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

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

Mr. GRIFFIN. Mr. President, I ask unanimous consent that my minority views, as they appeared in the report on the bill, be printed in the RECORD.

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

MINORITY VIEWS OF SENATOR GRIFFIN

Although this bill purports to authorize Federal loan guarantees for national express companies "engaged in rendering air and surface express service," its purpose and practical effect is to bail out only one company, REA Express, Inc. Last year I opposed a similar loan guarantee for a single company, Lockheed Aircraft, and I believe there is even less justification in this case.

There is no overriding public interest, as existed in the Penn Central bankruptcy, to be served by making the full faith and credit of the United States available for the benefit of future creditors of this corporation. In a letter to the Committee dated June 26, 1972, George M. Stafford, Chairman of the Interstate Commerce Commission, stated that "the relative importance of REA to national transportation in terms of volume of traffic handled has declined greatly since World War II, and the downward traffic trends continue."

Chairman Stafford further added that "apparently REA's loss in traffic is being absorbed by major regulated competitors (motor carriers, bus express, United Parcel Service, and numerous small package carriers) and to some extent by private shipper associations." No evidence has been provided to show that REA provides an irreplaceable transportation service to the public.

Regardless of this Corporation's significance to national transportation, the company does not appear to be facing imminent bankruptcy. A recent Department of Transportation staff analysis supplied to the Committee indicates that REA management predicts a positive cash flow over the second half of 1972 which appears sufficient to cover current needs.

The DOT staff analysis also revealed that the working capital decrease of the past few years has been stabilized and the level of accounts payable has been reduced by nearly 50% during the past year. Furthermore, although the company incurred a net loss in fiscal year 1972 of $2.5 million, this is a dramatic improvement over the $14 million loss recorded in fiscal year 1971.

This turnaround, in large measure attributable to new management, has led the Secretary of Transportation, John A. Volpe, in an August 7, 1972 letter to the Committee, to conclude that "REA is not faced with the prospect of bankruptcy during 1972 . . ." The Secretary also concluded that "we have not been able to determine that a Federal loan guarantee is necessary for the firm to obtain" capital funds.

Aside from bankruptcy, REA makes the claim that large amounts of capital funds are needed to assure the company's long-term viability. It is by no means clear, however, that REA must rely on the Government to provide these funds. In fact, in May 1972, REA was able to obtain an $8 million line of credit from a new banking source, hardly a sign that the financial community's doors are closed to the company.

It should also be pointed out that most of REA's financing needs are for terminals and rolling stock (trucks, tractors, and trailers). Yet all of these are the type of assets which are inherently self-financeable, since they usually serve as their own collateral.

In this connection, it is significant that REA, according to a June 2, 1972 ICC letter to the Committee, has been able to obtain, by means of leasing, 900 trailers and 200 road tractors since April 1971, and at the time of the writing of the ICC letter was arranging to lease pickup trucks at the rate of approximately 100 per month. Additionally, according to the DOT staff analysis, REA has not yet exhausted all possible means of private financing for its two major terminal needs, in Chicago and Northern New Jersey.

These developments indicate that REA is not without source of financing in the private sector, and refute the contention that Government assisted financing is necessary to the company's long-term viability.

Placing this bill in its proper perspective, then, we are being asked to enact legislation which is specifically designed to provide financial assistance to one company, the service of which has not been demonstrated as being publicly essential, the management of which does not foresee imminent bankruptcy, and the future viability of which has not been shown to be contingent upon government financing in the first place.

The policy of making Federal tax dollars available for the benefit of individual companies is a dangerous one which should be voided if at all possible. A case has not been made for giving REA special treatment and, consequently, I intend to vote against this bill when it reaches the floor.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be returned to the calendar and that the unfinished business be laid before the Senate for consideration.

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

Mr. MAGNUSON. Mr. President, if the Senator will yield, that means this bill will go back on the calendar?

Mr. MANSFIELD. Yes.

The PRESIDING OFFICER. The unanimous-consent request of the majority leader would mean, then, that the bill will be returned to its position on the calendar, the amendment as adopted would go with the bill, and the time limitation would be vitiated by the agreement.

Is there objection? Without objection, it is so ordered.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

Mr. MANSFIELD. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read the bill by title, as follows:

A bill (H.R. 13915) to further the achievement of equal educational opportunities.

The Senate resumed the consideration of the bill.

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. 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.

Mr. ROBERT C. BYRD. I ask unanimous consent that the Senator from New Jersey (Mr. WILLIAMS) be recognized for not to exceed 2 minutes, with the time not to be charged to either side.

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

NATIONAL COMMISSION ON MULTIPLE SCLEROSIS ACT

Mr. WILLIAMS. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 15475.

The PRESIDING OFFICER (Mr. CHILES) laid before the Senate a message from the House of Representatives anouncing its disagreement to the amendment of the Senate to the bill (H.R. 15475) to provide for the establishment of a national advisory commission to determine the most effective means of finding the cause of and cures and treatments for multiple sclerosis and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. WILLIAMS. I move that the Senate insist upon its amendment and agree

to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. WILLIAMS, Mr. KENNEDY, Mr. NELSON, Mr. EAGLETON, Mr. CRANSTON, Mr. HUGHES, Mr. PELL, Mr. MONDALE, Mr. SCHWEIKER, Mr. JAVITS, Mr. DOMINICK, Mr. PACKWOOD, Mr. BEALL, and Mr. TAFT conferees on the part of the Senate.

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. 3939) to authorize appropriations for the construction of certain highways in accordance with title 23, of the United States Code, and for other purposes, with an amendment, in which it requested the concurrence of the Senate; that the Houses insisted upon its amendment to the bill, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. KLUCZYNSKI, Mr. WRIGHT, Mr. JOHNSON of California, Mr. HOWARD, Mr. HARSHA, Mr. CLEVELAND, and Mr. DON H. CLAUSEN were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 9463) to prohibit the importation into the United States of certain pre-Columbian monumental or architectural sculpture or murals exported contrary to the laws of the countries of origin, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MILLS, Mr. ULLMAN, Mr. BURKE of Massachusetts, Mr. BYRNES of Wisconsin, and Mr. BETTS were appointed managers on the part of the House at the conference.

The message further announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 11091. An act to provide additional funds for certain wildlife restoration projects, and for other purposes;

H.R. 15461. An act to facilitate compliance with the treaty between the United States of America and the United Mexican States, signed November 23, 1970, and for other purposes;

H.R. 15735. An act to authorize the transfer of a vessel by the Secretary of Commerce to the Board of Education of the city of New York for educational purposes;

H.R. 15763. An act to amend chapter 25, title 44, United States Code, to provide for two additional members of the National Historical Publications Commission, and for other purposes; and

H.R. 16870. An act to amend the Sockeye Salmon of Pink Salmon Fishery Act of 1947 to authorize the restoration and extension of the sockeye and pink salmon stocks of the Fraser River system, and for other purposes.

The message also announced that the House had agreed to a concurrent resolution (H. Con. Res. 716) directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 56, in which it requested the concurrence of the Senate.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, as indicated:

H.R. 11091. An act to provide additional funds for certain wildlife restoration projects, and for other purposes; to the Committee on Finance.

H.R. 15735. An act to authorize the transfer of a vessel by the Secretary of Commerce to the Board of Education of the City of New York for educational purposes; and

H.R. 16870. An act to amend the Sockeye Salmon of Pink Salmon Fishery Act of 1947 to authorize the restoration and extension of the sockeye and pink salmon stocks of the Fraser River system, and for other purposes; to the Committee on Commerce.

H.R. 15461. An act to facilitate compliance with the treaty between the United States of America and the United Mexican States, signed November 23, 1970, and for other purposes; to the Committee on Foreign Relations.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The Senate continued with the consideration of the bill (H.R. 13915) to further the achievement of equal educational opportunities.

The PRESIDING OFFICER. Who yields time?

Mr. ALLEN. Mr. President, I yield myself 15 minutes.

At long last the U.S. Senate has before it for consideration legislation which has as its purpose limiting the power of Federal courts and Federal bureaucrats to order forced busing of schoolchildren. We are working on H.R. 13915, a bill which passed the House of Representatives on August 18, 1972, and is now the unfinished business as well as the pending business before the U.S. Senate. So it is now up to the Members of the Senate to determine whether or not some degree of sense and reason is to be used by Federal courts and Federal bureaucrats in matters affecting our schoolchildren and our public schools. Some action by Congress, upheld by the Supreme Court, is necessary to prevent chaos in our public schools.

Mr. President, I want to express my very deep and sincere appreciation to the distinguished majority leader, the able and distinguished Senator from Montana (Mr. MANSFIELD), for his action in seeing that this bill is brought before the U.S. Senate, He had been committed, here in the Senate Chamber, on behalf of the joint leadership, to see to it that this important piece of legislation was brought up for the consideration of the Senate ahead of the "must" legislation remaining on the calendar behind this measure. He has lived up to the letter and the spirit of that commitment. It is before the Senate for consideration, and I hope action.

The Senate can work its will on this legislation. It can pass it or it can defeat it. I do hope that those Senators who have indicated that they intend to filibuster against this legislation will reconsider their position and allow this bill to come to a vote.

It is somewhat ironic, Mr. President, to find that the very Senators who just the other day were arguing and pleading with the Senate to bring to a vote a piece of legislation will now take the position that another piece of legislation should not come to a vote in the Senate.

Mr. President, if the majority of the Senate wants to vote this measure down, well and good. I would hope that they would vote for the bill, but at least let it come to a vote on its merits.

The parliamentary situation we find ourselves in at this time is that, in accordance with the suggestion made by me, and in order that various Senators could schedule their speeches on this measure, a period of 5 hours has been set aside today, under controlled time, at the end of which time the bill will still be before the Senate, and there will be no control of the time. The time would be up for grabs, so to speak, as Senators ask for recognition. This gives the proponents of the measure an opportunity to outline for the RECORD and for the Senate just what the bill would do, just what the need is for the legislation, and what must be done in the Senate to assure passage of the measure prior to the adjournment of Congress sine die, which may or may not take place a week from tomorrow.

Mr. President, the bill comes to us from the House; and I think all Senators realize that the bill must be accepted perfectly in the identical form it comes to us from the House, but certainly without changing the main thrust of the legislation, so that on passage of the bill, when it returns to the Senate, there will be no necessity for a conference committee. Of course, if no change whatever is made in the bill—and that would be what the Senator from Alabama would hope for—then the bill would go to the President for his signature. If it is passed with amendments, no matter how slight, it would have to go back to the House, for action by the House in determining whether the amendments of the Senate would be accepted by the House or whether the House would want a conference committee appointed so that the differences could be reconciled.

So it is important that the Senate pass the bill, preferably without amendments at all.

Mr. President, the bill before the Senate, the Equal Education Opportunities Act of 1972, was proposed to Congress by President Nixon on March 17, 1972. Congressmen MCCULLOCH, QUIE, and GERALD FORD introduced the proposal as H.R. 13915 on March 20.

Subsequently the Committee on Education and Labor conducted 16 days of hearings on H.R. 13915 and related bills. The General Subcommittee on Education reported an amended version of that bill on July 19, and the full committee reported it to the House on August 8 by a record vote of 21 yeas and 16 nays, and it passed the House on August 18, 1972, by a vote of 282 to 102.

The purpose of the Equal Educational Opportunities Act is to provide Federal financial assistance for educationally deprived students and to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

Mr. President, this is not a bill which withdraws jurisdiction from the Federal courts in this area. It is not a bill that provides for a moratorium. It is a bill that provides for uniform desegregation

guidelines to be followed by all Federal courts throughout the country. Far from being an antibusing bill, it merely limits the use of busing, in the priority to which it is assigned in the bill, to the nearest school or the next nearest school of the child, having the same grade and course of study as the school from which the child is transferred.

So the bill provides for orderly and uniform procedures on the desegregation of public schools. It would provide a uniform system throughout the country, and not have one rule applied in one Federal court and another rule applied in still another Federal court.

The Federal financial assistance for educationally deprived students is obtained by amending the Emergency School Aid Act to earmark $500 million of the annual authorization of appropriations for compensatory education programs in schools with high proportions of low-income students. These funds will be administered through State plans submitted by State educational agencies.

Regarding the removal of the vestiges of the dual school system, the bill prohibits denials of equal educational opportunities by the States and authorizes civil actions by aggrieved individuals and by the Attorney General when such denials occur. The bill specifies, however, that the failure of an educational agency to achieve a racial balance of students among its schools is not a denial of equal educational opportunity or equal protection of the laws. Similarly, the assignment of a student to the school nearest his place of residence does not constitute any such denial unless such assignment is for the purpose of segregation.

Lastly, the bill prescribes remedies which Federal courts and agencies may use in correcting denials of equal educational opportunity and equal protection of the laws as regards education. These remedies are listed in a specific order of priority which courts and agencies must abide by in formulating remedies. No transportation, however, can be prescribed by any such court or agency, pursuant to this listing, for a student other than to the school closest or next closest to his or her place of residence.

So it does place a reasonable length of time on the extent of busing that may be ordered by any Federal agency or Federal court.

Mr. President, I might say parenthetically that at a later date I will discuss the constitutionality of this legislation. But what is being done here is to operate under and pursuant to section 5 of the 14th amendment and gives Congress the right to enact laws for the enforcement of the rights guaranteed by the 14th amendment. That is exactly what this bill would do. It does not deprive anyone of any substantive rights. All it does is to act with regard to remedies which the courts are in one accord in saying that Congress can do.

So the remedy that the courts can use is what is circumscribed by the bill rather than to place any limit on a substantive right.

In no case, however, can school district lines be ignored or altered unless they were established for the purpose, and had the effect, of segregating students. School districts may voluntarily, though, go beyond the limitations set out in this bill. This sequential listing of remedies and the provisions limiting the use of massive busing are meant to systematize the manner in which Federal judges and officials formulate their remedies. Far too often it seems that different officials order widely different remedies when they are faced with similar fact situations. It is the purpose of this section of the bill, title IV, to require an orderly and nationally uniform procedure for the formulation of remedies. Again the idea is to make clear the "ground rules" so that everyone involved will know where they stand.

In his message to Congress transmitting the Equal Educational Opportunities Act, President Nixon proposed a new Federal emphasis on compensatory education to help disadvantaged children. As his message noted:

> While there is a great deal yet to be learned about the design of successful compensatory programs, the experience so far does point in one crucial direction: to the importance of providing sufficiently concentrated funding to establish the educational equivalent of a "critical mass," as threshold level. Where funds have been spread too thinly, they have been wasted or dissipated with little to show for their expenditure. Where they have been concentrated, the results have been frequently encouraging and sometimes dramatic.

Title I of the Equal Educational Opportunities Act, as reported by the committee, is designed to change the persistent patterns of discouragement and failure experienced by poor children. The isolation of children, whether by poverty or race, diminishes the full benefits of educational opportunity for all children.

The title reserves $500 million of the funds authorized to be appropriated annually pursuant to the Emergency School Aid Act for special compensatory programs in those schools having the heaviest concentrations of poor children. As Secretary Richardson testified in hearings before the House committee, the objective of the financial assistance is to provide approximately $300 or more in additional funds for services for educationally deprived pupils presently in schools with sizable concentrations of poor children, under conditions that will provide both adequate levels of compensatory education and encouragement for feasible reductions in economic and racial isolation of schoolchildren.

Now, Mr. President, here is the limitation placed on the use of transportation of students—section 403 (a) and (b) of the bill:

> SEC. 403. (a) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.
>
> (b) No court, departments or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

Mr. President, it does have a significant provision. It is probably the only provision that would offer any hope to the embattled school systems of Alabama and the South, and that is section 406, entitled "Reopening Proceedings" which reads:

> SEC. 406. On the application of an educational agency, court orders, or desegregation plans under title VI of the Civil Rights Act of 1964 in effect on the date of enactment of this Act and intended to end segregation of students on the basis of race, color, or national origin, shall be reopened and modified to comply with the provisions of this Act. The Attorney General shall assist such educational agency in such reopening proceedings and modifications.

Section 407 reads:

> SEC. 407. Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws shall, to the extent of such transportation, be terminated if the court finds the defendant educational agency is not effectively excluding any person from any school because of race, color, or national origin, and this shall be so, whether or not the schools of such agency were in the past segregated de jure or de facto. No additional order requiring such educational agency to transport students for such purpose shall be entered unless such agency is found to be effectively excluding any person from any school because of race, color, or national origin, and this shall be so, whether or not the schools of such agency were in the past segregated de jure or de facto.

Now, Mr. President, I wish to make a passing reference to the decision of Mr. Justice Powell in the Augusta, Ga., case that makes the passage of this legislation absolutely necessary if the public schools of the Nation are to receive any relief.

Earlier this year, the Educational Amendments of 1972, Public Law 92–318, were passed. It provided that any order of a Federal court ordering transportation to overcome racial imbalance could be appealed, and that during the pendency of such appeal for a period, I believe, of about a year and a half, this power would be given to the local school systems and they could apply for a stay of that order until a final determination of the case.

Well, that is certainly logical and certainly fair and certainly right.

The statutes passed earlier this year, the Educational Amendments of 1972, also had a section saying that no Federal funds could be used to provide for the transportation of students to overcome racial imbalance or to carry out a plan of desegregation.

So Mr. Justice Powell, in denying the application of the Augusta School Board, said that this order of the lower court providing for transportation was not for the purpose of overcoming racial imbalance; it was for the purpose of doing away with illegal segregation, and while no Federal funds could be used for implementing a program to overcome racial

imbalance or to carry out a plan of desegregation, he said that it did not have that second phrase in there, to carry out a plan of desegregation, and that obviously this was not to overcome racial imbalance.

Mr. President, racial imbalance is a term that the courts have construed to mean de facto segregation, a Northern type of segregation, so to speak. So, they are forbidding, of course, a local school system from appealing and getting a stay of the busing order unless it was an order to overcome racial imbalance.

Mr. President, they do not have any racial imbalance down in our section of the country. That is called de jure segregation. And all that a Federal judge has got to do to keep a local system from getting a stay under the existing act is to say that the order calling for transportation is for the purpose of eliminating illegal segregation.

So, this statute that we passed is not worth anything. It is absolutely worthless. However, the legislation that we presently have under consideration would apply to any type of desegregation order. It does not provide for a stay of the order. It does not provide for a moratorium. All it does is to prescribe a limit to the power of a Federal judge or a Federal bureaucrat to apply the remedy of ordering the transportation of students in any desegregation process. So, Mr. President, the very language of the bill points out that the purpose of the legislation is to wipe out all vestiges of a dual school system. And really it is not hard to understand why those who are opposing the bill are opposing it, because it does provide a uniform guide for the Federal courts throughout the country. And they are going to prescribe the same rules and the same guidelines under this legislation for schools in the North that they are going to apply in the South. And they do not like that.

Mr. SPARKMAN. Mr. President, will the Senator yield to me?

Mr. ALLEN. Mr. President, I am glad to yield to my distinguished senior colleague.

Mr. SPARKMAN. Mr. President, is it not true that, although we have stated time after time right here on the Senate floor—and there has been language from time to time favorably acted upon here—that what we were striving for was uniformity throughout the country, the same treatment for one area as another?

The PRESIDING OFFICER (Mr. BROCK). The time of the Senator has expired.

Mr. ALLEN. Mr. President, I yield myself an additional 3 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized for an additional 3 minutes.

Mr. ALLEN. That is what we have been striving for; the Senator is correct.

Mr. SPARKMAN. And that is what this does?

Mr. ALLEN. The Senator is correct. It prescribes uniform lines for desegregating schools.

Mr. SPARKMAN. And it levels it off.

Mr. ALLEN. The Senator is correct. It does level it off.

Mr. SPARKMAN. Mr. President, the Senator was discussing some of the things the Court has said. I do not have it before me at the moment. However, during this past summer, I believe it was, Chief Justice Burger gave an ex parte decision or a unilateral decision in a case. And in that decision, as I recall, he commented on the fact that some of the district courts apparently had gone too far.

Mr. ALLEN. The Senator is correct. He made that comment.

Mr. SPARKMAN. It was something along that line.

Mr. ALLEN. The Senator is correct. But he went ahead and approved of what they had done, even though he had stated prior to that point that they had gone too far.

Mr. SPARKMAN. He laid down the rule about damaging a child's health.

Mr. ALLEN. The Senator is correct.

Mr. SPARKMAN. Mr. President, I thank my distinguished colleague for yielding to me.

Mr. ALLEN. Mr. President, I thank my distinguished colleague for his contribution to this subject matter.

Mr. President, I reserve the remainder of my time, and yield to my distinguished colleague.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SPARKMAN. Mr. President, I express my appreciation to the Senator from New York who, I know, wanted to get the opposition position stated. However, he agreed that I could proceed if I would not take too much time. Mr. President, I shall not take much time on this occasion.

I think it is extremely important that we pass the pending bill now and that we pass it before the Senate adjourns sine die.

In connection with the term "antibusing," I feel that unfortunately many people have developed their own thinking about it. Busing, of course, has been done down through the years. We expect busing.

I had a letter just this morning, I believe, from a friend down in Alabama. In that letter, my friend brought in this expression. He said:

> How in the world are we going to get students to our good, new consolidated schools without the use of busing?

I am afraid that a good many people have gotten the idea that the thing we are talking against is busing. Back when I was a boy, we did not have busing. We walked to school. But in later years, it has become a normal thing to bus students who live outside of a certain proximity to a school in their neighborhood where they went to school.

I think it ought to be understood, as the Senator pointed out several times, that the thing we are complaining against is the arbitrary setting up of busing for the purpose of making certain that the same percentage of the races go to that school as is representative of the community, or in other words, a racial balance.

I do not believe the Court has ever directed that that be done. However, it has been done primarily by district courts which, acting under the general policy laid down by the Supreme Court, have construed this as being for that purpose. But I believe the Court has steered clear of this idea of busing for the purpose of racial balance.

I think it was in the Augusta case that they found it was not for the purpose of maintaining racial balance, but that it was for the purpose of breaking down the dual school system, getting a unitary system.

This legislation could well be the most important piece of legislation to be considered in this session of Congress. It involves the vital issue of who shall control the destiny of this country's children—some nameless bureaucrat or judge, or the child's parents.

As I have said on numerous occasions, the busing of schoolchildren to achieve a racial balance is illogical, ill-considered, and actually counterproductive. It makes no sense to me to take children out of their own neighborhoods and transport them over long distances to achieve some kind of mythical racial balance.

This talk of taking them out of their own neighborhoods and transporting them long distances is not something just imaginary. It has been happening. I recall receiving a letter from a lady in Birmingham. She told me she had a young daughter just starting school. There was a school a block away that she could walk to, but was she allowed to do that? No, she was ordered to get on that bus every morning and ride 12 miles in order to go to a school where they were apparently seeking to establish or attain racial balance. I could understand her crying out in protest against that and I have had literally hundreds of such cases.

Rather than aid the child, this senseless business actually harms the education of all concerned. A recent Harvard study on the matter has thoroughly disproven the case of busing proponents. This study shows there is no benefit to the child from being transported to a distant school, and that in case after case there is no positive good resulting from busing to achieve a racial balance.

In addition to this and other studies, we can rely on our own commonsense to tell us that busing serves no useful purpose. Neither the white child nor the black child wants to spend an hour, or perhaps even more, riding to and from school in a bus just to satisfy some judicial or bureaucratic edict.

I have received literally scores of reports from Alabama of cases in which children were required to be bused 15 miles or more. Mr. President, that kind of busing is absolutely ridiculous. It defies logic, justice, and simple common sense. Why should an innocent young child be forced to ride a schoolbus for miles on end when he or she lives within walking distance of the neighborhood school? Why should parents have to forfeit the right to send their child to the nearest school? And finally, why should the choice of schools be dictated by persons who are required to answer to no one?

Mr. President, this country was founded on the proposition that those who are in positions of authority represent, and

answer to, the people. Our Founding Fathers sought a country in which local people and local government could act on and solve their own problems.

Yet, in the instance of this senseless busing to achieve a racial balance, neither the local people nor local government has any say-so. Some remote, faceless—and often nameless—bureaucrat or judge issues an edict. They impose their will on the people and their children.

The views of the American people have been made overwhelmingly clear. In referendum after referendum—including the recent presidential primaries in which Alabama Gov. George Wallace was a candidate—the people have registered their unalterable opposition to forced busing to achieve a racial balance. And yet the people seem powerless to change it.

Many of them have come to us here in the Congress to register their complaints and their frustrations. They have asked for our help. They want us to turn the schools back over to the people, where they belong.

We can do that, Mr. President, by passing the antibusing legislation now before the Senate. We can demonstrate our responsiveness to the will of the people by bringing a halt to busing and all of its excesses.

If we fail to act on this legislation, we will have been derelict in our duty as representatives of the people. We will have turned our backs on the demonstrated wishes of our constituents.

Mr. President, I cannot believe that this body will turn a deaf ear to the overwhelming national sentiment.

I urge that we move promptly to pass this legislation, a bill that will restore sanity and commonsense to the operation of our school systems.

Mr. President, I was pleased in reading the House committee report to note that they incorporated, apparently very closely, the language that Chief Justice Burger used. I said something about it a few minutes ago. I believe it is incorporated in the language of the bill, also, and that is where it may be harmful to the health and welfare of the child. In other words, it shows that there is a concern even in court decisions, and that this bill recognizes that. Here is what the Supreme Court said:

> An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process.

I think that is pretty clear language, and that is the language used, as I recall, in the amendment that was adopted by the House in this provision. I think it is something to be kept in mind. I do not believe anyone questions the fact that a child of tender age who is transported as much as 15 miles twice a day in order to go to school is not being properly cared for. The dual system has been broken up. It is rather strange to say it has been broken up much more thoroughly throughout the area that we represent than it has in other areas of the country.

By the way, in our State we have had very little difficulty so far as integration is concerned. The one great thing our people have been distressed with has been this useless busing in order to obtain racial balance.

This bill would remedy that situation and would make it uniform throughout the country, and that is what we want.

Mr. President, therefore, as strongly as I can I urge that we move promptly to pass this legislation, a bill that would restore sanity and commonsense to the operation of our school system.

Mr. ALLEN. Mr. President, I yield myself 1 minute.

I wish to commend the distinguished senior Senator from Alabama, my able colleague, for his fine remarks and for the leadership that he has furnished through the years in aid of preserving the public school system of our section of the country and throughout the Nation, and his work in seeking to see that every child in this country, white or black, gets the benefit of a good education. I commend my distinguished senior colleague at this time.

Mr. SPARKMAN. I thank the Senator.

Mr. ALLEN. Mr. President, at this time I would like to yield to the distinguished Senator from Michigan (Mr. GRIFFIN), under whose leadership all of us have operated in this vital area, and who has led the fight for legislation that would put some sanity into Federal court orders and the actions of Federal bureaucrats. I wish to acknowledge with deep appreciation the advice and leadership and hard work that he has expended in bringing this legislation to the floor at this time, and I yield 10 minutes to the distinguished Senator from Michigan (Mr. GRIFFIN).

Mr. GRIFFIN. I thank the distinguished Senator from Alabama.

Mr. President, the distinguished ranking Republican member of the Committee on Labor and Public Welfare (Mr. JAVITS) would ordinarily be recognized at this point to make a statement, but he has graciously allowed me to speak briefly. However, I want to assure him that I shall use no more than 10 minutes at this time, although I shall have more to say later.

Mr. President, I rise to commend the distinguished Senator from Alabama (Mr. ALLEN) for his diligence and persistence in making sure that this House-passed bill was brought up on the Senate floor.

At the outset, I want to say that this bill, as it passed the House, is not exactly in the form that I would like to see it. It is a strong bill, it is an effective bill, but it does not go as far as the measure I proposed earlier—the proposal to withdraw court jurisdiction which, on one occasion, passed by three votes, and then, on reconsideration, a few days later, failed by one vote. But this is a good bill, and I strongly support it, particularly at this point in time and under the circumstances we face with this session of Congress running out.

I would say that those who favor enactment of meaningful legislation to deal with the threat and the reality of forced busing based on race would do well to resist amendments that may be offered to this bill. Some of the amendments may be appealing, some may have merit, but I think we ought to be practical and realistic. If significant changes are made in this House-passed bill, it will then have to go to conference, where it will surely die. The one way—perhaps the only way—to be sure that we get a bill passed and enacted into law is to stick with this House-passed bill and pass it here in the Senate.

I think we might as well face some other realities which exist, because of the rules of the Senate. I believe, on the basis of the fact that my job as whip includes keeping track of individual Senators' positions on various issues, that a majority in this body is ready to vote for meaningful antibusing legislation. Earlier, particularly when this kind of legislation was offered as a rider to other bills, we did not have a majority. But now, I believe the strong sentiment and support for this antibusing legislation around the country has been impressed upon those who serve in this body. This Senator is confident that if we can get to vote on the merits of this bill, it can be passed.

Being realistic, then, the real question that faces us is whether we will have a chance to vote up or down on the merits of this bill, or whether there will be an effort, sometimes termed a "filibuster," by some to keep the Senate from voting on this bill.

I must say that I think there are times when the device or the use of the rules of the Senate for extended debate is perfectly defensible and appropriate. This Senator, who is now anticipating a problem, has participated in such extended debates himself in the past. Illustratively, I talked at considerable length about the 1968 nomination of then Justice Fortas to be the Chief Justice of the United States. I felt that the people of the United States did not know enough about his qualifications, did not know enough about some of the questions that had been raised concerning the nomination, and had not had the opportunity to form an intelligent opinion about whether or not he should be confirmed as the Chief Justice of the United States. As the Senate debate continued, it served a most useful purpose for in time people were able to develop and to form their respective opinions on the nomination.

But, Mr. President, that is not the situation we have with regard to this busing legislation. The problem of busing has been before the American people a considerable period of time. Moreover, the debate about the merits of the various proposals to deal with busing which are before the Congress have also been before the people for a considerable period of time. It is quite clear that the people in this country have formed a judgment, a consensus of opinion if you will as to what should be done. The overwhelming opinion of the American people is that Congress should act, and Congress should act effectively to deal with the threat and the reality of forced busing.

So those who plan to filibuster are not seeking to serve the majority of the people of the United States. Rather they are thwarting the will of the majority of the

people of the United States. And I would suggest that such a result would be most unfortunate—particularly in an age when increasing cries are heard for the Congress to be responsive, for Congress to recognize what the people want and have a right to expect, and for Congress to act responsibly and accordingly. Here it seems to me that, unless we do have an opportunity to vote up or down, we will be turning our back on the vast majority of the American people whose opinions and whose views and whose demands are very, very clear in this area.

Mr. President, as I have stated before during the 16 years of my service in Congress, I have had the opportunity to vote for and support every important civil rights bill that has passed the Congress and has become law since Reconstruction Days following the Civil War. All of the important civil rights bills have been passed in the period of my service in Congress, and I am justifiably proud of my civil rights record.

In a speech against busing which I gave to a NAACP chapter in Michigan, I explained why I was against busing. And although it might surprise some Members of the body, I was given a very good response from the audience. But then few people realize that the polls indicate that a majority of the black citizens of Michigan are against busing.

This opposition has been expressed in many ways. June Brown Gardner, a distinguished columnist for the Detroit News and who also happens to be black, wrote not long ago:

> The concept of moving an entire black city to the suburbs for education is humiliating to black people and an affront to black pride. Busing says, in effect, that any school which is all black is all bad. Black people cannot accept this implication, because we know that black teachers are equal to white, black principals are equal to white, and black student potential is equal to white.

Time and time again I have heard black citizens say to me, "Busing tends to relegate us to a permanent position of always being in the minority. Busing says that there can be only a certain percentage of blacks in any school; that we can never be in the majority."

Black parents as well as white parents also resent the diversion of scarce tax resources just to bus children around, without any assurance that there is going to be a quality education at the end of the bus ride.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. GRIFFIN. Mr. President, in deference to the distinguished Senator from New York, who I know is under time restrictions, I appreciate having had this opportunity to make this preliminary statement, and I shall have more to say later in the debate.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. I yield myself 15 minutes.

Mr. President, I shall address myself to the merits and the general terrain in which we shall be debating this action very shortly, but while the distinguished deputy minority leader is here, I would just like to answer the point about the overwhelming majority of the people of the country wanting this bill.

Mr. President, I do not know whether an overwhelming majority of the people of the country do or do not want this bill. Neither does the Senator from Michigan. That is his belief, and that may be what the polls show. But I do know one thing: That 55 Senators, a constitutional majority of the Senate, wanted a bill here just the day before yesterday and did not get it. I can count those Senators; I know who they are. There is no question of opinion about that.

So, Mr. President, if there are weapons to be used in the Senate, and they have to be used in the public interest, I do not see how anyone who uses them can complain about others who might use them also. I have no feeling of inhibition about that whatever, if it is justified on the facts. So the first thing is to ascertain that, Mr. President.

Now, what has happened here? A bill came over from the other body, admittedly written on the House floor—so badly written on the House floor, Mr. President, that its author, Representative QUIE, voted against it. He could not stomach it himself. He could not even hold his nose and vote for it. And the senior member of the Judiciary Committee, Representative MCCULLOCH, a longstanding and relatively conservative member in the civil rights field, and Representative ERLENBORN, a man of distinction and conscience, who also had a hand in fashioning the House bill, both voted against it.

So it comes over here, written on the House floor, its authors having voted against it; it is not sent to a committee for as much as a week or 10 days, a bill which came out of the Education and Labor Committee of the other body, a counterpart committee to the committee of which I have the honor to be ranking member; and it was put right on the calendar. We did not consider it, though we consider all other education bills, including the so-called higher education bill with the Scott-Mansfield compromise which was finally worked out with the House.

Since that time, Mr. President, there has been daily pressure to get this bill up, get it heard, and whoop it through.

Mr. President, there are lots of people in this country, millions upon millions of people. This country was built upon the fact that even minorities have a right to be heard, and that if justice is on their side—and I have seen this happen in this Chamber time and again—if justice is on their side, even the majority will bend to the claims of justice and the best interests of the country.

So, Mr. President, denied the opportunity to air this problem before a committee, with witnesses, experts, staff work, and deliberative opinion, we are simply going to have to do it on the Senate floor. That is okay. That is the choice of those who pushed the bill to this pass. It is not mine. So without any inhibition whatever, but simply because it is demanded by the facts, we shall take whatever time it takes, or as long as the Senate allows us, to expose the whole question which is involved here to the Senate.

Mr. President, this is a rather interesting situation in our country, which still faces very explosive problems with respect to race. I hope no one is lulled into a false sense of euphoria by the seeming standstill in our situation on race in the country today. I would only hope and pray that it does mean the permanent resolution of everything that has worried us for so long. But, Mr. President, there is still very deep dissidence, unhappiness, and dissatisfaction, and we had better keep abreast of the tremendous reforms we have been making, instead of regressing, in order to maintain some reason and stability in our country. Very, very troublesome problems slumber only beneath the surface, ready to be exposed any time the pressure becomes too high.

The main objection to this bill, Mr. President, is that it is heating up this mixture to a point where it might be beyond toleration in terms of the stability which we want in our country, and that is why people like myself and other Senators like me are deeply concerned, particularly about this measure.

Notwithstanding the fact that the Senator from Alabama (Mr. SPARKMAN) has said that it may be the most important measure taken up in this session of Congress, I do not think so. The issues of war and peace, prosperity and depression, and the interests of some 30 million poor, most of whom are included in one of the minorities, the black and Puerto Rican minority, are still equal in importance. But from the point of view of the social frame of our country and the progress which we thought we had made, this is a critically important bill, because, Mr. President, it is a highly regressive bill. That is really what is so appalling about it.

It takes us away back to the days when people were still arguing here about the morality of a dual school system and about why the dual school system should be let alone, why it should not be disturbed, and why the local communities should run themselves as they were running and had been running for decades, because everything was quiet there.

Well, those who heard the allegation that everything was quiet there speedily undid that. That was the first phase, and that ensued immediately after Brown against Board of Education in 1954 and the early debates on civil rights measures which followed immediately thereon.

Then we came into a second phase, and that phase was, "If you are going to compel these views on us, of desegregation and equal opportunity in education," said many of those who came from the southern part of our country, "then you have to compel them on yourself." I was one of the first to thoroughly agree with that idea. So the second phase, characterized by the famous Stennis amendment, which many of us may remember, was to cause the same rules to be observed in the North as well as the South.

Now we are in a third phase, rather an amazing phase, as really epitomized by this bill, and that is the phase of going back to undoing everything we had done before. That is the elementary thrust of this bill—to undo everything we had

done before and recreate the difficult racial tensions, aside from the unlawful segregation we had suffered for so many decades and thought we had at last put behind us.

Mr. President, the South prides itself—and I pride myself for them—on the fact that notwithstanding the deep doubts expressed that it would go along with the desegregation idea—I recall that the very prestigious and highly regarded Senator from Georgia, one of the great leaders of the Senate, Senator Russell, with whom I had many debates on this subject, predicted the worst possible eventuation socially, in terms of social reaction, if we should compel "the South" to do what it did not want to do—it is a great tribute to them as Americans that when the courts ordered, they did not defy. They acted in accordance with the orders of the courts; and they made this prideful advance in respect of desegregation, though there is still a great distance to go.

But is that any reason, is that an argument, for now undoing it? Is that any justification for an ex post facto reopener clause which would take every decree entered since 1954 which has resulted in this splendid record of desegregation, according to those who have uttered that claim, and reverse it and undo it, because a new cover has been found for going back to the old way? That is what is really at stake here. That cover is antibusing, and the antipathy which has been expressed in certain communities in respect of such busing as may have been ordered by the courts, and the fear of other communities that it might happen there, is really what it comes down to.

The fact is that those decrees which were most decried are up on appeal or have been reversed by the courts, and that the Supreme Court now, as alleged by those who are really very much for this bill, restored to a balanced complexion with an appreciable portion of conservative members, certainly is to be entrusted with the fact that it will go a relatively moderate course in respect of those appeals, which are still pending.

So that there is an awful lot of hollering in this situation before anybody is hurt. The ultimate fact is that the authorities who testified before us in the Committee on Labor and Public Welfare and in the Special Equal Educational Opportunity Committee which was organized by the Senate stated that overall busing has been increased 1 percent—the highest estimate I have seen is 3 percent; the HEW estimate is about 1 percent—in numbers, over and above what is the established busing pattern in the country, by which some 20 million pupils are bused to school every day and have been for a long time. Indeed, that busing has been a blessing, especially in respect of rural schooling, in doing away with the anachronism of that very picturesque—but very uneducational, in terms of the hard materials of education—"Little Red School House."

Mr. President, one last point which is critical here and which is flying directly in the face of the Constitution in a piece of legislation: We have introduced into the RECORD a declaration, a joint statement, by 500 professors of law, of every shade of political opinion, including many law school deans, who have stated in the most considered way that this measure is unconstitutional. Any time that a legislative body enacts a piece of legislation which on its face is unconstitutional and is later invalidated by the courts, a hoax is perpetrated upon those who look to that legislature for equality of justice. Where the law we would pass, which is in such grave and precarious status as to its constitutionality, is also going to undo much of what has already happened, so that its damage will be incalculable upon passage, whatever may be its fate in the days ahead, I think we take a tremendous risk which we have no right to take—especially as the bill itself has not even undergone the scrutiny of any Senate committee.

Mr. President, the joint statement of these law school professors says that they have had "grave reservations about the constitutionality of the legislation"; and "it would place in jeopardy most of the hard-won progress toward school desegregation of the last two decades."

In urging the defeat of this bill, the law teachers concluded that it would open to relitigation nearly two decades of additional desegregation decisions, many of which involved no busing whatever.

Incidentally, that was confirmed by the Attorney General in a speech the other day that the so-called reopener clause in this bill would put into question even those decrees in which no busing was involved.

The law school professors continue:

> Thus leading to divisiveness and confusion in many communities already satisfactorily operating under school desegregation plans.

It would place in confrontation the two independent agencies of Government between which we so much wish to avoid confrontation—the legislative and the executive, as the President would have to sign this bill, and the judicial power of the country.

So, Mr. President, while men and women of good faith might disagree with the conclusions of these law professors that this bill violates fundamental constitutional rights and threatens the notion of separation of powers implicit in our Constitution, such good faith disagreement, if acted upon now in the passion of an election campaign, would, in my judgment, be irresponsible in terms of acting on this legislation at this time.

Mr. President, this is not an ordinary bill, prospective in character, which would prompt orderly judicial resolution of the issues involved; but, rather, as the professors say, by reopening to litigation all school desegregations since 1954, it would do far more than maintain the status quo. Rather, it would undermine compliance with constitutional mandates, raising expectations of those who would wish a return to public school segregation as a way of life, and would create turmoil and disruption which race relations in this country can ill afford.

Notwithstanding the doomsayers, Mr. President, at the time we passed legislation to implement the desegregation decision of the U.S. Supreme Court in the past 18 years, particularly in the South, we as a country have made great progress in overcoming centuries of racial discrimination in the schools. But even a finding by the courts that this proposed Equal Educational Opportunities Act of 1972 is unconstitutional will not be able to cure the irreparable damage done by its passage. Communities which have painfully achieved stability will be destabilized overnight. Growing feelings of interracial acceptance and trust will be severely and unnecessarily strained, perhaps ruptured. We have struggled too long and too painfully to achieve racial understanding to give up what progress we have made in the heat of a presidential campaign.

Mr. President, as most decrees will be undone in the South, I wish to say this to my colleagues. It was the old South that fought bitterly, with a filibuster and every other weapon at its command, every conceivable type of civil rights legislation. Now we have a new South, which has made a great effort to implement what we made into law. It is my hope that the views of the old South will not prevail here, but that the views of the new South will triumph and carry on the progress which has been carried on before.

I do not say that in a sectional sense or in any sense to characterize the kind of opinion, the kind of approach to the particular questions with which I personally have had so much to do for so many years relating to the 1954 desegregation of the public school system. I have already referred to the statement of the Attorney General on that score.

Finally, I invite the attention of my colleagues to another provision, section 403(c) which says that these decrees which have been made may not in any way be changed, once districts have been found desegregated no matter what becomes the condition in that particular area due to population shifts, so that we have got not only a reopener clause, but we have a situation which we cannot even seek to relieve if there is a reason for seeking to relieve based on later residential shifts in population.

If ever I saw an unconstitutional provision, that is it, because this tries to exempt communities from the desegregation mandate of the Supreme Court's decision of 1954, whatever may have been the state of facts if it occurs after a decree has already been entered, no matter how long ago or how the situation may shift subsequent to that time.

Mr. President, I ask unanimous consent to have printed in the RECORD section 403(c) of the bill.

There being no objection, section 403(c) of the bill was ordered to be printed in the RECORD, as follows:

(c) When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated

school system, no educational agency because of such shifts shall be required by any court, department, or agency of the United States to formulate, or implement any new desegregation plan, or modify or implement any modification of the court approved desegregation plan which would require transportation of students to compensate wholly or in part for such shifts in school population so occurring.

Mr. President, finally, I should like to deal with the question of the so-called racial balance.

It is fantastic to me that every time someone gets up to make a speech on this subject, who wishes to turn the clock back because that is exactly what it is in respect of desegregation of the public school systems of the country, they carefully avoid use of the term desegregation of the schools. But that is all the Supreme Court decided. That is all that is illegal. That is all we can do anything about here on the Federal level.

But they speak very carefully of racial balance. Racial imbalance is nothing which the United States can redress. Indeed, the two very conservative Judges on the Supreme Court, reading literally the words of the Higher Education Act which deal with racial balance, have refused to implement that section of the Higher Education Act which froze the proceedings in desegregation cases on the ground that they do not involve racial balance at all. Racial balance is an educational concept which relates only to those in charge of education—to wit, State authorities—and has no relation whatever to the power of the Federal Government.

I have said that many times on this floor, and I repeat it, that there is nothing we can or should do about racial balance. That is up to the States in charge of education. But there is a great deal that we can and must do about desegregation. So racial balance is irrelevant to this debate and should not be used as a red herring dragged across the trail of this debate. The only thing we are debating is the illegality of segregation and the efforts to accomplish desegregation and the tools of which busing is one, of the courts of the United States to deal with the problem of segregation of the schools.

I repeat, racial balance is irrelevant. If one wishes to express it in legal terms, that is de facto segregation which the courts, and the law, and the decrees entered in the U.S. courts do not reach and cannot reach.

It is time we tear the cover from that illusion which has constantly dominated these debates and get down to the hardpan and discuss busing under the limitations and restrictions established by the Supreme Court in Swann against Charlotte-Mecklenburg, dealing as we in the Senate have defined it: One, with the health of the child; two, with the child's educational opportunities; three, as we define it in the Scott-Mansfield amendment, with the educational opportunity of the child in the school to which he is being bused. Let us apply those tests which are present tests, not yesterday's tests, we have a right to use busing as a tool, but not in racial balance. No one asks for that, and no U.S. court can or should do it.

Now, Mr. President, I have tried in these opening remarks to set the frame for the detailed analysis of the situations, including cases, and the experience, which we will present to the Senate in the course of this debate.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. BROCK). The Senator will state it.

Mr. JAVITS. Is it understood in respect of the unanimous-consent agreement for today's debate, concerning the division of time, that none of the speeches today on either side of the issue count as a speech within the rules?

The PRESIDING OFFICER. That is correct.

Mr. JAVITS. I thank the Chair.

I now yield—how much time?—5 minutes?—to the distinguished Senator from Michigan (Mr. HART).

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT—CONFERENCE REPORT

Mr. HART. Mr. President, I submit a report of the committee of conference on S. 976, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. BROCK). The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to 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, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of September 28, 1972, at page 32834–38.)

Mr. HART. Mr. President, this bill requires the Secretary of Transportation to set property loss reduction standards for the front and rear portions of passenger motor vehicles. The Senate bill authorized and directed the Secretary of Transportation to promulgate property loss reduction standards that were cost-beneficial. These standards could have related to any portion of the vehicle. The Senate conferees have agreed to the more limited authority provided in the House bill after assuring themselves that the promulgation of "bumper standards" could provide protection against damage to bumpers and sheet metal in the front and rear portions of the vehicle and could offer protection for 70 percent or more of the automobile accidents. An initial bumper standard preventing damage to the front and rear ends of automobiles at barrier impact speeds of between 5 and 10 miles per hour could save American consumers between $1 and $2 billion per year.

S. 976 establishes a consumer information program which would give automobile purchasers information about the repairability, damage susceptibility, and crashworthiness of vehicles on the market. Armed with this information, car buyers would be able to make more rational decisions about which car to buy. Under authority of this bill, for example, the Secretary might require an automobile manufacturer to attach a sticker to a vehicle which shows, through a bar graph representation, the repairability, damage susceptibility, and crashworthiness of the average vehicle compared to the particular vehicle to which the sticker is affixed. In addition to this information, the Secretary could require automobile dealers to distribute insurance cost information which lets the consumer know how much he can save by buying a car which is safe and not prone to damage.

The bill also establishes demonstration projects to test the design and feasibility of safety and emission diagnostic test inspection facilities which could insure the safety of motor vehicles in use and could help protect the car owner from intentional and unintentional repair abuses. Finally the bill establishes a national policy against odometer tampering.

In summary, the Motor Vehicle Information and Cost Savings Act directs the Secretary of Transportation to take steps to eliminate from automobiles, cosmetic bumpers and egg shell exteriors, at least in the front and rear and portions of the vehicle. While I am sure my colleagues in the Senate would have preferred a broader authority, I am reasonably satisfied that the limitation agreed to will enable the Secretary of Transportation to set standards which will prevent damage in a majority of automobile accident situations. The automobile information provisions will foster competition in the important areas of repairability, damage susceptibility, and crash worthiness. The diagnostic demonstration projects will give us needed information which will enable us to lay the final plans for designing a motor vehicle inspection system to assure the safety and environmental quality of our vehicles.

At the same time, these projects will start us down the road toward a solution of the automobile repair problem that plagues each and every owner of passenger motor vehicles and robs him of billions of dollars every year. Finally, a national policy against odometer tampering will prevent the defrauding of thousands of American car buyers.

Mr. President, frankly there is one provision which I agreed to in conference with which I am not, repeat not, satisfied. The limited criminal penalties provision in this bill troubles me. In 1966, I was among those in Congress who, for reasons I hope seemed sound then voted to eliminate from the auto safety act criminal penalties. No longer does that position make sense. It is wrong to differentiate between "crime in the streets"

and "crime in the suites." A knowing and willful act by a corporate executive or worker on the line destined to injure or designed to rob American consumers of thousands of dollars is as wrong and worthy of punishment as a street holdup. S. 976 recognizes that for some knowing and willful acts criminal penalties are appropriate.

Unfortunately, the criminal penalty provision which is in the bill still differentiates between the man in the white collar who performs a criminal act that could rob you of thousands of dollars and the man in the ghetto who burglarizes a store and gets away with $100 forth of merchandise. Under this bill a person is not punishable for his knowing and willful acts to violate the standards which will be established in S. 976 until after he has received notice of noncompliance. In other words, he is given a "first bite" to violate the standards established by this act before he can be convicted of a criminal offense and punished by a fine of up to $50,000 or imprisonment up to 1 year for any knowing and willful act to violate the standards.

As agreed to in conference, this whole matter of criminal penalties for white-collar crime needs to be carefully evaluated next year, particularly when we consider amendments to the National Motor Vehicle and Traffic Safety Act. Though we have come a step by including the criminal penalties provision in this bill, in my opinion we need to go further. Nevertheless, I urge my colleagues in the Senate to support this measure because overall it benefits American consumers.

Mr. President, the able Senator from New Hampshire (Mr. COTTON), is not able to be present this afternoon. He has authorized me to express his strong support for the conference report, as reflected in his views which I ask unanimous consent to have printed at this point in the RECORD.

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

STATEMENT BY SENATOR COTTON

Mr. President, I wish to express my support for the adoption of the pending Conference Report on S. 976—the Motor Vehicle Information and Cost Savings Act.

Mr. President, my colleagues in the Senate may recall that when the bill S. 976 was passed by the Senate on November 3, 1971, I voted against passage of this bill. I explained my vote at that time in the following manner:

"I trust that the bill will work effectively. However, with all due respect to my honored assistants on the Committee, in view of the failure of the Griffin amendment, which I think was vitally necessary to safeguard the bill, I will be compelled to vote against the bill." (Congressional Record, vol. 117, pt. 30, p. 39045).

Mr. President, I am pleased to note from a reading of the Conference Report and the joint explanatory statement of the Committee of Conference that the issue which was addressed by the Griffin amendment has in large measure been resolved. My concern at that time was over the regulatory reach of Title I of the bill which would have given to the Secretary of Transportation broad power to set minimum property loss reduction standards for passenger motor vehicles.

Mr. President, as pointed out in the joint explanatory statement of the Committee of Conference, the comparable House provision, on the other hand, limited the grant of authority in Title I to the power to establish bumper standards designed in general to reduce accident damage to a passenger motor vehicle's front and rear end. The joint statement then goes on to note the following, which I am pleased to call to the attention of my colleagues:

"The Committee of Conference has decided to take the more limited approach recommended by the House amendment."

Mr. President, I now feel that my vote against S. 976 last November is vindicated by the provisions of the Conference Report now before us for consideration and, in view of the more limited and reasonable approach taken in Title I, I am prepared to urge the adoption of this Conference Report. In point of fact, the approach taken in Title I concerning property loss is in keeping with the earlier hearing record before our Committee on Commerce, the principal thrust of which was directed to the problem of accident damage to a passenger motor vehicle's front and rear end and the need for such limited authority to establish bumper standards.

Mr. President, I therefore urge the adoption of the Conference Report on S. 976.

Mr. HART. Mr. President, I move that the Senate agree to the conference report on S. 976.

The motion was agreed to.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. BROCK). The Chair, on behalf of the Vice President, pursuant to Public Law 84–689, appoints the Senator from Utah (Mr. Moss) as alternate delegate to the North Atlantic Assembly, to be held at Bonn, Germany, November 18–24, 1972.

ACTION OF SENATE ON CERTAIN PROVISIONS OF SOCIAL SECURITY ACT AMENDMENTS OF 1972

Mr. MONDALE. Mr. President, before I begin my remarks, I want to comment on one action we took last night as part of the welfare reform bill which is now in conference—an action about which I feel very deeply.

I think that perhaps the most effective program in the whole OEO effort has been the legal services program. It is modestly funded. I think it is something less than $65 million a year. And yet that program has resulted in attracting some of the most gifted, young, seasoned lawyers in the country. And they have brought a whole host of long-overdue lawsuits dealing with legal and constitutional rights—suits that would have been brought years ago had commercial business interests been the ones adversely affected. Before the legal services program was established in 1965, those lawsuits were not brought, simply because the resources did not exist.

We talk about a health crisis, a housing crisis, a social security crisis, a transportation crisis, and many other crises in American society. But there is an underlying legal crisis which exists because the cost of high quality legal representation is beyond the reach of people of moderate means, and is totally beyond reality for people below or near the poverty level. The result is that public bodies, corporate interests and others can disregard the legitimate constitutional and legal rights of poor people almost with impunity, sometimes cruelly.

I recall hearings held a year or two ago in a county with a high migrant population, where a lawyer testified that the only way he could keep the unemployed migrants of that county from starving was to be with them when they applied for food stamps. If he was not with them, they would not get the stamps. If he did not threaten to sue, the authorities would not grant what the law requires to these pathetic people.

Time and time again this remarkable program has in a simple way brought law and order to poor people and poor communities throughout the country. And because it has been successful, powerful interests now want to throw it off.

I have never heard anyone suggest that the right of corporations to sue for their own interests and the right of wealthy people to sue for their own interests, should be restricted in any way—and I do not think they should be. But those lawsuits by and large are publicly supported, because the costs are deducted from income taxes.

I have never heard anyone say that any public body, such as a school board, should be restricted from asserting its rights. However, once again it is the public taxpayers who pay for the cost of those lawsuits.

Of course, the people in America who have unasserted legal rights are the poor. And even with the legal services they have very few rights to assert.

Last night in an action which I thought was unbelievable, the Senate passed a bill which would prohibit legal services attorneys from bringing a suit under the Social Security Act, which would mean they could not participate in any of the welfare fields at all. No matter how illegal, no matter how outrageous the violation, they cannot sue on behalf of poor people.

Mr. President, I would like to have some who voted for that provision go out and tell those poor people about our deep commitment here to law and order and to the Constitution—after we said, in effect, that the courthouse door is slammed shut, bolted, and nailed down as far as their rights are concerned. They better find a rich friend.

I deeply regret that action taken last night, and since it is in conference I hope the conferees will reject it and seek to keep this remarkable program alive. If the provision is kept I think the legal services program is, for all practical purposes, dead. I do not think they are going to be able to get gifted young lawyers into a program that cannot effectively serve the poor, which is why the American Bar Association sent a powerful telegram to the Senate urging that we reject this provision on the ground that it violates, in their opinion, the Canon of Ethics and the whole concept underlying justice in America.

I hope in conference that highly unwise and I think unfair provision will be dropped.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The Senate continued with the consideration of the bill (H.R. 13915) to further the achievement of equal educational opportunities.

Mr. JAVITS. Mr. President, I yield 20 minutes to the Senator from Minnesota (Mr. MONDALE).

Mr. MONDALE. Mr. President, I thank the Senator from New York for yielding some time to me in which to discuss the so-called equal educational opportunities measure.

Mr. MONDALE. Mr. President, I rise in opposition to H.R. 13915, the so-called Equal Educational Opportunities Act. For the third time this year the Senate faces a major debate over school desegregation.

For the third time we are asked to join in a vain effort to overturn the 14th amendment's prohibition against racial discrimination, through legislation which we know to be unconstitutional.

There are 11 million children attending 1,500 desegregating school districts in the country today.

For the third time this year we are asked to put the Congress against the courts, to plunge 1,500 school districts into confusion over what the law requires, to damage, perhaps beyond repair, the educational opportunities of 11 million children.

Twice this year the Senate and the Congress have risen to the challenge.

After two long and bitter debates, we enacted the Emergency School Aid Act.

That bill would provide up to $2 billion over 2 years to help school districts desegregate in a way that benefits all the children involved.

It would pay the burdensome costs of transportation. It would provide extra teachers and counselors. It would help school districts adopt team teaching, individualized instruction, and other innovative educational techniques to ease the process of desegregation. It would provide desperately needed bilingual education and other special help.

And the Congress adopted the so-called Mansfield-Scott amendment which stressed the Supreme Court's ruling that no transportation will be required which risks the health of students or impinges on the educational process.

Last July we stood with the Constitution. We stood for eliminating officially sponsored racial segregation in public education in a reasonable way, on a case-by-case basis.

For the third time we are asked to oppose the Constitution. We are asked to make the judgment that Chief Justice Burger, Justice Blackmun, Justice Rehnquist, Justice Douglas, Justice White, Justice Brennan, Justice Marshall, Justice Harlan, and Justice Stewart are not capable of assuring that desegregation proceeds in a reasonable way.

We are asked to reverse by legislation the Supreme Court's April 1971 ruling in Swann against Charlotte-Mecklenburg and its companion cases that transportation—beyond the "next nearest school"—may be required in individual cases to overcome the effects of past discrimination.

We are asked to do this even though the Congress cannot reverse the Supreme Court's rulings, and can only create confusion and disunity. We are asked to act now even though the Supreme Court this session will act—in cases involving Denver, Colo., Richmond, Va., and perhaps even Detroit—to clarify constitutional requirements where the law is now unclear.

Those court orders which have provoked the greatest concern—court orders requiring integration across school district lines in Richmond, Va., and Detroit, Mich.—have not been implemented. They are still on appeal. And the Supreme Court should be given the opportunity to resolve these very difficult cases without the added complication of misleading, extreme and clearly unconstitutional enactments—which attempt to reopen and relitigate virtually every school desegregation case decided since Brown against Board of Education in 1954.

Mr. President, H.R. 13915, the so-called Equal Educational Opportunities Act is a complex measure. It deals with one of the great constitutional issues of our time. And it deals with the future of millions of American schoolchildren.

Yet this important bill comes before the Senate in the pressure of closing days of the session, without even the benefit of hearings and a report by the appropriate Senate committee.

This bill was sent to the Senate by the House of Representatives 6 weeks ago, shortly before the Republican Convention.

But instead of permitting it to be considered by the Committee on Labor and Public Welfare, the bill was held at the Senate desk.

In the past that unusual procedure for circumventing the committee system has been justifiably and where the committee has established a clear record of being a graveyard for the legislation being held at the desk. But in this case just the reverse is true. The Committee on Labor and Public Welfare has repeatedly reported school desegregation measures for Senate debate, and I would bet that if we clocked the amount of time spent on school desegregation and discrimination in this Congress, more time has been spent on that issue than on any other single domestic issue before the Senate. And all of those issues have been reported out by the Committee on Labor and Public Welfare. We have held long hearings, and we have heard from practically anyone who wanted to testify; we spent days and days in Senate debate and in conference with the House; and we were perfectly prepared, as the distinguished chairman of the committee, the Senator from New Jersey (Mr. WILLIAMS) pointed out, to take the bill and act responsibly on it.

Instead of that, the highly unusual procedure of holding the bill at the desk was restorted to, that action was unwarranted and unwise on its face, and an insult to the committee system. It is war on action which undermines the basic processes of the Senate, and it should be rejected, if for no other reason than it establishes a precedent which has serious and profound repercussions over matters as they come before the Senate.

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

Mr. MONDALE. I yield to the Senator from West Virginia.

VISIT TO THE SENATE BY THE HONORABLE WINSTON CHURCHILL, A MEMBER OF THE BRITISH HOUSE OF COMMONS

Mr. ROBERT C. BYRD. Mr. President, I thank the able Senator from Minnesota for yielding. I have asked him to do so at this time—and I apologize for the attendance at the present time, but it has been explained to our distinguished visitor—because I wanted Senators who are here to know about the presence of a very distinguished guest. I shall yield to our able colleague from Maryland (Mr. MATHIAS) so that he might have the honor to present a distinguished visitor to the Senate.

Mr. MATHIAS. Mr. President, I thank the distinguished assistant majority leader for his courtesy.

Mr. President, it is a great honor and privilege for me to introduce to the Senate Mr. Winston Churchill, a Member of the House of Commons.

[Applause, Senators rising.]

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 2 minutes.

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

RECESS

Thereupon, at 3:30 p.m. the Senate took a recess until 3:32 p.m. During the recess Mr. Winston Churchill was greeted by Members of the Senate.

On expiration of the recess, the Senate reassembled when called to order by the Senator from Tennessee (Mr. BROCK).

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The Senate continued with the consideration of the bill (H.R. 13915) to further the achievement of equal educational opportunities.

Mr. MONDALE. Mr. President, I yield to the Senator from Alabama such time as the Senator may require to take up an FHA extension bill, without losing my right to the floor.

Mr. ROBERT C. BYRD. Mr. President, will the Senator limit that to not to exceed 5 minutes?

Mr. MONDALE. Mr. President, I so modify my request.

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

TEMPORARY EXTENSION OF CERTAIN HOUSING PROGRAMS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of order No. 1204, House Joint Resolution 1301.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The legislative clerk read the joint resolution by title, as follows:

A joint resolution (H.J. Res. 1301) to extend the authority of the Secretary of Hous-

ing and Urban Development with respect to the insurance of loans and mortgages under the National Housing Act.

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

There being no objection, the Senate proceeded to consider the joint resolution, which had been reported from the Committee on Banking, Housing and Urban Affairs with an amendment to strike out all after the resolving clause and insert:

That (a) section 2(a) of the National Housing Act is amended by striking out "October 1, 1972" in the first sentence and inserting in lieu thereof "April 30, 1973".

(b) Section 217 of such Act is amended by striking out "October 1, 1972" and inserting in lieu thereof "April 30, 1973".

(c) Section 221(f) of such Act is amended by striking out "October 1, 1972" in the fifth sentence and inserting in lieu thereof "April 30, 1973".

(d) Section 235(m) of such Act is amended by striking out "October 1, 1972" and inserting in lieu thereof "April 30, 1973".

(e) Section 236(n) of such Act is amended by striking out "October 1, 1972" and inserting in lieu thereof "April 30, 1973".

(f) Section 809(f) of such Act is amended by striking out "October 1, 1972" in the second sentence and inserting in lieu thereof "April 30, 1973".

(g) Section 810(k) of such Act is amended by striking out "October 1, 1972" in the second sentence and inserting in lieu thereof "April 30, 1973".

(h) Section 1002(a) of such Act is amended by striking out "October 1, 1972" in the second sentence and inserting in lieu thereof "April 30, 1973".

(i) Section 1101(a) of such Act is amended by striking out "October 1, 1972" in the second sentence and inserting in lieu thereof "April 30, 1973".

SEC. 2. Section 3 of the joint resolution entitled "Joint resolution to extend the authority of the Secretary of Housing and Urban Development with respect to interest rates on insured mortgages, to extend and modify certain provisions of the National Flood Insurance Act of 1968, and for other purposes", approved December 22, 1971, as amended, is amended by striking out "for a period of nine months after the date of approval of this joint resolution" and inserting in lieu thereof "until April 30, 1973".

SEC. 3. Section 10 of the United States Housing Act of 1937 is amended—

(1) by striking out "and $225,000,000 on July 1, 1971," in subsection (e) and inserting in lieu thereof "$225,000,000 on July 1, 1971, and $150,000,000 on July 1, 1972,";

(2) by striking out the proviso in subsection (b); and

(3) by striking out the second proviso in subsection (c).

SEC. 4. The first sentence of section 103 (b) of the Housing Act of 1949 is amended by striking out "and by $1,500,000,000 on July 1, 1971" and inserting in lieu thereof "by $1,500,000,000 on July 1, 1971, and by $250,000,000 on July 1, 1972".

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the staff director of the Housing Subcommittee have the privilege of the floor during the consideration of this measure.

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

Mr. SPARKMAN. Mr. President, this measure is for the purpose of extending, for a short period of time, various housing programs some of which expired a week ago. We have amended the House measure, and that is what we are seeking to pass at this time.

By the way, the Senator from Massachusetts (Mr. KENNEDY) had an amendment that he was planning to offer. He is out of the city. He called me a little while ago, telling me to go ahead and present the bill and he would not offer his amendment. I wanted to make that explanation.

Mr. BENNETT. Mr. President, the measure as it came from the House had the date of June 30, 1973, as the date of extension. In the committee, after some discussion, we suggested the date of April 30; but, after further discussion, I am proposing that the bill be amended to restore the date of June 30, 1973, as it appears in the House measure.

Mr. SPARKMAN. Mr. President, I am in favor of accepting that amendment.

The Presiding Officer (Mr. BROCK), who is a member of the committee, knows we have been trying to get a bill that the House would accept. We think it would come nearer to being accepted by the House if we included their date.

The PRESIDING OFFICER. Is the amendment suggested by the Senator from Utah being offered?

Mr. BENNETT. Mr. President, I offer the amendment.

The PRESIDING OFFICER. Is there objection to the amendment of the Senator from Utah to change the date from "April 30, 1973" in the committee amendment to "June 30, 1973"?

Without objection, the amendment is agreed to.

The question is on agreeing to the committee amendment, in the nature of a substitute, as amended.

The committee amendment, as amended, was agreed to.

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

The joint resolution (H.J. Res. 1301) was read the third time, and passed.

Mr. SPARKMAN. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. JAVITS. Mr. President, will the Senator give me 1 minute?

Mr. SPARKMAN. Mr. President, I will withdraw my motion, and yield to the Senator from New York. I will say to him that we are operating under a limitation of time.

Mr. JAVITS. I understand. If I may have 2 minutes, I want to just say that we understand what the Senator is doing in forwarding the whole housing program. He was kind enough to ask me how I felt about it. We simply understand the greater good which is involved.

I wish to express to him my deep concern about the situation of the mass transit provisions which were contained in the Senate housing bill and the public works bill, and we now understand ther is some problem with the provision that we had here, especially for operating expenses for mass transit systems, which was stricken out on a point of order in the other body, and I wanted to get some expression of opinion from the Senator from Alabama as to where he sees us going in the mass transit situation.

Mr. SPARKMAN. The Senator knows, of course, that from the very first, I supported the mass transit program.

Mr. JAVITS. Of course.

Mr. SPARKMAN. As a matter of fact, when it was first brought up by the Senator from New Jersey (Mr. WILLIAMS) as a separate bill, he recommended it be made a title in the omnibus housing bill. It was. That is where it was started. It has been there ever since. I am strongly for it.

The Senator knows that what we are trying to do here is get essential programs extended. The Senator from New Jersey (Mr. WILLIAMS), in the committee, very graciously said he would not insist on adding an amendment like that to this bill, which would be controversial.

Mr. JAVITS. May we count, then, on the continued support of the Senator from Alabama and his continued effort to find a way to effectuate the Senate purpose, as shown by this amendment to the housing bill and the public works bill with respect to urban mass transit?

Mr. SPARKMAN. I will stick to the bill out of our committee.

Mr. JAVITS. Let us stick to that.

Mr. SPARKMAN. I have supported it in the past, I support it now, and I will continue to support it in the future.

Mr. JAVITS. I thank the Senator.

Mr. SPARKMAN. Mr. President, I renew my motion to reconsider the vote by which the joint resolution was passed.

Mr. BENNETT. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SPARKMAN. I thank the Senator from Minnesota, who likewise is a member of our committee.

Mr. MONDALE. I thank the Senator from Alabama.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The Senate continued with the consideration of the bill (H.R. 13915) to further the achievement of equal educational opportunities.

Mr. MONDALE. Mr. President, before I leave the last point, I think a study of that particular parliamentary tactic will show that it is rarely used. And on the few occasions when it has been successfully used, there has been an unarguable case that the committee that is being denied the referral of legislation has a solid historic record of serving not as the committee to responsibly consider the proposal involved, but as its graveyard, and therefore that it is futile and hopeless to refer the bill to the committee.

In this instance, the Senate Labor and Public Welfare Committee has dealt, in this Congress alone, with two separate measures, held hearings, and reported bills.

Again, I think more time has been spent in this Congress on school discrimination issues than on any other domestic issue, on the basis of bills which were reported out of the Senate Labor and Public Welfare Committee.

Mr. THURMOND. Mr. President, will the Senator from Minnesota yield for about 10 or 11 minutes, with the under-

standing that he will not lose his right to the floor, and with the further understanding that my short address will come at some other place in the RECORD, and that the Senator may continue as soon as I finish?

Mr. MONDALE. I yield to the Senator from South Carolina.

The PRESIDING OFFICER (Mr. BROCK). The Chair inquires as to who is yielding time.

Mr. MONDALE. I am sorry; the time is under the control of the Senator from New York.

Mr. JAVITS. May we know the state of the time situation, Mr. President?

Mr. ROBERT C. BYRD. How much time does the Senator want?

Mr. THURMOND. About 10 minutes.

Mr. JAVITS. I will arrange it. We will work it out.

Mr. ROBERT C. BYRD. I thought I would yield in behalf of the Senator from Alabama.

Mr. JAVITS. That is exactly what I had in mind. I have just ascertained that this was a speech on the other side.

Mr. ROBERT C. BYRD. Mr. President, I yield 10 minutes to the distinguished Senator from South Carolina from the time allotted to the distinguished Senator from Alabama (Mr. ALLEN).

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Minnesota will not lose his right to the floor.

Mr. THURMOND. Mr. President, the issue before us in H.R. 13915 is one that has caused great controversy in the halls of Congress and has generated much public debate. In addition, it has become a very sensitive issue.

Although the overwhelming majority of the American people, including members of both races, are opposed to the use of forced busing to achieve school desegregation, there are those who have charged that the motive behind this legislation is, in essence, racism. That places an extra burden upon the Members of this body to insure that our deliberations not only reflect the will of the American people, but also properly consider the feelings of those who, through misunderstanding, may believe that our actions cast doubt on the American commitment to freedom and justice for all.

The history of race relations in the country is filled with both division and reconciliation, both bitterness and good will. Indeed, debate and controversy over school desegregation have accompanied many of the changes which have occurred in our school systems since the Brown decision in 1954. Motives both noble and ignoble have characterized both sides of this controversy and have generated much emotion that has yet to disappear.

Mr. President, it has been said that those who do not remember the past are doomed to repeat it. I do not believe that we can discuss the issue of school busing in an intellectual vacuum. We cannot ignore the recent past, the changes which this era has brought and the effect of these changes on the thinking of the people. Nevertheless, I am convinced that we are not prisoners of history, and that we can fashion a law which protects the people against the excesses which have come in the wake of school desegregation. Also we can assure all Americans that our actions are based on a desire to preserve and extend the right of all Americans to receive a good education in a nondiscriminatory school system.

It is clear that the great majority of our citizens oppose racial segregation in the public schools and believe strongly that our children deserve an equal opportunity to achieve an education. It is also clear that the vast majority of Americana believe that the use of busing to accomplish racial integration is harmful to the very educational process it seeks to enhance. A Gallup poll taken on October 31, 1971, showed the following figures regarding sentiment on busing across the Nation:

In the East, 71 percent against, 22 percent for.

In the South, 82 percent against, 14 percent for.

In the Midwest, 77 percent against, 16 percent for.

In the Far West, 72 percent against, 21 percent for.

In addition, another Gallup poll taken last March showed that people who favored desegregation of the schools by 66 to 24 percent also opposed compulsory busing by 69 to 20 percent. This public sentiment is not relegated to the white community alone. One poll has shown that blacks in Detroit opposed busing by 63 to 29 percent and the National Black Caucus at its national convention last March passed a resolution in opposition to busing.

Mr. President, although busing is a controversial issue, it is not one that has divided the American people into racial camps. People generally oppose busing for the very obvious reason that they believe long rides to and from school every day are harmful to the best interest of their children, particularly their young children. They also oppose busing because it destroys the neighborhood school as the unifying focal point of their community, be it a small town or an urban neighborhood. It further lessens the accountability of the school officials and faculty to the parents, and inhibits the constructive influence and interest of parents in creating a good educational environment in the school.

Mr. President, I urge my colleagues to support this legislation, as I believe it is in the best interests of providing the best possible education for the young people of this country. It is in this spirit that we should pass it, and in this spirit that we should discuss it.

I thank the distinguished Senator from Minnesota for his courtesy in yielding to me at this time.

I also thank the assistant majority leader for his courtesy.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, without prejudice to the rights of the distinguished Senator from Minnesota.

The PRESIDING OFFICER. 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.

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

Mr. JAVITS. Mr. President, I yield 10 minutes to the Senator from Minnesota.

Mr. MONDALE. Mr. President, I believe there will be occasion early next week when I might extend my remarks further.

Let me just attempt now to describe what the courts are doing. That is at the heart of this debate.

This bill is designed to undermine, frustrate, and paralyze the courts from enforcing the Constitution of the United States. The courts are not acting on some national theory of racial balance which says that you need a computer printout to determine how many blacks and whites and others have to be in each school. I do not think the courts have ever said that is necessary or required. Indeed, as I read the court decisions, they have said just the reverse.

What the Constitution reaches is simply the question of discrimination.

What do we mean by discrimination? We mean that where a school district has been deliberately sorting children out on the basis of race—that is, putting black children in one school and white children in another school and keeping them separated deliberately—that violates the 14th amendment, because such distinctions cannot be drawn. When such actions are found, the courts have ruled that you have to stop it; you have to stop discriminating.

Sometimes, in the course of disestablishing a discriminatory school system, it has been necessary, among the remedies, to require some transportation of students.

Let us turn to the issue of busing. The courts have not been resorting, as we hear from time to time, to systems of massive forced busing to achieve racial balance. I do not know of a single court order that has done that.

As a matter of fact, only 3 percent of the busing occurring in the United States today has had anything to do with court orders. In several States of this country which have been under court orders to eliminate discrimination there is less busing going on today than there was before. I know of three States in the South where, when the court said, "You have to stop the official policy of separating children on the basis of race," when they were forced to do that by court order, there was less busing following the court order than there was before.

As a matter of fact, busing was originally a key technique used to achieve discrimination.

Let us take a northern community. There are not innocent, inadvertent situations. This is what the Court found in South Holland, Ill.: They found that the schools were located in the center rather than at the boundaries of segregated residential areas in order to achieve school segregation. In other words, they found that the school district deliberately located new schools in order to keep the kids separated.

Second, they found that the school assignment policies were such that black

children living nearer to white schools attended black schools and white children living nearer to black schools attended white schools. In other words, the school district was saying, "Even though this white child lives closer to that school, what you might call his neighborhood school, we will disregard the neighborhood and send him further in another direction to keep the children separated."

Third, they found that school buses were used to transport students out of their neighborhoods in order to achieve segregation. That is, a neighborhood school system was totally ignored for the purpose of discrimination.

Fourth, the teachers were assigned on a racial basis. That is what the courts are getting at. They are getting at specific examples, which must be proved, of a school system deliberately separating children on the basis of race; and where they find them, they find that the Constitution has been violated, and it is necessary to disestablish a discriminatory school system.

I have heard people say, "Well, we are against discrimination and we are against busing." There are some situations in which you can disestablish a discriminatory school system without requiring any busing. There are other instances, as the Supreme Court in Swann against Charlotte-Mecklenburg found, in which you cannot.

The question now is whether we are going to seek to undermine and paralyze the court from enforcing the Constitution of the United States.

We meet in a time just before a presidential election, when emotions are very high, and when this issue, in my opinion, has been inflated out of all proportions and all reality. I do not know how much the facts of this situation are going to be discussed, but in the last minute and a half or 2 minutes I have tried to explain what the courts are doing. I do not think the courts have been insane; I do not think they have been irresponsible; I do not think they have gone off on some irrational binge.

The present Supreme Court of the United States, speaking through the new Chief Justice of the United States, nominated by the President of the United States, confirmed by the U.S. Senate, unanimously said that it is unconstitutional to permit discrimination and that you cannot in all cases restrict orders so that busing is not required. Not that busing is necessary in all instances. Certainly, racial balance is not necessary; but from time to time, if you want to eliminate discriminaton, transportation is one of the tools that must be available to the court in order to do so.

The measure at the desk would deny, for all practical purposes, any such remedy. So there would be a right without a remedy, which, to put it differently, would say that we have an unconstitutional amendment which prohibits discrimination, but we will now have a law which, although it is prohibited, permits it nevertheless.

Mr. President, I will perhaps speak more fully on this matter on Monday, and I yield the floor.

FEDERAL-AID HIGHWAY ACT OF 1972

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3939.

The PRESIDING OFFICER (Mr. BROCK) laid before the Senate the amendment of the House of Representatives to the bill (S. 3939) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes", which was to strike out all after the enacting clause, and insert:

TITLE I

SHORT TITLE

SEC. 101. This title may be cited as the "Federal-Aid Highway Act of 1972".

REVISION OF AUTHORIZATION FOR APPROPRIATIONS FOR THE INTERSTATE SYSTEM

SEC. 102. Subsection (b) of section 108 of the Federal-Aid Highway Act of 1956, as amended, is amended by striking out "the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1974, the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1975, and the additional sum of $4,000,000,000 for the fiscal year ending June 30, 1976", and by inserting in lieu thereof the following: "the additional sum of $3,500,000,000 for the fiscal year ending June 30, 1974, the additional sum of $3,500,000,000 for the fiscal year ending June 30, 1975, the additional sum of $3,500,000,000 for the fiscal year ending June 30, 1976, the additional sum of $3,500,000,000 for the fiscal year ending June 30, 1977, the additional sum of $3,500,000,000 for the fiscal year ending June 30, 1978, and the additional sum of $2,500,000,000 for the fiscal year ending June 30, 1979."

AUTHORIZATION OF USE OF COST ESTIMATE FOR APPORTIONMENT OF INTERSTATE FUNDS

SEC. 103. The Secretary of Transportation is authorized to make the apportionment for the fiscal years ending June 30, 1974, and June 30, 1975, of the sums authorized to be appropriated for such years for expenditures on the National System of Interstate and Defense Highways, using the apportionment factors contained in revised table 5, of House Public Works Committee Print Numbered 92–29.

HIGHWAY AUTHORIZATIONS

SEC. 104. (a) For the purpose of carrying out the provisions of title 23, United States Code, the following sums are hereby authorized to be appropriated:

(1) For the Federal-aid primary system in rural areas, out of the Highway Trust Fund, $700,000,000, for the fiscal year ending June 30, 1974, and $700,000,000 for the fiscal year ending June 30, 1975. For the Federal-aid secondary system in rural areas, out of Highway Trust Fund, $400,000,000 for the fiscal year ending June 30, 1974, and $400,000,000 for the fiscal year ending June 30, 1975.

(2) For the Federal-aid urban system, out of the Highway Trust Fund, $700,000,000 for the fiscal year ending June 30, 1974, and $700,000,000 for the fiscal year ending June 30, 1974, and $700,000,000 for the fiscal year ending June 30, 1975. For the extensions of the Federal-aid primary and secondary systems in urban areas, out of the Highway Trust Fund, $400,000,000 for the fiscal year ending June 30, 1974, and $400,000,000 for the fiscal year ending June 30, 1975.

(3) For forest highways, out of the Highway Trust Fund, $33,000,000 for the fiscal year ending June 30, 1974, and $33,000,000 for the fiscal year ending June 30, 1975.

(4) For public lands highways, out of the Highway Trust Fund, $16,000,000 for the fiscal year ending June 30, 1974, and $16,000,000 for the fiscal year ending June 30, 1975.

(5) For forest development roads and trails, $170,000,000 for the fiscal year ending June 30, 1974, and $170,000,000 for the fiscal year ending June 30, 1975.

(6) For public lands development roads and trails, $10,000,000 for the fiscal year ending June 30, 1974, and $10,000,000 for the fiscal year ending June 30, 1975.

(7) For park roads and trails, $30,000,000 for the fiscal year ending June 30, 1974, and $30,000,000 for the fiscal year ending June 30, 1975.

(8) For parkways, $20,000,000 for the fiscal year ending June 30, 1974, and $20,000,000 for the fiscal year ending June 30, 1975.

(9) For Indian reservation roads and bridges, $100,000,000 for the fiscal year ending June 30, 1974, and $100,000,000 for the fiscal year ending June 30, 1975.

(10) For economic growth center development highways under section 143 of title 23, United States Code, out of the Highway Trust Fund, $150,000,000 for the fiscal year ending June 30, 1974, and $150,000,000 for the fiscal year ending June 30, 1975.

(11) For carrying out section 319(b) of title 23, United States Code (relating to landscaping and scenic enhancement), $10,000,000 for the fiscal year ending June 30, 1974, and $10,000,000 for the fiscal year ending June 30, 1975.

(12) For necessary administrative expenses in carrying out section 131, section 136 and section 319(b) of title 23, United States Code, $3,000,000 for the fiscal year ending June 30, 1974, and $3,000,000 for the fiscal year ending June 30, 1975.

(13) For carrying out section 215(a) of title 23, United States Code—

(A) for the Virgin Islands, not to exceed $5,000,000 for the fiscal year ending June 30, 1974, and not to exceed $5,000,000 for the fiscal year ending June 30, 1975.

(B) for Guam not to exceed $2,000,000 for the fiscal year ending June 30, 1974, and not to exceed $2,000,000 for the fiscal year ending June 30, 1975.

(C) for American Samoa not to exceed $500,000 for the fiscal year ending June 30, 1974, and not to exceed $500,000 for the fiscal year ending June 30, 1975.

Sums authorized by this paragraph shall be available for obligation at the beginning of the fiscal year for which authorized in the same manner and to the same extent as if such sums were apportioned under chapter 1 of title 23, United States Code.

(14) Nothing in the first ten paragraphs or in paragraph (13) of this section shall be construed to authorize the appropriation of any sums to carry out section 131, 136, 319 (b), or chapter 4 of title 23, United States Code.

(b) Any State which has not completed Federal funding of the Interstate System within its boundaries shall receive at least one-half of 1 per centum of the total apportionment for each of the fiscal years ending June 30, 1974, and June 30, 1975, under section 104(b)(5) of title 23, United States Code, or an amount equal to the actual cost of completing such funding, whichever amount is less. In addition to all other authorizations for the Interstate System for the two fiscal years ending June 30, 1974, and June 30, 1975, there are authorized to be appropriated out of the Highway Trust Fund not to exceed $50,000,000 for each such fiscal year for such system.

SUBMISSION OF CERTAIN REPORTS

SEC. 105. The Secretary of Transportation is hereby directed to forward to the Congress within thirty days of the date of enactment of this Act final recommendations proposed to him by the Administrator of the Federal Highway Administration in accordance with section 105(b)(2), section 121, and section

144 of the Federal-Aid Highway Act of 1970 together with those recommendations of the Secretary of Transportation to the Director of the Office of Management and Budget unless these recommendations have been submitted to the Congress prior to the date of enactment of this Act.

DEFINITIONS

SEC. 106. Subsection (a) of section 101 of title 23 of the United States Code is amended as follows:

(1) The definition of the term "construction" is amended by striking out "Coast and Geodetic Survey in the Department of Commerce)," and by inserting in lieu thereof: "National Oceanic and Atmospheric Administration in the Department of Commerce), traffic engineering and operational improvements,".

(2) The definition of the term "urban area" is amended by inserting immediately after "State highway department" the following: "and appropriate local officials in cooperation with each other".

(3) The definition of the term "Indian reservation roads and bridges" is amended to read as follows:

"The term 'Indian reservation roads and bridges' means roads and bridges that are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services genrally available to Indians under Federal laws specifically applicable to Indians."

EXTENSION OF TIME FOR COMPLETION OF SYSTEM

SEC. 107. (a) The second paragraph of section 101(b) of title 23, United States Code, is amended by striking out "twenty years" and inserting in lieu thereof "twenty-three years" and by striking out "June 30, 1976", and inserting in lieu thereof "June 30, 1979".

(b)(1) The introductory phrase and the second and third sentences of section 104(b)(5) of title 23, United States Code, are amended by striking out "1976" each place it appears and inserting in lieu thereof at each such place "1979".

(2) Such section 104(b)(5) is further amended by striking out the sentence immediately preceding the last sentence and inserting in lieu thereof the following: "Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1976, and June 30, 1977. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1976. Upon the approval by Congress, the Secretary shall use the Federal share of such approved estimates in making apportionments for the fiscal years ending June 20, 1978, and June 30, 1979."

DECLARATION OF POLICY

SEC. 108. Subsection (b) of section 101 of title 23, United States Code, is amended by adding at the end thereof the following new paragraph:

"It is further declared that since the Interstate System is now in the final phase of completion that after completion of that system it shall be the national policy that increased emphasis be placed on the accelerated construction of the other Federal-aid systems in accordance with the first paragraph of this subsection, in order to bring all of the Federal-aid systems up to standards and to increase the safety of these systems to the maximum amount possible by no later than the year 1990."

MINIMIZATION OF REDTAPE

SEC. 109. Section 101 of title 23 of the United States Code is amended by adding at the end thereof the following new subsection:

"(e) It is the national policy that the maximum extent possible the procedures to be utilized by the Secretary and all other affected heads of Federal departments, agencies, and instrumentalities for carrying out this title and any other provision of law relating to the Federal highway programs shall encourage the drastic minimization of paperwork and interagency decision procedures and the best use of available manpower and funds so as to prevent needless duplication and unnecessary delays at all levels of government."

FEDERAL-AID SYSTEMS

SEC. 110. Section 103 of title 23, United States Code, is amended as follows:

(1) The second sentence of subsection (d) is amended by inserting immediately after "such area" the following: "and shall provide for the collection and distribution of traffic within such area".

(2) Subsection (d) is further amended by inserting immediately following the next to the last sentence the following new sentence: "Any State not having a designated urbanized area may designate routes on the Federal-aid urban system for its largest population center, based upon a continuing planning process developed cooperatively by State and local officials and the Secretary."

(3) The next to the last sentence of subsection (g) is amended by striking out "1975" and inserting in lieu thereof "1977".

(4) Subsection (g) is further amended by adding at the end thereof the following new sentence: "This subsection shall not be applicable to any segment of the Interstate System referred to in section 23(a) of the Federal-Aid Highway Act of 1968."

APPLICATION TO URBAN SYSTEM OF CERTAIN CONTROLS

SEC. 111. The last sentence of subsection (d) of section 103 of title 23, United States Code, is amended to read as follows: "The provisions of chapters 1, 3, and 5 of this title that are applicable to Federal-aid primary highways shall apply to the Federal-aid urban system unless determined by the Secretary to be inconsistent with this subsection, except that sections 131, 136, and 319(b) are hereby made specifically applicable to such system and the Secretary shall not determine such sections to be inconsistent with this subsection."

APPORTIONMENT

SEC. 112. Section 104 of title 23, United States Code, is amended as follows:

(1) Paragraph (1) of subsection (b) is amended by striking out "one-third in the ratio which the population of each State bears to the total population of all the States and inserting in lieu thereof the following: "one-third in the ratio which the rural population of each State bears to the total rural population of all the States".

(2) Paragraph (6) of subsection (b) is amended by adding at the end thereof the following: "No State shall receive less than one-half of 1 per centum of each year's apportionment."

(3) Subsection (c) is amended by striking out "20 per centum" in each of the two places it appears and inserting in lieu thereof in each such place the following: "30 per centum" and by striking out "paragraph (1), (2), or (3)" and inserting in lieu thereof "paragraph (1) or (2)".

(5) Subsection (d) is amended to read as follows:

"(d) Not more than 30 per centum of the amount apportioned in any fiscal year to each State in accordance with paragraph (3) or (6) of subsection (b) of this section may be transferred from the apportionment under one paragraph to the apportionment under the other paragraph if such transfer is requested by the State highway department and is approved by the Governor of such State and the Secretary as being in the public interest. The total of such transfers shall not increase the original apportionment under either of such paragraphs by more than 30 per centum."

(5) The last sentence of subsection (c) and subsection (f) are hereby repealed.

TERMINATION OF FEDERAL-AID RELATIONSHIP

SEC. 113. (a) Notwithstanding any other provisions of Federal law or any court decision to the contrary, the contractual relationship between the Federal and State governments shall be ended with respect to all portions of the San Antonio North Expressway between Interstate Highway 35 and Interstate Loop 410, and the expressway shall cease to be a Federal-aid project.

(b) The amount of all Federal-aid highway funds paid on account of sections of the San Antonio North Expressway in Bexar County, Texas (Federal-aid projects numbered U 244(7), U 244(10), UG 244(9), U 244(8), and U 244(11)), shall be repaid to the Treasurer of the United States and the amount so repaid shall be deposited to the credit of the appropriation for "Federal-Aid Highways (Trust Fund)". At the time of such repayment the Federal-aid projects with respect to which funds have been repaid and any other Federal-aid projects located on such expressway and programed for expenditure on such project, if any, shall be canceled and withdrawn from the Federal-aid highway program. Any amount so repaid, together with the unpaid balance of any amount programed for expenditure on any such project shall be credited to the unprogramed balance of Federal-aid highway funds of the same class last apportioned to the State of Texas. The amount so credited shall be available for expenditure in accordance with the provisions of title 23, United States Code, as amended.

ADVANCE ACQUISITION OF RIGHTS-OF-WAY

SEC. 114. (a) The last sentence of subsection (a) of section 108 of title 23, United States Code, is amended by striking out "seven years" and inserting in lieu thereof "ten years".

(b) The first sentence of paragraph (3) of subsection (c) of section 108 of title 23, United States Code, is amended by striking out "seven years" and inserting in lieu thereof "ten years".

HIGHWAY NOISE LEVELS

SEC. 115. Subsection (i) of section 109 of title 23, United States Code, is amended by adding at the end thereof the following: "The Secretary after consultation with appropriate Federal, State, and local officials, may promulgate standards for the control of highway noise levels for highways on any Federal-aid system for which project approval has been secured prior to July 1, 1972. The Secretary may approve any project on a Federal-aid system to which noise-level standards are made applicable under the preceding sentence for the purpose of carrying out such standards. Such project may include, but is not limited to, the acquisition of additional rights-of-way, the construction of physical barriers, and landscaping. Sums apportioned for the Federal-aid system on which such project will be located shall be available to finance the Federal share of such project. Such project shall be deemed a highway project for all purposes of this title.

SIGNS ON PROJECT SITE

SEC. 116. The last sentence of subsection (a) of section 114 of title 23, United States Code, is amended to read as follows: "After July 1, 1973, the State highway department

shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation."

CERTIFICATION ACCEPTANCE

SEC. 117. (a) Section 117 of title 23 of the United States Code is amended to read as follows:

"§ 117. Certification acceptance

"(a) The Secretary may discharge any of his responsibilities under this title relative to projects on Federal-aid systems, except the Interstate System, upon the request of any State, by accepting a certification by the State highway department of its performance of such responsibilities, if he finds—

"(1) such projects will be carried out in accordance with State laws, regulations, directives, and standards establishing requirements at least equivalent to those contained in, or issued pursuant to, this title;

"(2) the State meets the requirements of section 302 of this title;

"(3) that final decisions made by responsible State officials on such projects are made in the best overall public interest.

"(b) The Secretary shall make a final inspection of each such project upon its completion and shall require an adequate report of the estimated, and actual, cost of construction as well as such other information as he determines necessary.

"(c) The procedure authorized by this section shall be an alternative to that otherwise prescribed in this title. The Secretary shall promulgate such guidelines and regulations as may be necessary to carry out this section.

"(d) Acceptance by the Secretary of a State's certification under this section may be rescinded by the Secretary at any time if, in his opinion, it is necessary to do so.

"(e) Nothing in this section shall affect or discharge any responsibility or obligation of the Secretary under any Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)), and the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), other than this title."

(b) The analysis of chapter 1 of title 23, United States Code, is amended by striking out

"117. Secondary road responsibilities."

and inserting in lieu the following:

"117. Certification acceptance.".

MATERIALS AT OFF-SITE LOCATIONS

SEC. 118. Section 121(a) of title 23 of the United States Code is amended by inserting after the period at the end thereof the following: "Such payments may also be made in the case of any such materials not in the vicinity of such construction if the Secretary determines that because of required fabrication at an offsite location the materials cannot be stockpiled in such vicinity."

TOLL ROADS, BRIDGES, TUNNELS, AND FERRIES

SEC. 119. After the second sentence of section 129(b) of title 23, United States Code, insert the following: "When any such toll road which the Secretary has approved as a part of the Interstate System is made a toll-free facility, Federal-aid highway funds apportioned under section 104(b)(5) of this title may be expended for the construction, reconstruction, or improvement of that road to meet the standards adopted for the improvement of projects located on the Interstate System.".

CONTROL OF OUTDOOR ADVERTISING

SEC. 120. (a) The first sentence of subsection (b) of section 131 of title 23, United States Code, is amended by inserting after "main traveled way of the system," the following: "and Federal-aid highway funds apportioned on or after January 1, 1974, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of incorporated cities and villages, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way,".

(b) Subsection (c) of section 131 of title 23, United States Code, is amended to read as follows:

"(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1974, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, be limited to (1) directional and official signs and notices, which signs and notices may include, but not be limited to, signs and notices pertaining to information in the specific interest of the traveling public, such as, but not limited to, signs and notices pertaining to rest stops, camping grounds, food services, gas and automotive services, and lodging and shall include signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as many be appropriate to implement this section (except that not more than three directional signs facing the same direction of travel shall be permitted in any one mile along the Interstate or primary systems outside commercial and industrial areas), (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located."

(c) Subsection (d) of section 131 of title 23, United States Code, is amended by striking out the first sentence thereof and inserting the following in lieu thereof: "In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting, and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary."

(d) Subsection (e) of section 131 of title 23, United States Code, is amended to read as follows:

"(e) Any nonconforming sign under State law enacted to comply with this section shall be removed no later than the end of the fifth year after it becomes nonconforming, except as determined by the Secretary."

(e) Subsection (f) of section 131 of title 23, United States Code, is amended by inserting the following after the first sentence: "The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained: *Provided*, That such signs on the interstate and primary shall not be erected in suburban or in urban areas or in lieu of signs permitted under subsection (d) of this section, nor shall they be erected where adequate information is provided by signs permitted in subsection (c) of this section."

(f) Subsection (g) of section 131 of title 23, United States Code, is amended by striking out the first sentence and inserting the following in lieu thereof: "Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law."

(g) Subsection (m) of section 131 of title 23, United States Code, is amended to read as follows:

"(m) There is authorized to be apportioned to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for each of the fiscal years 1966 and 1967, not to exceed $20,000,000 for the fiscal year 1970, not to exceed $27,000,000 for the fiscal year 1971, not to exceed $20,500,000 for the fiscal year 1972, and not to exceed $50,000,000 for the fiscal year ending June 30, 1973, and $50,000,000 for the fiscal year ending June 30, 1974, and $50,000,000 for the fiscal year ending June 30, 1975. The provisions of this chapter relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967."

(h) Section 131 of title 23, United States Code, is amended by adding at the end thereof the following new subsections:

"(o) No directional sign, display, or device lawfully in existence on June 1, 1972, giving specific information in the interest of the traveling public shall be required to be removed until December 31, 1974, or until the State in which the sign, display, or device is located certifies that the directional information about the service or activity advertised on such sign, display, or device may reasonably be available to motorists by some other method or methods, whichever shall occur first: *Provided*, A State may not refuse to purchase and remove any nonconforming sign, display, or device voluntarily are available in the Department of Transportation.

"(p) In the case of any sign, display, or device required to be removed under this section prior to the date of enactment of the Federal-Aid Highway Act of 1972, which sign, display, or device was after its removal lawfully relocated and which as a result of the amendments made to this section by such Act is required to be removed, the United States shall pay 100 per centum of the just compensation for such removal (including all relocation costs)."

URBAN AREA TRAFFIC OPERATIONS IMPROVEMENT PROGRAMS

SEC. 121. Subsection (c) of section 135 of title 23, United States Code, is hereby repealed and existing subsection (d) is relettered as subsection (c), including any references thereto.

CONTROL OF JUNKYARDS

SEC. 122. (a) Subsection (j) of section 136 of title 23, United States Code, is amended by striking out the first sentence and inserting in lieu thereof the following: "Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law."

(b) Subsection (m) of section 136 of title 23, United States Code, is amended to read as follows:

"(m) There is authorized to be appropriated to carry out this section out of any money in the Treasury not otherwise appro-

priated not to exceed $20,000,000 for each of the fiscal years 1966 and 1967, not to exceed $3,000,000 for each of fiscal years 1970, 1971, and 1972, not to exceed $5,000,000 for the fiscal year ending June 30, 1973, and not to exceed $15,000,000 for the fiscal year ending June 30, 1974, and $15,000,000 for the fiscal year ending June 30, 1975. The provisions of this chapter relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967."

HIGHWAY PUBLIC TRANSPORTATION

SEC. 123. Section 142 of title 23, United States Code, is amended to read as follows:

"§ 142. Highway public transportation

"(a) To encourage the development, improvement, and use of public mass transportation systems operating motor vehicles (other than on rail) on Federal-aid highways for the transportation of passengers (hereafter in this section referred to as 'buses'), so as to increase the traffic capacity of the Federal-aid systems for the movement of persons, the Secretary may approve as a project on any Federal-aid system the construction of exclusive or preferential bus lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers. Sums apportioned under section 104 (b) of this title shall be available to finance the cost of these projects.

"(b) The establishment of routes and schedules of such public mass transportation systems shall be based upon a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title.

"(c) For all purposes of this title, a project authorized by subsection (a) of this section shall be deemed to be a highway project, and the Federal share payable on account of such project shall be that provided in section 120 of this title.

"(d) No project authorized by this section shall be approved unless the Secretary of Transportation has received assurances satisfactory to him from the State that public mass transportation systems will have adequate capability to fully utilize the proposed project.

"(e) In any case where sufficient land exists within the publicly acquired rights-of-way of any Federal-aid highway to accommodate needed rail or nonhighway public mass transit facilities and where this can be accomplished without impairing automotive safety or future highway improvements, the Administrator may authorize a State to make such lands and rights-of-way available without charge to a publicly owned mass transit authority for such purposes wherever he may deem that the public interest will be served thereby."

ECONOMIC GROWTH CENTER DEVELOPMENT HIGHWAYS

SEC. 124. (a) Section 143 of title 23, United States Code, is amended by striking out "demonstration projects" each place it appears and inserting in lieu thereof "projects", and by striking out "demonstration project" each place it appears and inserting in lieu thereof in each such place "project", by striking out "the Federal-aid primary system" in each place it appears and inserting in lieu thereof in each such place "a Federal-aid system (other than the Interstate System)", and in subsection (d) by striking out "Federal-aid primary highways" and inserting in lieu thereof "highways on the Federal-aid system on which such development highway is located".

(b) Section 143(e) of title 23, United States Code, is amended to read as follows:

"(e) Except as otherwise provided in subsection (c) of this section, the Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under this section shall be the same as that provided under this title for any other project on the Federal-aid system on which such development highway is located."

(c) Section 143(a) of title 23, United States Code, is amended by striking out "to demonstrate the role that highways can play".

FEDERAL-STATE RELATIONSHIP

SEC. 125. (a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 145. Federal-State relationship

"The authorization of the appropriation of Federal funds or their availability for expenditure under this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed. The provisions of this chapter provide for a federally assisted State program."

(b) The analysis of chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following:

"145. Federal-State relationship."

BICYCLE TRANSPORTATION

SEC. 126. (a) Chapter 2 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 218. Bicycle transportation

"(a) To encourage the development, improvement, and use of bicycle transportation, the Secretary of the Interior, acting through the Bureau of Outdoor Recreation, shall carry out (directly, by grant, contract, or otherwise), projects for the construction of separate or preferential bicycle lanes or paths, bicycle traffic control devices, shelters, and parking facilities to serve bicyclists and persons using bicycles, in conjunction or connection with forest development roads and trails, public lands development roads and trails, park roads and trails, parkways, Indian reservation roads, and Federal, State, and local parks.

"(b) Projects authorized under this section shall be located and designed pursuant to an overall plan which will provide due consideration for safety.

"(c) No motorized vehicle shall be permitted on the lanes and paths authorized by this section, except for maintenance purposes.

"(d) The Federal share of the cost of the project authorized by this section which is on State or local lands shall be 70 per centum.

"(e) There is authorized to be appropriated not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1974, and June 30, 1975, to carry out this section."

(b) The analysis of chapter 20, title 23, United States Code, is amended by inserting at the end thereof the following:

"218. Bicycle transportation."

SPECIAL URBAN HIGH DENSITY TRAFFIC PROGRAM

SEC. 127. (a) Chapter 1 of title 23 of the United States Code is amended by adding at the end thereof the following new section:

"§ 146. Special urban high density traffic program

"(a) There is hereby authorized to be appropriated out of the Highway Trust Fund, $100,000,000 for the fiscal year ending June 30, 1974, and $100,000,000 for the fiscal year ending June 30, 1975, for the construction of highways connected to the Interstate System in portions of urbanized areas with high traffic density. The Secretary shall develop guidelines and standards for the designation of routes and the allocation of funds for this purpose which include the following criteria:

"(1) Routes designated by the Secretary shall not be longer than ten miles.

"(2) Routes designated shall serve areas of concentrated population and heavy traffic congestion.

"(3) Routes designated shall serve the urgent needs of commercial, industrial, airport, or national defense installations.

"(4) Any routes shall connect with existing routes on the Interstate System.

"(5) Routes designated under this section shall have been approved through the planning process required under section 134 of this title and determined to be essential by responsible local officials.

"(6) A route shall be designated under this section only where the Secretary determines that no feasible or practicable alternative mode of transportation which could meet the needs of the area to be served is now available or could become available in the foreseeable future.

"(7) The designation of routes under this section shall comply with section 138 of this title, and no route shall be designated which substantially damages or infringes upon any residential area.

"(8) Routes shall be designated by the Secretary on the recommendation of the State and responsible local officials.

"(9) No more than one route in any one State shall be designated by the Secretary.

"(b) The Federal share payable on account of any project authorized pursuant to this section shall not exceed 90 per centum of the cost of construction of such project."

(b) The table of contents of chapter 1 of title 23 of the United States Code is amended by adding at the end thereof the following:

"146. Special urban high density traffic program."

PRIORITY PRIMARY ROUTES

SEC. 128. (a) Chapter 1 of title 23 of the United States Code is amended by adding at the end thereof the following new section:

"§ 147. Priority primary routes

"(a) High traffic sections of highways on the Federal-aid primary system which connect to the Interstate System shall be selected by each State highway department, in consultation with appropriate local officials, subject to approval by the Secretary, for priority of improvement as supplementary routes to extend and supplement the service provided by the Interstate System by furnishing needed adequate traffic collector and distributor facilities as well as extensions. A total of not more than 10,000 miles shall be selected under this section. For the purpose of this section such highways shall hereafter in this section be referred to as 'priority primary routes'.

"(b) Priority primary routes selected under this section shall be improved to geometric and construction standards for the Interstate System, or to such other standards as may be developed cooperatively by the Secretary and the State highway departments in the same manner as are standards developed for the Interstate System.

"(c) The Federal share of any project on a priority primary route shall be that provided in section 120(a) of this title. All provisions of this title applicable to the Federal-aid primary system shall be applicable to priority primary routes selected under this section except section 104. Funds authorized to carry out this section shall be deemed to be apportioned on January 1 next preceding the commencement of the fiscal year for which authorized.

"(d) The initial selection of the priority primary routes and the estimated cost of completing such routes shall be reported to Congress on or before January 31, 1974.

"(e) There is authorized to be appropriated out of the Highway Trust Fund to carry out this section not to exceed $300,000,000 per fiscal year for the fiscal years ending June 30, 1974, and June 30, 1975. One-half of such funds shall be apportioned among the States on the basis of the latest exist-

ing highway needs study, and one-half shall be available for apportionment to urgently required projects at the discretion of the Secretary."

(b) The table of contents of chapter 1 of title 23 of the United States Code is amended by adding at the end thereof the following:

"147. Priority primary routes."

ALASKA HIGHWAY

SEC. 129. (a)(1) Chapter 2 of title 23 of the United States Code is amended by inserting at the end thereof a new section as follows:

"§ 217. Alaska Highway

"(a) Recognizing the benefits that will accrue to the State of Alaska and to the United States from the reconstruction of the Alaska Highway from the Alaskan border to Haines Junction in Canada and the Haines Cutoff Highway from Haines Junction in Canada to the south Alaskan border, the Secretary is authorized out of the funds appropriated for the purpose of this section to provide for necessary reconstruction of such highway. Such appropriations shall remain available until expended. No expenditures shall be made for the construction of such highways until an agreement has been reached by the Government of Canada and the Government of the United States which shall provide, in part, that the Canadian Government—

"(1) will provide, without participation of funds authorized under this title all necessary right-of-way for the reconstruction of such highways, which right-of-way shall forever be held inviolate as a part of such highways for public use;

"(2) will not impose any highway toll, or permit any such toll to be charged for the use of such highways by vehicles or persons;

"(3) will not levy or assess, directly or indirectly, any fee, tax, or other charge for the use of such highways by vehicles or persons from the United States that does not apply equally to vehicles or persons of Canada;

"(4) will continue to grant reciprocal recognition of vehicle registration and drivers' licenses in accordance with agreements between the United States and Canada; and

"(5) will maintain such highways after their completion in proper condition adequately to serve the needs of present and future traffic.

"(b) The survey and construction work undertaken pursuant to this section shall be under the general supervision of the Secretary."

(2) The analysis of chapter 2 of title 23 of the United States Code is amended by adding at the end thereof the following:

"217. Alaska Highway."

(b) For the purpose of completing necessary reconstruction of the Alaska Highway from the Alaskan border to Haines Junction in Canada and the Haines Cutoff Highway from Haines Junction in Canada to the south Alaskan border there is authorized to be appropriated the sum of $58,670,000 to be expended in accordance with the provisions of section 217 of title 23 of the United States Code.

BRIDGES ON FEDERAL DAMS

SEC. 130. (a) Section 320(d) of title 23, United States Code, is amended by striking out "$16,761,000" and inserting in lieu thereof "$25,261,000".

(b) All sums appropriated under authority of the increased authorization of $8,500,000 established by the amendment made by subsection (a) of this section shall be available for expenditure only in connection with the construction of a bridge across lock and dam numbered 13 on the Arkansas River near Fort Smith, Arkansas, in the amount of $2,100,000 and in connection with reconstruction of a bridge across the Chickamauga Dam on the Tennessee River near Chattanooga, Tennessee, in the amount of $6,400,000. No such sums shall be appropriated until all applicable requirements of section 320 of title 23 of the United States Code have been completed by the appropriate Federal agency, the Secretary of Transportation, and the State of Arkansas for the Fort Smith project, and the State of Tennessee for the Chattanooga project.

GREAT RIVER ROAD

SEC. 131. (a) Section 14 of the Federal-Aid Highway Act of 1954, as amended (68 Stat. 70; Public Law 83-350), is amended by striking out "$500,000" and inserting in lieu thereof "$600,000".

(b) Chapter 1 of title 23 of the United States Code is amended by inserting at the end thereof a new section as follows:

"§ 148. Development of a prototype of a national scenic and recreational highway program

"(a)(1) The Congress finds—

"(A) that there are significant esthetic and recreational values to be derived from making places of scenic and natural beauty and historical, archeological, or scientific interest accessible to the public;

"(B) that there is a deficiency in the number and quality of scenic roads, parkways, and highways available to the motoring public;

"(C) that with increased population, greater leisure time and higher percentage of privately owned automotive vehicles, more families than ever are seeking suitable areas in which to drive for pleasure and recreation;

"(D) that the growth of cities and large metropolitan centers has decreased the quantity of open-space and recreational areas available to the general public, especially urban dwellers; and

"(E) that substantial economic, social, cultural, educational, and psychological benefits could be gained from a nationwide system of attractive roadways making possible widespread enjoyment of natural and recreational resources.

"(2) It is therefore the purpose of this section to provide assistance to the States and to other Federal departments and agencies having jurisdiction over Federal lands open to the public in order to develop highways throughout the Nation to satisfy such needs and to provide the actual national feasibility of such a system through direct Federal participation in the improvement and construction of the Great River Road and attendant facilities and to further provide for Federal participation in the celebration of the tricentennial of the discovery of the Mississippi River.

"(b) As soon as possible, after the date of enactment of this section, the Secretary shall establish criteria for the location and construction or reconstruction of the Great River Road by the ten States bordering the Mississippi River in order to carry out the purpose of this section. Such criteria shall include requirements that—

"(1) priority be given in the location of the Great River Road near or easily accessible to the larger population centers of the State and further priority be given to the construction and improvement of the Great River Road in the proximity of the confluence of the Mississippi River and the Wisconsin River;

"(2) the Great River Road be connected with other Federal-aid highways and preferably with the Interstate System;

"(3) the Great River Road be marked with uniform identifying signs;

"(4) effective control, as defined in section 131(c) of this title, of signs, displays, and devices will be provided along the Great River Road;

"(5) the provisions of section 129(a) of this title shall not apply to any bridge or tunnel on the Great River Road and no fees shall be charged for the use of any facility constructed with assistance under this section.

"(c) For the purpose of this section the term 'construction' includes the acquisition of areas of historical, archeological, or scientific interest, necessary easements for scenic purposes, and the construction or reconstruction of roadside rest areas (including appropriate recreational facilities), scenic viewing areas, and other appropriate facilities determined by the Secretary for the purpose of this section.

"(d) Highways constructed or reconstructed pursuant to this section (except subsection (g)) shall be part of the Federal-aid primary system except with respect to such provisions of this title as the Secretary determines are not consistent with this section.

"(e) Funds appropriated for each fiscal year pursuant to subsection (h) shall be apportioned among the ten States bordering the Mississippi River on the basis of their relative needs as determined by the Secretary for payments to carry out the purpose of this section.

"(f) The Federal share of the cost of any project for any construction or reconstruction pursuant to the preceding subsections of this section shall be 80 per centum of such cost.

"(g) The Secretary is authorized to consult with the heads of other Federal departments and agencies having jurisdiction over Federal lands open to the public in order to enter into appropriate arrangements for necessary construction or reconstruction of highways on such lands to carry out the purpose of this section. To the extent applicable criteria applicable to highways constructed or reconstructed by the State pursuant to this section shall be applicable to highways constructed or reconstructed pursuant to this subsection. Funds authorized pursuant to subsection (h) shall be used to pay the entire cost of construction or reconstruction pursuant to this subsection.

"(h) There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund, for construction or reconstruction of roads on a Federal-aid highway system, not to exceed $20,000,000 for each of the fiscal years ending June 30, 1974, and June 30, 1975, for allocations to the States pursuant to this section, and there is authorized to carry out this section out of any money in the Treasury not otherwise appropriated, not to exceed $10,000,000 for each of the fiscal years ending June 30, 1974, and June 30, 1975, for construction and reconstruction of roads not on a Federal-aid highway system."

(c) The table of contents of chapter 1 of title 23 of the United States Code is amended by inserting at the end thereof the following:

"148. Development of a prototype of a national scenic and recreational highway program.".

ALASKAN ASSISTANCE

SEC. 132. Subsection (b) of section 7 of the Federal-Aid Highway Act of 1966 is amended by striking out at the end of the last sentence "June 30, 1972 and June 30, 1973." and substituting "June 30, 1972, June 30, 1973, June 30, 1974, and June 30, 1975."

HIGHWAY BEAUTIFICATION COMMISSION

SEC. 133. (a) Subsection (i) of section 123 of the Federal-Aid Highway Act of 1970 is amended by striking out the first sentence and inserting the following in lieu thereof: The Commission shall not later than December 31, 1973, submit to the President and the Congress its final report."

(b) Subsection (n) of section 123 of the Federal-Aid Highway Act of 1970 is amended to read as follows:

"(n) There are hereby authorized to be appropriated such sums, but not more than

$450,000, as may be necessary to carry out the provisions of this section and such moneys as may be appropriated shall be available to the Commission until expended."

CLINTON BRIDGE COMMISSION

SEC. 134. (a) In order to facilitate interstate commerce by expediting the completion of interstate bridge facilities across the Mississippi River in the vicinity of the city of Clinton, Iowa, the City of Clinton Bridge Commission (hereafter referred to as the "commission"), created and operating under the Act approved December 21, 1944, as revised, amended, and reenacted, is hereby authorized to sell, convey, and transfer to the State of Iowa all of its real and personal property, books, records, money, and other assets, including all existing bridges for vehicular traffic crossing the Mississippi River at or near the city of Clinton, Iowa, and the substructure constituting the partially constructed new bridge which has been designed to replace the older of the two existing vehicular bridges, together with all easements, approaches, and approach highways appurtenant to said bridge structures, and to enter into such agreements with the State Highway Commission of the State of Iowa (hereafter referred to as the "highway commission"), and the Department of Transportation of the State of Illinois as may be necessary to accomplish the foregoing: *Provided, however,* That at or before the time of delivery of the deeds and other instruments of conveyance, all outstanding indebtedness or other liabilities of said commission must either have been paid in full as to both principal and interest or sufficient funds must have been set aside in a special fund pledged to retire said outstanding indebtedness or other liabilities and interest thereon at or prior to maturity, together with any premium which may be required to be paid in the event of payment of the indebtedness prior to maturity. The cost to the highway commission of acquiring the existing bridge structures by the State of Iowa shall include all engineering, legal, financing, architectural traffic surveying, and other expenses as may be necessary to accomplish the conveyance and transfer of the properties, together with such amount as may be necessary to provide for the payment of the outstanding indebtedness or other liabilities of the commission as hereinbefore referred to, and permit the dissolution of the commission as hereinafter provided, less the amount of cash on hand which is turned over to the highway commission by the commission.

(b) The highway commission is hereby authorized to accept the conveyance and transfer of the above-mentioned bridge structures, property, and assets of the City of Clinton Bridge Commission on behalf of the State of Iowa, to complete the construction of the new replacement bridge, to repair, reconstruct, maintain, and operate as toll bridges the existing bridges so acquired until the new replacement bridge has been completed, to dismantle the older of the two existing bridges upon completion of the new replacement bridge, and to thereafter repair, reconstruct, maintain, and operate the two remaining bridges as toll bridges. There is hereby conferred upon the highway commission the right and power to enter upon such lands and to acquire, condemn, occupy, possess, and use such privately owned real estate and other property in the State of Iowa and the State of Illinois as may be needed for the location, construction, reconstruction, or completion of any such bridges and for the operation and maintenance of any bridge and the approaches, upon making just compensation therefor to be ascertained and paid according to the laws of the State in which such real estate or other property is situated, and the proceedings therefor shall be the same as in the condemnation of private property for public purposes by said State. The highway commission is further authorized to enter into agreements with the State of Illinois and any agency or subdivision thereof, and with any agency or subdivision of the State of Iowa, for the acquisition, lease, or use of any lands or property owned by such State or political subdivision. The cost of acquiring the existing bridge structures, of completing the replacement bridge and of dismantling the bridge to be replaced and paying expenses incidental thereto as referred to in subsection (a) of this section may be provided by the highway commission through the issuance of its revenue bonds pursuant to legislation enacted by the General Assembly of the State of Iowa, or through the use of any other funds available for the purpose, or both. The above-described toll bridge structures shall be repaired, reconstructed, maintained, and operated by the highway commission in accordance with the provisions of the General Bridge Act of 1946, approved August 2, 1946, and the location and plans for the replacement bridge shall be approved by the Secretary of Transportation in accordance with the provisions of said Act, as well as by the Department of Transportation of the State of Illinois. The rates and schedule of tolls for said bridges shall be charged and collected in accordance with said General Bridge Act of 1946 and applicable Iowa legislation and shall be continuously adjusted and maintained so as to provide a fund sufficient to pay for the reasonable cost of maintaining, repairing, and operating the bridges and approaches under economical management, to provide a fund sufficient to pay the principal of and interest on such bonds as may be issued by the highway commission as the same shall fall due and the redemption or repurchase price of all or any thereof redeemed or repurchased before maturity, and to repay any money borrowed by any other means in connection with the acquisition, construction, reconstruction, completion, repair, operation, or maintenance of any of said bridge structures. All toll and other revenues from said bridges are hereby pledged to such uses. No toll shall be charged officials or employees of the highway commission, nor shall any toll be charged officials of the United States while in the discharge of duties incident to their office or employment, nor shall any toll be charged members of the fire department or peace officers while engaged in the performance of their official duties. No obligation created pursuant to any provision of this section shall constitute an indebtedness of the United States.

(c) After all bonds or other obligations issued or indebtedness incurred by the highway commission or loans of funds for the account of said bridges and interest and premium, if any, have been paid, or after a sinking fund sufficient for such payment shall have been provided and shall be held solely for that purpose, the State of Iowa shall deliver deeds or other suitable instruments of conveyance of the interest of the State of Iowa in and to those parts lying within Illinois of said bridges to the State of Illinois or any municipality or agency thereof as may be authorized by or pursuant to law to accept the same, and thereafter the bridges shall be properly repaired, reconstructed, maintained, and operated, free of tolls by the State of Iowa and by the State of Illinois, or any municipality or agency thereof, as may be agreed upon.

(d) The interstate bridge or bridges purchased, constructed, or completed under the authority of this section and the income derived therefrom shall, on and after the effective date of this section, be exempt from all Federal, State, municipal, and local property and income taxation.

(e) After all of the property, books, records, money, and other assets of the City of Clinton Bridge Commission have been conveyed and transferred to the State of Iowa as contemplated by this section, such commission shall cease to exist, without the necessity for any hearing, order, or other official action.

(f) The right to alter, amend, or repeal this section is hereby expressly reserved.

ROUTE 101 IN NEW HAMPSHIRE

SEC. 135. The amount of all Federal-aid highway funds paid on account of those sections of Route 101 in the State of New Hampshire referred to in subsection (c) of this section shall, prior to the collection of any tolls thereon, be repaid to the Treasurer of the United States. The amount so repaid shall be deposited to the credit of the appropriation for "Federal-Aid Highways (Trust Fund)". At the time of such repayment, the Federal-aid projects with respect to which such funds have been repaid and any other Federal-aid project located on said sections of such toll road and programed for expenditure on any such project, shall be credited to the unprogramed balance of Federal-aid highways funds of the same class last apportioned to the State of New Hampshire. The amount so credited shall be in addition to all other funds then apportioned to said State and shall be available for expenditure in accordance with the provisions of title 23, United States Code, as amended or supplemented.

(b) Upon the repayment of Federal-aid highway funds and the cancellation and withdrawal from the Federal-aid highway program of the projects on said sections of Route 101 as provided in subsection (a) of this section, such sections of said route shall become and be free of any and all restrictions contained in title 23, United States Code, as amended or supplemented, or in any regulation thereunder, with respect to the imposition and collection of tolls or other charges thereon or for the use thereof.

(c) The provisions of this section shall apply to the following sections:

(1) That section of Route 101 from Route 125 in Epping to Brentwood Corners, a distance of approximately two and thirty one-hundredths centerline miles.

(2) That section of Route 101 in the vicinity of Sells Corner in Auburn, beginning approximately two and forty one-hundredths centerline miles east of the junction of Interstate Route 93 and running easterly approximately two miles.

FREEING INTERSTATE TOLL BRIDGES

SEC. 136. Section 129, title 23, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) Notwithstanding the provisions of section 301 of this title, in the case of each State which, before January 1, 1974, shall have constructed or acquired any interstate toll bridge (including approaches thereto), which before January 1, 1974, caused such toll bridge to be made free, which bridge is owned and maintained by such State or by a political subdivision thereof, and which bridge is on the Federal-aid primary system (other than the Interstate System), sums apportioned to such State in accordance with paragraphs (1) and (3) of subsection (b) of section 104 of this title shall be available to pay the Federal share of a project under this subsection of (1) such amount as the Secretary determines to be the reasonable value of such bridge after deducting therefrom that portion of such value attributable to any grant or contribution previously paid by the United States in connection with the construction or acquisition of such bridge, and exclusive of rights-of-way, or (2) the amount by which the principal amount of the outstanding unpaid bonds or other obligations created and issued for the construction or acquisition of such bridge exceeds the amount of any funds accumulated or provided for their amortization, on the date such bridge is made free, whichever is the lesser amount."

STUDY OF TOLL BRIDGE AUTHORITY

SEC. 137. The Secretary of Transportation is authorized and directed to undertake a full and complete investigation and study of existing Federal statutes and regulations governing toll bridges over the navigable waters of the United States for the purpose of determining what action can and should be taken to assure just and reasonable tolls nationwide. The Secretary shall submit a report of the findings of such study and investigation to the Congress not later than February 1, 1974, together with his recommendations for modifications or additions to existing laws, regulations, and policies as will achieve a uniform system of tolls and best serve the public interest.

NATIONAL SCENIC HIGHWAY SYSTEM STUDY

SEC. 138. The Secretary of Transportation shall make a full and complete investigation and study to determine the feasibility of establishing a national system of scenic highways to link together and make more accessible to the American people recreational, historical, scientific, and other similar areas of scenic interest and importance. In the conduct of such investigation and study, the Secretary shall cooperate and consult with other agencies of the Federal Government, the Commission on Highway Beautification, the States and their political subdivisions, and other interested private organizations, groups, and individuals. The Secretary shall report his findings and recommendations to the Congress not later than January 1, 1975, including an estimate of the cost of implementing such a program. There is authorized to be appropriated $250,000 from the Highway Trust Fund to carry out this section.

PARTICIPATION IN TOPICS AND FRINGE PARKING PROGRAM

SEC. 139. In the administration of title 23 of the United States Code the Secretary of Transportation shall take such actions as he deems necessary to facilitate broad participation by the States in the urban area traffic operations improvement programs and projects for fringe and corridor parking facilities authorized by sections 135 and 137 of such title.

THREE SISTERS BRIDGE

SEC. 140. No court shall have power or authority to issue any order or take any action which will in any way impede, delay, or halt the construction of the project described as estimate section termini B1–B2, and B2–B3 in the 1972 Estimate of the Cost of Completing the National System of Interstate and Defense Highways in the District of Columbia as estimate section termini O2–O3 in the 1972 Estimate of the Cost of Completing the National System of Interstate and Defense Highways in the Commonwealth of Virginia, in accordance with the prestressed concrete box girder, three-span design approved by the Fine Arts Commission, known as the Three Sisters Bridge. Nor shall any approval, authorization, finding, determination, or similar action taken or omitted by the Secretary, the head of any other Federal agency, the government of the District of Columbia, or any other agency of Government in carrying out any provisions of law relating to such Three Sisters Bridge be reviewable in any court.

DISTRICT OF COLUMBIA

SEC. 141. None of the provisions of the Act entitled "An Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities", approved March 2, 1893 (27 Stat. 532), as amended, shall apply to any segment of the Interstate System within the District of Columbia.

CORRIDOR HEARINGS

SEC. 142. (a) The Secretary of Transportation shall permit no further action on Interstate Route I–287 between Montville and Mahwah, New Jersey, until new corridor hearings are held.

(b) The Secretary of Transportation shall permit no further action on the Corporation Freeway, Winston-Salem, North Carolina, until new corridor hearings are held.

INTERSTATE SYSTEM

SEC. 143. Paragraph (2) of subsection (e) of section 103 of title 23, United States Code, is amended as follows:

(1) The first sentence is amended by striking out "additional mileage for the Interstate System of two hundred miles, to be used in making modifications" and inserting in lieu thereof "there is hereby authorized such additional mileage for the Interstate System as may be required in making modifications".

(2) The fourth sentence is amended by striking out "the 1968 Interstate System cost estimate set forth in House Document Numbered 199, Ninetieth Congress, as revised." and inserting in lieu thereof the following: "the 1972 Interstate System cost estimate set forth in House Public Works Committee Print Numbered 92–29."

(3) The fifth sentence is amended by striking out "due regard" and inserting in lieu thereof the following: "preference, along with due regard for interstate highway type needs on a nationwide basis,".

PUBLIC MASS TRANSPORTATION

SEC. 144. (a) The Secretary shall, in cooperation with the Governor of each State and appropriate local officials, make an evaluation of that portion of the 1972 National Transportation Report, pertaining to public mass transportation. Such evaluation shall include all urban areas. The evaluation shall include but not be limited to the following:

(1) Refining the public mass transportation needs contained in such report.

(2) Developing a program to accomplish the needs of each urban area for public mass transportation.

(3) Analyzing the existing funding capabilities of Federal, State, and local governments for meeting such needs.

(4) Analyzing other funding capabilities of Federal, State, and local governments for meeting such needs.

(5) Determining the operation and maintenance costs relating to the public mass transportation system.

(6) Determining and comparing fare structures of all public mass transportation systems.

(b) The Secretary shall, not later than January 31, 1974, report to Congress the results of this evaluation together with his recommendations for necessary legislation.

(c) There is hereby authorized not to exceed $75,000,000 to carry out this section.

FERRY OPERATIONS

SEC. 145. (a) The last subsection of section 129 of title 23, United States Code, is hereby redesignated as subsection (g).

(b) Paragraph (5) of subsection (g) of section 129 of title 23, United States Code, shall be inapplicable to any ferry operated solely between the States of Alaska and Washington.

METRO ACCESSIBILITY TO THE HANDICAPPED

SEC. 146. The Secretary of Transportation is authorized to make payments to the Washington Metropolitan Area Transit Authority in amounts sufficient to finance the cost of providing such facilities for the subway and rapid rail transit system authorized in the National Capital Transportation Act of 1969 (83 Stat. 320) as may be necessary to make such subway and system accessible by the handicapped through implementation of Public Laws 90–480 and 91–205. There is authorized to be appropriated, to carry out this section, not to exceed $65,000,000.

TITLE II

SHORT TITLE

SEC. 201. This title may be cited as the "Highway Safety Act of 1972".

HIGHWAY SAFETY

SEC. 202. The following sums are hereby authorized to be appropriated:

(1) For carrying out section 401 of title 23, United States Code (relating to highway safety programs) by the National Highway Traffic Safety Administration, out of the Highway Trust Fund, $200,000,000 for the fiscal year ending June 30, 1974, and $360,000,000 for the fiscal year ending June 30, 1975.

(2) For carrying out section 403 of title 23, United States Code (relating to highway safety research and development), by the National Highway Traffic Safety Administration out of the Highway Trust Funds, $115,000,000 for the fiscal year ending June 30, 1974, and $115,000,000 for the fiscal year ending June 30, 1975.

(3) For carrying out section 402 of title 23, United States Code (relating to highway safety programs), by the Federal Highway Administration, out of the Highway Trust Fund, $35,000,000 for the fiscal year ending June 30, 1974, and $45,000,000 for the fiscal year ending June 30, 1975.

(4) For carrying out sections 307(a) and 403 of title 23, United States Code (relating to highway safety research and development), by the Federal Highway Administration, out of the Highway Trust Fund, for each of the fiscal years ending June 30, 1974, and June 30, 1975, not to exceed $10,000,000 per fiscal year.

RAIL-HIGHWAY CROSSINGS

SEC. 203. (a) In addition to funds which may be otherwise available to carry out section 130 of title 23, United States Code, there is authorized to be appropriated for projects for the elimination of hazards of railway-highway crossings, $150,000,000 for the fiscal year ending June 30, 1974, and $225,000,000 for the fiscal year ending June 30, 1975. Two-thirds of all funds authorized and expended under authority of this section in any fiscal year shall be appropriated out of the Highway Trust Fund. Such sums shall be available for obligation for one year in advance of the fiscal year for which authorized and shall remain available for obligation for a period of two years after the close of the fiscal year for which authorized.

(b) Funds authorized by this section shall be available for expenditure as follows:

(1) two-thirds for projects on any Federal-aid system (other than the Interstate System); and

(2) one-third for projects on highways not included on any Federal-aid system.

(c) Funds made available in accordance with paragraph (1) of subsection (b) shall be apportioned to the States in the same manner as sums authorized to be appropriated under paragraph (1) of section 105 of the Federal-Aid Highway Act of 1970. Funds made available in accordance with paragraph (2) of subsection (b) shall be apportioned to the States in the same manner as is provided in section 402(c) of this title, and the Federal share payable on account of any such project shall not exceed 90 per centum of the cost thereof.

BRIDGE RECONSTRUCTION AND REPLACEMENT

SEC. 204. (a) Subsection (b) of section 144 of title 23, United States Code, is amended by striking out "on any of the Federal-aid systems".

(b) Subsection (e) of section 144 of title 23, United States Code, is amended by striking out "1972; and" and inserting in lieu thereof "1972,"; by inserting immediately after "1973," the following: $225,000,000 for the fiscal year ending June 30, 1974, and $450,000,000 for the fiscal year ending June 30, 1975,"; by striking out "out of the High-

way Trust Fund," in the first sentence; and by inserting after the first sentence the following: "Two-thirds of all funds authorized and expended under authority of this section in any fiscal year shall be appropriated out of the Highway Trust Fund.".

(c) Subsection (f) of section 144 of title 23, United States Code, is relettered as subsection (g) (including references thereto); and immediately after subsection (e) the following new subsection (f) is inserted:

"(f) Funds authorized by this section shall be available for expenditure as follows:

"(1) two thirds for projects on any Federal-aid system; and

"(2) one-third for projects on highways not included on any Federal-aid system."

(d) Existing subsection (g) of section 144 of title 23, United States Code, is relettered as subsection (h) (including reference thereto).

PAVEMENT MARKING PROGRAM

SEC. 205. (a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 149. Special pavement marking program

"(a) Congress hereby finds and declares it to be in the vital interest of the Nation that a special pavement marking program be established to enable the several States to improve the pavement marking of all highways to provide for greater vehicle and pedestrian safety.

"(b) Notwithstanding the provisions of the last sentence of subsection (a) of section 105 of this title, the Secretary may approve under this section such pavement marking projects on any highway whether or not on any Federal-aid system, but not included in the Interstate System, as he may find necessary to bring such highway to the pavement marking standards issued or endorsed by the Federal Highway Administrator.

"(c) In approving projects under this section, the Secretary shall give priority to those projects which are located in rural areas and which are either on the Federal-aid secondary system or are not included in any Federal-aid system.

"(d) The entire cost of projects approved under subsections (b) and (f) of this section shall be paid from sums authorized to carry out this section.

"(e) For the purpose of carrying out the provisions of this section by the Federal Highway Administration, there is hereby authorized to be appropriated for each of the fiscal years ending June 30, 1974, and June 30, 1975, out of the Highway Trust Fund, the sum of $100,000,000, to be available until expended. Such sums shall be available for obligation at the beginning of the fiscal year for which authorized in the same manner and to the same extent as if such funds were apportioned under this chapter. Such funds shall be apportioned on the same basis as is provided in paragraph (2) of section 104 (b) of this title.

"(f) Funds apportioned to a State but not required by it for pavement-marking projects authorized by this section may be released by the Secretary to such State for expenditure for projects to eliminate or reduce the hazards to safety at specific locations or sections of highways which are not located on any Federal-aid system and which have high accident experiences or high accident potentials. Funds may be released by the Secretary under this subsection only if the Secretary has received satisfactory assurances from the State highway department that all nonurban area highways within the State are marked in accordance with the pavement-marking standards issued or endorsed by the Federal Highway Administrator.

"(g) Each State shall report to the Secretary in January 1975, and in each January thereafter for three years following completion within that State of the special pavement-marking program authorized by this section, with respect to the effectiveness of the pavement-marking improvements accomplished since commencement of the program. The report shall include an analysis and evaluation with respect to the number, rate, and severity of accidents at improved locations, and the cost-benefit ratio of such improvements, comparing a period one year prior to completion of improvements to annual periods subsequent to completion of such improvements. The Secretary shall submit a report to Congress not later than June 30, 1975, and not later than June 30 of each year thereafter until completion of the special pavement-marking program authorized by this section, with respect to the effectiveness of the pavement-marking improvements accomplished by the several States under this section."

(b) The analysis of chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following:

"149. Special pavement-marking program."

PAVEMENT-MARKING RESEARCH AND DEMONSTRATION PROGRAM

SEC. 206. (a) In addition to the research authorized by section 307(a) of title 23, United States Code, the Secretary of Transportation is authorized to conduct research and demonstration programs with respect to the effectiveness of various types of pavement markings and related delineators under inclement weather and nighttime conditions.

(b) There is authorized to be appropriated to carry out this section by the Federal Highway Administration, out of the Highway Trust Fund, $15,000,000 for the fiscal year ending June 30, 1974, and $25,000,000 for the fiscal year ending June 30, 1975.

DRUG USE AND DRIVER BEHAVIOR HIGHWAY SAFETY RESEARCH

SEC. 207. (a) Section 403 of title 23, United States Code, is amended by inserting "(a)" immediately before the first sentence thereof, and by striking out "this section" each place it appears and inserting in lieu thereof "this subsection", and by adding at the end thereof the following new subsections:

"(b) In addition to the research authorized by subsection (a) of this section, the Secretary, in consultation with such other Government and private agencies as may be necessary, is authorized to carry out safety research on the following:

"(1) The relationship between the consumption and use of drugs and their effect upon highway safety and drivers of motor vehicles; and

"(2) Driver behavior research, including the characteristics of driver performance, the relationships of mental and physical abilities to the driving task, and the relationship of frequency of driver accident involvement to highway safety.

"(c) The research authorized by subsection (b) of this section may be conducted by the Secretary through grants and contracts with public and private agencies, institutions, and individuals."

(b) There is authorized to be appropriated to carry out the amendments made by this section by the National Highway Traffic Safety Administration, out of the Highway Trust Fund, the sum of $15,000,000 for the fiscal year ending June 30, 1974, and $25,000,000 for the fiscal year ending June 30, 1975.

PROJECTS FOR HIGHWAY HAZARD LOCATIONS (SPOT IMPROVEMENTS)

SEC. 208. (a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof (after the section added by section 2 of this Act) the following new section:

"§ 150. Projects for high hazard locations

"(a) For projects to eliminate or reduce the hazards at specific locations or sections of highways which have high accident experiences or high accident potentials, by the Federal Highway Administration, there is hereby authorized to be appropriated for each of the fiscal years ending June 30, 1974, and June 30, 1975, the sum of $100,000,000, except that two-thirds of all funds authorized and expended under authority of this section in any fiscal year shall be appropriated out of the Highway Trust Fund. Such sums shall be available for obligation for one year in advance of the fiscal year for which authorized and shall remain available for obligation for a period of two years after the close of the fiscal year for which authorized.

"(b) Funds authorized by this section shall be available for expenditures as follows:

"(1) two-thirds for projects on any Federal-aid system (other than the Interstate System); and

"(2) one-third for projects on highways not included on any Federal-aid system.

"(c) Funds made available in accordance with subsection (b) shall be apportioned to the States in the same manner as is provided in section 402(c) of this title, and the Federal share payable on account of any such project shall not exceed 90 per centum of the cost thereof."

(b) The analysis of chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following:

"150. Projects for high hazard locations."

PROGRAM FOR THE ELIMINATION OF ROADSIDE OBSTACLES

SEC. 209. (a) Chapter 1 of title 23 of United States Code is amended by adding at the end thereof the following new section:

"§ 151. Program for the elimination of roadside obstacles

"(a) Each State shall conduct a survey of all expressways, major streets and highways, and through streets to identify roadside obstacles which may constitute a hazard to vehicles, and assign priorities and establish a schedule of projects for their correction. Such a schedule shall provide for the replacement, to the extent necessary, of existing sign and light supports which are not designed to yield or break away upon impact. Yielding or breakaway sign and light supports shall be used, to the extent necessary, on all new construction or reconstruction of highways.

"(b) For projects to correct roadside hazards by the Federal Highway Administration, there is hereby authorized to be appropriated for each of the fiscal years ending June 30, 1974, and June 30, 1975, the sum of $75,000,000, except that two-thirds of all funds authorized and expended under authority of this section in any fiscal year shall be appropriated out of the Highway Trust Fund. Such sums shall be available for obligation for one year in advance of the fiscal year for which authorized and shall remain available for obligation for a period of two years after the close of the fiscal year for which authorized.

"(c) Funds authorized by this section shall be available for expenditure as follows:

"(1) two-thirds for projects on any Federal-aid system (other than the Interstate System); and

"(2) one-third for projects on highways not included on any Federal-aid system.

"(d) Funds made available in accordance with subsection (c) shall be apportioned to the States in the same manner as is provided in section 402(c) of this title, and the Federal share payable on account of any such project shall not exceed 90 per centum of the cost hereof.

"(e) Commencing in 1974, the Secretary of Transportation shall report to Congress the progress made by the several States during the preceding calendar year in implementing improvements for the elimination of roadside obstacles. His report shall analyze and evaluate each State program, identifying any

State found not to be in substantial compliance with the schedule of improvements required by subsection (a), and contain recommendations for future implementation of the program."

(b) The analysis of chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following:

"151. Program for the elimination of roadside obstacles."

HIGHWAY SAFETY EDUCATIONAL PROGRAMING AND STUDY

SEC. 210. (a) The Secretary of Transportation, in cooperation with interested government and nongovernment authorities, agencies, organizations, institutions, businesses, and individuals, shall conduct a full and complete investigation and study of the use of mass media and other techniques for informing the public of means and methods for reducing the number and severity of highway accidents. Such a study shall include, but not be limited to, ways and means for encouraging the participation and cooperation of television and radio station licensees, for measuring audience reactions to current educational programs, for evaluating the effectiveness of such programs, and for developing new programs for the promotion of highway safety. The Secretary shall report to the Congress his findings and recommendations by January 1, 1974.

(b) For the purpose of carrying out subsection (a) of this section, there is hereby authorized to be appropriated the sum of $1,000,000 out of the Highway Trust Fund.

(c) The Secretary of Transportation shall develop highway safety pilot television messages of varying length, up to and including five minutes, for use in accordance with the provisions of the Communications Act of 1934.

(d) For the purpose of carrying out subsection (c) of this section, there is hereby authorized to be appropriated the sum of $4,000,000 out of the Highway Trust Fund.

CITIZEN PARTICIPATION STUDY

SEC. 211. (a) The Secretary of Transportation, in cooperation with State and local traffic safety authorities, shall conduct a full and complete investigation and study of ways and means for encouraging greater citizen participation and involvement in highway safety programs, with particular emphasis on the traffic enforcement process, including, but not limited to, the creation of citizen adjuncts to assist professional traffic enforcement agencies in the performance of their duties. The Secretary shall report to the Congress his findings and recommendations by January 1, 1974.

(b) For the purposes of carrying out this section, there is hereby authorized to be appropriated the sum of $1,000,000 out of the Highway Trust Fund.

FEASIBILITY STUDY—NATIONAL CENTER FOR STATISTICAL ANALYSIS OF HIGHWAY OPERATIONS

SEC. 212. (a) The Secretary of Transportation shall make a thorough study of the feasibility of establishing a National Center for Statistical Analysis of Highway Operations designed to acquire, store, and retrieve highway accident data and standardize the information and procedures for reporting accidents on a nationwide basis. Such study shall include an estimate of the cost of establishing and maintaining such a center, including the means of acquiring the accident information to be stored therein. The Secretary shall report to the Congress his findings and recommendations not later than June 30, 1974.

(b) For the purpose of carrying out this section, there is authorized to be appropriated the sum of $5,000,000 out of the Highway Trust Fund.

UNDERPASS DEMONSTRATION PROJECT

SEC. 213. (a) The Secretary of Transportation shall carry out a demonstration project in Anoka, Minnesota, for the construction of an underpass at the Seventh Avenue and County Road 7 railroad-highway grade crossing.

(b) The Secretary shall make a report to the President and Congress with respect to his activities pursuant to this section.

(c) There is authorized to be appropriated not to exceed $3,000,000 to carry out this section.

DEMONSTRATION PROJECT—RAIL-HIGHWAY CROSSINGS

SEC. 214. (a) The Secretary of Transportation shall carry out a demonstration project for the elimination or protection of certain public ground-level rail-highway crossings in, or in the vicinity of, Springfield, Illinois.

The Secretary shall make a report to the President and Congress with respect to his activities pursuant to this section.

(c) There is authorized to be appropriated not to exceed $36,000,000 to carry out subsections (a) and (b) of this section.

(d) The Secretary of Transportation shall enter into such arrangements as may be necessary to carry out a demonstration project in Lincoln, Nebraska, for the relocation of railroad lines from the central area of the city in conformance with the methodology developed under proposal numbered DOT-FR-20037. The city shall (1) have a local agency with legal authority to relocate railroad facilities, levy taxes for such purpose, and a record of prior accomplishment; and (2) have a current relocation plan for such lines which has a favorable benefit-cost ratio involving and having the unanimous approval of three or more class 1 railroads and multi-civil, local, and State agencies, and which provides for the elimination of a substantial number of the existing railway-road conflict points within the city.

(e) Federal grants or payments for the purpose of subsection (d) of this section shall cover 70 per centum of the costs involved.

(f) The Secretary shall make annual reports and a final report to the President and the Congress with respect to his activities pursuant to subsection (d) of this section.

(g) For the purpose of carrying out subsections (d), (e), and (f) of this section, there is hereby authorized to be appropriated the sum of $2,500,000 out of the Highway Trust Fund, and not to exceed $9,500,000 out of any money in the Treasury not otherwise appropriated.

TITLE III

PROHIBITION OF DISCRIMINATION ON THE BASIS OF SEX

SEC. 301. (a) Title 23, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 6—DISCRIMINATION ON THE BASIS OF SEX PROHIBITED

"Sec.

"§ 601. Prohibition of discrimination on the basis of sex.

"No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee."

(b) The analysis of chapters at the beginning of title 23, United States Code, is amended by adding at the end thereof the following:

"6. Discrimination on the basis of sex prohibited ..... 601".

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished senior Senator from West Virginia (Mr. RANDOLPH), I move that the Senate disagree to the amendment of the House and agree to a request for a conference with the House thereon and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer (Mr. BROCK) appointed Mr. RANDOLPH, Mr. MONTOYA, Mr. GRAVEL, Mr. MUSKIE, Mr. BENTSEN, Mr. COOPER, Mr. BOGGS, Mr. BAKER, and Mr. BUCKLEY, conferees on the part of the Senate.

OLDER AMERICANS COMPREHENSIVE SERVICES AMENDMENTS OF 1972

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 15657.

The PRESIDING OFFICER (Mr. BROCK) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 15657) to strengthen and improve the Older Americans Act of 1965, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished Senator from Missouri (Mr. EAGLETON), I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. EAGLETON, Mr. CRANSTON, Mr. KENNEDY, Mr. RANDOLPH, Mr. WILLIAMS, Mr. HUGHES, Mr. STEVENSON, Mr. BEALL, Mr. SCHWEIKER, Mr. TAFT, Mr. PACKWOOD, and Mr. STAFFORD, conferees on the part of the Senate.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The Senate continued with the consideration of the bill (H.R. 13915) to further the achievement of equal educational opportunities.

Mr. ALLEN. Mr. President, I yield such time to the distinguished Senator from Florida (Mr. GURNEY) as he shall require.

Mr. GURNEY. Mr. President, once again the Senate is involved in debate on the issue of forced busing. This is hardly the first time we have faced this issue. We have faced it one, two, three, four times in the years since I came to the Senate. The subject is not a new one. Many of us have been actively involved with the subject of busing, particularly those of us who come from the South,

because our States are heavily involved in busing, and could literally write a book on the subject.

I know of no issue that has arisen since I came into public office which cuts deeper into the feelings and the emotions of Americans who are affected by it than this issue of busing.

It is very interesting that regardless of geographic region the issue is the same. The parents of those involved directly with the issue feel as strongly about it, pro and con, whether they live in the State of Michigan, which is one of the few Northern States involved, or whether it is in my home State of Florida or in any of the other States in the South. The people of this country are overwhelmingly opposed to forced busing of their children.

Many straw ballots have been taken on the issue. This spring they were taken in my State of Florida during the presidential primary. The issue of busing was nearly the sole issue in that presidential primary in Florida. Gov. George Wallace of Alabama made it his principal issue and of course he swamped all the other Democratic nominees on this one issue alone.

On the very day that Governor Wallace won that presidential primary the people of Florida voted on the issue of busing. By an overwhelming margin, better than 75 percent to 25 percent, they declared their opposition to forced busing.

Later in the political year, straw ballots were taken in Tennessee and Texas. My recollection is that the sentiment, percentagewise, was even stronger in those States than in Florida.

Polls have been taken nationwide on this issue. These polls indicate, very interestingly, almost the same sentiment against busing that exist in Florida.

What I am saying in bringing to the attention of the Senate the sentiment of people on busing, given the results of the ballots which were taken, is that there is no more dramatic domestic issue at this time than the issue of busing.

It is certainly high time the Senate came to grips with the problem. But in spite of all these statistics, in spite of the sentiment, it seems to me that this body, during the years in which it has been confronted with this issue has done a masterful job of evasion. By the time we vote on any busing language, and we have done it time and again in the past few years, the busing advocates make sure that there are loopholes in the law big enough to let a whole caravan of schoolbuses through.

Now it seems to me that the time has come to stop this semantic nonsense. The people certainly know, especially those who live in the States affected by forced busing, such as my own State of Florida, that we have not done an effective job in Congress to come to grips with antibusing legislation.

Once again we have before us a bill passed by the House by a healthy margin which squarely presents the question: Do we or do we not continue this practice of forced busing for the sole purpose of racial balance?

In addition, the bill contains a reopener provision, extremely important to certain States where forced busing is and has been employed on a large scale.

For States like Florida, both sections are essential if we are to have fair and equitable antibusing legislation.

During the past 2 weeks, Mr. President, the offices of many of my colleagues in the Senate were visited by parents from the Jacksonville, Fla., area who came up here, many of them for the first time, and at their own expense, to talk about forced busing. They did not come here to march, to picket, or to threaten, but to tell their story, ask questions, and seek help. For those Senators who did not have the opportunity to meet with the citizens of Duval County, I should like to talk a little bit on just what is happening down there.

Since June of 1971, the Duval County school system has been under a court order requiring massive forced busing. Since that time, the school system has more than doubled the number of buses, from 200 to 420, to accommodate the 12,000 additional schoolchildren who are being shuffled around by HEW and judicial whim.

It was mentioned just a short time ago here by one of the speakers in favor of busing—I do not believe that busing has reached his particular State yet—that only 3 percent of schoolchildren are involved in this kind of busing. These figures are over 2 years old and were taken in nationwide newspaper studies. In other words, the forced busing which is concentrated in a small area of the country, mainly the South, is being equated by proponents of busing with this kind of busing statistic. But so far as Duval County, Fla. is concerned and the city of Jacksonville, one of the major cities in my State, we have doubled the number of schoolbuses and we will be busing 32,000 additional children. Believe me, that is a lot more than 3 percent. The increased cost for transportation alone resulting from the court order affecting Duval County amounts to $1,263,918. This is money that could have been far better spent on the improvement of facilites and the upgrading of teaching staffs. Jacksonville is not an unusual situation. In Los Angeles, for example, school officials have estimated that the $118 million 8-year plan they developed in anticipation of court ordered busing will require the busing of 196,000 children over twice a day as compared with 35,000 being transported previously. There again, that 3-percent figure that was thrown around here so blithely a short time ago, and the even stronger assertion that there is less forced busing than before is a lot of nonsense. It is not the truth at all.

In Los Angeles County, an additional 1,400 or 1,450 buses will be required, as well as facilities in which to park them and drivers to drive them. Los Angeles will be spending approximately $6.3 million a year in pupil transportation.

If Los Angeles was to use that $180 million that is projected over 8 years for busing for hiring schoolteachers and improving of facilities in the county, I would think the county could make major qualitative improvements in the educational opportunities it could afford to all its children.

Richmond, Va., is another example that has been used a great deal recently. As everyone here knows, in April 1971 the court order said that the city of Richmond should bus 7,000 more children than the previous year, a move that required 56 more buses costing half a million dollars.

There is now a new court order. The metropolitan area will be forced under this new order to bus 78,000 out of 104,000 children, 10,000 more than a year previously.

Then, in Henrico County, an adjoining county, the school officials estimate that the new plan will cost them two or three times the amount of money, $743,000, now being spent in transportation. In Chesterfield County, a county south of Richmond, it is estimated that increased busing will cost them an extra $300,000. Fortunately for these communities this case is on appeal. It has not been implemented yet and if we are able to pass the pending bill, it will not be implemented. If they want to improve the schools, they can put that money into education rather than schoolbuses and gasoline.

Mr. JAVITS. Mr. President, would the Senator yield?

Mr. GURNEY. I am glad to yield to the distinguished Senator from New York.

Mr. JAVITS. Mr. President, I hope that the Senator in the course of his discourse might rationalize perhaps on this proposition. These bills, which certainly I had favored, propose to afford Federal money, especially for the busing proposition or even for buttressing education. And indeed this bill probably—and I will calculate it and we will supply all of the data—will spend more money for compensatory education to make up for the fact that it seeks to eliminate busing.

I wonder what the rationale is that induces the Senator to say that these municipalities are going to be spending money, when the bills propose—even the one proposed by the President—to put up the money. If anything, we will spend more Federal money for compensatory education than we did to supplement the busing for local communities. Therefore, I ask the Senator if the Senator would mind rationalizing this concept.

Mr. GURNEY. Mr. President, of course the figures I am using are figures that have been promulgated as the cost involved in implementing busing under the various court orders. I will have other examples as I go along.

I do not see that the Senator's explanation in any way justifies the cost of unnecessary busing. I am not sure where the Senator thinks the money comes from. Whether it is raised by the taxpayers of Duval County and the city of Jacksonville; or whether the citizens of Jacksonville send it up here to Washington and then Washington sends it back to aid them; or whether it was raised by local authorities or Federal authorities; we are speaking of money that

is exacted from the taxpayers for busing which is totally unnecessary. This is money which could better be used in other educational endeavors, such as the compensatory education which the Senator mentioned.

Mr. JAVITS. Mr. President, would the Senator yield further?

Mr. GURNEY. I am glad to yield to the Senator from New York.

Mr. JAVITS. Mr. President, I think the Senator will find on an analysis that more money is being provided for compensatory education in this very bill than would need to be provided if it were not for the position taken by Senators like the Senator from Florida who are opposed to busing.

In short, compensatory education becomes a higher figure precisely because some Senators oppose any effort to make up for the loss of educational opportunities through some moderate busing.

That is my point. So, no matter where it comes from, it is more expensive.

Mr. GURNEY. Mr. President, I would be glad to comment on that. This is something that we have had a pretty good light shed on recently, as I am sure the Senator knows, because he is one of the most informed Senators in this Chamber on the whole subject of education, far more so than I am.

I note that Harvard University School of Education, which has done a lot of massive research and study on this subject, recently came out with a report, which was the subject of a news article in the Washington Post of May 21, 1972.

I will not read all of it. I will read the headlines of the article. It says, "Achievement, Tolerance, Unimproved Study Casts Doubt on Busing. Major Study Casts Doubt on School Desegregation by Busing." I know that my distinguished colleague is familiar with this study and I will not delve into it at this time.

What the Senator says is that the busing here will help improve the quality of education, and that we have also put in some more money for compensatory education. But if Senators would not support this business of busing we would do better for quality education.

The point I am making now is that we have had a plethora of studies which show that is not true at all that busing aids quality education.

Mr. JAVITS. Mr. President, if the Senator will yield further, I will deal with the Harvard studies and also analyze the financial situation. I want to interpose a thought—and I am not trying to pull my superior knowledge of the matter on the Senate suddenly—we will analyze it. I wanted to interject the thought that as far as the expenditures are concerned, it may be that we are paying a higher cost because the antibusing people feel so deeply about the matter and are spending much more in compensatory education than would otherwise be necessary if some moderate busing were in order. However, I will discuss that on my own time.

Mr. GURNEY. Mr. President, I do not mind if the Senator interrupts with these questions. I think they are important. I know that the Senator has very strong feelings on the subject of education, just as I do. We have differing viewpoints. However, I think our basic goals are precisely the same. That goal is to come up with better education for all of our schoolchildren and particularly for those disadvantaged school students who are bused more than anyone else. I do not disagree with that at all. I simply say that this is Federal money—and it is true that the burden may be lifted from the local government and put on the Federal Government. I would agree with the Senator. That is true.

I do not think that makes my view an unwise one. I would say to the Senator that as far as compensatory education is concerned and as far as upgrading our schools is concerned, I would indeed be glad to put every busing dollar contained in this bill into the area of compensatory education to improve the quality of schools. That is needed throughout our land.

So, I must say that I do not agree with the Senator's argument. However, to go on, so far as other school systems are concerned, we have Columbus, Ga., which is another excellent example of misplaced priorities.

Three years ago, pupil transportation cost the city about $365,000. During the last school year, despite 3,000 fewer students and despite a new rule requiring students that live a half mile further from school to be eligible to catch a schoolbus, pupil transportation cost approximately $720,000. The reason—a forced busing plan, which increased the number of pupils being bused from about 10,000 to over 14,000. Yet at the same time, the State board of education was forced to recommend the closing of several substandard schools. How can we say, under such circumstances, that this additional $300,000-plus being spent on forced busing, rather than improved facilities, is justifiable, or that it is in any way contributing to quality education? As long as facilities are substandard or unsafe, or schools are unaccredited, it seems only logical that every available dollar go to correcting these deficiencies.

Now, to depart from my prepared text for a moment, this brings to mind a very excellent, formerly black school in my own community of Winter Park, Fla., a fine city in Florida with about 25,000. It was an excellent school, better than many schools we have presently in use in my county. That school is now boarded up. The windows and doors are boarded up and it is no longer used. It is an excellent educational facility that has been shut down because of the court ordered busing we have in my home county. I cannot imagine any more idiotic thing than to have a million-dollar building, no more than 15 years old, closed down this year because of court ordered school busing.

Mr. President, I would like to address my remarks once again to my home State of Florida and call attenion to the city of Tampa in my State. In the Tampa area, approximately 23,000 youngsters had their school assignments altered by Federal court order last school year. The school board had to borrow $1 million from local banks, increase the county school tax and cut expenditures for improvements in areas more directly connected with improving educational opportunity.

Statistics, Mr. President, as we all know, can be used to convey a distorted view of any situation. For example, proponents of busing claim that of the 43 percent of all public school students who are bused in this county, less than 3 percent are bused for desegregation purposes. Well, in Duval County, as I pointed out, Mr. President, they are busing 59 percent of the student enrollment, of which 31 percent are bused for desegregation purposes.

This points up two things: First, that most of the massive forced busing has taken place since these figures were compiled in 1970, and second, that up to now, forced busing has been concentrated in one section of the country. Moreover, there is every indication that unless something is done, the situation will get worse, not better. That is the message that we get from the court orders that have been handed down in Richmond and in Detroit.

I have already mentioned Richmond, but let us examine Detroit for a moment. In Detroit, Judge Roth has ordered no less than 53 school districts merged. The result is that 310,000 out of 780,000 children will be bused at a fantastic expense. This would mean a purchase of 295 buses at a cost of about $3 million. Where will this money come from? The first and most obvious answer is increased taxes.

Whether they are going to increase local taxes or whether they are going to have Federal taxes, as we have discussed in a colloquy with the distinguished Senator from New York, in this Senator's view does not matter. These are taxes exacted from somebody's pocket to pay $3 million for something entirely unreasonable.

Moreover, Mr. President, the school board might also be forced to cut the number of schooldays from 180 to 117. This in the name of improving educational opportunity. Fortunately this court order was stayed. But plans of a similar, or even larger scope, are contemplated elsewhere.

Just passing a moratorium on new busing orders is not enough. For those who think that it cannot happen in their area or that the overall impact might be limited, I would like to make an analogy.

A few months ago, tropical storm Agnes hit the east coast. Its devastating impact left a wake of rubble and death in many towns which happened to lie in its path. Statistically, we might say that on a nationwide basis the whole incident was of little consequence because it only affected a small percentage of the whole country. Well, just try to sell that line of reasoning to the people of Wilkes-Barre, Pa., or in scores of other communities in the mid-Atlantic region.

Obviously, those of us in Congress who voted massive Federal aid for the storm-hit areas would never have accepted such an argument. And yet it is this same twisted reasoning that is being used

against the moratorium or the reopener provision or both. Busing, too, unless we move to check it now, will move on. It will hit other cities, and the results may not be unlike those in Jacksonville or Palm Beach, Miami, or other cities within the South.

There is certainly no refuge in the courts, either. The Supreme Court, in the Swann case said in part that—

An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process.

That is what the Supreme Court has said, and yet in the Federal district court in Duval County, Mr. President, they are packing 102 or more children into buses designated to seat 66, and sending these buses up to 31 miles across town. Just a few days ago, my distinguished colleague from Wisconsin (Mr. NELSON), in a strong statement regarding the urgent need for schoolbus safety legislation, reminded us of the great potential for tragedy under existing conditions.

In addition, I ask to have inserted at this point an editorial from the Washington Post of September 27, regarding unsafe school buses.

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

THE UNSAFE SCHOOL BUSES

It has been known for some time that school buses are high risk vehicles—more dangerous than the automobile, if that can be imagined—but public attention mostly comes following a crash, not in the quiet period long after. Plenty of crashes have occurred in recent years, from the Congers, New York, accident last March that killed five to the Gunnison, Colorado, crash where nine died in September, 1971. Last week, the National Transportation Safety Board, an advisory group of the Department of Transportation, issued a valuable report on the flawed design of American school buses. Referring to the New York crash, the board said it "tentatively concluded that the gross disintegration of the school bus body was made possible by widespread failure of the school bus body at the joints." In other words, the bus was fastened together by relatively few rivets and easily came apart at impact. The board said that this weakness, and others commonly found in school buses "must be eliminated as quickly as possible."

Calls for action are now almost routine regarding school bus safety; but then the dust settles and the vehicles keep rolling along. What is most alarming is not so much that the hazardous conditions persist but that the technology to correct many of them is available. Ward School Bus Manufacturing, an Arkansas firm, for example, is now producing a body with thousands more rivets than found in standard models. The cost for this safety feature rises $390, but in proportion to the $9,000 or $10,000 regular price of a bus the extra sum is hardly overwhelming.

Unlike private cars and commercial buses in which passengers are paying for the transportation and accept the risks inherent to the ride, children in school buses are at the mercy of what authorities give them. Thirty-one children were killed within school buses in 1971 and potential for even greater tragedy is ever present. The Department of Transportation has made some worthy efforts to protect the 19 million school bus riders, but with low funding for its safety agency it must give priority to decreasing the dangers of automobiles. In Congress, Rep. Les Aspin (D-Wis.) has introduced a school bus safety bill that now has 80 co-sponsors; it is expected to go nowhere this session. Over-all, a strange kind of inertia is present. No one is lobbying against school bus safety, no controversy is involved—go to the other busing issue for that—and the cost is small.

Until the advice of such groups as the National Transportation Safety Board is taken and the legislation of Mr. Aspin is passed, the crashes are likely to continue. Instead of preventive technology—how complex is a rivet job?—authorities apparently prefer to depend on luck to protect the children. Luck and school buses, though, are grimly similar: both easily give out.

Mr. GURNEY. Obviously, Mr. President, the concern for schoolbus safety is a real one. How, then, can we possibly justify sending overcrowded buses—dangerous under any circumstances—extra distances on busy highways or winding back roads to tranverse the cities twice a day? Just how far must we go before this sort of thing will be acknowledged as a "risk to health"?

For the life of me, I cannot understand how, under the Supreme Court decision, the court decision in Jacksonville was arrived at, but apparently a precedent has been set, and decisions have been entered. Obviously, then, the language of the Supreme Court, as far as busing and health are concerned, has no application in the practical situations that are faced every day in the places where our children are being bused.

And then there is another consideration—the physical and emotional dangers of sending children into a completely different neighborhood to school each day. For instance, in Pontiac, Mich., during the first 3 weeks of forced busing, the number of robberies in the schools increased from one to 24 and the number of assaults from 13 to 84.

And these are not isolated statistics. A federally commissioned study, done by the Policy Institute in Syracuse, N.Y., in 1970, showed that 85 percent of nearly 700 urban schools had experienced some type of disruption in the preceding 3 years and that racial factors figured in a large number of these incidents. From these figures, the study drew the conclusion that disruption is positively related to integration. Another study, done by the National Association of Secondary School Principals, corroborated this by noting that 77 percent of the incidents of conflict reported to them took place in mixed black and white schools. Now, this is not to say that integration should be rejected—far from it.

I have not heard any argument in the Senate or in Congress that that should be the case, but what it does indicate is that forced busing simply to achieve racial balance represents an unnecessary safety risk for all children, black and white. Better mutual understanding will not come about by unnecessarily increasing the fears of—and subsequently heightening the tensions between—the groups involved.

Certainly the people who came up from Jacksonville can attest to this type of problem. The stories they told of physical violence, drug abuse, and policemen having to escort children to the lavatory make it easy to understand why they would like to send their children to the nearest possible school where they would have the best chance to keep an eye on the situation.

Not only that, but still another study shows that some pupils suffer symptoms of psychological disorientation where they are moved back and forth from two completely different environments.

Aside from the travel hazards, there are other physical problems involved in this forced busing game plan.

One mother of four children—all of whom are scattered in different directions—told me she had no way of reaching her children during the day and that even if she did have transportation, it would take her over 2 hours to reach all of them.

Another thing to be considered is that busing, by contributing to resegregation, is self-defeating. In order to put their children in quality schools, many parents are moving away from areas where forced busing plans are in effect. The result is that once integrated schools soon become preponderantly uniracial again. Enlarging the scope of busing simply increases suburban sprawl and hastens the decay of the inner city. Unless the Government starts regulating where we live—something I believe no government has a right to do—this process will continue. Forced busing can only make it worse.

I would hope that the government would never reach the point where it tells us where we have a right to live. Certainly no government has the right to do that. But I must say I can conceive of a situation in which the government would say, if it is idiotic enough to engage in forced busing, totally contrary to the desires of almost all the people in this country, totally repugnant to the individual freedoms we have fought so much to attain, "No, you cannot move from this neighborhood, because if you do, it is going to resegregate, or segregate, or 'gate' something else, and you cannot do it." I would not be surprised if we would come to that kind of nonsense after a while.

Moreover, another disadvantage of busing is that parental support and participation, so vital to a successful school, is being sacrificed. If parents are too far removed from a school to be able to take much interest in it, the cause of quality education is in trouble.

That brings me to a very human story, too. I remember the first year I was here in the U.S. Senate, in 1969, a delegation of high school students came up from Florida, from a very lovely city in our State called Vero Beach, over on the east coast of Florida. They had a fine black high school in that particular community, and in order to comply with the racial balance orders of HEW, the school board decided they had to close this school down and bus all the high school students to another high school in another part of town. As I say, this was a delegation from that particular black high school, and I had my picture taken with them on the Capitol steps. After the picture was taken, I started to walk back to my office, and three of the high school boys came along with me and said, "Can we talk to you, Senator, for a few minutes about a problem?" I said, "Sure.

What's on your mind?" "Well," they said, "they are proposing to close our school at home, and if they do that, Senator, it is going to be a substantial loss to our community, because all the good things that happen in our community happen in that school. That is where we have the civic meetings. That is where the PTA meets. That is where all the enterprising, progressive occurrences in our community have their meetings and go forth from there." They went on to say, too, "We are going to lose a lot of the things that we have a deep interest in, our athletic teams, our band."

They told me all about those things with real, moving pathos in their language.

I said, "Well, I know what you are talking about. I am sorry I cannot do anything about it, but that is the way the law is. That is the way the Supreme Court has spoken, and I have to obey the law, too, until we can change it."

These are incidents that happened, that I do not think any of my very able and very conscientious colleagues here in the U.S. Senate from northern communities or communities outside the South know anything about at all, because they are not faced with the problem. They do not talk with these students, they do not talk with their parents, they do not know anything about the human side of the busing story. We who are faced with these problems do know, and we know how the people feel about them, black and white.

I could recount here scores and scores of similar stories exactly like that, that have been related to me personally here in my Senate office by parents, black and white, who have come to see me, or see me in Florida when I go back there.

I cannot understand why my colleagues, who are interested in the cause of good education and are interested also in the cause of race relations, cannot wake up to the fact that what is really happening in this business of schoolbusing is the closing down of schools and moving children back and forth like pawns.

As my story indicates forced busing deprives many students from the opportunity to participate in athletics and other extracurricular student functions. What it amounts to is that only those well off enough to afford special transportation home each day can participate in athletics and other activities designed to give all students a more well rounded educational experience.

And that is not a specious argument. If you have to take a schoolbus 2 hours to get from the school after it closes to the home, it is pretty obvious that you are not going to have too much time to participate in the athletics, the band activities, and all of the other things that go along with education in addition to the instructional classes themselves.

Another thing—parents of all races, creeds, and national origins want their children to learn their own culture and values within the context of the American system. Not only is the neighborhood school more convenient and safer, but it has traditionally been an effective vehicle for teaching culture and values.

The bitter irony of all this, Mr. President, is that we are simply not accomplishing the goals toward which these outlandish programs are geared. According to an extensive study by Harvard Prof. David J. Armor, we are neither raising educational achievement levels, nor improving race relations.

According to Professor Armor:

> The data suggest that, under the circumstances obtaining in these studies, integration heightens racial identity and conciousness, enhances ideologies that promote racial segregation and reduces opportunities for actual contact between the races.

Furthermore, Professor Armor concludes that:

> Massive mandatory busing for purposes of improving student achievement and interracial harmony is not effective and should not be adopted at this time.

Other studies indicate the same thing. And I can assure my colleagues that if they will talk to the parents of bused children—the only people who really know what busing is all about—they will find confirmation of these results.

In his book, "Ordeal of Change," the philosopher, Eric Hoffer, points out the need for a sense of self-identity and control of one's personal destiny as a prerequisite for any integration between any two groups of people. Yet, at a time when black Americans are building a sense of self-identity, at a time when they can have a say in their local neighborhood schools, Federal court decisions seek to disperse the black student amongst an overwhelming majority of whites with the implication that this is the only way these students can be properly educated. Columnist William Raspberry described this attitude as degrading, and I agree.

The implications behind such a policy are as racist as any de jure segregation.

It is one thing to correct inadequate facilities and teaching staffs. All children are entitled to the best of both.

However, when we speak of busing, of arbitrary racial balances, as an improvement we not only deny the evidence of recent studies, we imply that only where white children are in the overwhelming majority in the classroom can education occur.

It is not surprising then that black parents, as well as white, oppose forced busing. A poll of black Detroit parents showed 62 percent of them opposed to busing their children away from their neighborhood schools.

An estimated 52 percent of all blacks voted for an antibusing amendment to the Constitution. In a recent Gallup poll, blacks are shown to oppose forced busing by a 47–45 margin. And, in Gary, Ind., last spring the National Black Political Convention came out strongly against forced busing.

The changes are very excellent that a much higher percentage of blacks are opposed to busing because for blacks to take this position is not popular and can even be dangerous. For instance, one woman from Jacksonville told me about several black women who wanted to come to Washington, but were threatened by militant blacks. They were told that their welfare checks might "get lost" if they did not keep quiet.

In short, in spite of intense pressure by militant civil rights leaders upon blacks to get them to support busing, including threats, a majority of blacks still oppose busing, just as the whites do.

Indeed, Professor Armor points out that in one of the school systems analyzed, black high school students participating in a busing plan stated a solid preference for their own neighborhood schools.

Finally, there is the basic question of individual rights. Constituents are writing me and asking why, after they have put their life savings into a home so they could send their children to a neighborhood school they picked out, they will no longer be able to send their children to that school.

I can give no answer other than to say that I do not believe government should have the power to make that kind of decision. A person should have the right to buy a home in any neighborhood he chooses—if he can afford it—and know, when he buys it, what school his children will be sent to. Throughout our history, people have moved from neighborhood to neighborhood for educational reasons; to negate this possibility constitutes a serious abridgement of basic and traditional American freedoms.

It is sadly ironic now that one effect of the famous 1954 Supreme Court decision that ruled "separate but equal" school systems unconstitutional—that is the Brown case, of course—was to end the practice of busing black children away from the school closest to them in order to keep them in segregated schools.

That was what the decision was based on. That is what it was all about, that it was unlawful to bus black children away from a neighborhood school where white children attended. It was the court's intention that color no longer be the determining factor in pupil assignment.

But now, so help me, we have gone full cycle. We have turned it around 180 degrees, and now we use that first decision, the Brown decision, the landmark decision that said you shall not bus black children past their neighborhood schools on the basis of color, and now the U.S. Supreme Court says you have got to bus them past those neighborhood schools in order to achieve this racial balance—based, again, upon color.

It is the worst case of backtracking and counter-marching, and saying exactly what they did not say before, and contradicting themselves completely, that I think we have ever seen in the history of the U.S. Supreme Court. Of course, what has happened is that the courts have twisted the issue in their zeal to achieve this mythical racial balance, and they have forgotten that the real purpose of the Brown decision was to provide quality education for all our children, especially for our black children.

So Mr. President, I strongly urge the passage of H.R. 13915. It will stop a grave injustice that, if left unchecked, will not lead to quality education, is not leading to quality education, is destroying education, is not relieving racial tensions but increasing racial tensions, and is go-

ing in a direction that will eventually destroy our public schools and will certainly destroy their effectiveness as we have always known it.

There is one thing that I thought was reasonably true about the Government of the United States and the sort of representative government we have, and I should like to mention that in closing. I had always believed that, sooner or later, when a basic, fundamental issue was presented to Congress—or, for that matter, to any representative body in our Nation, whether it be a State legislature, a county commission, or a city commission—eventually, if overwhelming sentiment was in favor of a change of law, the elected representatives of the people would change that law. That is what I understood representative government to be all about. Yet, we have seen here, in the U.S. Senate, year after year after year—and I fear we are going to see it within the waning days of this congressional session—a majority of the Senate, or perhaps a minority of the Senate, thwart the feeling of the majority of people of the United States on the issue of forced busing.

I think this is a travesty on representative government. I hope the Senate will not do this. I hope, rather, that the Senate will conform to the prevailing majority opinion in this country and hurry on to the passage of this bill.

Mr. President, I yield the floor.

Mr. JAVITS. Mr. President, I yield 10 minutes to the Senator from Michigan (Mr. HART).

Mr. HART. Mr. President, I have listened with interest, as others have, to the remarks voiced thus far in this opening discussion.

I think the able Senator from New York, as he has done on other occasions, has sketched fully and with precision the bounds, the limits, the areas we believe should be understood by the Senate before it acts once again on this troublesome issue.

We can look back over nearly two decades of the long struggle to achieve school desegregation, which was ordered by the Supreme Court of the United States in 1954.

A witness before the House Judiciary Committee noted that young black students who were in kindergarten when Brown against Board of Education was decided are now in the last year of law school. Some black students entering kindergarten today still must go to schools segregated through violations of their constitutional rights. Yet, here we are today, and the Senate is considering whether or not to limit drastically any further desegregation of our public schools.

The 18th anniversary of the Brown decision was marked on May 17 of this year, and the following day was an equally historic reminder of the long road down which we have come. May 18 marked the day on which the Supreme Court, in 1896, decided Plessy against Ferguson, with its, I thought, discredited sanction of "separate but equal" treatment for different races.

At that time—that was 6 months ago—I remarked that the ironic juxtaposition of these two anniversaries "symbolizes a crossroads we had seemed to pass but which recent events present us with again: Will we move forward with the unfinished business of Brown or retreat to implicit acceptance of Plessy and the doctrine of 'separate but equal.'?"

Today, and in the days ahead, the Members of the Senate have to face that choice, and it is a pretty square confrontation. We all know that the consequences of this debate on H.R. 13915 are rather unusual. Here we are, virtually on the eve of the adjournment of a busy session of Congress, with many Members anxious for adjournment so that they can participate more fully in the closing weeks of the election campaign.

That campaign, itself, has enveloped this complex and controversial measure in the most intense cloud of heated emotion. The Members of the Senate most insistent on this measure being disposed of before we adjourn also are the Members who blocked its orderly referral to the Committee on Labor and Public Welfare when we received the bill from the House. As a result, under our rules, the bill went on the Senate calendar, and it has become the pending business without any consideration by any subcommittee or full committee of the Senate.

There are exceedingly few compass points to guide us on the most serious problems in the House-passed bill. To understand this one must review briefly its legislative history thus far.

H.R. 13915 is a substantially—and I emphasize the word "substantially"—revised version of the equal educational opportunities bill introduced on behalf of the administration last spring in both Houses of Congress, along with a companion measure, H.R. 13916, the student transportation moratorium bill of 1972. In the Senate, the moratorium bill was referred to the Judiciary Committee which has held no hearings on it. The original Senate counterpart to H.R. 13915 went to the Labor Committee which did hold hearings on it. Those hearings have not yet closed. In fact, an additional day of hearings was held last week, at the request of a proponent of the measure. Accordingly, the hearings have not yet been printed; they are not available to this Senator, nor to my colleagues. And of course there has been no committee action on the bill, let alone a report analyzing it for the full Senate.

In the House of Representatives, hearings were held by the Judiciary Committee on the moratorium bill. The House Labor Committee held hearings on the original version of the measure now before us, H.R. 13915. The House Committee made several substantial changes in the bill and sent it to the floor, where it was revised even more sharply.

Mr. President, the bill now before the Senate has been changed so much from the proposal initially put before Congress, that the Representative who introduced the bill for the administration, and other leading sponsors of it, felt obliged to vote against the final passage on the House floor because they thought it had been made unconstitutional.

The latest word which my office was able to obtain indicated that the complete House committee hearings on this bill were not yet available, either. The House committee report is available, but a careful reading of it discloses scant reference to any factual record underpinning the bill's more controversial provisions. And, of course, it did not address the further changes made in the bill on the House floor.

There we have it. Nothing out of our own Senate committee. The House committee hearings are not yet available. The House committee report understandably does not cover substantial changes made in the bill on the House floor.

ISSUES RAISED

What do we know about the bill before us, Mr. President? Well, we do know that it is designed to affect the precious constitutional rights of young black boys and girls—and that in a more fundamental sense it will affect not only their future, but America's as well.

We do know that it deals with an area involving many legal and policy issues of great complexity—issues which have been hard to bring into sharp focus through the haze of election-year rhetoric, even though we may feel that we have "been through the busing debate," so to speak, already.

Mr. President, I ask unanimous consent that I may yield the floor temporarily, without losing my right to the floor, in order that I may yield at this time to the distinguished Senator from Connecticut (Mr. RIBICOFF) to offer an amendment.

The PRESIDING OFFICER (Mr. GAMBRELL). Without objection, it is so ordered, and the Senator from Connecticut is now recognized.

Mr. RIBICOFF. Mr. President, I submit two amendments to H.R. 13915 and ask that they be read for the purpose of Senate consideration under rule XXII.

The PRESIDING OFFICER. Does the Senator wish the amendments read in full?

Mr. RIBICOFF. I would have no objection unless someone asks unanimous consent that their further reading be dispensed with.

Mr. JAVITS. Mr. President, I ask unanimous consent that the amendments be considered as having been read.

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

Mr. JAVITS. Mr. President, while we are on this subject, would the distinguished Senator from Alabama (Mr. ALLEN) have any objection to the usual provision that all amendments at the desk shall be considered as having qualified under rule XXII?

Mr. ALLEN. Entirely satisfactory. It is the usual custom.

Mr. JAVITS. I thank the Senator from Alabama

The PRESIDING OFFICER. Without objection, the amendments will be considered as having been read in order to comply with rule XXII.

Mr. JAVITS. Mr. President, I thank the Chair.

I should like to inform the Senate that I will consult with the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD), and if there are any problems

about this, I will undo the unanimous-consent request.

The PRESIDING OFFICER. Has the Senator from Connecticut completed his remarks?

Mr. RIBICOFF. Yes, Mr. President, I have.

The PRESIDING OFFICER. The Senator from Michigan (Mr. HART) has the floor.

Mr. HART. Thank you, Mr. President.

Mr. President, we know that there has been an unprecedented expression of concern—unprecedented, except perhaps for the comments and efforts made during the consideration of a recent Supreme Court nomination—from our Nation's leading legal scholars. Their voices, almost 500 strong, from some 42 law schools in over 20 States, from the South, the West, and the North, join in opposition to this bill. They urge us not to pass it, because of their "grave reservation about the constitutionality of the legislation," and because they conclude it "would place in jeopardy most of the hard-won progress toward school desegregation of the last 2 decades."

Mr. ROBERT C. BYRD. Mr. President, will the Senator from Michigan yield me just 1 minute without losing his right to the floor?

Mr. HART. I yield.

AMENDMENT OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 56.

The PRESIDING OFFICER (Mr. GAMBRELL) laid before the Senate the message of the House of Representatives to the bill, which reads as follows:

Resolved, That the House agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 56) entitled "An Act to amend the National Environmental Policy Act of 1969, to provide for a National Environmental Data System."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 1 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: That this Act may be cited as the "National Environmental Data System and Environmental Centers Act of 1972".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 2 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

DEFINITIONS

SEC. 2. For the purpose of this Act—

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "Council" means the Council on Environmental Quality established in title II of the National Environmental Policy Act of 1969 (Public Law 91–190).

(3) The term "Data System" means the National Environmental Data System established by title I of this Act.

(4) The term "Director" means the National Environmental Data System Director appointed pursuant to section 104 of title I of this Act.

(5) The term "educational institution" means a public or private institution of higher education, or a consortium of public or private, or public and private, institutions of higher education.

(6) The term "environmental center" means a State environmental center or regional environmental center established pursuant to title II of this Act.

(7) The term "environmental quality indicators" means quantifiable descriptors of environmental characteristics which will measure the quality of the environment.

(8) The term "information, knowledge, and data" shall be interpreted as including those facts which are significant, accurate, reliable, appropriate, and useful in decision-making or research in environmental affairs or problems.

(9) The term "other research facilities" means the research facilities of (A) any educational institution in which a State environmental center is not located and which does not directly participate in a regional environmental center, (B) public or private foundations and other institutions, and (C) private industry.

(10) The term "regional environmental center" means an organization which, on an interstate basis, conducts and supports research, training, information dissemination, and other functions described in section 205 of title II of this Act related to the protection and improvement of the environment.

(11) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(12) The term "State environmental center" means an organization which, on a statewide basis, conducts and supports research, training, information dissemination, and other functions described in section 205 of title II of this Act related to the protection and improvement of the environment.

On page 2, line 20, of the House engrossed bill, after "System." insert the following: The Data System shall include an appropriate network of new and existing information processing or computer facilities both private and public in various areas of the United States, which, through a system of interconnections, are in communication with a central facility for input, access, and general management. It shall also include all of the ancillary software and support services usually required for effective information system operation.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 16 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: (2) to all interstate agencies, States and political subdivisions thereof, environmental centers, and educational institutions,

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 21 to the aforesaid bill, and concur therein with an amendment as follows:

On page 4, line 15, of the Senate engrossed amendment, after "patent," insert: copyrighted,

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 44 to the aforesaid bill, and concur therein with amendments as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: environmental centers, educational institutions,.

On page 6, line 20, of the House engrossed bill, strike out "universities,".

On page 6, line 22, of the House engrossed bill, strike out "required" and insert the following: required.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 65 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

TITLE II—STATE AND REGIONAL ENVIRONMENTAL CENTERS

SHORT TITLE

SEC. 201. This title may be cited as the "Environmental Centers Act of 1972".

POLICY AND PURPOSES

SEC. 202. (a) It is the policy of the Congress to support basic and applied research, planning, management, education, and other activities necessary to maintain and improve the quality of the environment through the establishment of environmental centers, in cooperation with and among the States, and thereby to achieve a more adequate program of environmental protection and improvement within the States, regions, and Nation pursuant to the policies and goals established in the National Environmental Policy Act of 1969. It is hereby recognized that research, planning, management, and education in environmental subjects are necessary to establish an environmental balance in local, State, and regional areas to assure the Nation of an adequate environment.

(b) The purposes of this title are to stimulate, sponsor, provide for, and supplement existing programs for the conduct of basic and applied research, investigations, and experiments relating to the environment; to provide for concentrated study of environmental problems of particular importance to the several States; to provide for the widest dissemination of environmental information; to assist in the training of professionals in fields related to the protection and improvement of the Nation's environment; and to authorize and direct the Administrator to cooperate with the several States for the purpose of encouraging and assisting them in carrying out the comprehensive environmental programs described above having due regard for the varying conditions and needs of the respective States.

DESIGNATION AND APPROVAL OF ENVIRONMENTAL CENTERS

SEC. 203. (a) The Administrator shall provide financial assistance under this title for the purpose of enabling any State, if such State does not participate in a regional environmental center assisted under this title, to establish and operate one State environmental center if—

(1) such State environmental center is, or will be—

(A) located in an educational institution within the State, and

(B) administered by such educational institution;

(2) such educational institution is designated by the Governor of the State to be the State environmental center; and

(3) the Administrator determines that such State environmental center—

(A) meets, or will meet, the requirements set forth in section 204 of this title; and

(B) has, or will have, the capability to carry out the functions set forth in section 205 of this title.

(b) The Administrator shall provide financial assistance under this title for the purpose of enabling two or more States, if none of such States has a State environmental center assisted under this title, to establish and operate a regional environmental center if—

(1) such regional environmental center is, or will be—

(A) located in an educational institution within one of such States or in educational

institutions within two or more of such States if such institutions agree to operate jointly as the regional environmental center, and

(B) administered by such educational institution or institutions;

(2) such educational institution in each State is designated by the Governor of the State to participate in the regional environmental center; and

(3) the Administrator determines that such regional environmental center—

(A) meets, or will meet, the requirements set forth in section 204 of this title; and

(B) has, or will have, the capability to carry out the functions set forth in section 205 of this title.

(c) Each Governor, in designating an educational institution to be a State environmental center or to participate in a regional environmental center, shall take into account those institutions of higher education in the State which, at that time, are carrying out environmentally related research and education programs.

ELIGIBILITY REQUIREMENTS FOR ENVIRONMENTAL CENTERS

SEC. 204. Each State or regional environmental center shall—

(1) be organized and operated so as to support, augment, and implement programs contributing to the protection and improvement of the local, State, regional, and national environment;

(2) have (A) a chief administrative officer, and (B) a treasurer who shall carry out the duties specified in section 210 of this title, each of whom shall be appointed by the chief executive officer of the educational institution concerned, in the case of a State environmental center, or jointly approved and appointed by the chief executive officers of the educational institutions concerned, in the case of a regional environmental center;

(3) have a nucleus of administrative, professional, scientific, technical, and other personnel capable of planning, coordinating, and directing interdisciplinary programs related to the protection and improvement of the local State, regional, and national environment;

(4) be authorized to employ personnel to carry out appropriate research, planning, management, and education programs;

(5) be authorized to make contracts and other financial arrangements necessary to implement section 205(b) of this title; and

(6) make available to the public all data, publications, studies, reports, and other information which result from its programs and activities, except information relating to matters described in section 552(b)(4) of title 5, United States Code.

FUNCTIONS OF ENVIRONMENTAL CENTERS

SEC. 205. (a) Each State and regional environmental center shall be responsible for the following functions—

(1) the planning and implementing of research, investigations, and experiments relating to the study and resolution of environmental pollution, natural resource management, and other local, State, and regional environmental problems and opportunities;

(2) the training of environmental professionals through such research, investigations, and experiments, which training may include, but is not limited to, biological, ecological, geographic, geological, engineering, economic, legal, energy resource, natural resource and land use planning, social, recreational, and other aspects of environmental problems;

(3) the establishment, operation, and maintenance of a comprehensive environmental education program directed at the widest possible segment of the population, which program may include, but is not limited to, public school curricula development, undergraduate degree programs, graduate programs, nondegree college level course work, professional training, short courses, workshops, and other educational activities directed toward professional training and general education;

(4) the widest possible dissemination of useful and practical information on subjects relating to the protection and enhancement of the Nation's environment (including but not limited to, information and data resulting from research, investigations, and experiments by the environmental center and information, knowledge, and data obtained through the Data System) and the establishment and maintenance of a reference service to facilitate the rapid identification, acquisition, retrieval, dissemination, and use of such information; and

(5) the submission, on or before September 1 of each year, of a comprehensive report of its programs and activities during the immediately preceding fiscal year to the Governors concerned, the Administrator, the Director, the environmental center advisory board concerned, and the Environmental Centers Research Coordination Board.

(b)(1) Each State and regional environmental center is encouraged to contract with other environmental centers and with other research facilities to carry out any function listed in subsection (a) of this section in order to achieve the most efficient and effective use of institutional, financial, and human resources.

(2) Each State and regional environmental center is also encouraged to make grants, contracts, fund matching or other arrangements with—

(A) other environmental centers, other research facilities, and individuals the training, experience, and qualifications of which or whom are, in the judgment of the chief administrative officer of the environmental center, adequate for the conduct of specific projects to further the purposes of this title, and

(B) local, State, and Federal agencies to undertake research, investigations, and experiments concerning any aspects of environmental problems related to the mission of the environmental center and the purposes of this title.

(c) In the carrying out of the functions described in subsection (a) (3) and (4) of this section, the services of private enterprise firms active in the fields of information, publishing, multi-media materials, educational materials and broadcasting may be utilized where practicable so as to avoid creating government competition with private enterprise and to achieve the most efficient use of public funds invested in the fulfilling of the purposes of this title.

AUTHORIZATION OF APPROPRIATIONS FOR GRANTS

SEC. 206. (a) There is authorized to be appropriated $7,000,000 for the fiscal year ending June 30, 1974: $9,800,000 for the fiscal year ending June 30, 1975; and $10,000,000 for the fiscal year ending June 30, 1976. The sums authorized for appropriation pursuant to this subsection shall be disbursed in equal shares to the environmental centers by the Administrator, except that each regional environmental center shall receive the number of shares equal to the number of States participating in such regional environmental center.

(b) In addition to the sums authorized by subsection (a) of this section, there is further authorized to be appropriated $10,000,000 for each of the three fiscal years ending June 30, 1974, June 30, 1975; and June 30, 1976, which shall be allocated by the Administrator, after consultation with the Environmental Centers Research Coordination Board, to the environmental centers on the following basis: one-fourth based on population using the most current decennial census; one-fourth based on the amount of each State's total land area: and one-half based on the assessment of the Administrator with respect to (1) the nature and relative severity of the environmental problems among the areas served by the several State and regional environmental centers, and (2) the ability and willingness of each environmental center to address itself to such problems within its respective area; except that sums allocated under this subsection shall be made available only to those State and regional environmental centers for which the States concerned provide $1 for each $2 provided under this subsection.

(c) In addition to the sums authorized to be appropriated under subsections (a) and (b) of this section, there is authorized to be appropriated for each of the three fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, such sums as may be necessary to provide to each regional environmental center during each of such fiscal years an amount of money equal to 10 per centum of the funds which will be disbursed and allocated to such center during that fiscal year by the Administrator under such subsections (a) and (b).

(d) Not less than 25 per centum of any sums allocated to an environmental center shall be expended only in support of work planned and conducted on interstate or regional programs.

AUTHORIZATION OF APPROPRIATIONS FOR ADMINISTRATION

SEC. 207. There is authorized to be appropriated $1,000,000 for each of the three fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, to be used by the Administrator solely for the administration of this title and to carry out the purposes of section 208 of this title.

ENVIRONMENTAL CENTERS RESEARCH COORDINATION BOARD

SEC. 208. (a) There is established the Environmental Centers Research Coordination Board (hereinafter referred to in this section as the "Board"), for the purposes of assisting the Administrator with program development and operation, consisting of the following nine members—

(1) a Chairman, who shall be the Administrator:

(2) one representative each from (A) the Council on Environmental Quality, (B) the National Science Foundation, (C) the Smithsonian Institution, and (D) the Office of Science and Technology; and

(3) four members, appointed by the Administrator, who shall be appointed on the basis of their ability to represent the views of (A) private industry, (B) not-for-profit organizations the primary objectives of which are for the purposes of improving environmental quality, (C) the academic community, and (D) the general public.

(b) The Chairman of the Board may designate one of the members of the Board as Acting Chairman to act during his absence.

(c) The Board shall undertake a continuing review of the programs and activities of all State and regional environmental centers assisted under this title and make such recommendations as it deems appropriate to the Administrator and the Governors concerned with respect to the improvement of the programs and activities of any environmental center. The Board shall, in conducting its review, give particular attention to finding any unnecessary duplication of programs and activities among the several environmental centers and shall include in its recommendations suggestions for minimizing such duplications. The Board shall also coordinate its activities under this section with all appropriate Federal agencies and may coordinate such activities with such State and local agencies and private individuals, institutions, and firms as it deems appropriate.

(d) Selection of Board members pursuant to subsection (a)(2) of this section shall be

made by heads of the respective entities after consultation with the Administrator.

(c) The Board shall meet at least four times each year. The members of the Board who are not regular fulltime officers or employees of the United States shall, while carrying out their duties as members, be entitled to receive compensation at a rate fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and, while away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons intermittently employed in Government service.

ENVIRONMENTAL CENTER ADVISORY BOARDS

SEC. 209. (a) The Governor of each State having a State environmental center assisted under this title and the Governors of the States participating in each regional environmental center assisted under this title shall appoint, after consultation with the chief administrative officer of the environmental center concerned, an advisory board which shall—

(1) advise such environmental center with respect to the activities and programs conducted by the environmental center and the coordination of such activities and programs with the activities and programs of Federal, State, and local governments, of other educational institutions (whether or not directly participating in an environmental center assisted under this title), and of private industry related to the protection and enhancement of the quality of the environment; and

(2) make such recommendations as it deems appropriate regarding—

(A) the implementation and improvement of the research, investigations, experiments, training, environmental education program, information dissemination, and other activities and programs undertaken or supported by the environmental center, and

(B) new activities and programs which the environmental center should undertake or support.

All recommendations made by an advisory board pursuant to clause (2) of this subsection shall be promptly transmitted to the Governor or Governors concerned, the chief administrative officer of the environmental center, the chief executive officer of each educational institution in which the environmental center is located, and the Administrator.

(b)(1) Each advisory board appointed pursuant to this section shall have not to exceed fifteen members consisting of representatives of—

(A) the agencies of the State concerned which administer laws relating to the conservation of natural resources and environmental protection or enhancement:

(B) the educational institution or institutions in which the environmental center is located:

(C) the business and industrial community; and

(D) not-for-profit organizations the primary objective of which is the improvement of environmental quality and other public interest groups.

The chief administrative officer of the environmental center shall be an ex officio member of the advisory board. Each advisory board shall elect a chairman from among its appointed members.

(2) The term of office of each member appointed to any advisory board shall be for three years; except that of the members initially appointed to any advisory board, the term of office of one-third of the membership shall be for one year, the term of office of one-third of the membership shall be for two years, and the term of office for the remaining members shall be for three years.

(c) Any recommendations made by an advisory board pursuant to subsection (a)(2) of this section shall be responded to, in writing, by the chief administrative officer of the environmental center within one hundred and twenty days after such recommendations are made. In any case in which any such recommendation is not followed or adopted by the chief administrative officer, such officer, in his response, shall state, in detail, the reason why the recommendation was not, or will not be, followed or adopted.

(d) All recommendations made by an advisory board pursuant to subsection (a)(2) of this section, and all responses by the chief administrative officer thereto, shall be matters of public record and shall be available to the public at all reasonable times.

(e) Each advisory board appointed pursuant to this section shall meet not less than once each year.

(f) Funds provided under section 206 of this title may be used to pay the travel and such other related costs as shall be authorized by the chief administrative officer of the environmental centers which are incurred by the members of each advisory board incident to their attendance at meetings of the advisory board; except that the amount of travel and related costs paid under this subsection to any member of an advisory board with respect to his attendance at any meeting of the advisory board may not exceed the amount which would be payable to such member if the law relating to travel expenses for persons intermittently employed in Government service applied to such member.

SEC. 210. (a) Sums made available for allotment to the environmental centers under this title shall be paid at such time and in such amounts during each fiscal year as determined by the Administrator and upon vouchers approved by him. Each treasurer appointed pursuant to section 204(2) of this title shall receive and account for all funds paid to the environmental center under the provisions of the title and shall transmit, with the approval of the chief administrative officer of the environmental center, to the Administrator on or before the first day of September of each year, a detailed statement of the amount received under provisions of this title during the preceding fiscal year and its disbursement, on schedules prescribed by the Administrator. If any of the moneys received by the authorized receiving officer of the environmental center under the provisions of this title shall be found by the Administrator to have been improperly diminished, lost, or misapplied, it shall be replaced by the environmental center concerned and until so replaced no subsequent appropriations shall be allotted or paid to that environmental center.

(b) Moneys appropriated under this title, in addition to being available for expenses for research, investigations, experiments, education, and training conducted under authority of this title, shall also be available for printing and publishing the results thereof.

(c) Any environmental center which receives assistance under this title shall make available to the Administrator and the Comptroller General of the United States, or any of their authorized representatives, for purposes of audit and examination, any books, documents, papers, and records which are pertinent to the assistance received by such environmental center under this title.

DUTIES OF ADMINISTRATOR

SEC. 211. (a) The Administrator shall—

(1) prescribe such rules and regulations as may be necessary to carry out the provisions and purposes of this title;

(2) indicate to the environmental centers from time to time such areas of research and investigation as to him seem most important, and encourage (specifically through the development of (A) interdisciplinary teams within each environmental center, which teams may be composed of competent persons from the environmental center, other educational institutions and research facilities, and private industry, and (B) interinstitutional arrangements among such educational institutions, private industry, and governmental agencies at all levels) and assist in the establishment and maintenance of cooperation among the several environmental centers;

(3) report on or before January 1 of each year to the President and to Congress regarding the receipts and expenditures and work of all State and regional environmental centers assisted under the provisions of this title and also whether any portion of the appropriations available for allotment to any environmental center has been withheld, and, if so, the reasons therefor; and

(4) undertake a continuing survey, and report thereon to Congress on or before January 1 of each year with respect to—

(A) the interrelationship between the types of programs required to be implemented, and implemented, by environmental centers assisted under this title, and

(B) ways in which the system provided for in this title for improving the Nation's environment may be integrated with other environmentally-related Federal programs.

The Administrator shall include in any report required under this paragraph any recommendations he deems appropriate to achieve the purposes of this title.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 66 to the aforesaid bill, and concur therein with an amendment as follows:

On page 21, line 15 of the Senate engrossed amendments, strike out "1972," and insert: 1973,

On page 21, line 16, of the Senate engrossed amendments, immediately after "$51,954,709" insert: , subject to adjustment for growth and cutting,

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 67 to the aforesaid bill, and concur therein with an amendment as follows:

On page 22, line 3, of the Senate engrossed amendments, strike out "Section" and insert: With respect to the offer made on June 29, 1971, and effective with the making of such offer, section

Resolved, That the House recede from its disagreement to the amendment of the Senate to the title of the bill, and agree to the same.

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished Senator from Washington (Mr. JACKSON), I move that the Senate concur in the amendments of the House.

The motion was agreed to.

NATIONAL ENVIRONMENTAL DATA SYSTEM

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on House Concurrent Resolution 716.

The PRESIDING OFFICER. The concurrent resolution will be stated.

The legislative clerk read as follows:

H. CON. RES. 716

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House of Representatives, in the enrollment of the bill (H.R. 56) to amend the National Environmental Policy Act of 1969, to provide for a National Environmental Data System, is authorized and directed to make the following corrections:

On page 1, line 7, of the House engrossed

bill, strike out "NATIONAL ENVIRONMENTAL DATA SYSTEM" and insert the following: "SHORT TITLE".

On page 2 of the House engrossed bill, between lines 18 and 19, insert the following center heading: "NATIONAL ENVIRONMENTAL DATA SYSTEM".

On page 3, line 7, of the House engrossed bill, before the period insert the following: ", knowledge, and data".

On page 3, line 8, of the House engrossed bill, after "Information" insert the following: ", knowledge,".

On page 3 of the House engrossed bill, between lines 12 and 13, insert the following center heading: "AVAILABILITY OF INFORMATION, KNOWLEDGE, AND DATA".

On page 4 of the House engrossed bill, between lines 11 and 12 insert the following center heading: "DIRECTOR OF THE DATA SYSTEM".

On page 6 of the House engrossed bill, between lines 9 and 10 insert the following center heading: "ADMINISTRATIVE PROVISIONS".

On page 6, line 22, of the House engrossed bill, before "data," insert the following: "knowledge, and".

On page 6 of the House engrossed bill, between lines 23 and 24 insert the following center heading: "INTERAGENCY COOPERATION".

On page 8 of the House engrossed bill, between lines 13 and 14 insert the following center heading: "AUTHORIZATION OF APPROPRIATIONS".

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

There being no objection, the resolution (H. Con. Res. 716) was considered and agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had agreed to strike out the enacting clause of the bill (S. 1316) to amend section 301 of the Federal Meat Inspection Act, as amended, and section 5 of the Poultry Products Inspection Act, as amended, so as to increase from 50 to 80 percent the amount that may be paid as the Federal Government's share of the costs of any cooperative meat or poultry inspection program carried out by any State under such sections.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The Senate continued with the consideration of the bill (H.R. 13915) to further the achievement of equal educational opportunities.

Mr. HART. Mr. President, let me read what their statement says about this measure we are being asked to pass in a few days without committee consideration and under the trip-hammer pressure of the desire to adjourn. These nearly 500 law professors state:

> The passage of this bill . . . will—
>
> Place the legislative and judicial branches in conflict;
>
> Impair the Supreme Court's role as final arbiter of Constitutional matters;
>
> Remove a remedy for the vindication of minority students' constitutional rights, even when that remedy is constitutionally required; and
>
> Open to relitigation nearly two decades of judicial desegregation decisions, many of which involve no busing whatsoever, thus leading to divisiveness and confusion in many communities already satisfactorily operating under school desegregation plans.

That is not a warning to be brushed aside lightly. It is a most serious indictment of this measure by a group of thoughtful legal experts who are not prone to shoot from the hip.

This statement is mournful.

In my own State, for example, over a dozen members of the faculty at the University of Michigan School of Law joined in this statement. They include men such as Paul G. Kauper, Alfred Conard, past president of the American Association of Law Schools, former Dean Francis Allen, and Dean Theodore St. Antoine, all men whose views I take seriously and highly respect. Eleven other law school deans and many noted constitutional authorities were among the 500 signers.

So we know, or at least we should know, that the most serious dangers of a constitutional crisis are posed in this legislation, waiting like landmines in the field of foreseeable litigation. We will be discussing these constitutional questions in more detail.

In these circumstances, which I have just described, shall we say that the Senate saw fit to accord 1 or 2 days' review to the issues of this magnitude? Is that what Senators have meant in recent years when we have heard so much about this Senate as "the greatest deliberative body in the world"?

Those who wish to see this bill steamrollered through the Senate Chamber—despite the lack of Senate committee study, despite the lack of hearings available to us from either body, despite the radical changes in the original bill which have prompted its chief sponsors in the House to denounce it as unconstitutional, despite the pressure to adjourn and the election-year overtones—those who would jam this measure through despite all that will, I am confident, accuse some of their colleagues of unfair delay, of foot-dragging.

Well, call it what you will; when the stakes for our children, and for our constitutional system of government are this high, some of us will insist that the bill receive careful and adequate consideration.

Let me note that there has been no effort to block the leadership's motion to call up the bill, as has happened on past occasions. We are prepared to debate the measure. Remember, too, that it was not those of us concerned about this bill who prevented it from being considered by the Senate committee with jurisdiction back on Labor Day when it was sent to the Senate. Indeed, the senior Senator from New York tried to effect such a referral but was unable to do so under the rules.

There has been no effort to block the leadership on a motion to call up the bill, as has happened on past occasions. We are prepared to debate the bill. Those of us concerned about this matter have not kept it from assignment to the Senate Committee on Labor and Public Welfare.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. JAVITS. Mr. President, I yield an additional 5 minutes to the Senator from Michigan.

Mr. HART. Mr. President, indeed, the senior Senator from New York (Mr. JAVITS) tried to effect such a referral but was unable to do so.

Finally, by way of comparison, let me remind my colleagues that we have just seen over 2 weeks debate of the Consumer Protection Agency bill, prolonged by those who insisted its impact on American business had not been adequately explored—even though the measure was accompanied by full hearings and a committee report available to all Senators and had been passed by an overwhelming margin in the Senate in the previous Congress.

Many cases raising issues of school desegregation remedies not yet fully resolved by the Supreme Court are on appeal now. In the coming year the Court will resolve many of them, and, in the meanwhile, in many instances the orders being challenged are stayed pending appeal. Surely, we can afford to wait a few months to see what the Court says is in fact required—in large metropolitan areas, for example. And, in any event, surely the Senate can accord more than a day or two to the 14th amendment to the Constitution.

To those who will cry "filibuster" from the outset, I say "No, this is not an effort to filibuster and prevent the Senate from acting on a bill." The debate that I hope will ensue shall be an effort merely to demand that the Senate act responsibly, and not act under the worst imaginable conditions for reflective disposition, without the opportunity for adequate review by the Senate. When there has been an opportunity for that to occur, then I would not seek to prevent action on the bill. When proponents and opponents of the bill have had their day in court in the Senate, then I will be fully prepared to proceed to vote on the measure.

Mr. ALLEN. Mr. President, I yield 5 minutes to the senior Senator from Virginia.

The ACTING PRESIDENT pro tempore. The senior Senator from Virginia is recognized for 5 minutes.

Mr. HARRY F. BYRD, JR. Mr. President, I think it is very important that the Senate of the United States meet forthrightly the issue of compulsory busing for the purpose of achieving a racial balance in the Nation's schools. This is a vital issue to so many States and cities. It is a vital issue to the State of Virginia. It is a vital issue in many States.

The Senate of the United States has an opportunity before adjourning to consider this matter and to act on this matter. I think the people of our Nation are looking to the U.S. Senate for some legislation to protect the people from unreasonable court decisions and from unreasonable regulations issued by the Department of HEW.

I think the Senate will debate this matter fully. The Senate can stay in session long hours and meet the requirements laid down by the distinguished and able Senator from Michigan. But I doubt if there is any issue more important to more people than the issue of compulsory busing.

I believe in the neighborhood school concept. I think most of the people of our country do. In my judgment compulsory busing is wrong. It is unjust. It is not in the public interest. It is not helpful to either the children or to the parents. It is not helpful to the whites or to the blacks.

Mr. President, the Senate now has an opportunity to face this issue squarely. There is adequate time between now and adjournment. There are adequate hours in the day for a full discussion. And if the Senate is to meet its responsibility to the American people, I think it must meet this issue head-on and pass effective legislation to protect the people of our Nation against compulsory busing.

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

Mr. ALLEN. Mr. President, I yield 15 minutes to the distinguished senior Senator from Tennessee (Mr. BAKER).

The ACTING PRESIDENT pro tempore. The Senator from Tennesee is recognized for 15 minutes.

Mr. BAKER. Mr. President, I thank the distinguished junior Senator from Alabama for yielding so that I might make, as it were, opening and preliminary remarks on the question at hand. I intend to speak further on this matter as the debate proceeds. I will not long detain the Senate today with a lengthy discourse on the merits of the pending proposal before the Senate or the demerits of the action taken by the House of Representatives or its pendency in the Senate.

There are not many areas of the country that have experienced judicially ordered massive crosstown busing the way my State has.

I doubt whether there is any city in the United States that has experienced it to the extent that our capital city, Nashville, has, to the point where there are more than 50 percent of the students of that school system being transported by bus, where there is now a general agreement that enormous hardships have been worked not only on the children, but also on their parents and the resulting financial resources of the community, in that rank of importance.

I have seen it firsthand. I know what happens when a community is subjected to the judicial decree that young children be bused in some cases as far as 50 miles passed, not one or two or three schools, but as high as five, six, or seven schools, totally out of the neighborhood in which that child lives, to some distant part of a very large county.

I know the fears that are set up in the minds and the hearts of the parents of those children. I know that some of those fears prove to be at least not totally founded, but others prove to be situations worse than I believe the parents expected.

Altogether, I can say without reservation that judicially ordered busing in Nashville and in Tennessee, where we have had it now for some months, has been a colossal, disastrous piece of judicial mischief.

Since the Supreme Court of the United States in Brown 1 first enunciated the requirements for the dismantling of institutional segregation throughout the United States and then further elaborated on their points of view in Brown 2 and subsequent decisions, I then and now have been in agreement that the constitutionally protected and guaranteed rights of our charter document do in fact require a unitary school system and the elimination of a dual school system. I believe in the unitary school system, and I am not a Johnny-come-lately to that concept. I believe in the equality of educational opportunity for every child, whether white or black or, for that matter, whether a rural child or a city child or a northern child or a southern child.

Mr. President, on another day in the history of the Republic I expect that this body will turn its attention to other legislation to try to bring some rationality to the devotion of physical resources to equal educational opportunity. I note, as do many of my colleagues, the direction of the movement in California and in other States, and I applaud it. I believe the judicious and sensible redrawing of attendance lines, and many other judicially decreed tools have been variously successful and have worked with varying degrees of success.

None of the tools and techniques prescribed for the dismantling, as they say, of the last vestiges of institutional segregation has caused anything like the stress, strain, emotionalism, outcry, and disruption that massive crosstown busing has caused since the Swann case.

Mr. President, Brown and Swann enunciated a principle: Attendance lines and busing are tools to implement that principle and to carry it out.

It is important to note that we talk about the principle of access to equal educational opportunity and to the means by which we undertake it. I suggest that if we keep that distinction in mind we come to terms on whether or not busing has proven itself an acceptable, workable, efficient, and desirable tool for the furtherance of what I believe is almost a universally supported principle, and that is the desegregation of our school systems.

I find some considerable impatience welling up in my spirit when I hear the argument that opposition to busing is racist, segregationist, antiblack, and bigoted. I do not believe that for a second. I hope very much the tenor of the debate in the Senate does not turn on such an observation but rather on the merits of busing as a tool for the desegregation of our school systems.

It is interesting to note that courts themselves only recently came to busing as one of the tools in the kit of tools they have provided in the last two decades; that they consistently and studiously avoided ordering busing or prescribing it as a permissible technique until Swann. So even the courts themselves have not always felt busing was a desirable and workable tool, and have particularly rejected it in a number of cases prior to Swann. So it is difficult to make a case that resistance to busing is, per se, resistance to desegregation. They are different things; we are talking about complex legal concepts, we are talking about a continuing evolution, a development of judicial techniques, the tools and machinery supplied for the basic principles enunciated by the courts in Brown and other landmark decisions.

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

Mr. BAKER. I am happy to yield to the Senator from Tennessee.

Mr. BROCK. Mr. President, I simply wish to express my gratitude to my senior colleague for bringing some direction to this discussion. The senior Senator from Tennessee has labored mightily for these many years to achieve equal and fair opportunity for every child in the State. I think we have had rather considerable success. We have done it largely without the court and we have done it largely voluntarily; and largely the people of Tennessee believe that every child deserves an equal opportunity, be he black or white, rich or poor.

I think the Senator has raised the most fundamental question of the debate and that is the question of busing as a tool in pursuing this quest for equality. The situation in our State shows that it is not a tool; to the contrary, it is a tool of intimidation, anger, agony, a tool which results in chaos in the community rather than communication.

I want to associate myself with the remarks of the senior Senator from Tennessee and to express my personal gratitude for his efforts and his leadership on this particular measure throughout these months because it is that kind of leadership that has brought us to the point where we have some hope today, and I am grateful for his efforts and the fruits of his efforts which we have close at hand if the Senate will stay on course in efforts to guarantee to every child in America equality of opportunity, equality of public support, without the coercion of numerical balances which would go back to pre-1954 and place the racial bias on our school system.

I thank the Senator for his contribution.

Mr. BAKER. Mr. President, I thank my colleague for his remarks. I am grateful.

I intend to speak later in greater detail as we progress in the debate and take as active a part as I know how because I feel keenly about this matter and I know the people of my State are deeply involved, being a State where such impact has been experienced.

And now, in these preliminary remarks I wish to express my appreciation to the joint leadership for making it possible for us to have a vote on this matter. It was not always so clear and apparent that we would have a vote on the House-passed bill. Together with others, I made, what might be called persistent inquiries about when we might expect our "day in court," so to speak. I commend the leadership for tolerating our questioning and for scheduling this matter for debate.

I commend the President for stating forthrightly his support for making this the pending business, his support for the bill, and his expression of concern that Congress not adjourn until it acts on the measure.

I express appreciation to those who, like the Senator from Michigan, expressed their desire to have us come to terms on the merits of this debate. I hope it will not be necessary to try to shut off debate but I hope if that becomes necessary in the waning days of this Congress we can do so quickly and promptly by an overwhelming vote so that win or lose the country will know that the Senate came to grips with this controversial matter.

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

Mr. BAKER. I yield.

Mr. HART. I thank the Senator, and I wish to reflect on what the Senator said about willingness.

We are willing to permit the Senate to work its will when we have enabled the Senate to be in a position where it can act responsibly.

Mr. BAKER. Mr. President, in closing I express my appreciation to the distinguished junior Senator from Alabama for his great leadership in this body and for his stewardship of the issue over the last several weeks. He has been most helpful and I suspect he will be most helpful in the debate as it progresses. I have many things to say, and I will reserve them until we get to the merits of the controversy.

I thank the Senator for yielding.

Mr. JAVITS. I thank my colleague.

Mr. WILLIAMS. Mr. President, last August 18, the Senate received a message from the House on H.R. 13915—a measure the House had passed the previous evening.

Under normal procedures this bill would immediately have received two readings and would have been referred to the Committee on Labor and Public Welfare—the committee which, under the Senate rules, has jurisdiction over measures relating to education.

The customary legislative process was thwarted in this instance, however, by the junior Senator from Alabama (Mr. ALLEN)—a supporter of H.R. 13915—who, immediately following its first reading, objected to having the second reading on the same day. This forced the matter to go over until a subsequent legislative day. The Senator from Alabama explained to the Senate that the course of action he had chosen to pursue was calculated to prevent H.R. 13915 from being referred to committee—it being, in his view and that of others—too important a measure for it to be delayed by committee consideration.

On September 6, H.R. 13915 was laid before the Senate for second reading, upon which the junior Senator from Alabama objected to further proceedings. As a result of this objection, the bill went directly to the calendar, pursuant to rule XIV of the standing rules of the Senate.

At that time, the ranking minority member of the Committee on Labor and Public Welfare, Mr. JAVITS, inquired of the Chair as to whether there existed under the rules any way in which the bill could be referred to committee, and was told by the Chair that there was not, in view of the parliamentary situation which had been created.

Seven weeks have now elapsed since we received the House message on H.R. 13915. During this time, the appropriate committee of the Senate has been denied the opportunity to hold hearings on the bill, to give consideration to its provisions, or to report its recommendations to the Senate. Yet we are now expected to debate this far-reaching and complex measure and to act upon it in reasonable and responsible fashion.

That it was a serious mistake to deprive this bill of the benefit of committee consideration—consideration which we find useful to accord even the most inconsequential matter—should be readily apparent when we reflect on the circumstances under which it has reached us.

Since its original introduction as an administration bill such sweeping changes have been effected in H.R. 13915 during its consideration in the House—some added at the last minute, in a hectic late-night session—that several of the Representatives who introduced the original version voted against H.R. 13915 on final passage.

For example, the original bill permitted busing of students in the lower grades if the numbers of students, distances and the durations of the trips involved were comparable to transportation in that particular community in previous years. In the case of older grades, that limitation was not applicable if the court found additional transportation necessary to desegregate. In committee a new concept was substituted: The "next closest school limitation." Without regard to local conditions or existing student transportation, this provision prohibits busing beyond the school next closest to the one in the student's immediate neighborhood. On the House floor, this concept was expanded to apply to all grade levels as well. There was little opportunity for assessing the potential impact of this concept in the House committee. We do not know how many schools would be affected, how much school desegregation would be prevented or what the impact of this limit would be upon the white and black students who now live in our urban areas.

In addition, several other provisions provide conditions under which the power of courts to require further desegregation efforts shall cease. It is not at all clear to what extent these provisions would overrule decisions of the U.S. Supreme Court; moreover, such provisions appear to be inconsistent with other parts of the bill itself.

It should be noted that an extraordinary number of legal scholars and prominent attorneys in all sections of the country have expressed grave doubts about the constitutionality of the House bill—a matter which in itself gives us cause for serious reflection.

Under all the circumstances, I believe it essential that while this bill is before us for debate, the fullest possible discussion be given to the potential ramifications of its provisions, and the grave questions they raise. However, the drive to adjourn is strong, and election-eve overtones combine with the highly emotional feelings surrounding the issues presented by this bill. Under these circumstances, I am very much concerned that the reasoned and informed consideration which such a measure should receive has been greatly jeopardized by the determination of some Members to circumvent the normal legislative process.

H.R. 8389—THE VICTIMS OF CRIME ACT OF 1972

Mr. McCLELLAN. Mr. President, during the past month or so the Senate has passed a number of significant measures designed to give necessary assistance to those who may be victimized by crime. These measures have included:

S. 750—to afford innocent crime victims compensation;

S. 30—to secure adequate group life insurance for public safety officers;

S. 2087—to give slain public safety officers a $50,000 gratuity; and

S. 16—to secure for victims of racketeering and theft enhanced civil remedies.

On September 18, 1972, Mr. President, all of these several bills were combined and by amendment adopted were made a part of H.R. 8389, a House-passed drug bill. The purpose of this action was to afford the House the opportunity to act on these measures before the close of this session of the Congress. No one necessarily expected the other body simply to accept each or all of the Senate amendments. It was our hope and expectation that a conference could be held between the House and the Senate and that a mutually satisfactory compromise could be worked out. We believed this was an acceptable and feasible approach to getting this important legislation to the President for his signature.

Mr. President, for some unknown reason, it now appears that the other body is not even going to appoint conferees so that a good bill can be finally passed. If it does not, that will mean that this entire package of urgently needed legislation is going to die and fail of enactment at this session of Congress. Should this occur, it will be a tragic loss for our Nation. The Senate has done everything in its power to get these measures passed.

I think the Senate can be proud that it has faced up to its responsibilities. I think it is to be deeply regretted if the other body does not act so that these measures can become law to deal with these problems.

But, Mr. President, I want to assure my colleagues that the failure of the House to act will not deter us from continuing this effort to get appropriate laws enacted to deal with these problems. At the next session of Congress these measures will go back before the Senate, and I have no doubt they will pass again with the same overwhelming vote by which they passed this time and again the House will have the opportunity and the duty to consider these measures and, hopefully, it will enact them into law.

Mr. President, a very fine editorial was published in yesterday's Washington Star-News. The editorial is entitled "Aid for Crime Victims." The concluding paragraph thereof reads:

These efforts will come to nothing, however, unless the House Judiciary Committee moves quickly to help organize a House-Senate conference on this legislation. There is just barely time for enactment before adjournment, and it's up to the House.

Let the record so reflect. The Senate has met its responsibility and the failure to get this vital legislation enacted into law in this session of Congress rests not upon the inaction or failure of responsibility on the part of the Senate but it rests squarely on the other body.

Mr. President, I ask unanimous consent to have printed in the RECORD the editorial from yesterday's Washington Star-News.

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

AID FOR CRIME VICTIMS

Reports always are telling us what crime costs the nation—away up in the billions and thousands of lives lost in a year's time. But behind the gross statistics lie countless unreported stories of prolonged suffering and financial ruin. For much of that cost is borne by innocent individuals—the victims of crime, and their families. All too often the victim is wiped out by long hospitalization or loss of earning power over an extended period. In some cases, the families can't even afford burial costs, for a great many of crime's casualties are poor people.

So the Senate's passage of a bill to compensate victims of violent crime, and persons who are injured or slain trying to assist them, is most welcome. These stricken people could receive government payment for medical, therapeutic and burial expenses, loss of earnings and support, and child-care expense (so that one parent could work). Wisely omitted is coverage of property losses, except those incurred by citizens intervening to help crime victims. Also left out, prudently, is any recompense for injury, or death suffered in intrafamily violence. But in other regards, the measure is generous, providing up to $50,000 in aid for an individual.

Though its immediate application would be only to territories under direct federal jurisdiction, including the District of Columbia, the bill lays excellent groundwork for extending this system to the whole country. Under a new federal grants program, the states could adopt similar plans, with the federal government paying 75 percent of the cost. Only seven states (including Maryland) have set up programs to compensate crime victims. Most of the others undoubtedly will hasten to do likewise if this legislation is enacted. Nor is the federal cost estimate at all forbidding—only $15 million in the first year, rising to about $23 million annually in five years.

The measure is part of a crime-remedy package that also includes $50,000 federal payments to survivors of law officers and other public safety personnel killed in the line of duty. In addition, they would be compensated for certain crippling injuries, and given other protections. All this is needful, in view of the grim tallies on the killing of policemen. And it is fitting that Congress should, at the same time, affirm the government's responsibility to injured citizens whom the law enforcement system has failed to protect.

These efforts will come to nothing, however, unless the House Judiciary Committee moves quickly to help organize a House-Senate conference on this legislation. There is just barely time for enactment before adjournment, and it's up to the House.

PENSION REFORM—WHERE DO WE STAND?

Mr. JAVITS. Mr. President, I would like to make some remarks regarding the reform of private pension and welfare plans. The majority, apparently, has made up its mind not to permit the bill, which has now gone through the Committees on Labor and Public Welfare and Finance, and is a very well articulated bill, to be scheduled for floor consideration here. The Senator from Michigan (Mr. GRIFFIN) spoke to this matter the other day, and I feel he made a very convincing case. Yet the majority does not wish to do this, apparently, while the presidential candidate of their party—and I really regret this—is issuing statements excoriating the administration for its position on pension reform. Here we have an opportunity to act on a measure which has been the result of months and months of study. The bill is a very gifted job and it has been worked out in a completely bipartisan way, by both the Senator from New Jersey (Mr. WILLIAMS) and myself. I think that the people who are interested—millions of them—ought to understand the situation.

There is now close to a 50-percent Senate sponsorship of the bill. That certainly is a substantial showing of concern, and therefore the Senate should have an opportunity, on an extensively studied and constructed bill, to work its will.

I hear that there is some possibility that we may come back after the election in November. I do not know whether it is true or not, but, Mr. President, I would much rather bring this bill to a vote now, with so much interest and so much work and study behind it, than wait and take the remote chance that we will come back after November.

My feeling is very strongly emphasized by a development which just occurred and which only emphasizes why this bill is so important.

We have just learned of another pension plan which has been terminated—that of the Hickok Manufacturing Co., of Rochester, N.Y. As of October 1, 1972, that pension plan has been discontinued by the company which had acquired Hickok, the Tandy Corp. of Fort Worth, Tex.

I ask unanimous consent that a letter on this matter be printed in the RECORD at this point.

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

HICKOK MANUFACTURING CO., INC.,
Arlington, Tex., September 25, 1972.

I am writing to tell you that, pursuant to the terms of the plan, the company has discontinued the Hickok Revised Basic Pension Plan under which you are currently receiving a pension. The effect of this discontinuance on you will be to eliminate the possibility of a pension when you reach the eligible age as provided for by the plan.

The change will be made effective with pension payments made on October 1. The decision to discontinue the plan was a very difficult one to make. We have tried for more than a year to find some alternate course that could be taken which would permit the continuance of these pension payments, but we have not been successful. When the Tandy Corporation purchased Hickok Manufacturing Co., Inc., a little over a year ago, Hickok had a long history of operating losses and the company was not far from having to close down. There were many costly programs and practices that had to be discontinued if the company were to be saved. The changes have affected active employees, retired employees, and employees who have terminated. We have done our best to be as fair as we could be to each of these groups and at the same time to the Tandy stockholders whose money was invested in Hickok. There have been terminations, salary reductions, benefit plan changes, etc. that have affected all of us. We believe that our obligation to those who depend on us required these changes. We have regretfully concluded that this action on the pension plan is a necessary part of our efforts to make Hickok into a secure company.

The terms of the pension plan included specific rules for the manner of distribution of the total assets accumulated in the Pension Fund in the event of discontinuance. Connecticut General Life Insurance Company, who are administrators of the plan, have made the calculations necessary to allocate the money in the manner prescribed by these rules. Total available funds were first applied (as long as they lasted) to provide pensions to persons currently retired and receiving pensions. When this group has been provided for, the rules say that remaining funds are next to be applied to provide for persons not yet retired but having sufficient amount of service to have acquired a vested right to a pension upon retirement. Unfortunately, total funds in the plan at discontinuance were only sufficient to assure about 88% of pensions to persons currently retired. No funds were left for persons with a vested right or for any other participants not currently receiving retirement benefits, and of course, no funds revert back to the company.

I am sorry it is necessary to write you of this change which I assure you was made only after most careful consideration of all possible alternatives.

Sincerely yours,

LAWRENCE H. FLYNN,
Vice President-Treasurer.

Mr. JAVITS. The result is, Mr. President, according to information gathered by my staff, that 350 retired employees will be compelled to take a 12-percent cut in their pensions, and 400 employees who are not yet retired and whose pension are vested; that is, employees who have rights to a pension, will receive absolutely nothing. In addition, there are 96 active employees who have not earned vested pensions and they also will receive nothing.

Let us note that a substantial number of the 400 who will be entitled to nothing have worked for Hickok for over 15 years, many over 25 years, and they are all older people.

All of that is the result of the acquisition of this company by another corporation, which determined to conduct a phasing-out operation in the Rochester company which had this pension plan.

Moreover, this was done not for any lack of earnings. In the 6 months ending December 31, 1971, it appears that Tandy's net income increased by more than one-third. Income rose from $7.23 to $9.85 million. Sales rose from $13.89 to $17.93 million. And it is interesting

to note that in July of 1971 when Tandy purchased Hickok, Tandy's stock split 2 for 1.

Thus, the acquiring corporation, in fact, is doing better in the current year than it did in the previous year. It is a company with an appreciable income, in the millions. So here are 400 employees with absolutely nothing and 350 already retired with cuts of 12 percent in their pensions, because Congress has not yet provided, in an important way, for pension plan reform.

I regret very much the decision of the majority not to take up this bill, if that is their decision. I can only express the hope that it will have high priority and early attention if we do come back in November, and certainly immediately after the first of the year, when I am sure the Senator from New Jersey (Mr. WILLIAMS) and I will introduce it again.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The Senate continued with the consideration of the bill (H.R. 13915) to further the achievement of equal educational opportunities.

Mr. ALLEN. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ALLEN. Mr. President, I yield 15 minutes to the distinguished Senator from Florida (Mr. CHILES).

Mr. CHILES. I thank the distinguished Senator from Alabama for yielding this time to me.

Mr. President, I want to take this opportunity to compliment the distinguished junior Senator from Alabama for the role that he has played in regard to the legislation that is now before us. I really think that he is probably more responsible for this legislation's being brought to the attention of the Senate and being brought to the floor of the Senate at a time when we do have an opportunity to have the Senate work its will on this legislation than any other Member of the Senate. He constantly questioned all those who would have something to do wtih the legislation in an effort to determine when we could expect to have the legislation before the Senate. I think the fruits of his efforts are that we are now on the legislation.

I also compliment the dsitinguished majority leader in that he did make a commitment to a number of Members of the Senate, at the request of the junior Senator from Alabama, that this legislation would be brought before the Senate in a timely fashion, or at a time when the Senate would have an opportunity to work its will, and he has certainly honored that commitment, as he honors every commitment that he makes.

I know that there is no particular magic in the bill that is before us now. In fact, if the junior Senator from Florida could draw a bill on this subject, he would draw it quite differently from the bill that is before us now, but this happens to be the only vehicle that is before the Senate, that has passed the House of Representatives, and that many of us find that we have any opportunity on which to express our feelings on behalf of ourselves and our people. So, for that reason, I think this particular bill becomes much more important than perhaps it should be as a piece of legislation.

The junior Senator from Florida is a little distressed that we are involved in a debate like this, in which the whole subject that we are talking about is antibusing. The subject of busing itself, I think, has gotten so far afield from what we should be concerning ourselves with, and that should be quality education—quality education for every child, whether he is rich or poor, or black or white. That really should be the concern not only of the Senate and of the Congress but, as I am sure it is, the concern of mothers and daddies everywhere, and of all of our people.

Somehow, we have gotten to the situation where busing was thought to be the answer. I think much of the responsibility for that lies with the Congress because, since the Brown decision in 1954, I think it has really failed in its responsibility to set forth guidelines as to what would be a unitary school system, what would comply with the court's decision, and what would be a quality school system. If we could have gone in that direction, and if Congress had been positive in the reaction that it should have taken, then perhaps we would not be in this debate today.

The courts did wait for a long time before they got into the bramble bush of busing. They did not make pronouncements for a number of years. Congress, again, in some instances, you might say, waited, hoping the Court would do their job for them, or hoping that the Court would say that they were not going to order busing.

But we find that once the courts got into the idea, now they are caught up in the numbers game, which was first the fallacy that HEW and the Justice Department got into by thinking that there is some magic in the mathematical mixing of the races, so that you have to have that magic formula in every school.

I say they felt there was some magic, in that they seemed to feel there was a magic formula for the South, but they did not seem to feel that there was any great magic in it for anyone else over the period of years, until finally, in just very recent times, they have taken some halfhearted steps in that direction. But we in the South have been the guinea pigs in the experimentations in regard to busing, and this magic formula of trying to mix on a mathematical basis every school on the basis of race has occurred in the South.

We can look at the results and see what is happening. We can look at any study that has been made and see that busing has never done anything to promote quality education. If anything, these studies—and these are not done just in the South, or done by people who really want to keep the races from being mixed, but they are independent studies—show that in fact it works the other way. To see how ridiculous it gets, in my State we have a different ratio of blacks and whites in every county.

If we must have a 17 percent mix in one county, an 11 percent in another county, and a 22 percent mix in another, what do we do in the States that have no blacks? What do we do in Idaho, in Iowa, or in other States where there are no blacks? Are we depriving the white children of having an equal education, or should we bus them in from out of State? No one would want to do that, but it really shows the ridiculous extent we have gone to.

Looking at Florida, the State I know best, since the Brown decision of 1954 we have been able to mix our schools in the rural areas with really no trouble, no fanfare, no court orders, and really no problem with HEW, because the races live close together. It has not amounted to a problem of trying to buy buses. They were just able to cross a couple of blocks and mix in the schools, and that has worked fine. Our problems have come about in the cities, in Jacksonville, Tampa, Orlando, St. Petersburg, and where, by virtue of the size of the city, the problem becomes great, where they have all black neighborhoods.

The easy thing for the school board to do, in many instances in the all black neighborhoods, was to close those schools. It was easier than trying to bus some white children into the black neighborhood. In many instances, they were inferior schools anyway. I think this was one of the great problems; there was no such thing as a separate but equal school system. They were separate, but not equal.

To a certain extent this has been good, in that it has pointed out that we would have equal schools. By now I think most people—and I know the people of Florida—have faced the fact that the schools were not equal. But rather than do something about the black school, rather than try to improve or make a quality school out of it, we just closed that school. That was the easiest solution to it, and we thus not only deprived the blacks of having a neighborhood school but we closed their community center, because in most instances the buildings serve not just as the school, but as the community center as well.

I introduced a bill that would try to provide excellence, a prize school bill, to provide for additional funds that would go to any school in an area in which any lower income group resided, or a school that had been deprived, so that they could have a lower pupil-teacher ratio, so that they could have the best kind of recreational equipment, and the best kind of vocational technical training, to really make a prize school that would be something the neighborhood could build from. I think we would find, if we had one teacher to 22 pupils in such a school, whereas the average of the others was 1 to 30, a lot of parents wanting to

send their children to those schools, and have to some extent a voluntary reverse flow.

But we have not been able to do anything with that legislation, so we just close such schools and bus the children, not just to the nearest facility, but they have gotten into every kind of plan in the world, in which one family with six children can have its children going to six different schools.

They go to one school for two grades, and then to another school. Many of them are bused as far as 30 miles or more. Some of them are riding a bus 3 hours in the morning and 3 hours in the afternoon, and yet they are going past schools all along the way. There is no way that the junior Senator from Florida can explain to a mother who has her child being bused over those distances that there is or can be any rhyme or reason in a plan that requires that kind of busing. The mother cannot visit the teachers. The child cannot participate in recreation or afternoon activities. The child is not close to home in case any problems come up.

Many of these problems have been brought to people's attention. But yet the sad part about it is that unless you see the problems that arise in your State, you cannot really understand the plight and the feeling of frustration that the mothers of Florida and the mothers in States where busing is going on are going through.

I think this is so sad because I am talking about people now who are not racists, they are not bigoted, they were not opposed to the mixing of the races, they were really willing to have their children go to integrated schools, they never had any feeling on the race issue at all, and suddenly they are brought into this situation in which their young children have to be bused, and they simply go out of their minds, because there is no way that you can make them understand that there is some rhyme or reason to this policy, when they know—and they do know—that we in Florida are being put to this test, and yet it is not happening in New York, it is not happening in Chicago, it is not happening in Los Angeles, and it has not been happening in most other places in the country.

They realize that there is a double standard, and that they are being subjected, now, to a different school system, or a separate school system, in the South or in Florida as opposed to the rest of the Nation.

This, I think, is where the Congress of the United States has got to come to grips with the situation. The junior Senator from Florida has voted on a number of occasions on measures, and is willing now to vote on a number of measures, some of which could include busing, if it is going to be done on a uniform basis everywhere in this country. If it is sauce for the goose in Florida, then it ought to be sauce for the gander every other place. But as to the fiction that has continued over the years that there was a difference depending on whether you had a de facto or de jure segregation policy, the time for that has long since passed; and it is interesting for the junior Senator from Florida to see what has happened in Florida—I think throughout the South but I know in Florida—since the Brown decision.

We had a State policy of segregation in Florida. It was blatant. It was open. It was calculated. It was the law of the land that we were going to prohibit the races from mixing. The Brown decision came in and said, "This is wrong; this is against the Constitution of the United States; and we will not tolerate it; it has to change." Florida has accepted that decision, and the people of Florida have.

In the statewide vote that recently was taken in Florida, in which 74 percent of the people expressed themselves as being against busing, 79 percent of the people said they did not want to go back to the separate school system. So they evidenced their feeling that what had taken place prior to the Brown decision was wrong.

But I think that in a way Florida is much better off than many of the areas of the North, because what we were doing was open; it was deliberate; it was blatant. Now that we have recognized that and we see that that is wrong and that it always was wrong, we have corrected it, and we have corrected it in a more open manner.

Yet, in the North, where that segregation has been in a much more concealed method, where it has been done not openly but much more under cover, we now find more problems. I think the people in the North do not want to accept and face that situation and are still practicing segregation. I think this is one of the reasons why you cannot get any response from the North in regard to how we should attack the problem of busing; because as long as it has not come to their doorstep, they do not want to face up to the problem. They want to go just the way they have been going, because they have separate school systems now, they have segregation now, they have had it over the years. But just because they did not write it into their public policy, because they did it through their neighborhood systems and through the pattern of where people live and every other way, they do not have to face up to the problem, and they will not face up to it now.

We in the South are going to be beyond the race problem long before the North has their problem solved, because it was a different situation and it was an open problem in the South, and we are facing it on that basis.

I think Congress has before it now, in this piece of legislation, an opportunity to start addressing itself to the problem. We ought to attempt to call a halt to a massive attempt to mix on a mathematical basis, and we should get busing behind us and get back to the real problem, which is quality education and equal opportunity. We really should be addressing ourselves to those kinds of problems.

I think the Court needs direction and probably is seeking direction, because Congress has failed for so long to step into this area and to set some guidelines. I hope the Senate would be able to address itself to this piece of legislation and that during the next week we would be able to debate it and come to a vote. Hopefully, that vote will be in favor of this bill; but at least I would like to see the Senate take some action and not stick its head in the sand, because the problem is not going to go away. Many people think it will. But if they could come to my State, and if the law is equally applied, they would realize that it will not go away.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. GAMBRELL. Mr. President, before closing today, I should like to address the Senate briefly on the unfinished business, the so-called antibusing bill (H.R. 13915).

I have some remarks prepared which I intend to submit on Monday next, but I thought it would be appropriate and helpful, since I understand that constitutional issues are involved on the moratorium or the provisions of the pending legislation which limit the jurisdiction of the court, which has been described at some length today, to put in today's RECORD some material on this subject which is rather current and is now pending before the Supreme Court of the United States, that is, the case of Ann Gunter Drummond, et al., against Robert L. Acree, et al., involving proceedings affecting the Board of Education in Richmond County, Ga.

There are a number of issues in that case which are not directly pertinent to the bill before the Senate now. But a section or a part of that case does directly involve the constitutionality of the provisions of the so-called higher education antibusing sections restricting jurisdiction of the Federal court in regard to busing orders.

Therefore, Mr. President, I ask unanimous consent to have printed in the RECORD certain pages of the brief of the parties in that case, which gives a rather full discussion and illumination of the question of the power of Congress to restrict, or order, or regulate the powers of the courts in order to effect a more perfect application of constitutional rights among the citizens of this country.

The PRESIDING OFFICER (Mr. ALLEN). Would the Senator from Georgia kindly state for the record the pages to be inserted, or the parts from which they will be taken?

Mr. GAMBRELL. Yes. The part to be printed begins on page 47 of the brief and runs through page 60.

The PRESIDING OFFICER. Without objection, it is so ordered and the excerpt will be printed in the RECORD.

The excerpt is as follows:

IV—EDUCATION AMENDMENTS OF 1972, TITLE VIII, SECTIONS 803–806

In light of its peregrinations through the Federal judiciary, little perspicacity is required by petitioners to realize that the point of no tomorrow is rapidly approaching. With this uppermost in mind, time is a luxury not enjoyed. Consequently, it is necessary to anticipate the Courts' response and prepare accordingly.

Considering the overwhelming documentation, entirely contrary to the premise upon which Mr. Justice Powell based his ruling, it appears reasonable to expect that the Court

will consider this issue afresh. At such time it is also anticipated that the outcome will ultimately depend upon a determination of constitutionality. To this point the following remarks are addressed.

Each of this Act's last four sections (803–806) have a common scheme: they restrict, limit, or even preclude powers of the District Court. Although the authority of Congress to take such action has never been questioned in other areas of law, this represents a historic first in school litigation. Congressional power to effectuate these measures though, comes from the same repository—the Constitution of the United States.

Several provisions appear sufficient to authorize this legislation without question, and, upon closer consideration, create the distinct impression that Congress possesses adequate residual muscle to justify much more stringent measures should it desire. Article I provides the first indication that Congress was expected to exercise some control over the judiciary. Section 8 deals with specific powers of Congress and authorizes it at Clause 9:

"To constitute Tribunals inferior to the Supreme Court".

Clause 18 of this same section represents the broadest grant of authority expressed in the Constitution. It directs Congress:

"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers . . ."

Further evidence that a degree of congressional dependence by the judiciary was intended comes from Article III. Section 1 reads in part:

"The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Finally, there is the Fourteenth Amendment itself. Under the "equal protection clause" of Section 1, it has provided the cornerstone for school decisions. This article may, in the final analysis however, provide strongest authority for congressional action. Section 5 reads:

"The Congress shall have power to enforce by appropriate legislation, the provisions of this article."

An examination of the provisions quoted gives rise to supporting theories mutually seperate and distinct. Since the Act applies, by its own terms, to District Courts, both are legitimate. It can thus be argued that this legislation represents congressional exercise of its power to affect the jurisdiction of an inferior Federal court under Article III, or simply use of the "enforcement powers" of § 5.

This Court's history is replete with decisions recognizing that jurisdiction of lesser tribunals is absolutely dependent upon Congress. In one form or another, opinions for at least 173 years have noted it: "The political truth is, that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this court, we possess it, not otherwise. . ." *Turner v. Bank of North America*, 4 Dall. 8, 10 n.I (U.S. 1799). "Courts created by statute can have no jurisdiction but such as the statute confers." *Sheldon v. Sill*, 8 How. 441, 449 (U.S. 1850).

An excellent discussion of Act III, Section 1, appears in *Kline v. Burke Construction Co.*, 260 U.S. 226, 234 (1922):

"The effect of these provisions is not to vest jurisdiction in the inferior courts over the designated cases and controversies but to delimit those in respect of which Congress may confer jurisdiction upon such courts as it creates. Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution. *Turner v. Bank of North America*, 4 Dall. 8, 10, 1 L.Ed. 718; *United States v. Hudson & Goodwin*, 7 Cranch, 32, 3 L.Ed. 259; *Sheldon v. Sill*, 8 How. 441, 448, 12 L.Ed. 1147; *Stevenson v. Fain*, 195 U.S. 165, 25 S.Ct. 6, 49 L.Ed. 142. The Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated cases, but it requires an act of Congress to confer it. *The Mayor of Nashville v. Cooper*, 6 Wall. 247, 252, 18 L.Ed. 851. And the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part; and if withdrawn without a saving clause all pending cases though cognizable when commenced must fall. *The Assessors v. Osborne*, 9 Wall. 567, 575, 19 L.Ed. 748. A right which thus comes into existence only by virtue of an act of Congress, and which may be withdrawn by an act of Congress after its exercise has begun, cannot well be described as a constitutional right."

A final example on this point, somewhat more recent, is *Lockerty* v. *Phillips*, 319 U.S. 182, 187 (1943). It is persuasive authority for the proposition that Congress, by restricting a District Court's use of busing, has withheld jurisdiction to a degree. Rather than use only the remarks of Chief Justice Stone, I prefer to repeat in its entirety that portion of the earlier decision quoted from:

"Second, in the doctrine so often ruled in this court, that the judicial power of the United States, although it has its origin in the Constitution, is (except in enumerated instances, applicable exclusively to this court), dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court), for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good. *To deny this position would be to elevate the judicial over the legislative branch of the government, and to give to the former powers limited by its own discretion merely.*" *Cary* v. *Curtis*, 3 How. 236, 245 (1845). (Emphasis added)

Although unnecessary to consider in the context of this argument, any discussion of jurisdiction and congressional power leads one inexoraby to *Ex Parte McCardle*, 7 Wall 506, 514 (1868). It stands for the proposition that appellate jurisdiction, even of the Supreme Court, rests within the control of Congress under Article III § 2.

This is perhaps the high-water mark in judicial acknowledgement of congressional power. In the wake of voluminous debates as to the constitutionality of the President's anti-busing proposals it has become a much mentioned decision.

While an appeal in a habeas corpus case was pending before this court, Congress withdrew jurisdiction. Chief Justice Chase observed:

"[T]he power to make exceptions to the appellate jurisdiction of this court is given by express words, . . . Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause."

Even though some modern scholars may seek to disparage it as precedent today, one would do well to remember that this is a unanimous opinion, unreversed after more than 100 years.

As convincing as the foregoing may or may not have been, Section 5 of the Fourteenth Amendment affords a cogent justification that is hard to quibble with. The current trend of constitutional thought seems to be that the powers it affords Congress are quite broad. This observation finds support in recent case law, as well as authoritative treatises. According to the excellent work of Professor Bork,[1] the scope of these powers is the subject of heated current debate. This is succinctly described in a paragraph attributed to Professor Archibald Cox:

"Today one of the major questions of constitutional theory and practice is whether the congressional power to make binding determinations upon questions of fact and degree, acknowledged under the commerce clause, applies to legislation enacted by Congress 'to enforce' the fourteenth amendment."[2]

Those who would answer that it does, find vast support in Katzenbach v. Morgan, 384 U.S. 641 (1966). This case arises under the Voting Rights Act of 1965 and deals extensively with Section 5. Referring to congressional power the majority quotes with approval at page 648:

"It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective." Ex parte Com. of Virginia, 100 U.S. 339, 345 (1880). (Emphasis in original).

At 650:

"By including § 5 the draftsmen sought to grant to Congress, by a specific provision applicable to the Fourteenth Amendment, the same broad powers expressed in the Necessary and Proper Clause, Art. I, § 8, cl. 18. The classic formulation of the reach of those powers was established by Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat, 316, 421, 4 L.Ed. 579:

'Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional.'"

At this point reference is made to the earlier decided voting right case, *State of South Carolina* v. *Katzenbach*, 383 U.S. 301, 326, 327 (1966), in dealing with the power afforded Congress by a similar section, it quoted the words of Chief Justice Marshall:

"This power like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Gibbons* v. *Ogden*, 9 Wheat, 1, 196, 6 L.Ed. 23.

* * * * *

"The basic test to be applied in a case involving Section 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress . . ."

That test was identified as the one formulated in *McCulloch* v. *Maryland*, and since Section 2 of the Fifteenth Amendment is identical to Section 5 of the Fourteenth Amendment (as well as Section 2 of the Thirteenth, Eighteenth, and Nineteenth Admendments), it was adopted by *Morgan* supra who stated:

"Thus the McCulloch v. Maryland standard is the measure of what constitutes 'appropriate legislation' under § 5 of the Fourteenth Amendment. Correctly viewed, § 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment."

The upshot of this decision appears to be a clear recognition of the broad discretion

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[1] Bork supra note 5 at 8.

[2] Cox, The Role of Congress in Constitutional Determinations, 40 Cincinnati Law Review 199, 258 (1971).

vested in Congress under Section 5. Reasoning in support of this conclusion relies heavily upon the fact that Congress enjoys a position which enables them "to assess and weigh the various conflicting considerations" in a manner superior to that of the court. This appears only logical, and if ever an issue arose which required this vital function, it must be the question of busing. Professor Bork is of this opinion:

"The nature of the problem is one peculiarly suited to Congress superior capacity for finding facts on a nationwide scale and making the detailed trade-off judgements required to frame a general rule applicable everywhere in the country. Courts, confined to particular fact situations and the record the litigants set before them, are less able to work out satisfactorily detailed legislative rules of the sort required here. That is the reason for the deference courts often show to congressional determinations of fact and to congressional alteration of remedies. We may conclude that Congress possesses substantial power to regulate busing under Section 5 of the Fourteenth Amendment." [3]

Having established the preferred constitutional source for the power Congress seeks to assert, it is susceptible to further refinement. "Section 5 of the Fourteenth Amendment, taken at the minimum weight that must be allotted it, confirms and reinforces Congress' historic power to deal with remedies employed by Federal courts. There is doubt about Congress power to deny all remedies for an established right, but very little about its power to limit or even deny one among many." [4]

This particular point is well covered in a unique and enlightening article by Professor Henry M. Hart. The following comments are found in an uninhibited colloquy between Professor Hart as interrogator and Professor Herbert Wechsler of Columbia.

Question: "The power of Congress to regulate jurisdiction gives it a pretty complete power of remedy, doesn't it? . . ."

Answer: ". . . The denial of any remedy is one thing—that raises the question we're postponing. But the denial of one remedy while the other is left open, or the substitution of one for another, is very different. It must be plain that Congress necessarily has a wide choice in the selection of remedies, and that a complaint about action of this kind can rarely be of constitutional dimension."

Question: "Why is that plain?"

Answer: "History has a lot to do with it . . . But the basic reason, I suppose, is the great variety of possible remedies and even greater variety of reasons why in different situations a legislature can fairly prefer one to another." [5]

It goes without saying that there are no decisions on this point in the area of school desegregation. For almost a score of years the current has only gone in one direction, and as noted, congressional action in this regard is without precedent.

Decisions of this Court, from its inception, have recognized the inherent power of Congress to affect remedies. The following opinions are illustrative and, though dealing with a variety of matters, their principles, by parity of reasoning, apply.

Chief Justice Marshall, in an opinion concerning state insolvency laws, gave full recognition to this point:

"The distinction between the obligation of a contract, and the remedy given by the legislature to enforce that obligation, has been taken at the bar, and exists in the nature of things. Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of a nation shall direct." Sturgis v. Crowninshield, 4 Wheat. 122, 200 (1819). See also the procedural case of the same vintage, Bank of Columbia v. Okeley, 4 Wheat, 235, 245 (1819).

Another early decision, which dealt with the right of contract, was *Antoni* v. *Greenhow*, 107 U.S. 769 (1883). Chief Justice Waite approves the language of an earlier opinion:

"It is competent for the state to change the form of the remedy, or to modify it otherwise, as they may see fit, providing no substantial right secured by the contract is thereby impaired . . ."*Von Hoffman* v. *Quincy*, 4 Wall. 553 (1869).

and concludes that:

"In all cases the question becomes, therefore, one of reasonableness, and of that the legislature is primarily the judge." (Emphasis added)

Finally, *Munn* v. *Illinois*, 94 U.S.C. 132 (1872):

"We ought never to overrule the decision of the legislative department of the government unless a palpable error has been committed. If a state of facts could exist that would justify the change in a remedy which has been made, we must presume it did exist, and that the law was passed on that account." (Emphasis added)

With this lengthy preamble in mind, it is appropriate to turn now to the legislation in question. Four sections are of concern here (803–806). As the reader is aware, 803 (Broomfield Amendment) was discussed at length in Portion I.

These remarks, however, were limited to a point raised in the opinion of Mr. Justice Powell concerning congressional intent. This portion seeks to further buttress the constitutional underpinnings of the moratorium. Being a case of first impression little authority exists.

Fortunately for petitioners, however, considerable guidance has been obtained from the treatise of Professor Bork, whose remarks appear ubiquitously in this brief. Although dealing with the moratorium provisions of the Nixon anti-busing proposals, it is extremely relevant, since that language is virtually identical to Section 803. An extensive quote from this treatise is most convincing:

"Congress' power to enact moratorium legislation in order to hold matters in status quo while it considers detailed regulation is probably best located in Article I, Section 8, Clause 18 . . . The moratorium can be defended as necessary and proper for Congress to carry into execution its power to regulate remedies, a standstill in busing orders being required so that irreparable disruptions and impairments of education do not take place before Congress can act.

". . . This means, essentially, a showing of the likelihood of the entry of further large-scale busing orders with their concomitant heavy expenditure of funds, administrative disruption, and student inconvenience, all tending to disrupt and make less effective the educational process. Combined with such a showing should be an argument that there is reason to believe these orders go beyond the duty of affirmative dismantling of segregated school systems, and that the disruption and expense will have to be undergone a second time in order to comply with the further legislation contemplated by Congress." [6]

This thinking seems particularly appropriate in view of the recent House passage of the Equal Educational Opportunities Act of 1972, detailed in Portion II. From this it is apparent that at least one body of Congress wishes to effectuate detailed regulation of school busing.

This brief is likewise replete with quotations from the Congressional Record declaring the need for such a moratorium. A prime example is found in the remarks of Congressman Quie:

"This is an extremely important necessary action designed to obtain equity and uniformity in these cases, and perhaps to give the Federal judiciary some time to assess the mood of Congress and the Country with respect to wholesale busing of children." (Emphasis added)

Congressional Record—House—H5404, June 8, 1972.

While designed to automatically halt, pending appeal, all busing orders, regardless of title or nomenclature, it was held inapplicable in the present case. This position not only frustrates the will of Congress, but ignores language currently used in school desegregation plans. Most important, the Court in so ruling has attributed to Congress the enactment of meaningless and futile legislation.

Under the interpretation reached in Drummond this is the inevitable result. Section 803 is said to apply only to orders whose mere existence makes them illegal for violating the principles laid down in Swann, and also Section 806 of the same act.

To illustrate this point, the following excerpts from Swann need be remembered. At page 15:

"The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation."

Further, at page 15:

"If school authorities fail in their affirmative obligations under these holdings, judicial authority may be invoked."

At page 16:

"Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults."

Further, at page 16, with reference to whether schools should have a prescribed ratio of black to white:

"To do this as an educational policy is within the broad discretionary powers of school authorities; absent a finding of a constitutional violation, however, that would not be within the authority of a federal court."

At page 17, concerning 407(a)

"The legislative history of Title IV indicates that Congress was concerned that the Act might be read as creating a right of action under the Fourteenth Amendment in the situation of so-called 'de facto segregation'."

The thrust of these remarks by Chief Justice Burger is to emphasize repeatedly the condition precedent to judicial involvement. Without a constitutional violation, uncorrected by school officials, judicial authority does not exist. Courts simply have no power to interfere with school systems unless there has been a constitutional violation. Vestiges of de jure segregation is considered by the courts to be such a violation. Therefore, this has been deemed sufficient to justify the use of busing as one tool for desegregation in those states.

(The ACTING PRESIDENT pro tempore assumed the chair.)

Mr. ALLEN. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged equally against both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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[3] Bork supra note 5 at 16.

[4] Bork supra note 5 at 11.

[5] Hart, "The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic," 66 Harvard Law Review 1362, 1366 (1953).

[6] Bork supra note 5 at 19.

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

Mr. ALLEN. Mr. President, I yield myself 3 minutes.

I should like to inquire of the distinguished senior Senator from Michigan (Mr. HART), inasmuch as the opposition to this bill seems to have wound down here at 6 o'clock in the evening, whether there might be a possibility that we might agree on a time to vote on final passage of the bill early next week.

Mr. HART. I doubt it.

Mr. ALLEN. The Senator would not hold out a great deal of hope, then, at that point?

Mr. HART. The Senator from Alabama knows perfectly well that we wound down because we agreed we would wind down about this hour.

There is a monumental documentation to be presented to the Senate. I indicated in some preliminary remarks certain areas that we know about this bill—we know it fiddles with the 14th amendment—but we have never had a committee analyze how many school districts actually are within reach of the next district but one to the student. That is one of many examples of items that have to be developed.

I was almost flip in my remark that "I doubt it," but I did it in the best of spirit, because the Senator from Alabama knew perfectly well the loaded question he asked me, and I answered in kind.

Mr. ALLEN. I see. I thank the distinguished Senator from Michigan.

We would, then, anticipate that the documentation the Senator refers to would come into the RECORD early next week?

Mr. HART. It is my information that the cloture motion has been filed. Is that correct?

Mr. ALLEN. Yes.

Mr. HART. We would hope that we would have the opportunity, before cloture was applied, to develop that documentation; but the range of it—without my repeating the comments I made earlier and the comments of the Senator from New York—would suggest that that will not be possible before next Tuesday.

Mr. ALLEN. The Senator is conceding, then, that in all likelihood he feels that cloture might be invoked on Tuesday?

Mr. HART. Whether on the popular or unpopular side, I have never been able to find the fellow who made the crystal ball that was reliable on those votes. We will just have to wait until the roll is called. I have a measure of confidence that, while it may not be an easy vote, it certainly will not be hailed by certain people as a good vote, that there is enough prudence in this Chamber not to shut us off before we get started.

Mr. ALLEN. I have noticed, though, that in cloture votes in the Senate, it has been the observation of the junior Senator from Alabama that we generally find the distinguished Senator from Michigan in favor of getting to the issue and getting to the final vote.

Mr. HART. Always, and I shall in this case.

Mr. ALLEN. I am delighted to hear it.

Mr. HART. After the Senate has available the information from which it can derive a responsible answer.

Mr. ALLEN. The Senator reminds me more and more this afternoon of the distinguished senior Senator from North Carolina (Mr. ERVIN).

Mr. HART. That is a very complimentary observation, and on that note I am ready to close.

Mr. ALLEN. I thank the distinguished Senator.

Mr. President, I am prepared to yield back the remainder of the time for this afternoon. I should like to state, before I do, that that time was divided for today only, with the thought that both sides would be allowed to make the presentation of their arguments, that any Senator desiring to speak on this subject, on either side, would have time allotted to him.

Starting Monday, then, the burden is going to be on the opposition to the legislation to carry the burden of the debate and to present the documentation to which the Senator has referred. So that there will be no control of time starting Monday.

I thank the distinguished Senator.

I yield back the remainder of my time.

Mr. HART. I yield back the remainder of my time.

GEN. PAUL K. CARLTON—NEW HAMPSHIRE IS PROUD

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement on behalf of the distinguished Senator from New Hampshire (Mr. MCINTYRE), entitled "Gen. Paul K. Carlton—New Hampshire Is Proud."

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

GEN. PAUL K. CARLTON—NEW HAMPSHIRE IS PROUD

(By Senator MCINTYRE)

It affords me great pleasure at this time to speak for a few moments of the pride which the people of the State of New Hampshire take in the recent nomination by the President of Lieutenant General Paul K. Carlton of the Air Force for promotion to the grade of General and to assume the duty of Commander of the Military Airlift Command.

General Carlton was born on April 14, 1921, in Manchester, New Hampshire, the son of Mr. and Mrs. R. W. Carlton. Subsequently, the family moved to Erie, Pennsylvania, and the General was graduated from Academy High School in Erie in 1939. Following his graduation from high school, he attended both the University of Pittsburgh and later Ohio University. In September of 1941, he entered the Army Corps aviation cadet program and received his pilot wings and commission as second lieutenant in April, 1942.

Since that time the General has had a long and distinguished career of military service. During World War II he served as a B–17 and B–29 pilot and was part of the first group which operated against the Japanese mainland from India and China in the latter aircraft. Following World War II, from January 1946 to September 1949, he was assigned to Strategic Air Command's first atomic bomb organization, the 509th Bombardment Wing at Roswell Air Force Base, New Mexico. Since that time he has held several important assignments throughout the Air Force, primarily with Strategic Air Command—taking time out from his military duties to attend the National War College in Washington, D.C. from August 1961 to June 1962.

In his most recent assignment General Carlton has been the Commander of the 15th Air Force of Strategic Air Command with Headquarters at March Air Force Base, California. He has more than 11,000 flying hours and has flown the B–47, B–52, B–58, and KC–135 aircraft as well as the fastest aircraft in the United States, the Mach III SR–71 strategic reconnaissance aircraft.

His military decorations and awards include the Silver Star, Legion of Merit, Distinguished Flying Cross, Air Medal, Army Commendation Medal, and the Purple Heart.

The General has been married to the former Helen Sweat of Albany, Georgia, since 1942 and they are the proud parents of two children; a married daughter, Mrs. Peter (Dorothy) Sievert, and Captain Paul K. Carlton, Jr., of the Air Force who is a distinguished graduate of the Air Force Academy and is currently pursuing further studies for the Air Force at the University of Colorado Medical School in Denver, Colorado.

The General is to become the commander of the Military Airlift Command and I believe that he is particularly well qualified to insure that it continues to live up to its motto: "Global in Mission—Professional in Action."

ORDERS FOR RECOGNITION OF SENATOR HUGHES AND SENATOR ROBERT C. BYRD AND FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders have been recognized on Monday, under the standing order, the distinguished Senator from Iowa (Mr. HUGHES) be recognized for not to exceed 15 minutes; to be followed by the Senator from West Virginia (Mr. ROBERT C. BYRD) for not to exceed 15 minutes; to be followed by routine morning business for not to exceed 15 minutes, with statements therein limited to 3 minutes.

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

ORDER FOR THE UNFINISHED BUSINESS, H.R. 13915, TO BE LAID BEFORE THE SENATE ON MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of routine morning business on Monday next, the unfinished business be laid before the Senate.

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

H.R. 1—RECONSIDERATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the third reading and passage of H.R. 1 be reconsidered and that the Stevens amend-

ment, which was offered for the Senator from Montana (Mr. METCALF), and which was inadvertently stricken from the bill be readopted and that, as thus amended, the bill be read a third time and passed, and that the vote be considered as having been reconsidered and laid on the table.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

Mr. HART. Mr. President, reserving the right to object—and I shall not—but I am glad that the very able Senator from Alabama (Mr. ALLEN) is still in the Chamber because I should like to remind him again of the hazards we are in when we proceed before we fully understand what we are doing.

I have no objection.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at 9 a.m. on Monday, October 9, 1972.

Following the recognition of the two leaders under the standing order, the distinguished Senator from Iowa (Mr. HUGHES) will be recognized for 15 minutes, to be followed by the Senator from West Virginia (Mr. ROBERT C. BYRD) for 15 minutes, after which there will be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements therein limited to 3 minutes.

Following morning business, the Senate will resume consideration of the unfinished business, H.R. 13915, the equal educational opportunities bill.

There is no assurance that yea-and-nay votes will not occur on Monday. They can occur on tabling motions, conference reports, and other bills which may be called up under short-time limitations, and so forth.

There will be a vote on Tuesday next, on the motion to invoke cloture on H.R. 13915.

The political weather for the week ahead appears to be somewhat cloudy and unsettled, with some turbulence showing on the radar. The barometer is falling, and as the week progresses, temperatures are expected to rise, with strong winds—gusty at times. Seat belts should be kept buckled in the event the busing becomes hazardous. Nothing, really, to be alarmed at—just seasonal expectations, the political calendar being what it is.

By Saturday, October 14, however, it is hoped that there will be a noticeable improvement in the forecast, with sunny skies and even temperatures—and, hopefully, a closing down of the weather station sine die.

ADJOURNMENT TO MONDAY, OCTOBER 9, 1972, AT 9 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9 a.m. on Monday next.

The motion was agreed to, and, at 6:08 p.m., the Senate adjourned until Monday, October 9, 1972, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 6, 1972:

UNESCO REPRESENTATIVES

The following-named persons to be Representatives of the United States of America to the 17th session of the General Conference of the United Nations Educational, Scientific and Cultural Organization:

William B. Jones, of California.
R. Miller Upton, of Wisconsin.
Louise Gore, of Maryland.
Jaquelin H. Humes, of California.
Benjamin F. Marsh, of Ohio.

The following-named persons to be Alternate Representatives of the United States of America to the 17th Session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

E. Dorothy Dann Bullock, of Pennsylvania.
Henry David, of the District of Columbia.
Pierre R. Graham, of Illinois.
James C. Haahr, of Minnesota.
Chauncy D. Harris, of Illinois.

EXTENSIONS OF REMARKS

PENSION LEGISLATION SHOULD BE DEBATED

HON. ROBERT P. GRIFFIN

OF MICHIGAN

IN THE SENATE OF THE UNITED STATES

Thursday, October 5, 1972

Mr. GRIFFIN. Mr. President, the Detroit Free Press has demonstrated a keen awareness of the urgent need for pension reform legislation as well as the failure so far of this Congress to produce.

A bill, S. 3598, is now on the Senate calendar. While it is not a satisfactory bill as it stands, that is no reason for the Democratic leadership not to call it up for debate so we could have a chance in this session to consider the subject of pension reform. If that opportunity is afforded, then I could, and would, be able to offer my stronger, more effective pension reform proposal as a substitute amendment. I stand ready to do just that, and I am confident that a majority in the Senate would support such an amendment.

The time remaining in this session of Congress is rapidly running out. Surely, there can be no excuse if the Senate adjourns for the year without even debating the subject of pension reform.

Mr. President, I ask unanimous consent that an editorial from the Detroit Free Press of October 5, 1972, be printed in the RECORD.

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

CONGRESS MUST PROTECT WORKERS ON PENSIONS

The Senate Finance Committee's dismissal of most key provisions of a plan to oversee and guarantee private pension systems cannot be permitted to stand. Too many workers in Michigan and around the nation have lost their pension rights after contributing to various plans for years.

Sen. Robert Griffin, who introduced the bill more than a year ago, has promised a hard fight to restore the deletions made by the committee without so much as a public hearing.

Still vivid in Sen. Griffin's mind is the experience of thousands of Studebaker Corp. workers who discovered there was no money in the pension kitty when the company failed. Studebaker has not been the only one; hundreds of plants have gone down, leaving faithful employes without the benefits around which they had planned their retirements.

There are other ways a worker can lose out on a pension, too. He may change jobs before he acquires pension rights, or hire on with a firm that does not have a plan for which he is eligible when he reaches retirement age.

Sen. Griffin's proposal would vest all participants in private plans after 10 years of service, meaning that if they should change jobs they would receive pensions at age 65 based on their previous service. A person might benefit from several pension systems, almost the equivalent of pension portability.

And an important feature of Sen. Griffin's plan is a provision for a federal pension insurance program covering losses of vested benefits. Such a program would provide a pension in the event the firm went out of business in the interval between a worker's leaving it and his attaining pension age.

Ideally, a pension fund should have enough money in it to pay all current claims and those that might be made in the future. This is difficult where large numbers of workers are employed but the government should encourage sound pension funding.

Private pension plans are supplemental to Social Security. But Social Security benefits, even with the recent 20 percent increase, do not provide much more than minimum needs. Workers who toil for years to build up pension benefits should not lose them. There are few legal safeguards to protect them, however, and there should be.

TENTH CONVENTION OF BYELORUSSIANS OF NORTH AMERICA

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 5, 1972

Mr. DERWINSKI. Mr. Speaker, Toronto, Canada, was the site of the 10th convention of Byelorussians of North America on September 2, 3, and 4. I insert in the RECORD a resolution unanimously adopted at the convention relating to Soviet-Russian domination of the Byelorussian people:

RESOLUTION

Whereas Russian rule over Byelorussia—first forcibly annexed by Muscovy in 1772